



Department for  
Communities and  
Local Government

Mr Tim Hellier  
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London Bridge  
London  
EC4R 9HA

Our Ref: APP/F0114/A/13/2191952

18 December 2013

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)**  
**APPEAL BY TESCO STORES LIMITED**  
**FORMER BATH PRESS, LOWER BRISTOL ROAD, BATH**  
**APPLICATION REF: 12/01999/EFUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, S R G Baird BA (Hons), MRTPI, who held a public local inquiry which opened on 2 July 2013 into your client's appeal against the decision of Bath and North East Somerset Council (the Council) to refuse planning permission for the erection of a mixed-use redevelopment comprising 6,300 sq. m of retail (Class A1), 4,850 sq. m of creative work space (Class B1), 2,610 sq. m of offices, (Class B1), 220 sq. m of community space (Class D1/D2), 10 residential houses, a basement car park, landscaping and access, including the realignment of Brook Road at Former Bath Press, Lower Bristol Road, Bath, in accordance with planning application ref: 12/01999/EFUL, dated 4 May 2012.
2. The appeal was recovered for the Secretary of State's determination on 14 February 2013 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeal involves proposals for main town centre uses totalling over 9,000 sq. m on a site in an edge-of-centre or out-of-centre location that are not in accordance with an up-to-date development plan document.

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

3. The Inspector recommended that the appeal be dismissed and planning permission be refused. For the reasons given below, the Secretary of State agrees with both the Inspector's conclusions and recommendation. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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## **Procedural matters**

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. He has also taken account of the Inspector's comment on the ES at IR1.7. The Secretary of State agrees with the Inspector that the ES complies with the above regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

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

5. Following the close of the Inquiry, the Secretary of State received the following correspondence concerning the withdrawal of a planning application by Sainsbury's Supermarkets Limited for the Bath Western Riverside East (BWRE) site: a letter dated 4 September 2013 from CMS Cameron McKenna LLP (on behalf of Sainsbury's Supermarkets Limited) to the Planning Inspectorate and an email dated 19 September 2013 from Terence O'Rourke Limited, on behalf of Tesco Stores Limited, to the Planning Inspectorate. The Secretary of State has carefully considered these representations in his determination of this appeal. Overall, and having considered all the representations made, he considers that the withdrawal of the planning application for the BWRE site has little bearing on his decision regarding the appeal site. Copies of these representations may be obtained by written request to the address at the foot of the first page of this letter.

## **Policy Considerations**

6. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
7. In this case the development plan comprises the 2007 Bath and North East Somerset Local Plan (LP). The Secretary of State notes that the Statement of Common Ground (ID1.3) contains a full list of relevant policies (IR4.2); and agrees with the Inspector that the development plan policies most relevant to the appeal have been identified at IR4.3-4.12. He further agrees with the Inspector, for the reasons set out at IR12.4-12.6, that the relevant policies of the LP are consistent with the policies and objectives of the Framework.
8. Other material considerations that the Secretary of State has taken into account (IR4.13-4.15 & IR4.23-4.42) are: *the Bath Western Riverside Supplementary Planning Document; the Bath and North East Somerset Supplementary Planning Document – Planning Obligations; the Bath Economic Regeneration Delivery Plan; The Treasure and Transform our route to prosperity brochure; the National Planning Policy Framework (the Framework); Technical Guidance to the National Planning Policy Framework (March 2012); Planning for Town Centres – Practice Guidance on need, impact and the sequential approach; Circular 11/1995: Use of Conditions in Planning Permission; and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.*
9. The Secretary of State has also had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based

resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

10. Having had regard to the Inspector's comments about the draft Bath and North East Somerset Core Strategy (IR4.16-4.22) (ECS), and the Inspector's analysis of the consistency of the policies therein with the Framework (IR12.7-12.10), the Secretary of State agrees that, notwithstanding the suspension of the ECS Examination<sup>1</sup>, and in view of the fact that the Local Planning Authority's approach to BWRE, particularly the extension of the city westwards are unlikely to be materially affected by changes to the ECS, ECS Policies B2 and B3 can be attributed more than limited weight.

## **Main Issues**

### **Retail Considerations**

11. The Secretary of State agrees with the Inspector's reasoning and conclusions that the proposal site is out-of-centre and as such must be assessed in the context of LP Policy S.4 and paragraphs 24 and 26 of the Framework (IR12.13).

### **Sequential test**

12. The Secretary of State notes the Inspector's view that there is no dispute that either the appeal site or the BWRE site could physically accommodate the proposed development; that the BWRE site is not landlocked in terms of ownership; and there is no explicit planning policy bar to the development on either the appeal or BWRE site. Overall, the Secretary of State agrees with the Inspector, for the reasons set out at IR12.14-12.32, and notwithstanding the fact that the Sainsbury's BWRE planning application has been withdrawn, that the BWRE site is sequentially preferable to the appeal site (12.33).

### **Impact test**

13. The Secretary of State agrees with the Inspector that the proposed Tesco would have a significantly harmful impact both on public and private investment (IR12.35-12.40) and the vitality and viability of the Moorland Road District Centre (MRDC) (IR12.41-12.45); and that this harmful impact would conflict with the objective of local and Framework policy which seeks to ensure the vitality and viability of town centres (IR12.46). The Secretary of State does not consider that the withdrawal of the Sainsbury's BWRE planning application affects his conclusion on this matter because whilst Sainsbury's BWRE planning application has been withdrawn, it is to be revised, and as the main parties acknowledge, the proposal represents planned private investment (IR12.36).

### **Highway Considerations**

14. The Secretary of State has considered carefully the Inspector's analysis of all the inquiry evidence (IR12.48-12.56). He agrees with the Inspector's conclusion that the concerns regarding the operation of the junction during the peak hour indicate that the operation of the junction with the proposed development would result in a

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<sup>1</sup> The Secretary of State notes that the ECS Hearings in relation to certain housing matters took place on the 10<sup>th</sup> and 11<sup>th</sup> December 2013.

severe and unacceptable residual impact on the operation of the highway network, contrary to the objectives of paragraph 32 of the Framework (IR12.57).

### **Other considerations**

15. The Secretary of State agrees with the Inspector's reasoning and conclusions regarding the design of the buildings in relation to the City of Bath as a World Heritage Site (WHS), and in this context considers that the proposal would conserve the significance of the WHS and retain and enhance one key element of the building that is of local significance (IR12.58).
16. For the reasons set out at IR12.59-12.60, the Secretary of State agrees with the Inspector that given the concerns regarding the operation of the junction and the potential for increased congestion, there is the potential for an adverse impact on local air quality; and that this adds to the general overall concern regarding the impact of the development (IR12.61).

### **Benefits of the scheme**

17. The Secretary of State agrees with the Inspector that the proposed scheme would bring substantial benefits in relation to projected creation of some 600 plus jobs; and that a substantial job creator providing a range of employment opportunities, in an area where there are high levels of unemployment and deprivation, is a benefit that should attract significant weight (IR12.62). He further agrees that the proposed scheme would bring about a substantial visual improvement to the Lower Bristol Road area and would contribute to the ongoing redevelopment and improvement of the wider area; that the ability to provide some historical interpretation of the history of the site; the provision of residential accommodation (part affordable); and the potential improvements to Lower Bristol Road, all add weight in support of the scheme (IR12.63).

### **Conditions**

18. The Secretary of State has considered the Inspector's reasoning and conclusions on the proposed planning conditions (IR12.64). He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of Circular 11/95. However, he does not consider that these overcome his reasons for dismissing the appeal.

### **Obligations**

19. The Secretary of State notes that the proposal is accompanied by an S106 agreement and agrees with the Inspector that the S106 is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development; and further agrees that it accords with the tests set out in the Framework and CIL Regulation 122 (IR12.65). The Secretary of State has noted the Inspector's comments at IR12.67 and IR12.68, but in light of his decision on this appeal, he does not consider there is any need to consider these matters further.

## **Overall conclusions**

20. The Secretary of State has considered carefully the Inspector's overall conclusions at IR12.69-12.71, and against the backdrop of the withdrawal of the Sainsbury's BWRE planning application. He agrees that the appeal site is an out-of-centre site, that the BWRE site is sequentially preferable and, in retail policy terms, the Tesco scheme would conflict with the relevant development plan policies and NPPF policies identified by the Inspector (IR12.69); the proposed scheme would have an unacceptable impact on the safety and operation of the Lower Bristol Road/Windsor Bridge Road junction and would conflict with the relevant development plan policies and those in the NPPF (12.70). Whilst the proposal would result in significant employment and environmental gains, benefits to affordable housing, and transport contributions, which are all positive factors in favour of the scheme, the Secretary of State agrees with the Inspector that these matters do not outweigh the substantial harm identified. The proposal does not meet the tests of Paragraph 27 of the Framework in that it fails to satisfy the sequential test and would have a significant adverse impact on vitality and viability of the MRDC. He therefore concludes that the appeal should be dismissed and planning permission refused.

## **Formal decision**

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal for a mixed-use redevelopment comprising 6,300 sq. m of retail (Class A1), 4,850 sq. m of creative work space (Class B1), 2,610 sq. m of offices, (Class B1), 220 sq. m of community space (Class D1/D2), 10 residential houses, a basement car park, landscaping and access, including the realignment of Brook Road at Former Bath Press, Lower Bristol Road, Bath, in accordance with planning application ref: 12/01999/EFUL.

## **Right to challenge the decision**

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

23. A copy of this letter has been sent to Bath and North East Somerset Council and other main parties. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Richard Watson', with a stylized, flowing script.

**Richard Watson**

**Authorised by the Secretary of State to sign in that behalf**



The Planning  
Inspectorate

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

by S R G Baird BA (Hons), MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 23 September 2013

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TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY

TESCO STORES LIMITED

BATH AND NORTH EAST SOMERSET COUNCIL

Inquiry held on 2 July 2013

Former Bath Press, Lower Bristol Road, Bath, Avon BA2 3BL

File Ref: APP/F0114/A/13/2191952

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**File Ref: APP/F0114/A/13/2191952**

**Former Bath Press, Lower Bristol Road, Bath, Avon BA2 3BL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tesco Stores Limited against the decision of Bath & North East Somerset Council.
- The application Ref 12/01999/EFUL, dated 4 May 2012, was refused by notice dated 17 January 2013.
- The development proposed is a mixed-use redevelopment comprising 6,300 sq. m of retail (Class A1), 4,850 sq. m of creative work space (Class B1), 2,610 sq. m of offices, (Class B1), 220 sq. m of community space (Class D1/D2), 10 residential houses, a basement car park, landscaping and access, including the realignment of Brook Road.

**Summary of Recommendation: The appeal be dismissed.**

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**1. Preliminary Matters**

- 1.1. This appeal was recovered for determination by the Secretary of State (SoS) under S79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990 because it involves proposals for main town centre uses totalling over 9,000 sq. m on a site in an edge-of-centre or out-of-centre location that are not in accordance with an up-to-date development plan document.
- 1.2. A Pre-Inquiry Meeting was held on 14 May 2013. At that time, based on the reasons for refusal and the Statements of Case, the main topics to be addressed (ID1.9) were identified as:
  1. development plan policies and their relationship to guidance contained at paragraphs 14 and 215 of the Framework<sup>1</sup>;
  2. emerging development plan policies and their relationship to the guidance contained at paragraph 216 of the Framework;
  3. other relevant local and national planning guidance with an indication of the weight to be attached to them;
  4. the contribution of the proposed development to building a strong and competitive economy;
  5. the implications of the development having regard to Framework guidance on ensuring the vitality of town centres;
  6. the implications of the development for the operation of the highway network and the promotion of sustainable transport patterns;
  7. the implications of the development for public safety having regard to the relationship of the site to operational gasholders;
  8. the implications of the development having regard to Framework guidance on built design and conserving and enhancing the historic environment;

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<sup>1</sup> National Planning Policy Framework



9. the implications of the development for the living conditions of nearby residents with particular regard to air quality, on-street car parking, noise and disturbance;
  10. conditions and the reasons for them and, where appropriate, S106 Agreements. Where planning obligations are to be presented they should be accompanied by a statement regarding CIL compliance.
- 1.3. The first reason for refusal (RfR) relates to the proximity of the site to gasholders located to the north of Lower Bristol Road and an objection by the Health and Safety Executive (HSE). Since the application was refused a mechanism for the removal of the Windsor Bridge Gasholder Station has been agreed by the Bath and North East Somerset Council (B&NES) (LPA 7C Appendix 4). Subject to the imposition of a Grampian style planning condition relating to occupation of the site, the HSE withdraws its objection. Other than identifying the mechanism for dealing with the decommissioning of the gas holders and a Grampian style condition, the parties did not address this RfR or address paragraph 1.2 (7) above (LPA 7C Appendix 4).
  - 1.4. The Inquiry sat for 8 days from 2 July to 5 July and 9 July to 12 July. Unaccompanied site visits were made before and during the Inquiry. An accompanied visit to the site and its surroundings was made on 17 July. At the request of Sainsbury's Stores Limited (SSL), an unaccompanied visit to The Paintworks, Bath Road, Bristol was made on the evening of 16 July.
  - 1.5. The RfR and the Statement of Common Ground (SOCG) between Tesco and the local planning authority (lpa) contained reference to Regional Spatial Strategy and Joint Replacement Structure Plan policies (ID1.1). An Order to revoke the Regional Strategy for the South West was laid on 24 April 2013 and came into force on 20 May 2013. The Order also revokes all directions under paragraph 1(3) of Schedule 8 to the Planning and Compulsory Purchase Act 2004 preserving policies contained in the Joint Replacement Structure Plan.
  - 1.6. Certified copies of a S106 Agreement between B&NES and Tesco Stores Limited and a S106 Unilateral Undertaking by Tesco Stores Limited were submitted (IDs 1.7 & 1.8).
  - 1.7. Regard has been had to an Environmental Statement (ES) submitted with the application under The Town and Country Planning (Environmental Impact Assessment) Regulations 2011. The submitted ES complies with the requirement of the Regulations.
  - 1.8. The list of documents includes opening and closing submissions and proofs of evidence from the 4 main parties. The proofs of evidence are as originally submitted and do not take account of how that evidence may have been affected by cross-examination or subsequent discussions and agreement between the various parties. Accordingly, in reporting the cases for the main parties, I have used the opening and closing submissions as the basis for their cases.

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## 2. The Site and Surroundings

- 2.1. This 3ha site is located on the south side of the A36 Lower Bristol Road at the junction with Brook Road and Windsor Bridge Road (WBR) approximately 1km south-west of Bath city centre (Tesco 6G). The site is occupied by a series of utilitarian industrial buildings dating largely from the 1900s, made of brick, block and stone (ID1.7 Drawing No. PN0500; CD2.4 page 26: CD 2.7 Chronology Plan). The majority of the site was formerly used by the Bath Press, a print works which was operational up until 2007. The majority of the buildings are unused apart from a separate tyre fitting/MOT garage with a frontage to Brook Road. At the eastern end of the Lower Bristol Road frontage is a continuous decorative stone façade, erected in sections between 1913 and 1929, and a decorative chimney located behind the façade (CD2.4 page 18). Internally, the majority of the building is on one level, providing large-scale industrial and warehouse space, with a partial basement below. At the eastern end there is some limited accommodation at first-floor level.
- 2.2. The main vehicular access is from Brook Road, into an external yard located in the south-west corner of the site. The southern area of this yard is currently used for parking by residents of the adjacent properties in South View Road. There are also vehicular accesses available onto Lower Bristol Road and Dorset Close. The narrow, gated access onto Lower Bristol Road appears to have been unused for some time. The Dorset Close access serves a small yard, which is currently being used by Oldfield Park Infants School for off-street car parking.
- 2.3. Although the vast majority of the site is either occupied by built form or hard surfaced, there is a row of mature trees and shrubs along the western section of the Lower Bristol Road frontage. Further planting/self-seeded vegetation exists around the tyre dealership and in the area fronting Brook Road at the western end of the site. The site lies within the City of Bath World Heritage designation but is not within a Conservation Area and none of the buildings are listed.
- 2.4. The area along Lower Bristol Road to the east and west has a commercial character with garages, car showrooms, industrial and storage uses. On the north side of Lower Bristol Road, are the garages/showrooms, beyond which are the former Windsor Bridge Gasholder Station and the River Avon (ID1.7 Drawing No. PN0500). The gasworks and the adjacent undeveloped area to the east form the proposed Bath Western Riverside (BWR) regeneration project. BWR proposes over 2,000 new homes, leisure and employment uses. Outline planning permission exists for this development with reserved matters approval for Phase 1. Construction commenced in April 2011 at the eastern end of the site.
- 2.5. On the western side of Brook Road at the junction with Lower Bristol Road is a public house with vehicular access to a small car park from Brook Road. To the south of this is a row of modern terraced houses and a large Cash & Carry Unit. Vehicular access to the Cash & Carry for customers is from Brook Road and deliveries are taken from Bellotts Road to the rear. Brook Road rises to the south with mature terraced house on either side. Few, if any, of the houses have off-street car parking. Immediately to the south of

the site is a dense area of mature terraced housing on South View Road and Denmark Road. This area is characterised by narrow streets and extensive on-street car parking. The eastern part of the site has a road frontage to Dorset Close, a cul-de-sac that serves Oldfield Park Infants School, a small park/playground and several buildings converted to residential use.

- 2.6. Moorland Road District Centre (MRDC) is located approximately 0.5km to the south and contains approximately 60 retail units, comprising a mix of independent and national stores (Tesco 6G; ID1.3 Appendix 4). Vehicular and pedestrian access from the site and Lower Bristol Road to MRDC is via Brook Road, which crosses the Bath to Bristol railway line at Oldfield Park Station approximately 250m to the south. The bridge is one-way to the south and has a 7.5 ton weight restriction.
- 2.7. Lower Bristol Road (A36) is designated as a National Primary Route and provides a strategic east-west vehicular route through the city and is signed as an east-west route for through traffic including heavy good vehicles (HGV) between Bristol and the south coast. Lower Bristol Road is served by several bus services, which stop adjacent to the site and serve the city centre and the wider local area. The Lower Bristol Road, Brook Road, Windsor Bridge Road junction is traffic light controlled with a dedicated right-turn lane on the approach from the east and dedicated right and left-turn lanes on the approach from the west (LPA 4C Appendix 1). At the time of the Inquiry, B&NES had commenced a junction improvement scheme (LPA 4C Appendix 3).

### 3. The Proposals

- 3.1. The scheme is for a mixed-use development including a 6,300 sq. m supermarket (Class A1), 7,190 sq.m of Class B1 employment space, (4,580 sq. m for creative work industries and 2,610 sq. m offices), 220 sq. m of community space (Class D1/D2), 10 houses, a basement car park, new areas of public realm and the realignment of the Lower Bristol Road, Brook Road, Windsor Bridge Road (CDs 2.2; 2.4 to 2.15 & ID1.7).

#### Retail Store

- 3.2. The supermarket would be set centrally within the site, in a predominantly single-storey building fronting Lower Bristol Road. The building would be sited behind the retained façade of the former Bath Press, which would include detailing to reflect the former use of the building. The new building would be clad in Bath stone, with glazing around the main pedestrian entrance onto Lower Bristol Road. The store would incorporate 3,983 sq. m of net sales floor space (2,828 sq. m convenience and 1,155 sq. m comparison). A café would be located in the corner of the building overlooking Lower Bristol Road and a new pedestrian space to the east.
- 3.3. An enclosed loading area accessed from Brook Road would serve the retail store. Pedestrian access would be from Lower Bristol Road and the new pedestrian space to the east, via the café. A travelator located adjacent to these entrances would provide access to and from a basement car park. The new store could generate approximately 350 jobs.

#### Creative Work Units

- 3.4. Creative workspace is proposed in 2 areas of the site. A 3-storey, L-shaped building would occupy the north-western corner and a 2-storey terrace would be located at the eastern end of the site opposite the store and overlooking the new pedestrian space. On the corner of Lower Bristol Road and Brook Road, the 3-storey building would be curved. The main façade would be made up of a series of Bath stone columns, between which would be a row of metal louvers in front of tinted glass. Above the columns a horizontal beam, also clad in Bath stone, would align with the cornice of the retained façade to replicate the rhythm and form of the retained façade. At the second-floor level, the building would be set back with a façade of steel and glass to lighten its appearance. The creative work units would provide flexible workspace for a range of light industrial users, to be targeted specifically at the creative industries. These include arts, crafts, media, and architectural and engineering activities. It is anticipated that the creative work units will generate approximately 97 full time equivalent jobs.

#### Offices, Community Space and Museum

- 3.5. Office and community space is proposed in a part 2-storey building at the eastern end of the site. The Lower Bristol Road and southern facades would be finished in Bath stone and vertical glazing, mirroring the form of the retained façade. Along its eastern and western edges, the building would have a more industrial character, comprising red brick, with limited variation and detailing. A saw tooth roof with a maximum height of 10m above ground level, to replicate the roof form of the original Bath Press buildings is

intended to reinforce this character. The office accommodation is proposed over 2 floors suitable for multiple or single lets. The office and community space could generate some 150 full-time equivalent jobs.

- 3.6. The community space would be located centrally within the building with access from Dorset Close. Operated by a management company, this is intended as flexible space for a range of community activities and clubs. In the north-east corner of this building, fronting Lower Bristol Road and Dorset Close, a small museum space displaying exhibits from the Pitman collection is proposed.

#### Residential Units

- 3.7. This would be a terrace of ten, 2-storey residential houses, at the eastern end of the site adjacent to the southern boundary. The houses would replicate the general form of the traditional dwellings located in Denmark Road to the south. The front facades would be faced in Bath stone and the rear façade in red brick.

#### Access and Parking

- 3.8. The main pedestrian access to the scheme would be from Lower Bristol Road. A new walkway would be provided behind the retained façade of the building. A new pedestrian route through the site is proposed, to connect Lower Bristol Road to Dorset Close. The layout is intended to integrate with the proposed layout of BWR, aided by the provision of new pedestrian crossing facilities and bus stops.
- 3.9. Vehicular access would be from a realigned Brook Road, at the western end of the site. This would provide access to a basement car park with 359 spaces, to be shared by the customers of the store and the users of the new offices and creative workspace. Ten separate car parking spaces are proposed at surface level along Dorset Close for the residents of the new houses. This area would have hard and soft landscape treatment to improve the pedestrian environment and general appearance.
- 3.10. Deliveries for the supermarket would be via the access on Brook Road, leading to a service yard at the western end of the site. Deliveries to the other uses would be via a lay-by in Dorset Close or the basement car park. The existing car parking by residents from South View Road in the former service yard would be retained. The Lower Bristol Road/Brook Road junction would be altered to provide facilities for pedestrians and cyclists. The alterations are intended to complement the junction works currently being undertaken by B&NES.

#### 4. Planning Policy

##### Development Plan Policy

- 4.1. The development plan includes the Bath and North East Somerset Local Plan (LP) adopted in 2007 (CD6.1). The LP was adopted in accordance with the Town and Country Planning Act 1990. As such, paragraph 215 of the Framework indicates that due weight can be given to relevant policies according to their degree of consistency with the Framework.

##### *Bath and North East Somerset Local Plan (CD6.1)*

- 4.2. The SOCG (ID1.3) contains a full list of relevant policies. The appeal site is not allocated for any specific purpose in the LP. Of the policies listed in the SOCG, the following are considered to be the most relevant.
- 4.3. *Policy S.1* identifies a hierarchy of shopping centres to be maintained and enhanced. Moorland Road is the only centre identified as a District Centre. Paragraph B5.4 highlights that retailing within these centres makes an important contribution to a vibrant and vital public realm. To ensure their vitality and viability is maintained and enhanced new retail development should be directed towards existing centres. The extent of the City Centre Shopping Area (CCSA), the Primary Shopping Frontages (PSF) and the MRDC are shown on the LP Proposals Map and at Tesco 6C Appendix 3.
- 4.4. Paragraph B5.16 describes MRDC, which has some 60 retail units comprising a variety of small independent convenience shops, comparison goods retailers including national multiples and a large food store, as a sizeable, healthy and vibrant centre with low vacancy rates. Whilst the function of MRDC is described as catering for the daily shopping needs of local residents, the LP notes that because of the range of retail on other services available it has a wider than average catchment area. Paragraph B5.54 highlights the valuable role of a district centre in providing local convenience and top-up shopping; seen as essential to helping to reduce the need to travel for shopping trips. The importance of maintaining their shopping function and, where possible, promoting investment is also highlighted.
- 4.5. *Policy S.4* says that retail development outside the *Policy S.1* centres will only be permitted where, (i) there is a quantitative and qualitative need; (ii) the scale of development complements the role and function of the centre; (iii) the proposal is located in accordance with the sequential approach i.e. city or town centre first, then if a site is not available there, as a first preference, the site is in an edge-of-centre location forming a natural well-connected extension to the town centre, or, as a second preference, the site is within an out-of-centre location that is well connected with it and provides for a high likelihood of linked shopping trips; (iv) there should be no unacceptable impact on the vitality and viability of existing centres, and (v) the site is or will be accessible by a choice of means of transport and will not unacceptably rely on private transport or add unacceptably to traffic and congestion. As the Framework does not require developers to demonstrate retail need, criterion (i) of this policy is inconsistent with guidance in the Framework. Whilst the wording of criterion (iii) is different, its objective is consistent with that set out in paragraph 24 of the Framework.

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- 4.6. Although *Policy S.8* relates to the change of use of existing A1 units within a district centre, the supporting text at paragraphs B5.57 and B5.58 reinforce the importance the LP attaches to the role of these centres. Paragraph B.57 refers to the "*need to retain existing shopping provision within district... centres*" and paragraph B.5.58 says, "*Given their importance locally it is critical that the vitality and viability of these centres is maintained*".
- 4.7. The objective of transport and highway *Policies T. 1, 3, 5, 16 and 24*, is to reduce the environmental impact of transport, improve safety and promote sustainable travel patterns. *Policy T.26* indicates that a scheme will only be permitted if an appropriate level of on-site servicing and parking is provided having regard to specific maximum parking standards. Paragraph D12.6 indicates that, "*...developers will not be required to provide more off-street parking than they themselves wish unless the likely increase in on-street parking would have irresolvable implications for road safety or seriously detract from the amenities of local residents.*". In the case of retail schemes, the maximum standard is one space per 14 sq. m.
- 4.8. Paragraph B6.31 recognises that air pollution can be the cause of serious health problems. Paragraphs B6.34 and B6.35 refer to the adoption of a Local Air Quality Strategy which requires that air quality is considered at the earliest stage in development proposals and indicates that the influence of air quality considerations on planning decisions will vary and weighed against all the other material considerations. *Policy ES. 10* says that development will not be permitted where it would have an adverse impact on health through, amongst other things, air pollution. The Bath Air Quality Action Plan (CD8.10) was adopted in April 2011 which refers to the Lower Bristol Road/Windsor Bridge Road junction. The Plan notes, "*a close correlation between air pollution levels and traffic flows on Bath's major road network means that transport is the main source of air pollution in Bath and as such transport improvement measures also relate to air quality improvement*". A key action is to bring forward measures as part of the Bath Transportation Package to tackle congestion such as the improvement to the Lower Bristol Road/Windsor Bridge Road and bus route improvements.
- 4.9. As a former industrial site, the appeal site is subject to the provisions of *Policies ET. 1, 2 and 3*. These policies seek to protect existing employment uses and promote new employment development in appropriate locations. *Policy ET.2 (3) (c)* says that proposals for office space in areas very closely associated with the central area of Bath will be supported in principle. Given its former and existing use, the appeal site is an employment site and, amongst other things, proposals for the loss of employment land will be assessed on whether the site is capable of continuing to offer adequate accommodation for business use or other similar employment uses; whether continued employment use would perpetuate unacceptable environmental or highway problems and whether alternative proposals offer community benefits that outweigh the loss of the site to an employment use.
- 4.10. *Policy GDS.1 B1*, Western Riverside (BWR) identifies some 33ha of land between Green Park Road and Windsor Bridge Road for a mixed use development including Class B1 Uses, residential development, small scale local needs shopping, food and drink uses and local offices. BWR includes

an existing Sainsbury's store at Green Park Station and a Homebase store at Pines Way. Policy GDS.1 B1 indicates that existing businesses wishing to remain and which are compatible with the BWR Supplementary Planning Document (SPD) will either remain in their current locations or be relocated within the redevelopment area or elsewhere.

- 4.11. *Policy BH.1* indicates that development that would harm the qualities that led to its designation of the Bath World Heritage Site or would harm its setting will not be permitted. The Bath Press building was included in a draft list of Locally Important Buildings. Although the list was not adopted, *Policy BH.5* seeks to preserve the architectural interest and integrity of such buildings and any contribution to its context, local interest or historical associations.
- 4.12. Within Bath, *Policy HG.8* seeks to secure the provision of 35% affordable housing on sites of 0.5ha along with mechanisms to secure implementation and retention of the affordable houses for subsequent occupation. *Policy IMP.1* indicates that in determining planning applications, planning obligations may be sought under S106 of the above Act where a particular form of development is required to comply with policy, to provide compensatory provision, to mitigate an otherwise unacceptable impact on local facilities/infrastructure or overcome harm that would otherwise make the development unacceptable.

*Bath Western Riverside Supplementary Planning Document (CD7.2)*

- 4.13. Adopted in 2008, the BWR SPD has a long term vision to create a sustainable mixed use city quarter as a contemporary addition to the city environment whilst respecting its World Heritage Status (CD7.2 paragraph 2.2.1). Paragraph 1.6.23 highlights that the LP makes provision for appropriate retail development at BWR principally in the eastern zone. Paragraph 1.6.24 that the Spatial Masterplan is intended to be flexible enough to guide development up to about 2021 and does not rule out additional retail development. Paragraph 2.2.5 indicates that the eastern end of the site closest to the city will provide a new extension to the city centre based on a mix of uses comprising retail, offices, culture, leisure and residential, with a higher proportion of commercial uses (Plan 2.3 page 21).
- 4.14. Paragraph 2.2.11 highlights that the BWR falls naturally into 2 parts either side of Victoria Bridge Road where the emphasis on uses and design responses changes dramatically. The east is seen as being very much part of an extension to the existing city centre, with the west having a supporting role as a sustainable location for a new community. Under the Spatial Masterplan, there is also reference to a "*full range of uses including retail ...*" to the east of Victoria Bridge Road (page 22 Uses), and to the relocation of Sainsbury's in order to free up the Green Park Station area to create an area "*at the heart of the city extension*" (Page 24 paragraph 2.5.10). The Zonal Masterplan: Land Use at paragraph 2.12.2 refers to the eastern zone accommodating city centre type uses with the Local Development Framework establishing the role that the eastern zone of BWR has to play in the future of Central Bath. Paragraph 2.12.3 anticipates the Green Park Station area accommodating city centre retail and associated uses which, "*would require Sainsbury's moving across the river*"



*Bath and North East Somerset Supplementary Planning Document – Planning Obligations (CD7.1)*

- 4.15. Adopted in 2009 the SPD provides guidance on planning obligations in 5 policy areas, those relevant to this case are affordable housing, children's services and life long learning and sustainable transport. Where appropriate the SPD sets out a methodology for calculating the level of contributions.

*Bath and North East Somerset Core Strategy (CDs 6.2 & 6.3)*

- 4.16. The draft Core Strategy (CS) was published in December 2010 (CD 6.2) and was submitted for examination in May 2011. Although the examination of the plan has been suspended, the Ipa, in March 2013, approved an amended CS for development management purposes (CD6.3). At the time the Inquiry took place the examination of the CS had not resumed.
- 4.17. The District Wide Spatial Strategy identifies the city as one of the areas where new jobs, housing and community facilities will be focused. To enable economic diversification there is a focus on ensuring the location of modern office space within or adjoining the city centre (Policy DW1). Policy B1 sets out the spatial strategy for Bath, which, amongst other things, includes sustaining and enhancing non-designated heritage assets of local interest and value; expanding the knowledge intensive and creative employment sectors; increasing the stock of office premises and enabling appropriate levels of business space in mixed use out-of-centre developments; increasing the supply of housing; transforming BWR into a contemporary residential neighbourhood; protecting and, where possible, enhancing the vitality and viability of district centres; focusing additional convenience retail floorspace within or on the edge of existing centres before considering out-of-centre sites and implementing the Air Quality Management Plan. The CS identifies strategic policy areas including the Twerton and Newbridge Riverside Area; The Central Area, comprising the City Centre, South Quays and BWR East and The Western Riverside Area (CD6.3 page 32; Annex 1 Diagram 6).
- 4.18. The Central Area lies at the heart of Bath comprising the city centre and neighbouring locations. The extent of the city centre is shown on the Proposals Map (CD6.2 Appendix 3). A key objective is for the city centre to expand and encompass the entire Central Area (Annex 1 Diagram 7). Diagram 7 illustrates the general extent of the city centre and identifies neighbouring areas with the capacity for significant change. Policy B2 identifies the Green Park Station area and the Homebase site as key development opportunities; Diagram 7 shows these areas as Key Development Hotspots. Policy B2 (4) lists the key activities to be accommodated in The Central Area, which includes small to medium comparison retailing; 2,000 sq. m convenience shopping space, hotels, dwellings and riverside enhancement schemes. It is anticipated that by 2029 The Central Area will change, with the city centre boundary expanding westwards as key redevelopment sites within the existing city centre and edge-of-centre areas are redeveloped (Diagram 8).
- 4.19. The CS Western Riverside (WR) policy area (Diagram 6) is smaller than that identified in the LP at Policy GDS.1 B1 and the BWR SPD. The CS WR area excludes the majority of the area now generally referred to as Bath Western

Riverside East (BWRE), which, given the commercial led mixed uses being sought for this area is now seen as forming part of The Central Area.

- 4.20. Twerton Riverside would form the western extent of the City of Ideas Enterprise Area with the appeal site highlighted as a Key Development Hotspot (Diagrams 6 & 9). Whilst Policy B3 notes that Twerton Riverside has contracted as an industrial location in recent decades, it continues to be a suitable location for a broader range of uses with scope to redevelop the area to provide new business premises (Class B1a-c) and housing. The area is recognised as a potential location and flexibility for businesses displaced by the residential development on BWR and the intensification of the Central area into BWRE and housing. The façade of the Bath Press building is identified in the CS as a non-designated heritage asset. Policy B3 notes that there *"is good, yet not fully realised connectivity with the city centre via the shared riverside walking and cycling route..."*.
- 4.21. Policy CP12 sets out the hierarchy of shopping centres with Moorland Road being listed as a District Centre. The policy objective is to secure and enhance its role of providing for everyday shopping needs and contributing to economic and cultural diversity (paragraph 2.23). Other than for the city centre, the boundary of the MRDC is that established by the LP. These boundaries are intended to be reviewed as part of the Place Making Plan.
- 4.22. On transport and movement, the CS continues the longstanding theme of reducing car dependency and working towards making walking, cycling and the use of public transport more attractive. It is acknowledged that the highway network is heavily trafficked and that transport and access improvements are required to facilitate growth. Policy CP13 indicates that new developments must be supported by the required infrastructure to provide balanced and more self-contained communities.

#### Other Local Documents

- 4.23. *The Bath Economic Regeneration Delivery Plan* (ERDP) (CD8.1) sets out a vision for Bath to be a "City of Ideas" where world class academia, high tech manufacturing, creative industries and training academies meet to develop new ideas that lead job growth (CD8.1 Appendix 1 page 4). The ERDP identifies sites that could help to support sustainable economic growth and help deliver the smart growth that would help the city to thrive.
- 4.24. Green Park Station is referred to as a gateway site to an enlarged city centre with the potential to be a vibrant new retail/leisure destination comprising significant retail space, bars, restaurants, health and fitness uses, hotel/conference facilities and residential. BWRE could provide a high quality commercially led link comprising retail, offices, live/work units riverside leisure facilities and residential development between the BWR residential quarter to the west and Green Park Station and the city centre to the east. Bath Press, as part of Twerton Riverside is identified as an opportunity to create a mixed use development delivering out-of-centre retailing that compliments the existing city centre retail offer, office and creative business space and residential uses.
- 4.25. *The Treasure and Transform Our Route to Prosperity* (CD8.2) brochure highlights the economic transformation of B&NES and refers to the Bath

"City of Ideas" Enterprise Area. Various sites, including BWR east and west and Bath Press are listed as having potential for mixed use developments. The Economic Strategy for Bath and North East Somerset (CD8.5) lists as a priority action for 2010-2013 facilitating new city centre and edge-of-centre commercial quarters, including the BWRE site (CD8.5 page 45).

- 4.26. Although identified as having the potential as an evidence base for informing planning policy, the Ipa indicated that the above documents have not been the subject of a formal planning-led consultation process and as such should attract only limited weight.

#### National Planning Policy

##### *National Planning Policy Framework*

- 4.27. The Framework has at its heart a presumption in favour of sustainable development which contributes to building a strong economy, supports strong, vibrant and healthy communities and contributes to protecting and enhancing the natural, built and historic environment. Development that accords with the development plan should be allowed without delay or where the development plan is silent or out of date permission should be granted unless the impact would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole or specific policies indicate that development should be restricted (paragraph 14).
- 4.28. Core Planning Principles include driving and supporting sustainable economic development, promoting the vitality of main urban areas, the effective use of brownfield land, promoting mixed use developments, conserving heritage assets in a manner appropriate to their significance and taking account of local strategies to improve health and well being. In building a strong and competitive economy, the Framework indicates that significant weight should be placed on the need to support economic growth.
- 4.29. The Framework recognises the importance of town centres and supporting their vitality and viability. Whilst an applicant no longer is required to demonstrate need for schemes that are in edge or out-of-centre locations, planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date LP are to be the subject of a sequential test and an impact test. Paragraph 26 indicates that applications for main town centre uses should be "*located in town centres, then in edge-of-centre locations and only if suitable sites are not available should out-of-centre sites be considered. When considering edge-of-centre and out-of-centre proposals, preference should be given to accessible sites that are well connected to the town centre*". The impact assessment looks at the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and the impact on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area. Paragraph 27 says that where an application fails to satisfy the sequential test, or is likely to have significant adverse impact on one or more of the above factors, it should be refused.
- 4.30. Paragraph 32 says that all developments that generate significant amounts of movement should be supported by a Transport Assessment (TA).

Decisions should take account of whether: the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure; safe and suitable access to the site can be achieved for all people; and improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

- 4.31. Section 7 of the Framework indicates that the Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development and is regarded as indivisible from good planning. Paragraph 58 sets out several objectives that developments should seek to achieve. These include ensuring that it: functions well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; establishes a strong sense of place, using streetscapes and buildings to create attractive and comfortable places to live, work and visit; responds to local character and history, and reflects the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation.
- 4.32. Section 12 of the Framework sets out policy on conserving and enhancing the historic environment. Heritage assets include buildings... identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. The definition includes designated heritage assets and assets identified by the local planning authority, including local listing.
- 4.33. In determining planning applications, local planning authorities should take account of: the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation; the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and the desirability of new development making a positive contribution to local character and distinctiveness. The City of Bath is designated as a World Heritage site and as such is a designated heritage asset. The Bath Press building, although not considered worth of Listed Building Status, is included on a draft list of locally important buildings.
- 4.34. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Where a proposed development will lead to substantial harm to the significance of a designated heritage asset, lpas should refuse consent, unless it can be demonstrated that the substantial harm is necessary to achieve substantial public benefits that outweigh that harm. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated

heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

- 4.35. The Framework at paragraph 216 indicates that from the day of publication, decision-takers may also give weight to relevant policies in emerging plans according to: the stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given); the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and the degree of consistency of the relevant policies in the emerging plan to the policies in the Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given).

*Planning for Town Centres - Practice Guidance on Need, Impact and the Sequential Approach.*

- 4.36. Although Planning Policy Statement 4 – Planning for Sustainable Economic Growth has been superseded by the Framework, the Practice Guide remains extant<sup>2</sup>. The Practice Guidance gives guidance on the impact and sequential site assessments. Following the introduction of the Framework, although a developer is no longer required to demonstrate need for a development it remains relevant in terms of the sequential approach and impact test.
- 4.37. The policy objectives of the sequential approach are identified at paragraph 6.2. The Practice Guidance identifies that town centre sites or, failing that, well connected edge-of-centre sites are likely to be the most readily accessible locations, thus reducing the need to travel, and are locations where customers are able to undertake linked trips, thereby reinforcing the vitality and viability of the existing centre.
- 4.38. Paragraphs 6.3 to 6.8 set out definitions of in-centre, edge-of-centre and out-of-centre. In-centre for retail development is defined as the Primary Shopping Area (PSA). Edge-of-centre is a location that is well connected to and within easy walking distance, up to 300m, of the PSA; for all other main town centre uses this is likely to be within 300m. PG indicates that, in determining whether a site falls within the definition of edge-of-centre, account should be taken of local circumstances i.e. topography, major barriers, attractiveness and perceived safety of the route and the strength of attraction and size of the centre. Out-of-centre is defined as somewhere not within easy walking distance of the centre. Where in-centre or edge-of-centre locations are not available preference should be given to sites well served by a choice of means of transport, which are close to and have a higher likelihood of forming links with a centre.
- 4.39. The sequential test involves assessing sites in terms of their availability, suitability and viability. Paragraph 6.37 indicates that urgency of need can be a consideration in assessing availability. Paragraph 6.39 indicates that availability and the sequential approach have to be considered, together with the impact of development occurring in edge of or out-of-centre locations and the long term consequences for town centres. In these

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<sup>2</sup> Unchanged by DCLG Beta Mode Guidance.

circumstances whether it is appropriate to assess availability over 3 to 5 years or a longer period will depend on local circumstances. Paragraph 6.40 highlights that some major town centre schemes can take 10 to 15 years to deliver and may require the use of a CPO. Paragraph 6.41 says that *"when promoting a proposal on a less sequentially preferable site, it will not be appropriate for a developer or retailer to dismiss a more central location on the basis that it is not available for the developer/retailer in question"*. Paragraphs 6.42 to 6.50 give guidance on assessing suitability and viability.

- 4.40. On town centre impact, paragraph 7.16 identifies the impact on existing, committed and planned public and private investment in a centre; the impact on vitality and viability including local consumer choice and the range and quality of the comparison and convenience retail offer and the impact on trade/turnover as relevant considerations. Paragraph 7.17 indicates that where the lpa and/or the private sector has identified town centre development opportunities, and is actively progressing them, it will be highly material to assess the effect of proposals on that investment. Key considerations will include: the stage which the proposal has reached; the degree to which key developer/occupier interest is committed; and the level and significance of predicted direct and indirect impacts.
- 4.41. On vitality and viability, paragraph 7.22 indicates that it will be appropriate to consider the implications of a proposal on retail diversity, particularly the range, type and quality of goods available. On turnover and trade, paragraph 7.29 suggests that it will be necessary to balance the desirability of maintaining and enhancing the turnover of existing facilities with the benefits of improved consumer choice, competition and access to new facilities. Paragraphs 7.31 and 7.32 indicate that the turnover levels needed to maintain and enhance vitality and viability will vary between different centres according to the level of overheads/rents etc. Where a centre is experiencing falling rents, high levels of vacancy and declining footfall, even modest levels of trade diversion can have significant adverse impacts.
- 4.42. Where centres are vital and viable, and existing retailers/leisure operators are achieving high levels of turnover, they may be able to withstand high levels of trade diversion resulting from a proposal, although this does not mean in itself that such impacts are acceptable. In most cases, unless there is clear evidence of a significant impact on turnover likely to undermine the vitality and viability of the centre, the negative effect of trade diversion needs to be balanced against any positive town centre or wider impacts as part of reaching an overall judgement.

## 5. The Case for Tesco Stores Limited

The material points are: -

### Introduction

5.1. Bath Press is a brownfield, underused, unattractive and wasted piece of land in need of regeneration. Tesco proposes a significant mixed use development that would regenerate the site, provide jobs and improve this important entrance to Bath. The scheme includes employment with retail alongside residential and community components. The employment uses would ensure that a significant number and range of jobs are achieved; many more than previously existed at the Bath Press. This would be achieved at a time, when there is demand for the proposed creative workshops and office space, when there is a restricted and reducing supply of this type of accommodation in the city and when no new accommodation is under construction (Tesco 4B paragraph 7.20 & 7.21).

5.2. Located in the south-west quadrant of the city where there is a relative deficiency of main food retail space, the store would meet the demands of shoppers locally and would provide a new large store operator where there is no substantial Tesco presence currently. The existing large food stores (Sainsbury's, Morrisons and Waitrose) are overtrading and expected to continue to do so even after commitments have come on-stream. In addition, there is a significant outflow of retail expenditure to Midsomer Norton and Trowbridge. The scheme would also provide much-needed new homes, local community space and a museum in acknowledgement of the site's locally significant past.

*What are the characteristics of the scheme generally; in terms of Framework guidance on built design and conserving and enhancing the environment; and are they beneficial and do they contribute to building a strong and competitive economy?*

5.3. There is no issue about the design of the scheme. Tesco has been careful and responsible to meet all the design opportunities of the site in consultation with the lpa and local residents. The roof was originally flat but following concern about increased disturbance from gulls using the roof as a roost it has been modified to deter these birds (Tesco 4B paragraph 7.10). A local resident describes the site as '*an abandoned slum area*' and welcomes the proposal (IP8). The design is of high quality and would make a significant improvement to this degraded area on one of the main routes into the city of Bath (CD2.4). Tesco has, at local request, committed to retaining part of the façade and chimney of the original Bath Press and to design a scheme that respectfully acknowledges its past. The building is not listed, but has echoes for many local residents who either worked, or had connections with people who were employed at Bath Press.

5.4. The Tesco scheme would bring vitality to this area where a gateway feature would be created which would offer a sense of arrival into the heart of the city (CD2.4). Facing Dorset Close and along its southern edge, the scale of development would be reduced, to blend with the residential character of

the area and the school. The new buildings would incorporate a range of sustainable design measures to offer a modern high quality solution.

- 5.5. Twerton Ward, which is close to the site, has the highest proportion of deprivation in the city, with 34% of young people whose families are either on unemployment benefits or are earning 60% of the average household income, compared to the district wide figure of 12%. Unemployment in this ward at 6.4% is almost twice as high as the rest of the city at 3.5% (Tesco 4B paragraphs 7.23 to 7.26). The Tesco scheme, would offer a range of employment. However, it should be noted that the greater floorspace is in the employment component as opposed to the retail.
- 5.6. The suggestion is made that in some way there is an inappropriate cross-subsidy to employment from the retail. There may well be a cross-subsidy. The reason for that is Tesco are presenting a proper mixed use scheme that creates a package that is appropriate in this location. That there is less value in the employment uses is a fact of life Tesco has to bear. Tesco would build the scheme as a whole unit and would be extraordinarily unwise if it did not do its utmost to let the employment space and recoup that investment. Given the lpa welcomes the employment elements of the scheme, this matter cannot be a concern of weight. The lpa's concern is the net amount of jobs produced. It is not a basis for real criticism but a qualification of any employment or retail scheme. The gross number of jobs is unlikely to equate with the net figure anywhere. In contrast, the suggestion by Sainsbury's that the site should be developed for B2 uses is no more than a facile irrelevance. The local economy would be stimulated through the significant investment proposed by the appeal scheme and the creation of over 600 jobs (CD2.14 Section 6). The Economic Development officer supported the application, recognising the important opportunity it presents (CD5.1 page 73 & CD5.2 page 57).
- 5.7. Sainsbury's suggestion that this site should be used for B2 uses is somewhat bizarre. Leaving aside Tesco's analysis that Sainsbury's viability work was not reliable and indeed the scheme it appraised was unviable, there had been no thought given to the implications of a B2 proposal on the immediate neighbours in Brook Road, South View Road, and Dorset Close (SSL 7B & 7C Appendix JM11; TESCO 5D). Sainsbury's say there is no demand for creative workspace and B1 offices (SSL 7B). Yet it seeks to promote 2,400 sq. m of creative workspace and 10,630 sq. m of office space some 500m away on the Homebase site. Like most of Sainsbury's contribution to this Inquiry, it was ill considered.

#### *National and Local Policy Background*

- 5.8. The Government's ambition, set out at paragraph 14 of the Framework, is to energise development through the "*presumption in favour of sustainable development*". The Framework's core planning principles include proactively delivering development and reusing land that has been previously developed. Paragraph 17 of the Framework requires the planning system to "*proactively drive and support sustainable economic development to deliver homes, business and industrial units, infrastructure and thriving local places the country needs...*" Tesco's scheme would clearly support these aspirations by providing significant investment and jobs at a vacant



brownfield site. The proposal also follows the Framework requirements in Sections 7 and 12 which (i) encourage high quality design and (ii) conservation of the historic environment. The design solution is the result of thorough local engagement that has led to a scheme welcomed by many of the immediate local residents and is compatible with its surroundings.

- 5.9. The development plan is out of date and therefore, in line with guidance at paragraph 14 of the Framework, permission should be granted unless any adverse impacts of doing so would significantly and adversely outweigh the benefits when assessed against the policies of the Framework as a whole. It is important to note that the impacts have to be more than just impacts; they must be significant or severe.
- 5.10. Although LP Policy S.4 is broadly overtaken by the provisions of the Framework, it is, with the exceptions of criteria (i) and (ii) generally consistent with the Framework. In terms of emerging policy, CS Policy CP12 is relevant and in line with the provisions of the Framework. CS Policies B2 and B3, where the provisions are consistent with the Framework, are material considerations and should be given weight i.e. more than the limited weight suggested by the lpa.
- 5.11. In respect of CS Policy B3, it is only recently, March 2013 that specific reference to "retail" was removed<sup>3</sup> (CD6.3). More significantly, the overriding principle of CS Policy B3, supported by a wide range of other B&NES policies, is to bring forward business led redevelopment at Bath Press as one of the only 2 "*key regeneration opportunities*" in Twerton Riverside. The issue between Tesco and the lpa as to the efficacy of CS Policy B3 is, because overall housing requirements are still being reviewed and that there is no specific quantum of housing set out in these policies and the most recent CS delay relates to Green Belt releases to respond to the housing needs of the wider Strategic Housing Market Assessment. However, these matters are not fundamental to this Inquiry.
- 5.12. Giving weight to the emerging CS policies however, is separate to any consideration of the current Sainsbury's proposal, which importantly is not before the SoS. It is inappropriate to suggest that the redevelopment of the Homebase site for a new Sainsbury's would deliver the BWRE policy objectives for extension of the city centre. The Sainsbury's scheme is as yet untested and may be undeliverable. It does not meet the policy objectives for the comprehensive planning of this area and the scheme is not in line with the emphasis on a commercially led employment development (Tesco 4B). Moreover, the objectives for the BWRE site could be better achieved by improving the retail offer on the Green Park Station/existing Sainsbury's site and improving the linkage to the city centre.

*Is the Bath Western Riverside East site ('the Homebase site') and its proposal by another retailer, a bar to the development of the appeal site?*

- 5.13. The lpa accepted<sup>4</sup> that there is no development plan allocation or policy requirement for development of the BWRE site to include a relocated Sainsbury's or indeed any foodstore. The lpa acknowledged<sup>5</sup> a Tesco store on the appeal site would not breach any emerging policy for BWR, and that regeneration of BWR would continue irrespective of the outcome of this appeal. On this basis alone, there is no policy reason why a proposal by another retailer should affect the development of the appeal site.

#### The Sainsbury's Application

- 5.14. There are other good reasons why the Sainsbury's Homebase application has no significance for a decision on the Tesco scheme. The Sainsbury's application is clearly an attempted spoiling exercise with a degree of cynicism. The starting point is that at a distance of some 675m<sup>6</sup>, the site is out of centre, whilst the store it would replace is considered to function, just, as an edge-of-centre store. There is no certainty that the Sainsbury's application will be approved. The lpa's retail consultant confirmed<sup>7</sup> that he has been asked verbally to assess the application and he confirmed that it may not be acceptable on retail impact grounds. There is also no evidence that the scheme is viable. The key generators of value being the Sainsbury's additional floorspace, which is only expected to generate some £10-11m additional sales per annum and the conversion of the existing Green Park store to non-food use for which no one is lined up at present. In this context, it is hard to believe that this is sufficient to fund a £160m investment. Sainsbury's say that it will not proceed with this application if the appeal is allowed<sup>8</sup>. So be it; there is already a substantial supermarket at Green Park Station with planning permission to expand. Any long term ambitions the lpa has for this area can work round that. The posturing by Sainsbury's is of no importance to the SoS's decision on the Tesco scheme.
- 5.15. Sainsbury's urban designer<sup>9</sup> acknowledged that the artist's impression of the scheme was "ghastly" (SSL 6D page 47 Figure 29). Clearly it is a rushed, ill thought out design more akin to a football stadium than an asset to Bath. The scheme appears to be dependent on the value achieved on the redevelopment of the existing Green Park Station site for comparison goods for which there are no declared takers and the timing and deliverability of the employment component is clearly uncertain.

#### The Sequential Test

- 5.16. The only relevance of the BWRE/Homebase site to the SoS's decision is whether it represents a sequentially preferable site that is suitable and available for the proposed development. This is clearly not the case. Although the Tesco site is acknowledged as being out-of-centre, the CS

<sup>4</sup> X-Examinations of Ms James & Mr. Hay

<sup>5</sup> X-Examination of Ms James.

<sup>6</sup> Tesco 6G Point A to Point J

<sup>7</sup> X-Examination of Mr. Morris.

<sup>8</sup> SSL GD5 paragraph 81.

<sup>9</sup> X-Examination of Ms Reynolds.

recognises that Twerton Riverside has "...good, yet not fully realised connectivity with the city centre..." and the SHLAA describes it as "closely related" to the city centre and BWR (CD6.3 Policy B3 2e; SSL 4C Appendix CH1 page 73). BWR is currently being developed for 2,280 residences, which will accommodate some 6,270 new residents who would have easy access to a new store the junction of Lower Bristol Road and Brook Road (Tesco 7F).

- 5.17. The BWRE site is also out-of-centre and there is no need for a preference to be found in respect of accessibility of the out-of-centre Tesco site in comparison with the out-of-centre Homebase site. Based on a ratio of 1 space per 26 sq. m, the Sainsbury's application has insufficient car parking. If it is to achieve the lpa's required ratio of 1:14 sq. m it would require an additional layer on the roof with all the attendant environment/visual consequences. The Sainsbury's application would provide no substantial linkage of trips to the centre. It is at the furthest point from the city centre on any view (Tesco 6G; SSL 6C). All parties agree that the existing Sainsbury's Green Park Store, at some 390m from the CCSA and, attracting just 17% linked shopping trips with the city centre, can just about be defined as an edge-of-centre retail store (Tesco 6G Point A to Point B). In this context, a proposed Sainsbury's store at some 735m from the CCSA and with its back turned on the city centre cannot be anything other than an out-of-centre (Tesco 6G Point A to Point J).
- 5.18. Thus, whilst a relocated Sainsbury's would attract more pedestrian linked trips than from Tesco, both would attract much less than 17% and the difference would not be material. Furthermore, Tesco could be expected to attract car and bus borne linked trips to a slightly greater extent than the 7/8% linked trips by Morrison's and Sainsbury's Odd Down shoppers. The Telford Judgment indicates that such a difference between 2 out-of-centre sites needs to be "*stark*" to be telling (SSL 6E). Here, that difference is not stark.
- 5.19. The fundamental point in terms of the application of the sequential test is that the best evidence shows the Homebase site is not available until December 2020. A letter from agents acting for Homebase says that the site is not available in terms of the Framework and the Practice Guidance. The advice is that "*Homebase trade successfully from their current store and wish to continue doing so, and have a lease that extends until 19<sup>th</sup> December 2020. My clients ...did have concerns with the findings of the Officers report to Committee on 12<sup>th</sup> December 2012 which suggested that the preferred sequential site ...was (BWRE) and that this site was suitable, viable and available*" (Tesco 6C Appendix 5, Letter 19 Dec 2012). The letter concludes "*...the WRE site in so far as it comprises the Homebase site is clearly not available*". These points were restated in a more recent email dated 3 June (Tesco 6C-5). The position regarding the Homebase site is unequivocal; it is not available to anyone and any suggestion that it can come forward earlier must be a guess or speculation, neither of which is a sound basis for decision. Even if there was vacant possession in December 2020, it is unlikely that there would be any shop built much before 2023 some 10 years hence. There is no compulsory purchase order to bring it forward earlier.

- 5.20. The Framework is seeking to allow sustainable development without delay and there is no foodstore appeal decision, including Lancaster<sup>10</sup>, which supports waiting 10 years in case the site might become available. There is no reasonable prospect that it will, and the retailer demand and the retail need Tesco identify would otherwise be sterilised, as would the regeneration of one of only 2 “key development hotspots” in the Twerton and Newbridge Riverside Area. A decision on Tesco’s proposal must be taken on the basis that the Homebase site is not available as a sequential site generally. That is why the lpa withdrew the report from their Committee in December 2012 when they discovered the true position over Homebase. Thus, the Tesco site is acceptable as a retail location. Other than the positives of regeneration and employment, there are no other policy issues to be addressed other than retail.

*The impacts on Bath City Centre and Moorland Road District Centre.*

- 5.21. It is important to note what is not mentioned here, namely ‘need’. Need was referred to, especially by the lpa, but, as, acknowledged<sup>11</sup> need is not a policy test of the Framework. Further, whilst it was suggested by the lpa that need is relevant in terms of the size and timing for any development, no evidence to support this claim has been put forward.

Investment in the City Centre and Moorland Road.

- 5.22. The impact on investment in the existing city centre is not a reason for refusal. The only large foodstore commitment within the city centre (Waitrose extension) has been implemented and there is no indication that existing investments will be affected. The only large foodstore commitment on the edge-of-centre, Sainsbury’s extension at Green Park Station, would be undermined if Sainsbury’s relocate to the out-of-centre BWR instead. There is nothing to show that it would be affected by a Tesco.
- 5.23. Sainsbury’s, supported by the lpa, suggests that its proposal on the BWRE site would eventually become part of the expanded city centre and that a Tesco would undermine this planned private investment. This, however, relies on several heroic assumptions that are clearly unfounded. The BWRE site is not part of the city centre. The current city centre boundary is proposed to be amended in the CS, but does not yet include the Green Park Station site. The PSF and CCSA are more tightly drawn and notwithstanding that their review is to occur in the future Placemaking Plan, Sainsbury’s and the lpa sought to undertake that review now. However, neither could identify any change on the ground that would suggest that either of the designations should be altered.<sup>12</sup> In explaining why the CCSA is correct on the ground<sup>13</sup>, Tesco referred to the concentration of food and drink uses at Kingsmead Square and the mixed-use character of James Street West and all parties agree that the CCSA reflects what the Framework describes as a PSA. As a result, given the distance from the CCSA to the existing Sainsbury’s at Green Park Station, it is concluded that the store is

<sup>10</sup> LPA 6G.

<sup>11</sup> X-Examination of Mr Morris.

<sup>12</sup> X-examinations of Mr Morris and Mr Hays.

<sup>13</sup> Lpa X-Examination of Mr Butterworth.

technically out-of-centre, but functions, just, as an edge-of-centre store in terms of limited linkage, reflecting the 30 years the store has been trading, during which time the linkage has become established. However the BWRE site remains out-of-centre. Sainsbury's and the lpa accepted<sup>14</sup> that there is no allocation or policy requirement for development of the BWRE site to include a relocated Sainsbury's or any foodstore. As the lpa acknowledged<sup>15</sup>, a Tesco store at Bath Press would not breach any emerging policy for the BWRE and the regeneration of the BWR to continue irrespective of the outcome of this case.

- 5.24. As to the MRDC, it is important to note that the effect on investment in the centre was also not a reason for refusal. Indeed, the effect on existing or planned investment was not raised as a concern by the lpa's retail consultant in the review of the Tesco application nor was it raised by the Co-op in their original objection (CD13.1 & CD13. 3). Now, the Co-op is saying that, if the Tesco scheme is approved, the planned investment in the Co-op store will not proceed (CG 4C Appendix PN11). However, this stance is not consistent with the approach of most retailers who seek to invest, in order that they can better withstand the additional competition<sup>16</sup>. The Co-op's suggestion should attract no weight.
- 5.25. As to the remainder of the MRDC, it is suggested by the Moorland Road Traders Association that other investments will be lost (IP10). However, there is no hard evidence to support these concerns and it is predicated on a significant decline in footfall within MRDC. Moreover, this position is not consistent with the evidence that the owners of the former Shoe Zone unit, area, regardless of the outcome of this appeal, current investing in refurbishing it. MRDC is a healthy centre, the LP at paragraph B5.16 refers to it as vibrant and previous health checks for Tesco and others have concluded it is in a good state of health (Tesco 6C Appendix 7). The latest assessment carried out for Tesco concludes that MRDC *"...not only remains a vital and viable centre, but has become stronger as a result of new representation and very few vacancies. Its popularity with shoppers is evident through good pedestrian flows and limited available car parking"* (Tesco 6C Appendix 7 paragraph A7.33). There is no reason arising from a Tesco development why any intended investment should not go ahead on the same basis as now.

The trading impacts on Bath City Centre and Moorland Road District Centre

- 5.26. Tesco accept<sup>17</sup> that paragraphs 26 and 27 of the Framework apply but with the caveats that the Sainsbury's application is not a commitment and that it is at a very early stage with significant questions about deliverability. Moreover, the Sainsbury's application site, Homebase, is not in an existing centre. Applying the Framework paragraph 27 test of *"significant adverse impact"* to the impact on the city centre's vitality and viability, there is an agreed position of no deleterious impact (ID1.3 paragraph 7.2).

<sup>14</sup> X-Examinations of Ms James and Mr Hays.

<sup>15</sup> X-Examination of Ms James.

<sup>16</sup> Co-op X-Examination of Mr Butterworth.

<sup>17</sup> X-Examination of Ms Bartaby.

- 5.27. As to MRDC, the starting point is that the main trade draw to Tesco would be from similar stores within and outside of Bath, i.e. those that provide for main food bulk shopping trips. The Co-op is very different from such stores, as shown by the comparison with Sainsbury's Odd Down (Tesco 6E), and the potential for diversion of top-up trips is limited by the propensity of Co-op shoppers to visit on foot and the greater numbers who are physically closer to MRDC than the Tesco site. The Allegra Household Survey shows that 97% of the shoppers in all zones, and 91% in Zone 4 do not do their main food and grocery shopping at the Co-op (CD 2.16 Q1).
- 5.28. A visit to MRDC reveals a healthy, well used, busy centre which presents itself as a thriving entity (ID1.3 Appendix 4 Goad Plan). As such it is competing successfully with the out-of-centre larger competition and the nearby city centre. As confirmed by a longstanding local resident, MRDC has evolved to meet challenges to it (IP8). This shows MRDC adapting from originally catering just for families to a mixed community with a large proportion of students. This evolutionary change supports an eclectic mix of shops, cafes, restaurants and takeaways, hairdressers and beauty salons and other niche traders. Residents confirm that MRDC has an excellent butcher and vegetable store which are probably the only surviving shops since the 1970's because of their high quality and level of customer service. MRDC has already shown its adaptability over the years and there is no reason to assume the proposed development would affect footfall. That is witness to the dynamism of retailing and retailers.
- 5.29. The above submission is corroborated by the owner of Oldfield Park Bookshop whose competition is not from supermarkets with their limited range of books, but from the specialist large retailers such as Waterstones and the internet. The bookshop competes and it was conceded that perhaps it was not going to be affected. The bookshop is a niche business; a draw to the centre in its own right will continue to prosper.<sup>18</sup> This situation is typical of the independent trader who is the essence of the MRDC and that core would continue to attract and prosper.
- 5.30. The concern that the proposed Tesco would reduce footfall in MRDC is unfounded. The bookshop has monitored footfall, and since 2004 there has been no more than a 6% reduction in footfall in the February and October, months which are less likely to be affected by other influences such as holidays, even though that period has seen changes in the economy, competition and major street works in the centre (IP10). Of course that does not indicate health or turnover, but it is a clue as to whether shoppers will continue to visit.
- 5.31. MRDC performs well in comparison to the performance of other centres of this size and mix confirming its robustness (Tesco 6D paragraphs 2.10 to 2.16 & Annexes 2 & 3). Vacancies are low, the environment good and there is encouraging evidence about retail rents and vacancy rates (Tesco 6D Annex 1). Reviews by all the retail consultants in this case of the health check evidence, find MRDC continuing to be a sizeable and vibrant centre which trades well, has a good range of facilities and few vacancies.

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<sup>18</sup> X-Examination of Mr Wainwright.

- 5.32. The MRDC Traders Association has produced evidence from a representative of the independent chemists, John Preddy Company, who has known the centre apparently for 3 years (IP9). A survey of 14 shops is submitted, but that represents the minority as there are 46 others. In addition, The Association, apparently with help from a last minute secret funder, instructed Rapleys, who describe themselves as having worked for Co-op, to give a view as to the impact of the Tesco development on MRDC. The report starts, paragraph 2.4, with the tendentious approach of relying on the instruction that the Ipa's ground of refusal "*would give rise to an unacceptable and significant adverse impact on the vitality and viability of (MRDC)*" as a given, and concludes in the next paragraph that there would be a negative impact, yet it does not address the actual trade taken from the centre. That is neither scientific nor right. That report has not been subject of scrutiny at the Inquiry and as such has to be given the appropriate weight (IP10). In contrast, an opinion produced for Tesco by Alder King does no more than describe the health of the centre and, quite properly, leaves it to others to decide what impact is brought onto the matrix described (Tesco 6D Annex 1). This assessment corroborates the consensus that MRDC is a healthy centre.
- 5.33. The Co-op says it fulfils an anchor role in MRDC, thus elevating it from an attraction, just as the book shop is, to a shop without which the centre cannot survive. However, in 2008 Alder King, when it sought to promote the Lidl interest in Bath and had to assess MRDC, did not identify the Co-op as an anchor and no individual assessment of the Co-op was found necessary (CD13.17 p 34 & 41). Now, when there is opposition to a development, Co-op surprisingly becomes "the anchor". It is not surprising in the commercially driven objection from Co-op it seeks to rate its role as high as possible. However, on the Co-op's own case it is under performing now (CG 4C PN11).
- 5.34. The Co-op attracts just 3% of main food shopping trips from the study area. In comparison, the Asda at Brighton Hill District Centre in Basingstoke, a true anchor store, attracted 56% of main food trips in its catchment and 9% in the "home" Zone 4. The Ipa acknowledged<sup>19</sup> that 91% of people in Zone 4 do their main food shopping elsewhere and the Tesco proposal would claw back some trade. In practical terms there is no requirement that the Co-op should be protected. Tesco acknowledges that the Co-op is the largest in the centre and has the highest individual turnover, but in policy terms it should only be protected if its role is more than just another shop among the 60 units that make up MRDC. The evidence does not suggest a role that elevates it above the others. Indeed the centre has benefitted from the opening of Sainsbury's Local, a second national multiple convenience store, in a more central location. The Co-op-commissioned street survey did not ask the question as to whether the interviewee used the Co-op for main food shopping, nor whether a visit to the store was the primary purpose of the trip. For most, any visit to the Co-op is the ancillary part of the trip (Tesco 6D paragraph 2.25 et seq). More respondents visit the Sainsbury's Local and Stokes the independent greengrocer, than Co-op, and 19.8% say their main reason for visiting the centre is food shopping at other shops

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<sup>19</sup> X-Examination of Mr Newton.

whereas Co-op can only get support on that basis from 8.6% (Tesco 6D Tables 2.2 & Table 2.3). Moreover, the Co-op car park is of less importance to the centre than has been suggested, with just 4.5% of respondents in MRDC indicating they had parked there.

- 5.35. Based on the evidence, the Co-op is an under performing shop in a converted cinema. It has no special status and is not to be treated differently from any other retailer. If it is not good enough to compete so be it. The dynamic of retailing will prevail and something else will come forward. The Co-op does not need protection from competition on any genuine planning basis. Its average basket size is £12.07, so clearly the predominant use must be top-up and small main food shops (CG 4C Appendix PN11). Tesco would not compete significantly in that market. The competition will be with the large overtrading superstores.
- 5.36. It would appear that Co-op does not have any intention to address competition by trying harder and the suggestion that they will not invest is just posturing (CG 4C Appendix PN11). The Co-op must invest and modernize whatever; the shape and size of the layout, and the product range must change. If not the Co-op can close and let someone else try, either in the existing unit, or in a redevelopment with mixed ground floor retail with residential above or elsewhere in the centre. Simply stated Tesco would cause no significant impact on the Co-op and in any event the Co-op can help itself if it needs to. It is important to note that nowhere does Co-op say it will close. The position is only put as high as *"On any basis there must be very serious cause for concern as to the future viability of the Co-op store"* (CG3 paragraph 45). Closure is not forecast and the latest turnover figures which would have advised the latest position have not been provided.
- 5.37. In terms of the level of trade draw expected from MRDC, the differences between the parties on the likely financial impact of the Tesco store boil down to their different judgments about the extent to which Tesco would claw back trade leaking from Bath City and the extent to which the Co-op and other shops in MRDC would directly compete. The Allegra Household Survey evidence on the effect of the Sainsbury's at Odd Down is telling on both counts (CD2.6 paragraph 4.9 & Appendix 3 Tables A3.4 & A3.5; CD13.16 Survey Q6). The Co-op and Tesco agree that a Tesco store, providing a new large foodstore fascia in Bath, would claw back some Bath main food shoppers from Asda Longwell Green and the Tesco and other stores at Midsomer Norton and Trowbridge, but to differing degrees. Tesco estimates that it would claw back approximately half of the outflow to the Asda store. This assessment would increase the City's main food shopping retention from 86% to just below 90%. That is realistic given the retail geography of Bath and its catchment.
- 5.38. As to the Co-op and small independent shops in MRDC, the household and street survey show that, whilst the Co-op is used by most people shopping at the centre, the Co-op is not the main reason for doing so, it is just one of the centre's many attractors and serves a different main food shopping function for its predominantly walk-in student and elderly immediate catchment population. This is seen on a visit to the Co-op and observation as to how its trading profile compares to the use of the 2 Sainsbury's stores.



The Co-op and the small shops coexist with the existing large foodstores in Bath now and the other parties predict a diminishing further trade diversion with each subsequent commitment – until, of course, they each consider Tesco.

- 5.39. Tesco would have a 9.5% convenience impact on the Co-op, 1.7% on the other food shops, equating to a 7% convenience impact. The equivalent cumulative convenience impact figures are 21.1%, 9.5% and 17.5% respectively (Tesco 6D Tables 5.1 & 5.2). Based on the Allegra household survey (CD2.16), the performance of Co-op store would reduce from its present performance of 84% of the Co-op Group benchmark to 75% following commitments and to 68% with Tesco. The lpa and the Co-op do not suggest that this level of impact would harm this strongly performing centre. Their view that the closure or downsizing of the Co-op cannot be ruled out is based on their much higher impacts leading to, for example, the Co-op trading at 45% below benchmark based on the lpa's assessment.
- 5.40. Comparison shopping purchases at large foodstores are undertaken on an ancillary or opportunistic basis. Tesco has identified what it proposes to sell and assesses the potential for comparison diversion to be very small, given their very different specialist role and complementary offer. This was not seriously challenged, despite the lpa quantifying a greater level of Tesco comparison impact on MRDC. In doing so, the lpa was presumably mindful of the fact that the 2,239 sq. m net increase in comparison floorspace at the proposed Sainsbury's at BWRE is twice the amount proposed by Tesco.
- 5.41. It follows from the evidence that there would be no substantial diversion from traders in MRDC and, on any view, it does not amount to a significant adverse impact and the centre would quickly absorb the diversion. There is every reason to be confident that the retail dynamism that local residents identify would prevail and, indeed, MRDC could benefit from increased footfall as a result of the employment on the appeal site, i.e. MRDC is likely to prove a convenient and attractive option for employees during their lunch hour. As a result there is no threat to the status of MRDC. To give added certainty, Tesco proposes a planning condition preventing the inclusion of a post office, an optician, a dry cleaner, a pharmacy and a photo processing unit within the store.

*The implications of the proposal on the highway network and the promotion of sustainable transport patterns.*

- 5.42. On highway matters there are 3 main issues between the parties, trip rates, pass-by flows and the extant use. As an example of the issue, the adopted WSP trip rates of 13.75 per 100 sq. m during the p.m. peak is above those recorded at Sainsbury's Green Park (13.15), the Sainsbury's Green Park Extension (10.38) and Morrison's (12.37) (Tesco 7B paragraph 6.2.6 Table 6.1). In comparison, Sainsbury's are suggesting a trip rate of 6.44 for the BWRE application. In commenting on the Tesco proposal, Sainsbury's do not suggest a trip rate, rather it uses the historical rate suggested by SKM of 16.464 (Tesco 7B paragraph 6.2.6 Table 6.1<sup>1</sup>), which is not a figure supported by SKM themselves; they reduced it by 10% to 14.8 (Tesco 7E). WSP interrogated TRICS, which has a number of bases for achieving the rates including gross or net floorspace or car parking. The car parking was

the basis for assessment. That is legitimate and as a matter of common sense can be understood to constrain the visitation (Tesco 7B paragraph 6.2.1). The evidence shows WSP to have been robust on the trip rates and that they are, as a matter of judgment, reasonable.

- 5.43. On pass by flows, Tesco uses a level of 70% during the p.m. peak hour, which is above that measured for Morrison's at 53.9%<sup>20</sup>, Sainsbury's at Odd Down at 62%<sup>21</sup> and above the SPD contribution assessment level of 50%. It should be noted that Morrisons has only one main route passing its entrance. However, at Lower Bristol Road, the pass by rate reflects that the store would be at the axis of those 2 routes, Lower Bristol Road and Windsor Bridge Road, the latter one of the few crossings of the Avon in the City. The WSP 70% is of course the peak, for much of the day the pass by will be lower because the purpose of the journey is more likely to be specific, but it is the peak hour which is of importance. The a.m. pass by is only 10% and Saturday morning 30%. Where the S106 SPD uses 50% for the contributions calculation, it is a daily average (CD7.1). The conclusion invited is that there can be confidence that the 70% pass by attribution is reasonable and a guide to overall judgment.
- 5.44. Examination of the extant use reflects what could operate from the site under the current consent. It is a reasonable requirement that the decision takes into account the possibility of actual generation from the site. It is large, with 3 accesses one of which is direct onto Lower Bristol Road. It is a possibility that the site use is maximised in the small B2 sector in which case there will be a great deal of activity during the peak hour. Car parking is achievable (Tesco 7C Appendices G & R). WSP use TRICS database to advise that 211 movements could take place in the peak hour, and the lpa's is lower at 46. The conclusion is invited that it is appropriate to take the WSP figure as robust as it builds in a reasonable assessment but also accommodates a factor of safety needed given the awkwardness of the accesses on the current regime.

Other transportation matters.

- 5.45. On traffic growth, the lpa and WSP agree 2012 as the base year. Whether there is negative growth, no growth, or 4.5% growth the effect will be to raise or lower the base line both in the with and without development scenarios and hence the differential between the with and without development will be the same. The lpa uses a growth figure of 4.53% for 2012 to 2020<sup>22</sup> and WSP uses 9.1%. The use of the higher figure should be regarded as a sensitivity test approach because the reality is that there is no growth<sup>23</sup> and the figures show a reduction. Indeed, the Temprow model is still locked in a pre-recessionary mode showing a theoretical growth in Bath 2008 to 2012 of 4.9% whereas the reality is zero growth (Tesco 7c Appendices L & M). Given that Tesco has applied a growth rate twice that used by the lpa should give the SoS confidence that a robust approach to growth has been used.

<sup>20</sup> ID1.5 2<sup>nd</sup> SOCG Appendix B paragraph 8.8.2.

<sup>21</sup> ID1.5 2<sup>nd</sup> SOCG 2 Appendix B paragraph 5.10.6

<sup>22</sup> ID1.5 2<sup>nd</sup> SOCG Transport Appendix H

<sup>23</sup> ID1.5 2<sup>nd</sup> SOCG Transport Appendix C

- 5.46. On base traffic flows, whether the flows adopted by the SoS are those used by the lpa or WSP, the 2012 data will only set the base line to which the development traffic is added. The point is the same as with growth. The effect of differing distributions of the traffic on the immediate junction of Lower Bristol Road and Windsor Bridge Road does not materially affect the assessment of the junction. The affect is primarily as a result of the 3 main issues above. The basis of the junction analysis is agreed in terms of the Linsig assessments.
- 5.47. The level of parking required to support the development is a function of the trip rates. WSP have used a factor of 1 space per 18 sq. m of floorspace. That is the same as the ratio approved at the Sainsbury's Green Park extension. Moreover, it is believed that the Sainsbury's application for the Homebase site uses a ratio of 1:26. It is self evident that lack of parking will constrain visits and from that constrain turnover. The lpa's reference to a ratio of 1:14 appears to misunderstand the LP policy which is a maximum figure and flies in the face of the modern idiom to reduce car parking. Again confidence is found that the store will not operate in a way that is burdensome on the network.
- 5.48. The 16.5 HGV movements west along Lower Bristol Road from Brook Road can be controlled by a routing arrangement agreed with the lpa in the usual way. The manoeuvres would be a right turn to exit Bath and the left turn will be avoided by way of management control. All other servicing would operate satisfactorily.
- 5.49. The public house would continue to be serviced from the road exactly as now. It is a feature of urban premises that servicing has to be done in an imperfect way. Tesco has no power to stop the intermittent delivery in this way. The road however would be wider and there would be less of a blockage and the lpa suggested probably rightly that the deliveries tend to be early in the day<sup>24</sup>. The current turning manoeuvre, however, can be addressed. Tesco would make the service yard turning area available for the public house delivery vehicle to turn round. That would be set out in the Servicing Management Plan in negotiation with the lpa as part of a proposed planning condition.
- 5.50. The east/west through routes are not significantly different on the lpa's scheme to the Tesco scheme. On the right turn land, there is sufficient capacity with 5.7 PCU's needed and 7 PCU's available. These figures would improve with the S106 works.

#### Factors of Confidence in the Transportation Judgement

- 5.51. There are several factors that give confidence that Tesco's assessment is robust and would result in a lesser highway impact than assessed. Trip rates are not discounted to account for the floor areas within the store that are occupied by the travelators which amounts to an 8% overestimate. The trip rates are 10% higher than those recorded at Morrison's, Bath. No account is taken of modal shift, as a consequence of Smarter Choices in the Local Transport Plan. No account is taken of the future impact of the

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<sup>24</sup> X-Examination of Mr Plumb.

proposed bus lane along the Lower Bristol Road, which should assist modal shift or the further junction improvements on the approach to the Lower Bristol Road/Windsor Bridge Road junction associated with the Bus Lane measures. Through the S106 UU, Tesco would contribute the very substantial sum of £2,180,333.70 which is agreed to be productive, as it must be. It is highly material. If it was not going to produce a benefit it cannot be accounted. For the avoidance of doubt, this figure is arrived at through an SPD formula based on trip rates and 50% pass by. Tesco has used those figures because the lpa's rates would be wrong and disproportionate. No account is taken of the 20% reduction to delays from the use of SCOOT<sup>25</sup>.

- 5.52. In summary on the transportation case, the highway network of Bath can accommodate the traffic produced from the development. Bath is a busy city with limited number of roads available and some congestion is inevitable at peak hours. There is of course no moratorium on new development. The subject junction is capable of receiving the traffic with no deleterious impact, and movement here will to some extent relieve elsewhere. For the avoidance of doubt, the hospital access will be as now, with no compromise, with an opportunity for ambulances to use an improved bus lane for part of the route.
- 5.53. The lpa hold up the Lancaster appeal decision as a measure of what is considered "severe" impact (LPA GD3 paragraph 92). However, we cannot base the "severe test" on this decision as (i) the traffic conditions in Bath are not that in Lancaster; and (ii) if there were some standard for delay to be severe, the Framework would say so. It does not. The test has moved from nil-detriment. Thus, it is not necessary to judge whether there is some impact on the network, but whether, as specified at paragraph 32 of the Framework, the impact is severe. That is a high test, deliberately so in a permissive approach from government that seeks to get development going forward. Severe impact is not found even applying the lpa's high and erroneous assumptions.

*The implications of the development on the living conditions of nearby residents with particular regard to air quality, on street car parking, noise and disturbance.*

- 5.54. In respect of air quality, reference is made to the "*substantial adverse impact*" on air quality at St Peter's Place stated in the Environmental Statement (CD2.15 Appendix B). This reference should be considered in the context of the methodology adopted for the air quality impact assessment, which assumes 2 projections, a worst case and a best case, in order to provide a sensitivity test to reflect changes in good practice guidance. The air quality assessment concluded that the worst case assessment would be unlikely but that the best case assessment was overly optimistic and therefore the most realistic predicted impact would be between these 2 scenarios. The assessment adopted a precautionary approach and on this basis, the predicted impact at St Peter's Place would be of moderate significance. The Federation of Bath Residents Associations understood that

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<sup>25</sup> X-Examination of Mr Langdon.

a change of traffic regime here may relieve air quality on London Road which is of higher concern.

- 5.55. The WSP assessment tells that there would be no on street parking and in any event the immediate residents have their parking consolidated by dedicated arrangement on the appeal site. The scope for noise and disturbance is less than under the existing B2 regime and any other possible industrial use. Tesco would be required to be a good neighbour through the noise condition.

#### Conclusion

- 5.56. The ambition of the Framework is to achieve economic regeneration, today, not in 10 years time. Tesco bring forward a mixed scheme which is regenerative in the true sense. It addresses a derelict site in an important location at the entry to Bath. It provides more floorspace in the B1 sector than in retail, and would generate some 600 jobs. It is hard by and within walking distance of the largest housing development current in Bath at BWR. There is no downside in environmental, retail impact or highway terms. The contrary argument from Sainsbury's and Co-op is no more than commercial posturing. The SoS is asked to allow the appeal and grant planning permission.

## 6. The Case for Bath and North East Somerset Council

The material points are: -

Background matters

- 6.1. This is a controversial planning application because it is proposed to build what would be Bath's largest foodstore in an out-of-centre location, adjacent to one of Bath's most congested road junctions and close to MRDC, which is protected by policy at both local and national levels. Therefore, in order to show that the proposal is acceptable, there are significant hurdles for Tesco to overcome. Part of Tesco's case included groundless complaints about the lpa's handling of the similar planning applications it has submitted<sup>26</sup>. These complaints are not relevant to the determination of the appeal by the SoS.
- 6.2. Tesco appears to have taken an unrealistic view of the prospects of achieving agreement with the lpa about its application, and therefore securing planning permission without having to go to appeal<sup>27</sup>. The fact is that, from an early stage in the whole of the planning process relating to the appeal site<sup>28</sup>, the lpa's concerns about the proposals were made clear; and, despite the submission by Tesco of further information about the proposals on numerous occasions, the key issues of retail impact, the sequential test and impact on the junction have remained unresolved. The issue concerning the gasholder was addressed in an appropriate manner and has now been resolved.

*Development Plan Policies and their Relationship to Framework Paragraphs 14 and 215*

- 6.3. LP Policy S.1<sup>29</sup> is consistent with the Framework, because it seeks to maintain and enhance the defined, existing shopping centres whose boundaries are defined on the Proposals Map. The relevant centres for the purposes of this appeal are the city centre, described in the policy as Bath Central Shopping Area (BCSA) and Moorland Road the only District Centre in the district. Accordingly, Policy S.1 can be given full weight.
- 6.4. LP Policy S.4 can also be given full weight, except for criteria (i) and (ii), which refer to need and scale and are inconsistent with the Framework. Policy S.4 allows for retail development outside the defined centres only if the proposal accords with the sequential approach, there would be no unacceptable impact on the vitality and viability of those centres, and it would be accessible by a choice of *means of transport and would not "add unacceptably to traffic and congestion"*. This latter phrase needs to be interpreted in the light of the Framework paragraph 32, which says that development should only be refused on transport grounds "*where the residual cumulative impacts ... are severe*".
- 6.5. Policy S.8 appears under the main heading "*Local Convenience Shopping*", and under the sub-heading "*District, local and village centres*". It is

<sup>26</sup> LPA 7D.

<sup>27</sup> Tesco 4B paragraph 7.103.

<sup>28</sup> LPA 7D, First chronology (ref 10/03380/EFUL): 23 Nov 2010, 17 March 2011, 18 May 2011.

<sup>29</sup> CD6.1 page 75.

consistent with the Framework and can be given full weight. Paragraph B5.58 states that *"it is critical that the vitality and viability of these centres is maintained"*. That policy objective is consistent longstanding national policy, which has been continued through to Section 2 of the Framework – Ensuring the Vitality of Town Centres. Permitting the Tesco store so close to MRDC would seriously put at risk the future health of the centre.

- 6.6. Policy S.8 provides that the change of use of shops to another use *"will not be permitted where the vitality and viability of that centre is adversely affected"*. Unsupported by any evidence, Tesco's suggestion that, if the Co-op were to close it might be redeveloped for residential use would, on the face of it, be contrary to Policy S.8<sup>30</sup>, as it would result in the permanent loss of an A1 use in a designated district shopping centre. There is also no evidence of any likelihood of an empty Co-op being reoccupied by one or more retailers.
- 6.7. LP Policy ET.2 (3) supports in principle the development of office floorspace outside the city centre core office employment area provided at least one of the specified criteria is met. The lpa does not suggest that the proposal is in conflict with this policy, and in any event acknowledges that the Framework gives strong support to development which helps to secure economic growth. However, it does not consider that the proposed office space is likely to yield the number of jobs suggested by Tesco, certainly not for a number of years.
- 6.8. LP Policy T.24 has to be read in the context of the Framework *"severity"* test. However, it raises issues of highway safety which the Framework does not suggest are of any less importance than they always have been. Policy T.26 is concerned with the provision of appropriate on-site servicing and car parking. The Schedule to the policy sets out maximum parking standards, for food retail for developments above 1,000 sq m of 1 space per 14 sq. m GFA. Other policies of relevance are set out in the Planning SOCG (ID1.1 paragraph 5.9). However, these do not give rise to any issues between the lpa and Tesco.

*Emerging Development Plan policies and their Relationship to Framework paragraph 216.*

- 6.9. Given the stage that the emerging CS has reached, and given the CS Inspector's more recent concerns about the lpa's SHMA, only limited weight<sup>31</sup> can be given to the emerging strategic policies of the CS, since the lpa's response to the Inspector's concerns, and how matters are progressed thereafter, could affect these policies (LPA 6F). On the other hand, "limited" does not mean no weight, and there seems to be general agreement that material weight can be given to relevant policies in the emerging CS. Furthermore, in so far as those policies are consistent with the Framework, which they are, they must attract greater weight.
- 6.10. Policy CP12 closely reflects LP Policy S.1, in that it sets out the hierarchy of centres in the same way, and encourages uses which contribute to

<sup>30</sup> X-Examination & Re-Examination of Ms James.

<sup>31</sup> Evidence-in-Chief Ms James.

maintaining the vitality, viability and diversity of centres within the hierarchy. Retail development within centres will generally be permitted. The policy also reaffirms the centre boundaries established in the LP, but notes that the Placemaking Plan "*will review these boundaries and identify sites for development*". The question of the city centre boundary, and its relationship with the existing and proposed Sainsbury's store, will be addressed in the context of the sequential approach. The policy, being consistent with the Framework and not the subject of objection, may be given significant weight.

- 6.11. CS Policy B2 is the "*Central Area Strategic Policy*", and its aim is to enhance Bath city centre as a shopping centre and as a place of international cultural significance. It also identifies a number of "*Key Development Opportunities*", including ("*part 3: neighbouring the city centre*") the Green Park Station Area and the Homebase area (including the Pinesway Industrial Estate and gyratory). It is therefore plainly the intention of the lpa, and accepted as such by Tesco, to extend the city centre westwards to include Green Park Station and BWRE.
- 6.12. Part 4 of Policy B2 ("*scope and scale of change*") lists the key activities to be accommodated in the central area. These include "*2,000 sq m of convenience shopping space to address the overtrading of existing stores*", that is in addition to existing floorspace. Whilst this would be taken up by the Sainsbury's extension, and the policy does not require, nor even make specific provision for, the development by Sainsbury's of a larger replacement store on BWRE, it does not preclude it either. That proposal is certainly consistent with the policy objective of securing a westwards expansion of the central area.
- 6.13. Policy B3 looks to secure redevelopment in Twerton Riverside, where the appeal site is located, for business premises and housing. "*Good yet not fully realised*" connectivity into the city centre is recognised, but this is along the riverside walking and cycling route, which is not the route anyone wishing to walk from a new Tesco to the city centre would be likely to take. It also recognises the congestion problems at the Lower Bristol Road/Windsor Bridge Road junction at peak times. The Bath Press site is identified as a "*key regeneration opportunity*", but the current version of the policy does not suggest that retail use would be appropriate; rather, appropriate uses would be those set out in part 1 of the policy (LPA 7G). Even when the draft policy did include reference (in parentheses) to retail as an "*other economic development use*", there was no suggestion, overt or implied that the Bath Press site might be suitable for a new large foodstore.

#### Interim policy conclusion

- 6.14. Neither the Tesco scheme nor the Sainsbury's planning application proposal at BWRE and Green Park is ruled in or out by current or emerging development plan policy. The lpa submits that the Tesco scheme fails specific policy tests, and so is unacceptable in planning terms. The Sainsbury's proposal is not before the Inquiry, and the lpa's position on it has not been resolved. For the purposes of the sequential test, however, that is unimportant: the question is whether the site is suitable and available for the development of a large new foodstore.



*Other Relevant Local and National Planning Guidance and the weight to be given to them*

- 6.15. *The Practice Guidance on Need, Impact and the Sequential Approach* remains relevant and can be given weight, save in so far as it conflicts with the Framework (CD10.2). The guidance on the sequential approach remains valid and correct, and has not been superseded by the Framework; nor is it necessary, contrary to the evidence of Tesco, to temper or modify it in the light of the Framework.
- 6.16. The only local guidance which attracts significant weight is the adopted BWR SPD (CD7.2). This is said to be “supportive of policies for the plan period up to 2011”, but “does not ... rule out additional retail development at BWR beyond 2011, if the Council’s Local Development Framework considers this to be acceptable” (page 6 paragraph 1.6.24). There is also reference to a “full range of uses including retail ...” to the east of Victoria Bridge Road (i.e. on BWRE page 22 paragraph 1.6.24), and to the relocation of Sainsbury’s in order to free up the Green Park Station area to create an area “at the heart of the city extension” (Page 24 paragraph 2.5.10). Other land use objectives set out in the SPD are also entirely consistent with Sainsbury’s current proposals (page 48 paragraphs 2.12.2 & 2.12.3). It is clear and Tesco agreed<sup>32</sup>, therefore, that moving the existing Sainsbury’s store over the river is part of the Spatial Masterplan in the SPD; as is the westwards expansion of the city centre.
- 6.17. The appeal proposal would regenerate an underused and unattractive site, and has for this reason been welcomed by some local people. This benefit is also recognised by the lpa. However, it would harm other elements of the local economy, notably through its adverse retail impact on MRDC and on the A36 Lower Bristol Road, a major route into and out of Bath. There is no evidence that, should planning permission be refused for the Tesco scheme, a different development which was viable, which did not cause the same degree of harm, and which was compliant with policy, could not be brought forward.
- 6.18. Tesco acknowledged<sup>33</sup> that the employment element of the development would be cross-subsidised by the retail element and that without cross-subsidy the employment floorspace would not be viable to build. Up until now, this matter has formed no part of the justification for the application, this evidence is hearsay and not supported by any analysis or other evidence. As such it should be given no weight.
- 6.19. The weight to be given to the fact that the Tesco scheme would secure regeneration of the site must therefore be set against not only the adverse impacts of the development and the policy conflict that results, but also that, should the appeal be dismissed, securing regeneration through an alternative policy-compliant development is likely, albeit not immediately.

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<sup>32</sup> X-Examination of Ms Bartaby.

<sup>33</sup> X-Examination of Mr Price.

- 6.20. There are also doubts about how much employment the site would provide, and when. The lpa contends that the office floorspace would be likely to remain vacant for a considerable period of time, and that comparisons with Bristol Paintworks are misplaced. The Bristol scheme is overall a significantly larger scheme in a much larger city and where the floorspace is not divided by a very large foodstore. Of course Tesco will want to let the floorspace if it can, and will do its best to do so; but given the value of the retail floorspace it is hardly likely to be a significant concern if the commercial floorspace, or some of it, remains vacant for a period of time. In other words, it would want to undertake the development even if it thought there was no demand for the commercial floorspace at all. Sainsbury's have called specialist evidence on the commercial office and creative workspace market in Bath. The lpa adopts the main thrust of the submissions made in this respect on Sainsbury's behalf<sup>34</sup>.
- 6.21. The evidence is clear that the demand for office floorspace in Bath has been weak, and there has been a considerable oversupply in recent years. This situation has led to agents such as Alder King to provide supporting evidence for planning applications seeking planning permission for the change of use of existing office buildings, and the development of land which has planning permission for offices, to other uses, on exactly that basis (LPA 7B pages 19-21). Tesco's evidence says that the demand is now there, but this is based more or less entirely on the fact that demand picked up during 2012. There is no evidence that this has continued into 2013, or that there is any current shortfall of supply against demand. Tesco asserts that the reason landowners are not bringing forward office/creative workspace schemes, and indeed continue to plan to convert office buildings and permissions to other uses, is that, although there is the demand, such developments are not currently viable (Tesco 5B paragraphs 5.18, 5.19). However, this is not supported by evidence. None of the schemes referred to has been brought forward as a formal proposal and the lpa's position on their merits is unknown. Indeed if it were true, it would give the lpa good grounds on which to refuse planning permission. Current lack of viability would not be a sound basis on which to allow loss of employment floorspace in circumstances where demand was apparent, and could not be met from existing stock or land with planning permission. Thus, limited weight should be given to the claimed economic benefits of the office element of this scheme.
- 6.22. The Tesco proposal would introduce further competition into the food retail market in Bath. Although Tesco do not currently have a large foodstore in Bath, there is no clear quantitative or qualitative requirement for this to be provided. Tesco is represented in Bath through several smaller foodstores, and there are larger foodstores at Odd Down and Green Park (Sainsbury's), London Road (Morrisons), and The Podium (Waitrose). This is a consideration that should not be given significant weight.
- 6.23. Whilst the provision of housing is not a key element in part 1 of the Framework, which is about building a strong and competitive economy, it is nevertheless an important facet of the Framework read as a whole.

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<sup>34</sup> Sainsbury's Closing Submissions paragraphs 72-76.

However, the provision of 10 houses as part of the scheme does not constitute a significant contribution to the supply of housing in the district. In fact, the appeal development precludes the provision of a significant amount of housing on the site, for which it is plainly suitable and identified as such in the Lpa's February 2013 SHLAA, which estimates the housing potential of the site at 160 to 190 dwellings, or 100 dwellings as part of a mixed use scheme (LPA 7C).

*The implications of the development having regard to Framework guidance on ensuring the vitality of town centres*

- 6.24. *"Ensuring the vitality of town centres"* is the heading to section 2 of the Framework, and it includes the following elements that are of cardinal relevance and application to the present appeal:
- recognition that town centres are the heart of communities; policies should support their vitality and viability;
  - a sequential test should be applied to applications for out-of-centre retail development;
  - the impact of such applications on existing, committed and planned investment in existing centres, and on town centre vitality and viability, should be assessed;
  - where an application fails the sequential test, or is likely to have a significant adverse impact on investment or vitality and viability it should be refused.
- 6.25. This last point is of particular importance. Unlike the guidance given in relation to other applications e.g. those which would cause harm to heritage assets<sup>35</sup>, it is unqualified. Whilst it must always be open to the SoS to take account of other material considerations, should he find that the sequential test is not met and/or the vitality and viability of an existing centre would be harmed, here there are no such considerations of sufficient weight to justify allowing the appeal nonetheless. Tesco, in its evidence, has not sought to argue that that would be an appropriate outcome.

#### The Sequential Test

- 6.26. In order to understand whether potential alternative sites may be sequentially preferable to the proposal under consideration, it is necessary to establish where the "Primary Shopping Area" (PSA), as defined in Annex 2 to the Framework, lies; and, in particular, where its boundary is. That is because the Framework defines edge-of-centre and, by extension, out-of-centre by reference to that boundary. There is no defined PSA in Bath. The LP Plan does however define the CCSA and PSFs, which in the case of the boundary of the CCSA closest to Green Park Station coincide (Tesco 6C Appendix 3). The Council intends to extend the central area, but the new boundaries will be established through plans yet to be prepared. The SoS

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<sup>35</sup> Framework paragraphs 133 & 134

needs to take a view, therefore, on what the appropriate PSA boundary is, for the purposes of applying the Framework.

- 6.27. PSAs, as defined, can include "*those secondary frontages which are adjoining and closely related to the primary shopping frontage*"; and "*secondary frontages*" are defined as including a diversity of uses such as restaurants, cinemas and businesses. Trinity Street and James Street West<sup>36</sup> include food and drink outlets, food and non-food retail, a public house and a cinema. Their character does not differ materially from much of the CCSA<sup>37</sup>, and they physically adjoin and can be said to be closely related to the PSF. It follows, that the PSA as defined in the Framework in reality extends as far as the junction of Charles Street and James Street West. But whether that is so or not, because of the nature of the relationship between the Green Park Station area and the CCSA, and the character of the streets that connect them, it is appropriate to classify the existing Sainsbury's store as edge-of-centre.
- 6.28. BWRE is out-of-centre, but it is likely to become at least edge-of-centre, and quite possibly in-centre, when the LPA's objectives are realised and the central area is extended to the west. The propriety of that objective is not contested, so this is a significant material consideration in the appeal. Whilst in principle the Tesco site and BWRE are both out-of-centre, there is a likelihood that the central area will extend towards and embrace BWRE, but the appeal site will always remain out of centre<sup>38</sup>. Furthermore, it is implicit in the BWR SPD's anticipation that the existing Sainsbury's store could be relocated to BWRE in order to enable the Green Park Station area to play an appropriate role in the extended city centre such that there could be an increase in the size of the store, as NLP recognised in their 2004 Opportunities Appraisal<sup>39</sup>. There is nothing at all in policy, including the SPD, to preclude it, and whether such an increase is acceptable will depend on application-specific considerations. BWRE is therefore suitable in policy terms to accommodate a new large foodstore. It is also agreed to be physically capable of doing so<sup>40</sup>. In terms of availability, the fact that it is not available to Tesco does not mean that it is not available in the sense contemplated by the Framework.
- 6.29. There is nothing in the Framework that suggests a radical shift in the way that the sequential test had previously been applied. Paragraph 24 refers simply to consideration being given to out-of-centre sites "*only if suitable sites are not available*". And the decision of the Supreme Court in *Tesco v Dundee City Council* has to be treated with some caution, since it was concerned with the interpretation not of the Framework but with a local plan policy<sup>41</sup>. In any event, neither the wording of the Framework nor the *Dundee* decision suggests that a site, in order to be sequentially preferable, must be available to the store operator, if there is one, associated with the proposed development. Rather, because paragraph 24 is concerned with

<sup>36</sup> LPA 6B page50 Fig 5.2

<sup>37</sup> SSL2 Appendix CH4

<sup>38</sup> Tesco 6G: proposed Sainsbury's store to proposed Tesco (I-E) = 515m

<sup>39</sup> LPA 6I paragraphs 7.76, 7.77

<sup>40</sup> ID1.3 paragraph 6.3

<sup>41</sup> CD13.18 paragraphs 38, 5 (in which Local Plan policy 45 is set out; NB criteria (c) and (e))

*"planning applications for main town centre uses"*, the question must be whether a site is suitable and available for the proposal the subject of the application. Here, the proposal is for a new shop comprising predominantly convenience floorspace of some 6,300 sq. m. In this case, the non-retail elements have no bearing on the application of the sequential approach.

- 6.30. The above approach is supported by the Practice Guidance, which states that: *"When promoting a proposal on a less sequentially preferable site, it will not be appropriate for a developer or retailer to dismiss a more central location on the basis that it is not available to the developer/retailer in question"* (CD10.2 paragraph 6.41). It is also supported by the Lancaster appeal decision, which is a SoS decision and which post-dates the Framework. Here, it is clear both the Inspector and SoS took the above into account, along with the Practice Guidance (LPA 6G: Decision Letter paragraph 12; Inspector's Report paragraphs 42, 423 & 427). In that case, the sequentially preferable site was being promoted by another developer and not by the applicant or the intended occupier of the proposed foodstore.
- 6.31. Tesco relies on the decision of an Inspector in relation to an appeal by Sainsbury's relating to Telford Forge Retail Park (Tesco 6I). This too was made after the Framework was published, and the Inspector refers to this in paragraphs 24 to 27 of his decision. Availability is dealt with in paragraphs 22 to 24 of the decision, where he concludes that *"the conditional contract for disposal [of the sequentially preferable site by Wrekin Borough Council] to Asda makes the site unavailable"*. The point does not appear to have been the subject of any submissions by either party, and the Inspector does not explain why he took the approach he did, which the lpa submits was wrong.
- 6.32. However, the recent appeal relating to a site in Stirchley, and again post-Framework, accords with the approach taken in the Lancaster decision and not with that taken in the Telford Forge decision (SSL4 paragraphs 10, 27, 37-39). In the Stirchley decision, it was concluded that a sequentially preferable site was suitable, available and viable, even though it was being promoted for development by Tesco and was plainly not available to the appellant, Asda. Here, the specific argument was raised that the site was *"not available to the developer/retailer in question"*, but this was expressly rejected on the basis of paragraph 6.41 of the Practice Guidance. This approach is consistent with the Framework and should be preferred.
- 6.33. Whilst the Homebase site, which is in the freehold ownership of British Land, is not presently available to Tesco, it could become so. Tesco have made no enquiries of British Land as to their willingness to dispose of it to them, and the site is not currently under contract to Sainsbury's. It can be seen from the land ownership plan that the site is not landlocked, and it is of sufficient size to accommodate a store of the size of the proposed Tesco (Tesco 6J, SSL3).
- 6.34. As to availability, the Practice Guidance refers to sites being *"available now or within a reasonable period of time (determined on the merits of a particular case, having regard to inter alia, the urgency of the need)"*; and advises that *"whether it is appropriate to assess availability over 3 to 5 years, or a longer time period, will depend upon local circumstances"*

(CD10.2 paragraphs 6.37, 6.39). Whilst the Framework has removed the former requirement to show need for an out-of-centre development, there is no reason why this should affect the materiality of need, as one local circumstance, in the context of the sequential test. This would entirely emasculate the force of the test, which is such a key component in achieving the overall Framework policy objective of ensuring the vitality of town centres, in circumstances where a sequentially preferable site is not immediately available but is likely to become so. It is very hard to see how or why such an approach is required by, or would be consistent with, other Framework objectives.

- 6.35. The Lancaster appeal decision is an example of availability being assessed over a longer time period – there, “5 years or so”. Account was also taken of the fact that the need was not urgent<sup>42</sup>. Again, there is nothing in the Framework or the *Dundee* decision that suggests that this was wrong. The recent *Stirchley* decision also sheds light on this issue. The appellant argued that there was no reason why the appeal proposal “*should await the sequentially preferable site*”<sup>43</sup>. The Inspector commented: “*Fundamental to this approach is the idea that the proper application of the sequential test is spatial rather than temporal. However, the NPPF clearly states, at paragraph 27, that where an application fails to satisfy the sequential test, it should be refused.*”
- 6.36. In the present case, there is no capacity for any additional convenience floorspace beyond the Sainsbury’s extension until 2016. Even by 2021, taking the higher population growth forecasts<sup>44</sup>, an approach the lpa does not accept is reasonable, there is only capacity for well under 50% of the convenience turnover of the Tesco store<sup>45</sup>. It follows that there is no immediate or imminent quantitative need for a large new foodstore in Bath. Nor is there any pressing qualitative need either<sup>46</sup>.
- 6.37. The position of Homebase in relation to their existing lease, which expires in December 2020, is clear enough. They want to stay where they are, but are “*willing to consider*” relocation subject to feasibility, viability and being able to meet their operational and customer requirements. Their representations on the CS thus request a change to Policy B2 to refer to the “*retention and enhancement of existing retail businesses or their relocation to a suitable and viable site*”<sup>47</sup>. Homebase are plainly willing to entertain the prospect of moving, and normal commercial considerations strongly suggest that, if Sainsbury’s achieve planning permission for their new store on BWRE, Homebase may be very interested in reopening discussions with them. There is therefore a reasonable prospect that the Homebase site will become available to Sainsbury’s before 2020. Even if it does not, the circumstances of the present case are such that BWRE should not be ruled out on availability grounds.

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<sup>42</sup> LPA 6G, Inspector’s Report 426 & 432

<sup>43</sup> SSL4 paragraph 34

<sup>44</sup> LPA 6D Section 2

<sup>45</sup> Tesco 6C Appendix 1 Table P6.4; LPA 6C Appendix MM2 Table 8 (lower population growth) Appendix MM7 Table 8a (higher population growth). Tesco convenience turnover = £31.46m (ID1.3 p.38 Table 5).

<sup>46</sup> LPA 6B paragraphs 4.37 to 4.41

<sup>47</sup> LPA 6C Appendix MM3, GR Planning letter of 31 January 2011.

- 6.38. Tesco now accepts<sup>48</sup> that, in the light of the decision of the High Court in *Borough of Telford and Wrekin and St Modwen Developments v SSCLG*<sup>49</sup>, it is necessary for the SoS to consider the suitability and availability of other out-of-centre sites, albeit that he does not, if on the facts the sites are in reality equal, have to choose between them.
- 6.39. Here, the comparison to be made is in terms of their relative accessibility and connectivity to the city centre<sup>50</sup>. The Tesco site is around 500m further from the CCSA than the relocated Sainsbury's store would be<sup>51</sup>. Furthermore, whilst the walking route from both stores would share the part that runs through BWRE and the Green Park Station area, the Sainsbury's proposals include very significant regeneration and urban design improvements to that area which would make that route, were the store to be built, much more attractive than it is at present. The Tesco scheme of course includes no such proposals. Also, the first part of the route from the Tesco store would be along the heavily trafficked Lower Bristol Road, which is not an attractive route. Therefore, a new foodstore at BWRE would have a significantly greater propensity to achieve linked trips on foot with the city centre than would the Tesco store, from which a very few such trips can be expected.
- 6.40. In terms of linked trips by bus, linkages to the CCSA from BWRE would be better than from the Tesco site, and linkage by car would be comparable. However, given that the development would be a key part of bringing the area into an extended centre, there would be much less need to get on a bus or into one's car in order to pay a visit to the historic centre. It is clear, therefore, that BWRE is sequentially preferable to the appeal site, and that it is suitable and available. The appeal should therefore be dismissed because it fails to satisfy the sequential test.

#### Adverse impact on vitality and viability

- 6.41. In assessing the impact on vitality and viability, BWRE is a relevant consideration. Development of BWRE for a replacement, and enlarged, Sainsbury's store, together with other commercial, retail and residential uses, is consistent with the CS objectives. Clearly its particular impacts, in all senses, must be assessed, and it is not known at this stage whether planning permission will be granted. However, Sainsbury's have said, given the lack of capacity to support both proposals, that, if the appeal is allowed, it will not proceed with its development. This is a direct impact on planned private investment, not in an existing centre but in an area which is planned to become part of an extended centre in the future.
- 6.42. At MRDC, the Co-op store quite plainly plays a very significant role in the centre, and its loss would be very damaging to it. On the basis of the Allegra household survey, of the Co-op's £7.6m turnover, £5.6m, or 74%, comes from what respondents described as a main food shopping trip<sup>52</sup>. The Co-op themselves estimate that 52% of their turnover comes from main

<sup>48</sup> X-Examination of Mr Butterworth.

<sup>49</sup> LPA 6E paragraphs 27 to 28, 31, 33, 49 to 50.

<sup>50</sup> Framework paragraph 24.

<sup>51</sup> Tesco 6G - approx difference between A-J and A-E).

<sup>52</sup> LPA 6C Appendix MM2 Tables 4, 5.

food shopping trips<sup>53</sup>. For someone undertaking a main food shopping trip, whatever the basket size, that will generally be the main reason for undertaking the trip. Tesco anticipate that over 80% of their convenience turnover will be derived from main food shopping trips<sup>54</sup>. It is entirely clear, therefore, that Tesco would be in competition with the Co-op for main food shopping expenditure. Some of the main food shopping trips that currently go to the Co-op are bound to transfer to Tesco.

- 6.43. The fact that main food shoppers using the Co-op visit slightly more frequently, spend less per visit, and have a higher propensity to walk, than main food shoppers using larger foodstores<sup>55</sup>, is likely to be primarily a function of the characteristics and personal circumstances of the shoppers, than it is of the store itself. There is no reason why they should not shop in the same way at the new Tesco. It is to be anticipated therefore that many of these people would transfer to Tesco from the Co-op if it is more convenient for them to do so. Tesco would also attract top-up food trips. Although this is a relatively small proportion of its turnover, this would still amount to around £6m of expenditure. Much of this would be derived from those who currently undertake top-up food shopping trips to the Co-op.
- 6.44. There is no doubt, therefore, that the convenience turnover of the Co-op would be significantly diminished as a result of competition from Tesco. The importance of the Co-op to the centre has also been significantly underestimated by Tesco. Tesco rely heavily on a single piece of evidence, namely that in response to being asked which shops, businesses or services in MRDC Road those surveyed intended to visit on the day in question, the Co-op came third, behind Sainsbury's Local and Stokes Greengrocers<sup>56</sup>. But this does not mean that the Co-op is unimportant to the centre. In the first place, the turnover of the Co-op is much higher than any of the other convenience stores in the centre. Secondly, of the 198 people surveyed, 153, or 77%, said that they visited the Co-op sometimes (46% at least once a week); and, of those, 122 (or 80%) normally linked their trip with another shop or other facility in the centre<sup>57</sup>. Thus, 122 out of 198 of all respondents, or 61%, visit the Co-op as well as other shops and facilities in the centre.
- 6.45. The cross-tabulations<sup>58</sup> from the Allegra household survey provided by Tesco are also instructive in this respect. Of the total of 30 main food shoppers at the Co-op identified in the survey, there were 23 people (or 77% – closely comparable to the 80% from the on-street survey) who linked to other shops or facilities in the centre, and 26 actual linkages. All of this evidence demonstrates the key contribution that the Co-op makes to the vitality and viability of the centre.
- 6.46. The Ipa estimates that the impact on the Co-op from commitments and Tesco would be £0.5m and £2.3m respectively and the impact on other convenience stores in MRDC would be £0.2m and 0.6m respectively. Tesco

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<sup>53</sup> CG4C Appendix PN11 page 2.

<sup>54</sup> X-Examination of Butterworth.

<sup>55</sup> Tesco 6C page 58 Table 2 (comparison is with Sainsbury's Odd Down).

<sup>56</sup> CG4C Appendix PN7 page 7 Q09.

<sup>57</sup> CG4C Appendix PN11 page 10 Q10, Q11.

<sup>58</sup> X-Examination of Mr Butterworth Tesco 6E pages 5, 9, 10, 11.



assesses the impact on the Co-op from commitments and the Tesco store would be £1m and £0.64m respectively. The impact on other MRDC convenience stores from commitments and Tesco would be £0.27m and £0.06m respectively. However, Tesco's trade diversion estimates from the Co-op lack credibility. The estimated diversion to Tesco, at £0.64m, is too low; and the estimated diversion to commitments, at £1m, is too high. The Ipa's estimated trade diversion is based on more realistic judgments about the factors which will influence this.

- 6.47. The convenience turnover of the commitments is approximately £37m<sup>59</sup>, which is about 17% higher than the convenience turnover of the Tesco store. The commitments are also all further away, in most instances considerably further away, from MRDC than the Tesco store would be<sup>60</sup>. Yet Tesco's estimated trade diversion from the Co-op to the commitments is 56% higher than the estimated trade diversion to Tesco. This is simply not plausible, even taking account of the fact that the commitments, or most of them, are likely to be trading before Tesco. There is an even greater disparity for the other MRDC convenience shops<sup>61</sup>. This is not plausible either. None of the commitments is at all comparable to a new, large Tesco store. The extended Sainsbury's would be comparable, but there is no certainty about when it would take place. The new Tesco would be a much greater attractor of convenience shopping trips than any of them.
- 6.48. Tesco identifies 2 key factors that underlie the differences between the parties on the trade diversion estimates. The first is proximity of Tesco to MRDC. Tesco claims that proximity to home is more important, but the Allegra survey identifies convenience to home as the main reason for choosing to undertake a main food shop at a particular store, which will bring in other considerations as well. Also, for most people it will be a combination of factors, and not just one, which will have led to their choices.
- 6.49. The store catchment area plans and associated population statistics<sup>62</sup> were introduced in evidence at the very end of the Inquiry, and there has not been time to have them assessed by the relevant witnesses. There is a lot of information but no obvious conclusions to be drawn from this. They do show, however, that there is plenty of scope for Tesco to attract trade from the Co-op, and from other convenience stores in MRDC. Many of those who currently shop in MRDC but who would live closer to the new Tesco are likely to shop there instead; some of those who will still live closer to MRDC would nevertheless transfer, whether for reasons of convenience, because they are drawn to Tesco because of its size, or for some other reason. Of course many would still shop at MRDC; but there will be fewer of them, and the evidence of the traders has made it clear how important maintaining footfall is to the health of the centre<sup>63</sup>.
- 6.50. The second main reason for the differences between the parties' trade diversion estimates from the Co-op and from other MRDC convenience

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<sup>59</sup> X-Examination of Mr Butterworth.

<sup>60</sup> ID1.3 Plan A4.

<sup>61</sup> Tesco 6D Tables 5.1, 5.2: £60,000 impact from Tesco, £270,000 impact (4½ times as great).

<sup>62</sup> Tesco 7F.

<sup>63</sup> Mr Wainwright, Oldfield Park Bookshop.

shops relates to the extent to which the new Tesco would be able to claw back expenditure from outside the catchment. Tesco's evidence suggests that the new Sainsbury's store at Odd Down has clawed back trade, and that the new Tesco could do the same and perhaps even more so<sup>64</sup>.

However, that evidence only tells part of the story as it only deals with the pre and post-Odd Down market shares of the larger stores in Bath, but not all convenience stores in the city. In order to achieve the true picture, a comparison must be made between the market shares of all stores in Bath pre- and post-Odd Down.

- 6.51. GVA's retail study of 2011, undertaken prior to the opening of the Odd Down store, shows that in Zone 1 of that study, which is broadly equivalent to Zones 1-4 which have been examined in the evidence at this Inquiry, the market share of Bath stores was 85.9%<sup>65</sup>. Tesco's evidence<sup>66</sup> shows that the market share of all convenience stores in Bath in Zones 1-4, after the impact of Odd Down has been absorbed, is 86.1%. The increase in the market share of convenience stores in Bath was therefore negligible, following the opening of Odd Down. This plainly does not support a conclusion that a Tesco store on the appeal site would significantly increase convenience expenditure retention rates in the city.
- 6.52. Tesco also predicts a significant degree of clawback of expenditure from Asda, Longwell Green. The reasons why those living in Zones 1-4 shop there, and have continued to do so following the opening of Odd Down, are not known, so it is very difficult to do any more than speculate on whether they may decide to shop at a new Tesco instead. In any event, this has little direct bearing on the likely level of impact on MRDC. The decision of a shopper to transfer to Tesco from Asda will not bring any benefit to MRDC; nor will it prevent someone else who lives locally and who currently shops at MRDC from also deciding to transfer to Tesco.
- 6.53. The Tesco scheme would have a significantly harmful impact on the vitality and viability of MRDC. The protection of centres such as this one lies at the heart of national and local policy. The risk posed to the centre from a very large new Tesco store in such close proximity is obvious. The appeal should be dismissed on this ground also.

*The implications of the development for the operation of the highway network and the promotion of sustainable transport patterns*

- 6.54. The site lies adjacent to the A36, a National Primary Route and is the signed East-West route for through traffic in Bath. Lower Bristol Road/Windsor Bridge Road is the single most congested junction in Bath, in terms of delays experienced (LPA 4C Appendix 2). It is for these reasons that significant funding has been secured, as part of the Bath Transportation Package, to carry out works to the junction, to alleviate current delays through the junction and improve its layout and performance. It is in this context that the implications of the development for the operation of the junction must be considered.

<sup>64</sup> CD2.6 Table A3.4.

<sup>65</sup> CD8.6 Appendix B Table 12.

<sup>66</sup> Tesco 6C Appendix 1 Table P6.5.

- 6.55. Paragraph 32 of the Framework makes it clear that a *"safe and suitable access"* is a prerequisite to the grant of planning permission for developments that generate a significant amount of movement. The Framework does not allow the safety of highway users to be compromised and that improvements to the highway network may be capable of limiting the significant effects of the development, which should only be prevented *"where the residual cumulative impacts ... are severe"*.
- 6.56. LP Policy T24 is broadly consistent with the Framework, and should be given full weight, with one qualification<sup>67</sup>: criterion (vi), which refers to *"the introduction of traffic of excessive volume"*, must be interpreted in the light of the Framework severity test. Therefore, traffic is *"excessive"* if it leads to delays which are severe. The policy also includes a requirement that development must provide *"a high standard of highway safety"*.
- 6.57. Some general assistance is to be derived as to what may be meant by *"severe"* from the Lancaster appeal decision (LPA 6G DL14, IR441, 442, 445, 447). In that case, the effect of the proposed and committed developments meant that, in the PM peak, there would have been 102% saturation (= minus 12% PRC) for northbound traffic on the A6 (part of the primary road network, as is the A36 in Bath) at the appeal site junction, with an average queue length of more than 50 PCUs and a delay of 110 seconds. This was regarded as *"unacceptable congestion"*, which could therefore be described as *"severe"* in the terms of the Framework. It can also be seen from the Inspector's report that traffic generation was based on TRICS, that LINSIG modelling was undertaken, and that Temprow traffic growth rates were used, although the Tesco argued that this was likely to overestimate future traffic flows<sup>68</sup>.
- 6.58. Here, using all of Tesco's assumptions including Temprow growth plus BWR, the equivalent congestion indicators in 2020 for the PM peak hour are a PRC of minus 16.2%, an average queue length of 48 vehicles (for all vehicles passing through the junction), and a delay of 129 seconds, comparable to Lancaster but materially worse in terms of PRC and delay (LPA 4D page 7 Table 1, bottom line). On this basis, it would be reasonable for the SoS to conclude that the effects of the Tesco store, in terms of congestion at the junction, were severe.
- 6.59. A comparison must be made, in order to reach a conclusion on this, with what the situation would be without the development. The equivalent figures for this scenario, assuming therefore BWR plus Temprow growth, are minus 11.8% PRC, a queue length of 26 vehicles and a delay of 82 seconds. This is significantly better than the with-development scenario. Therefore, it can be concluded that the development would lead to a material worsening in conditions at the junction, and result in unacceptable congestion. The residual impacts, therefore, following the junction improvement works, would be severe.
- 6.60. The assumptions underlying Tesco's scenarios are however in issue. The *"base plus"* scenarios significantly overstate the amount of traffic that would

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<sup>67</sup> X-Examination of Mr Plumb.

<sup>68</sup> IR 120, 123, 148

pass through the junction, and all of the "Proposed development plus" scenarios significantly understate the likely impact of the development (ID1.5 Appendix C).

- 6.61. Tesco's base flows are too low, the best evidence of current base flows is the lpa's manual traffic count undertaken on Wednesday 30 May 2012<sup>69</sup>, which is in a neutral month on a day unaffected by public holidays (LPA 5E paragraph 6.3). As it is a "*built-up principal*" road, the COBA advice applies to the A36<sup>70</sup>. Tesco's manual counts were undertaken in March 2012 and 2013, which is a non-neutral month. Tesco's 2013 count was also undertaken between 16:00 and 17:00 hours, which are not the network peak hour. This is in fact slightly higher than the 2012 manual count, which was taken in the peak hour. The declining trend shown by the ATCs is acknowledged, but the fact remains that the most reliable manual count is the one undertaken on behalf of the lpa in May 2012. Even the average of all surveys gives a figure which is materially higher than the one used by Tesco in the "Base plus" scenarios.
- 6.62. In relation to traffic growth, the position of both parties<sup>71</sup> is that there is an element of double counting if both BWR<sup>72</sup> and Temprow growth are allowed for. However, Tesco was and remains content for the performance of the junction to be assessed on the basis that both should be included, for robustness<sup>73</sup>. Tesco's contention<sup>74</sup> is that there may be no further traffic growth beyond BWR flies in the face not only of its own evidence but also the fact that substantial housing growth in addition to BWR is planned<sup>75</sup>, and that significant employment growth is also planned. The lpa's approach, which strips out BWR from Temprow growth and results in a traffic growth rate at 4.53% being added to base flows<sup>76</sup>, is rational and well-founded. Furthermore, given that Temprow growth rates are based on local authority household and employment projections, the recent recession appears to have little if anything to do with whether these are reliable. They are reliable and there is no justification for reducing or ignoring them.
- 6.63. In relation to the extant use of the site, Tesco's assumption that there would be 211 2-way trips generated by the site in the PM peak hour is not defensible. Tesco's planning evidence is clear that the site has "*little prospect of re-use in its current form*"<sup>77</sup>. The position Tesco has assessed, would involve making significant changes to the existing main building in order to enable re-letting in smaller units and removing the building at the western end to provide more car parking, is not a true fall-back. Tesco's evidence<sup>78</sup> does not support the view, that there is a reasonable prospect of its re-use in this way, nor is it known whether planning permission would be required for what has been assumed. It is not appropriate, therefore, to

<sup>69</sup> LPA 7C-1 Appendix M

<sup>70</sup> X-Examination of Mr Plumb.

<sup>71</sup> Tesco 7B para 5.7.9; 2<sup>nd</sup> SoCG para 5.7

<sup>72</sup> Agreed at 174 vehicles in the PM peak: 2<sup>nd</sup> SoCG paragraph 5.11

<sup>73</sup> X-Examination of Mr Plumb.

<sup>74</sup> X-Examination of Mr Plumb.

<sup>75</sup> Tesco cited 3116 total new dwellings, 2280 at BWR and 836 elsewhere. The housing figures may of course increase still further, depending on the outcome of the Core Strategy examination.

<sup>76</sup> LPA 5D page 3 paragraph 3

<sup>77</sup> Tesco 4B p.24 para 7.16

<sup>78</sup> Tesco 7b.

assess the “Base plus extant flows” scenario using this figure, and compare this with the “with development” scenarios. If any assumption is to be made in this respect, it should not be, and a much lower figure should be adopted. The lpa’s figure, based on the application of TRICS data to the existing B2 floorspace, is 37 outbound trips in the PM peak hour (LPA 5D page 3 paragraph 4).

- 6.64. All of Tesco’s “Base plus extant flows” scenarios therefore very significantly overstate the delays at the junction without the appeal development. So far as any alternative redevelopment of the site is concerned, this would need to explain its traffic impacts and provide appropriate mitigation, including (if necessary) junction improvements. This is not in any event the basis on which either party has sought to assess the performance of the junction.
- 6.65. In relation to trip rates, WSP’s review concluded as follows: *“SKM’s approach to predicting the future trip generation of the site is considered sound. Although SKM has used TRICS derived average trip rates to predict future travel demand, this approach follows best practice and prevents overly designing for the motor vehicle.”*<sup>79</sup> This appears to be still Tesco’s view<sup>80</sup>. It is difficult to see, therefore, any reason why WSP’s trip rates were adjusted downwards, unless it was in recognition of the prospect that, unless this was done, the junction would not operate satisfactorily.
- 6.66. The original TA<sup>81</sup> did not provide a satisfactory or comprehensible explanation of how, or why, the SKM trip rates, which were derived directly from TRICS<sup>82</sup>, had been *“factored to reflect the proportional profile of the daily movements to reflect maximum occupation of the level of parking”*. A further explanation is however given in the 2<sup>nd</sup> Supplementary TA<sup>83</sup>, from which it is apparent that the methodology employed was to set the car park size at 359, then calculate the trip rates which would result in a maximum accumulation of 359 cars<sup>84</sup>. This departs from the usual methodology of calculating generated traffic from the application of a trip rate per 100 sq. m GFA, as SKM had done, and is in conflict with the principle, enunciated by Tesco, that trip generation varies according to the amount of floorspace.
- 6.67. This approach also ignores the point made by SKM in their TA<sup>85</sup> that *“car parks [should] be designed to operate at a maximum occupancy of 85%”*. The parking accumulation tables in the 2<sup>nd</sup> Supplementary TA<sup>86</sup> are also incomprehensible, as the trip rates do not tally with the arrivals and departures figures. Furthermore, if the amount of parking is to act as a constraint on the number of trips attracted by the store, there is no reason why this should take effect until the car park approaches capacity. Yet the parking accumulation tables appear to assume that the constraint will have effect throughout the day, leading to an underestimate of the rate at which the car park is likely to fill up.

<sup>79</sup> LPA 5C, WSP letter of 3<sup>rd</sup> February 2012, p.2 “Trip Generation”.

<sup>80</sup> X-Examination of Mr Plumb.

<sup>81</sup> CD2.17 p.16 paragraph 6.1.2

<sup>82</sup> CD2.17 Appendix J page 3.

<sup>83</sup> CD3.2 paragraphs 2.3.1 – 2.3.2

<sup>84</sup> X-examination of Mr Plumb.

<sup>85</sup> Tesco 7E

<sup>86</sup> CD3.2 Appendix A

- 6.68. Tesco's approach to trip generation has not therefore been justified, and trip rates are too low to enable a robust assessment of the trip attraction of the proposed store to be made. The other stores on which reliance has been placed are mostly not comparable<sup>87</sup>; the Morrison's Bath store is more comparable, but to use the trip rates from this store alone would again not result in a robust assessment of the likely impacts of the development being made.
- 6.69. The lpa recognises that building a car park that is too small to accommodate the amount of traffic likely to be generated by the store could have a constraining effect on arrivals during the PM peak hour, which is the time about which it has the greatest concerns. However, many of those who would shop at the new store in the PM peak hour would do so because that is what was most convenient for them i.e. they were on their way home from work. The potential for modal shift from car to bus by those who have found themselves in a queue to enter the car park is also very limited, particularly for those who are undertaking a main food shop or for any other reason have no choice other than to use their car. In any event, any attempt to adjust the TRICS trip rates to allow for these factors would be speculative, and neither party has approached the matter in this way.
- 6.70. Tesco has materially underestimated the likely trip generation of the store in the PM peak hour. This could lead to congestion and queuing into the car park, which could affect the operation of the junction. Thus, the proposed car park is too small to accommodate the likely development traffic in the weekday peak. In relation to car parking provision, maximum car parking standards are set out in the LP. The explanatory text at paragraph D12.3 advises that: *"Development at locations which have good accessibility by non-car modes or where there is adequate public off-street or shared parking available will be expected to provide less than the permitted maximum level of parking."*
- 6.71. It is agreed that the site has good, but not excellent (such as would be found at in or edge-of centre sites), accessibility by non-car modes, and that there would be no parking available for shoppers other than in the store car park. This does not, of course, mean that development at other locations must provide parking at the maximum standard, but anything less must be shown to be adequate. This has not been done in the present case. It also means, as Tesco acknowledged<sup>88</sup> that a comparison with the Sainsbury's Green Park extension cannot legitimately be made, since this does have off-street public parking available nearby, in addition to the parking available in association with the store itself<sup>89</sup>.
- 6.72. It is agreed that any spill-over parking in local streets by Tesco shoppers would be unacceptable, but the implementation of a Controlled Parking Zone in the area depends on its provision by the BWR development through the planning obligations that relate to that development, which may never be triggered, or if they are will not be triggered until well after the Tesco store

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<sup>87</sup> Evidence in Chief, Mr Smith.

<sup>88</sup> X-Examination of Mr Plumb.

<sup>89</sup> Evidence in Chief Mr Smith.

opens for trading. This adds weight to the importance of the SoS being satisfied that adequate car parking is provided for the store.

- 6.73. In relation to pass-by/diverted trips, TRICS 95/2 was referred to in WSP's Second Supplementary TA<sup>90</sup> and still provides relevant advice. Other material to which reference is also made in the Second Supplementary TA supports a pass-by/diversion rate of less than 50%. TRICS 95/2 itself shows an average pass-by/diversion rate of 40%; in Scotland, and in the special circumstances of London, slightly higher (LPA 5F Tables 3.2, 3.4 & 3.5). It is therefore entirely reasonable, and robust, to assess the appeal proposals on the basis of pass-by/diversion rates of 30 and 50%. Tesco's 70% is likely to be too high, and lacks robustness.
- 6.74. Tesco say that the fact that no allowance has been made for the proposed travelators in the junction assessment adds robustness to the assessment. This is accepted, although the amount of GFA taken up by the travelators is not clear. It has not been suggested that any deduction should be made from the trip generation from the store to reflect this factor.
- 6.75. Reference has been made to SCOOT; the lpa's evidence is that SCOOT typically reduces traffic delay in urban areas by 20% (LPA 4D paragraph 1.24(c)). However, in this case, there is no evidence that the use of SCOOT would improve the LINSIG model delay outputs in this particular case by that amount, or indeed any other amount and little weight can therefore be attached to this.
- 6.76. In light of all of the above it is concluded that;
- even on Tesco's assumptions, the junction would operate with unacceptable delays in 2020;
  - however, Tesco's assumptions are not accepted, so the junction would in fact perform worse if the right inputs into the model were made, and the BTP junction without the development would perform better;
  - on the lpa's assumptions, the junction would be a long way over capacity (LPA 4D page 9 Table 2). Assuming 50% pass-by/diverted trips and on Tesco's trade draw estimates, in 2020 the junction would operate at minus 27.6% PRC, with an average delay to vehicles of 217 seconds and a mean maximum queue length of 87 PCUs. This is plainly, and unarguably, unacceptable. Tesco's response, that the junction would never get to such a situation is simply recognition of this, and is no answer to the inevitable conclusion that the impact of the development on congestion at this key junction would be severe.

The appeal should therefore be dismissed on this ground.

- 6.77. The lpa also has concerns regarding the safe and satisfactory operation of the junction, as follows<sup>91</sup>:

<sup>90</sup> CD3.2 page 9 paragraph 3.2.1.

<sup>91</sup> Tesco's proposed junction layout is at 2<sup>nd</sup> Highways SoCG Appendix D; the BTP scheme is at LPA 5C Fig 5.

- the northbound, straight ahead lane from Brook Road is misaligned with the straight ahead land in Windsor Bridge Road, which would lead to vehicles needing to move to the left as they negotiated the junction in order to align themselves correctly. There is an obvious risk of side-swipe accidents and collision with cyclists. The BTP scheme does not pose this risk, because the “misalignment” is far less, and there is only a single lane for Brook Road outbound traffic;
- there is a similar, albeit less severe, position for westbound, straight ahead traffic on Lower Bristol Road east;
- Tesco accepts that the public house service vehicles should be allowed to turn in Tesco’s service yard, and cannot realistically turn into the public house car park either from the north or from the south. Therefore they will have to continue to service the pub from Brook Road. However, the position now is radically different from what it will be if the development takes place, because of the very large increase in flows along this part of Brook Road. A parked HGV outside the public house would block the cycle lane and the left turn lane for vehicles, which is a highly unsatisfactory situation in the immediate vicinity of a large new development which requires substantial re-design of the existing junction;
- it is agreed that large articulated vehicles should be prevented from turning left out of Brook Road, and a mechanism has been proposed to achieve this;
- at peak times, traffic on Lower Bristol Road west wishing to go straight ahead or turn right is likely to back up and not clear during the green phase, because, unlike in the BTP improvements, these movements are separately phased. This will add to delays, and increases the performance differential between the BTP and Tesco’s schemes.

These considerations add significant weight to the lpa’s submission that the appeal should be refused on highway grounds.

*The implications of the development having regard to Framework guidance on built design and conserving and enhancing the historic environment*

- 6.78. The lpa considers that the development accords with Framework guidance in this respect, but does not consider that significant weight should be attached to the claimed heritage benefits of the proposals, which consist in the retention of the façade of the old Bath Press, the building is not listed, and the provision of a “*museum display window*”<sup>92</sup>, which although worthwhile is hardly a significant benefit. The design of the scheme is acceptable, but not outstanding.
- 6.79. The proposal also includes a community space, which again is welcomed but it will be charged out at “*a reasonable market rate*”<sup>93</sup>; it therefore may, or

<sup>92</sup> Application drawing PN2010/00.

<sup>93</sup> Section 106 agreement, definition of “Community Facilities Strategy” (page 2).



not, prove worthwhile. Again, therefore, this should not attract material weight in the planning balance.

*The implications of the development for the living conditions of nearby residents with particular regard to air quality, on-street car parking, noise and disturbance*

- 6.80. The development is compatible with the protection of local amenity. There is however no evidence that the previous use of the site gave rise to significant impacts on local amenity. Local residents have raised concerns about the impact of the development on air quality, but the lpa did not refuse planning permission on this basis, though it is a relevant consideration, as the uncertainties over the traffic modelling add to the concerns that the development may impact adversely on local residents<sup>94</sup>.

*Overall Conclusion*

- 6.81. The scheme would regenerate the site and includes not only retail but also employment floorspace. The fact of regeneration is an important benefit of the proposals, as is, albeit with qualifications, the provision of the employment floorspace. However, the adverse impacts of the development, and its consequential conflict with national and local policy, decisively outweigh these benefits. The appeal should be dismissed.

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<sup>94</sup> LPA 7B paragraph 7.24, 3<sup>rd</sup> bullet.

## 7. The Case for The Co-operative Estates

The material points are: -

### Introduction

- 7.1. MRDC the only designated district centre in the adopted LP, next in importance to the city centre, has an established role within the shopping hierarchy. Emerging CS policy seeks to maintain this position. The reason for designating Moorland Road as a District Centre is because it is a sizeable centre with a variety of shops with specific reference being made to the Co-op as a large foodstore. The Co-op plays a key role in providing the size, variety and range that justifies district centre status designation. MRDC provides for daily shopping needs and serves a wider than average catchment because of its range of facilities. Maintaining its position in the hierarchy is very important.
- 7.2. Tesco plays down the significance of the Co-op in MRDC and, without evidence, seeks to portray it as a failing store. The Co-op has a floorspace of some 1,509 sq. m net (2,941 sq. m gross) with a 60-space off-street car park. It is the largest store in the centre and its convenience turnover is twice that of the remaining stores in the centre. The Co-op performs both main food and top up functions with an average of 11,000 weekly transactions. Tesco's retail witness estimates the next largest store is Sainsbury's with a turnover of £1.5-2m<sup>95</sup>; at most 34% of the Co-op turnover. The Co-op is the greatest generator of foot fall to the centre and provides the only off-street car park. Some 80% of shoppers who use the Co-op also visit other shops in MRDC. On any basis the Co-op is an anchor store for the centre and one that generates linked trips within the centre. Effectively, the Co-op is the main reason why people go to this centre to spend money. Indeed, Tesco acknowledges that the Co-op is a *"contributor to the overall vitality and viability of the centre....., trading at a level slightly lower than company benchmark ....and the household survey shows those now undertaking a main food shop are generally happy with the store"*<sup>96</sup>. Thus, there is no basis to the suggestion that the store is failing.
- 7.3. Tesco also seeks to dismiss the Co-op's objection as a simple competitor objection. This is not so, the Co-op's objection is based on a proper assessment of policies in the development plan and the Framework and not concerns about commercial competition. When assessed against local and national policies, the Tesco proposal would have a significant and unacceptable adverse impact on the vitality and viability of MRDC, on local consumer choice and on private investment in the centre. Whilst Tesco suggest that the benefits of the scheme outweigh any harm, it accepted<sup>97</sup>, unequivocally, that if the proposal is judged to fall foul of paragraph 27 of the Framework in terms of its impact on MRDC then it should be refused.

<sup>95</sup> X-Examination of Mr Butterworth.

<sup>96</sup> Tesco 6B paragraphs 8.8 and 8.10.

<sup>97</sup> X-Examination of Ms Bartaby.

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The Health of the Centre.

- 7.4. As to impact on the vitality and viability of MRDC, the starting point is an assessment of its role in the shopping hierarchy and whether that role is being presently fulfilled. That assessment provides the criteria against which the overall health of the centre should be assessed. MRDC is the only designated district centre coming alone next in importance to the City Centre. That hierarchy is maintained in the CS and Tesco has not sought to object to it.
- 7.5. LP Policy S.1 seeks the maintenance and enhancement of centres within the shopping centre hierarchy. Paragraphs B5.54 and B5.57 provide that it is important for the district centre to, “maintain (its) shopping function” and “equally important is the need to retain existing shopping provision in the district centre”.
- 7.6. CS Policy CP12 also provides that MRDC retain its role as the only district centre, second only to the city centre in the existing hierarchy. In emerging policy, the maintenance of the hierarchy is still fundamental and the policy objective to maintain and enhance the district centre remains. CS Policy B1 (6) makes it a strategic objective to protect and where possible enhance the vitality and viability of the district centre whilst paragraph 2.23 confirms the spatial strategy is to secure and enhance the vital role that MRDC plays as part of the city’s neighbourhoods.
- 7.7. Tesco has signally failed to address the hierarchical issue. What Tesco has done is to look at the present position and health of the centre without putting it into any hierarchical context or considering how the centre currently meets its role in the hierarchy. Tesco accepted<sup>98</sup> that the success of the centre must first be assessed against the reasons for the designation as a district centre. If MRDC is failing against those reasons then it cannot be considered a vibrant district centre fulfilling its allotted function.
- 7.8. Paragraph B5.16 of the LP indicates that Moorland Road was designated a district centre because it contains a variety of shops including small independent convenience shops; several comparison goods retailers, including national multiples, and includes a large food store. The reference to a “large food store” can only be a reference to the Co-op. The centre is designated a district centre because it not only serves daily needs but also serves a wider than average catchment because of the range of its facilities.
- 7.9. Tesco<sup>99</sup> acknowledged that the range and choice of shops was the reason why Moorland Road is designated a district centre. However, since the LP was adopted, that range and choice has been significantly eroded. The national multiple comparison retailers, Woolworths and Shoe Zone, have gone and a furniture warehouse located above the Co-op has been replaced by a dance studio. Tesco’s scheme would undermine the only large food store which is essential to MRDC’s range and choice. Since the LP designation, MRDC and the Co-op have experienced significant trade diversion as a result of committed and implemented schemes. GVA Grimley for the lpa assessed a

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<sup>98</sup> X-Examination of Ms Bartaby.

<sup>99</sup> X-Examination of Ms Bartaby.

trade diversion of some £1.9 to £2.1m from MRDC to other schemes which has weakened MRDC (CD8.6; CG 4B paragraph 5.20). This shows that MRDC is fragile and as such it is imperative that no further erosion takes place that would prejudice its ability to carry out its district centre function in the shopping centre hierarchy.

- 7.10. MRDC is also vulnerable to the effects of competing development because in addition it has suffered a high “churn” of occupants in recent years. In the past 3 years some 35% of all shops (21 out of 60) have changed hands. In the last year alone the figure is 10% (CG 4B paragraph 6.10). Recently Shoe Zone has closed and the owner has reduced the retail element and converted part to residential. However, despite refurbishment, there is no evidence of any letting on the horizon. Hippy Shake has also recently closed. Ominously Lloyds Bank holds over and has done so since 2011. It is agreed that MRDC contains few units that would be attractive to multiple retailers which could help restore the range and choice.
- 7.11. It is also accepted that whilst Sainsbury’s, McColl and Greggs provide a top up shopping role, they unlike the Co-op do not fulfil any significant main food role. For the continuing satisfaction of the main food role in MRDC, the Co-op remains essential if it is to retain its range and justify maintaining its distinct district centre status. MRDC now has 5 charity shops amounting to 8.5% of the total shops compared to a national average of 3.92% (CG 4B paragraph 6.13). The presence of these shops was not conceivably relied upon as to establishing vibrancy to a level that justified a district centre designation and certainly are not evidence of a thriving centre. The high number of independent retailers means that they lack the support of national organisations and branch networks and as such are more susceptible to local pressures and competition.
- 7.12. Thus, whilst MRDC appears relatively healthy on the surface it is a centre that is vulnerable to new development and in particular to a competing retail scheme of the scale proposed by Tesco (CG 4C Appendix PN4). Scale is a vital factor, because the greater the size of the scheme the more robust an existing centre needs to be to withstand its effect. The scale of the Tesco proposal can be summarised as:
  - a. it will be the largest store in Bath in an out of centre location;
  - b. Tesco will be a new fascia to Bath;
  - c. the store would sell a wide range of goods that would be in direct competition with the Co-op and over half of the other retailers in MRDC and the competition would be across the board on both convenience and comparison (CG 4B paragraph 6.18);
  - d. the store would be some 670 m from MRDC;
  - e. it would operate as a standalone store, with a 385 space dedicated car park as a rival shopping destination in its own right;
  - f. there would be very significant overlapping catchments between MRDC and Tesco (CG 4C Appendix PN6). Within the 10 minute walk catchment of MRDC there are 9,682 persons. In the Tesco catchment area there are 6,539 persons. The overlapping catchment area covers 5,134 persons. This overlap is of great importance given that 58% of shoppers to MRDC walk. It is agreed there are no similar overlapping catchments existing between MRDC and Odd Down;

- g. Tesco would have no meaningful public transport or pedestrian linkage with MRDC. Any bus journey between the appeal site and MRDC is circuitous and the service is irregular and hourly for much of the day. As to walking links, Tesco<sup>100</sup> described such opportunities as limited and went no further. That is to totally overstate the position. No effort has been made to improve the existing route.
- 7.13. No weight can be attached to Tesco's evidence on comparable centres. The health of an individual centre may be influenced by that of other centres within a district's hierarchy. However, no meaningful conclusions can be made from the position appertaining in centres such as Bristol, Cheltenham or Plymouth. Furthermore, none of the centres Tesco refer to are actually district centres in a similar position in the hierarchy indeed most are local or neighbourhood centres. Whilst Radstock does lie within the Bath administrative area, it is a town centre outside Bath and has a totally different character.
- Role of the Co-op in MRDC.
- 7.14. Notwithstanding reference at paragraph B5.16 LP to a large food store i.e. the Co-op, Tesco have sought to argue that the Co-op store is of no great significance in terms of shopping in MRDC and of no more importance or attraction than say Stokes the green grocer. However, Tesco's interpretation can have no credence whatever in the light of information as to turnover, footfall and the results of the shopper survey and the Allegra Household Survey, which was commissioned by Tesco (CD2.6 Appendix 4).
- 7.15. The Co-op is pre-eminent in terms of turnover and footfall. Based on the Allegra survey, the Co-op's turnover of the store is assessed to be some £7.8m, although actual turnover is some £6.9m (CG 4C Appendix PN11). The convenience turnover of the rest of the centre amounts to some £3.4m, less than half that of the Co-op. Tesco estimates the turnover of the Sainsbury's in-centre store at £1.5-£2m, which is only 34% of the Co-op turnover. Stokes turnover was assessed at £120,000, which is a fraction of the Co-op's turnover. The inescapable conclusion is that on turnover the Co-op is hugely significant to the MRDC.
- 7.16. Tesco accepts<sup>101</sup> that the Co-op weekly transactions amount to 11,219, which represent the minimum number of shoppers who pass through the store. On any basis it is clear beyond doubt that shops such as Stokes cannot be of anything like the importance to the centre that the Co-op is in terms of linked trips within the centre no matter how worthy that shop might be. Neither can Sainsbury's. These stores cannot remotely generate footfall that is anywhere near that of the Co-op. It is absurd to suggest that they are more significant attractants.
- 7.17. The Co-op's on-street shopper survey undertaken in May 2013 establishes beyond any doubt the significance of the Co-op to the health of the district centre (CG 4C Appendix PN7). The conclusions of the shopper survey are unequivocal. Some 64% of visitors to the centre shop for food and groceries

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<sup>100</sup> X-Examination of Mr Butterworth.

<sup>101</sup> X-Examination of Mr Butterworth.

- (Q2.3, and 03x). Some 53% of shoppers visit the Co-op once a week (Q9) and only 23% of visitors to the centre never shop at the Co-op (Q10). Most tellingly of all, of the shoppers who shop at the Co-op, some 80% then visit other shops in the district centre.
- 7.18. The above figures establish beyond any doubt the importance that food shopping has in bringing trade and prosperity to, and to the general well being of, MRDC. At this stage it does not matter what the nature of their shopping actually is at the Co-op since what it shows is that 80% of 11,000 shoppers move on from the Co-op to spend money in other stores (Q11). Plainly there cannot be a reciprocal reliance by the Co-op on other stores. On this evidence alone, it is clear that the Co-op is operating as an anchor store for the centre and that Tesco cannot realistically assert that "any visit to the Co-op is the ancillary part of their trip" (Tesco 6D paragraph 2.25).
- 7.19. The Allegra survey deals with the main food position. Tesco accepted<sup>102</sup> that this survey established that 77% of those doing main food shopping at the Co-op also do further linked shopping trips in the centre. That admission is consistent with the 80% obtained from the Co-op's survey and reiterates the anchor store function of the Co-op.
- 7.20. The Allegra survey goes far further in that it demonstrates beyond any doubt the importance of the Co-op across all food shopping in the centre. Thirty respondents identify the Co-op as being their "main" main food destination only 7 (or less than 25%) identify Sainsbury's as fulfilling that role; and that no other store fulfils a "main" main food role in the centre (Q1). Twenty additional respondents identify the Co-op as the shop where they also regularly do other main food shop (as opposed to their main main food shop) only 7 similarly identify Sainsbury's. Eight local shops appear on this secondary list (Q3). Again the Co-op is predominant in this secondary main food role. It follows that taking main food shopping overall some 50 respondents do their main food shopping at the Co-op compared to 18 (less than 40%) at Sainsbury's and 8, less than 20%, at other shops. As to top-up shopping, 36 respondents use the Co-op for top-up shopping making it the largest top-up shopping location in Zone 4. Sainsbury's respondents at 14 are far less as are local shops at 12 (Q14).
- 7.21. Thus on all measures, the Co-op is the main main food shop, the most regularly used shop for secondary main food, the most regularly used overall main food destination and the highest used top up shop. The surveys establish beyond any doubt that the Co-op is the anchor store to MRDC and one that is absolutely vital to the centre's well being because of the level of footfall it generates and the linked trips that it spawns. The suggestion that a shop such as Stokes is a greater attraction has no foundation. The Co-op's anchor role is clearly recognised by the other local traders.
- 7.22. Tesco queries the size of main food shopping carried on at the Co-op in an effort to distinguish it from main food shopping carried out in larger superstores. However, on the evidence, this point had no validity. The Co-op is plainly carrying out an important main food function for its catchment area. The Allegra survey asked the questions as to the main food shop and

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<sup>102</sup> X-Examination of Mr. Butterworth.

responders were in no doubt they were dealing with main food shopping and the survey did not seek to qualify or further refine the question. Interrogating the Allegra survey (pages 23 and 24) Tesco seeks to establish the "median" main food spend as £30-40 for those who carry out a main main food shop at the Co-op (Tesco 6E Appendix 8 Table 2 update). However, reference to Q9, pages 8/24 gives a more detailed and accurate breakdown of the responses. These are that: 9 responders indicated a main food shop of up to £30; 6 indicate a main food shop of £30-40 and 13 indicate a main food shop of more than £40 going up to £130. This information establishes a higher average food spend than Tesco suggested. Basing the average on the lowest spend in a category (i.e. £30 in the category £30-40) the average would be £43. Taking the highest spend in the separate categories (i.e. £40 in the £30-40 category) the average spend would be £53. Thus, the average is £43 -£53 or a midpoint of £48. Therefore, on any basis there is significant and important main food shopping taking place at the Co-op. Indeed, based on Allegra, Tesco accepted<sup>103</sup> that 74% of the Co-op's turnover was main food. Accordingly, it is entirely inappropriate and misleading to seek to portray the shopping at the Co-op as more akin to the top up function.

- 7.23. This main food shopping is vital to the well being of MRDC and no responders have sought to express dissatisfaction with the provision that has been made. The 77% and 80% footfall from the Co-op leads to spend in other shops is fundamental to the range and choice of shopping provision in the centre being retained.

#### Retail Impact and the Effect on Vitality and Viability

- 7.24. In assessing the impact of the Tesco proposal, the Co-op adopts the Ipa's assessment<sup>104</sup> that Tesco is not within or on the edge of MRDC; the store would have no logical connectivity or inter visibility with MRDC; the intervening route is residential with no other retail or town centre uses; the change in levels and gradients do not encourage walking the 385 space dedicated car park would further encourage one stop shopping. Taking these together, the store would operate as a standalone store as a rival shopping destination in its own right. As such linked trips or spin off trips would not be generated from the Tesco store to MRDC. Indeed, it would appear that Tesco have effectively given up on the issue of generating any linkage with MRDC. This must be a matter of very substantial concern. Tesco accepted<sup>105</sup> that the LP makes much of the need for district centres and shopping provision to remain accessible to those without the car, however, MRDC can look forward to no linked trade from Tesco.
- 7.25. Given the above factors, the Tesco proposal would inevitably have a massive and unacceptable impact on MRDC. Tesco seek to argue that effectively any shoppers wishing to transfer their allegiance to other stores would already have left the Co-op and MDRC as a result of past implemented schemes and in particular Odd Down. However, this conclusion is flawed because the impact on MRDC of the Tesco scheme is of an entirely different magnitude.

<sup>103</sup> X-Examination of Mr Butterworth.

<sup>104</sup> Evidence of Mr Morris

<sup>105</sup> X-Examination of Ms Bartaby & CD 6.1 paragraph B5.54.

This is because: Sainsbury's were already represented at Green Park when it opened Odd Down whereas Tesco brings in an entirely new fascia and fresh competition; the proposal is for a far larger store than Sainsbury's Odd Down; Tesco would duplicate the offer in MRDC; the Tesco proposal is some 4.5 times closer than Odd Down, which does not have any overlapping walking catchments, and the car parking provision at Odd Down is less extensive than the Tesco scheme. Thus, the likely trade diversion of the Tesco scheme cannot be laid off against earlier impact and its impact would be felt by MRDC with full force.

- 7.26. Based on the Allegra household survey the survey derived convenience turnover of the Co-op would, after taking into account the impact of Odd Down, be £7.8m, whilst the convenience turnover of the MRDC stores would be £3.46m. The proposal's impact on Co-op convenience turnover is assessed at £2.05m which, after taking into account other commitments, would leave the store trading at 49% of company average levels. There would be a cumulative 42% impact. The impact of the proposal on the wider centre excluding the Co-op is assessed at 23%. Overall, the cumulative impact on MRDC total convenience offer is assessed at £4.05m or some 36%.
- 7.27. In order to give the greatest certainty as to the effect of the Tesco scheme on the Co-op and MRDC, it has released details of its actual trading position (CG 4C PN11). The figures show, that following the opening of Sainsbury's Odd Down store the Co-op's turnover fell from £7.91m to £7.04m. The Co-op's 2012 turnover is £6.85m indicating that other assessments of the Co-op's present trading performance are inflated. Applying the overall convenience trade diversion of £3.25m arising from the proposal and commitments to the actual turnover shows a 47% impact and would result in a store trading at 40% of benchmark. Such impact figures are clearly unacceptable to any trader but also to any centre particularly when they are backed by unanimous local shopper opposition and concern.
- 7.28. On any basis there must be very serious cause for concern as to the future viability of the Co-op store. Although raised, Tesco does not press the argument that the Co-op should in some way alter their retail model to add a greater element of comparison goods to its offer. The Co-op has experimented with such small scale change but has positively determined it is inappropriate to proceed further with such. On-going trading at the store must be a matter of conjecture and closure must be a real prospect. In light of the above figures, closure of the store would be a rational and logical commercial decision. Tesco agrees<sup>106</sup> that, by reference to VERDICT, the Co-op is closing stores, whilst at the same time opening others. If that happens here then there would be a total loss of the anchor store with the loss of the potential for linked trips to other shops from some 11,000 weekly customers and MRDC would also lose its only off-street car park. Moreover, no store in the centre would be able to take on and discharge the Co-op's anchor function, which is essential to the range and choice hierarchical considerations.

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<sup>106</sup> X-Examination of Mr Butterworth



- 7.29. Thus whilst the Co-op has indicated that there is a real risk of closure, that is not the test to be applied. Rather it is an assessment of the impact of the proposed scheme on the vitality and viability of the centre as a whole. This approach is confirmed by a recent appeal decisions (CG 4C Appendix PN10 Paragraph 16). The Framework indicates that the impact assessment should consider the potential effect on committed and planned private investment in a centre. This store is scheduled for refurbishment as part of its ongoing store investment programme, which is rolling out a new shopping format into some 250 stores. The value of this refurbishment would exceed £1.1m and the Co-op has said that if the Tesco proposal is permitted then the investment in this store will not proceed.
- 7.30. With the obvious exception of Tesco, there is unanimity that this proposal would have significant adverse effects on the wider MRDC. Whilst main or top up shopping at the Co-op is of vital importance to its future, it is also vital to the other shops given the huge loss of footfall that they would suffer. Local traders are clear in their understanding of the drastic effects that the loss of footfall would have and it is not seriously suggested that Sainsbury's would step into the breach or generate replacement footfall. The trader's position is that footfall will collapse<sup>107</sup>, businesses would close and investment cease. Tesco produced no real evidence to the contrary.
- 7.31. Not one trader is in favour of the proposal and Tesco produce no evidence to rebut the views of the independent traders. The following are representative on the consequences on loss of footfall: Sheriton Jewellers: *"if people stop shopping in Moorland Road for their groceries and go to Tesco we may as well close up and Moorland Road will be nothing more than takeaways, charity shops and not a lot else"*; John Preddy: *"the impact will be negative. We expect reduced footfall, reduced takings. We will lose the Co-op foodstore and this will lead to loss of the Post office, Banks, free parking and closure of many small shops"*; Barnable: *"it will close the street down and create unemployment"*; Newleaf Health Foods: *"it will take trade away from Moorland Road with footfall at an all time low many businesses will close up"*; Oldfield Park Bookshop: *"it will have a severely detrimental impact on footfall...the impact on passing trade will be conservatively a decline of 20-25%"* and Miss Conden: *"the Co-op is a real anchor for Moorland Road"*.
- 7.32. It is no answer to say that the store could be redeveloped. First, it could not because of the dance studio above. Second, residential redevelopment of the large foodstore that formed a significant part of the rationale for assigning Moorland Road district centre status would be a fundamental loss to range and choice within the centre and would not maintain and enhance the shopping function. Similarly, there is nothing in the suggestion that the building might be taken on by another retailer. Whilst agents have been employed to write letters and to appraise other prospects, there is no evidence as to other potential gainful use of this building and car park.
- 7.33. Tesco's proposal would undermine the only large food store within MRDC which is an essential part of the centre's range and choice and it was that range and choice that led to district centre designation. This range and

<sup>107</sup> Traders Survey IP10 - Bath Opticians, Oldfield Park Bookshop, Newleaf Healthfoods, Park Pets, Banable, Bath Bakery, John Preddy, Sheriton Jewellers..

choice has already been very significantly eroded and would be further and irreparably eroded as a consequence of the Tesco proposal.

## Planning Policy

### Local Plan

- 7.34. LP paragraph B5.20 highlights the importance of district centres continuing to fulfil its vital shopping function. LP paragraph B5.54 reiterates that the district centre plays a valuable role in providing locally available convenience and top up shopping. Such centres are recognised as being essential in helping to reduce the need to travel for shopping trips and are particularly important to residents with limited mobility e.g. those without a car. As such the LP indicates that it is important to maintain their shopping function. Paragraph B5.57 sees a need to retain existing shopping provision within district centres.
- 7.35. Against this background LP Policy S.1 seeks to maintain and enhance the value of named centres within the shopping hierarchy. The Tesco proposal on any basis will not maintain and enhance the hierarchy as it will damage the range and choice and the proposal contravenes these policy references. As this is an out-of-centre store proposal it is not compliant with LP Policy S.4, in so far as it remains consistent with national guidance, because of the unacceptable impact on the vitality and viability of the MRDC.

### Core Strategy

- 7.36. CS Policy CP12 likewise provides that MRDC retain its role as the only district centre second only to Bath in the existing hierarchy. The maintenance of the hierarchy is still fundamental and the policy is to maintain and enhance the district centre. Policy B1 (6) make it a strategic objective to protect and where possible enhance the vitality and viability of the district centre. Paragraph 2.23 confirms the spatial strategy is to secure and enhance the vital role that MRDC plays. The proposal is contrary to the CS policy.

### NPPF.

- 7.37. Paragraph 23 of the Framework seeks through local plans to achieve a network and hierarchy of centres resilient to future economic changes. This proposal damages the hierarchy and would not maintain and enhance the hierarchy as it will damage the range and choice of shopping facilities.
- 7.38. The scheme has to be measured against the impacts set out in Paragraph 26. Here there would be a significant and unacceptable significant adverse impact on existing and future private investment in MRDC. If the appeal is successful and if the Co-op does not close the store, it will not invest £1.1m modernisation and refurbishment. Based on the predicted level of trade diversion, such a decision cannot be commercially faulted. The Co-op must invest its monies and resources where they will have optimum impact.
- 7.39. Based on the returns from local shopkeepers it is clear that as a direct consequence of this application many will not be renewing leases and that they do not expect further investment by new and would be tenants. Closure and retrenchment would inevitably take place. It is fundamental that traders

need to continue to invest and that if they do not have the confidence to do so the centre will go into a spiral of decline.

- 7.40. In light of these factors, there would be significant adverse on private investment in the centre and a significant adverse impact on the vitality and viability of MRDC as a whole. Local consumer choice and trade in the district centre would also be very seriously damaged. Given that the application would have a significant adverse impact on one or more of the above impacts referred to in paragraph 26 of the Framework the advice at paragraph 27 is clear and unambiguous. The application should be refused.

## 8. THE CASE FOR SAINSBURY'S SUPERMARKETS LIMITED

The material points are: -

### Introduction

- 8.1. The PIM identified 10 topics to be addressed by the SoS when determining this appeal. Sainsbury's do not produce evidence on topics 7, 9 and 10 relating to the gas holders; the impact on the living conditions of nearby residents and relevant conditions/S106 Agreements/UUs. Regarding topic 5, vitality of town centres, Sainsbury's supports the cases advanced by the Ipa and the Co-op regarding the impact on MRDC and does not produce separate evidence. On the vitality of town centres, Sainsbury's case is that the proposal would have an adverse impact on planning private investment in Bath city centre with consequences for its vitality and viability, including local consumer choice and trade. Whilst Sainsbury's do not present evidence on the implications of the highway network, evidence relevant to the promotion of sustainable travel patterns in the context of the sequential test is submitted. These 2 issues are dealt with as part of Sainsbury's evidence in relation to topic 3 conformity with the Framework.
- 8.2. Sainsbury's have submitted a hybrid planning application for the redevelopment of the BWRE site, the Homebase and Sainsbury's store (SSL 6A-6D). The application comprises a mixed use development with full details of (1) the erection of new foodstore (A1); 214 residential units (C3); 4 commercial units (A1, A2, A3, A4 or A5); external works and subdivision of existing foodstore for mixed commercial use (A1, and A3 or A4); reconfiguration of petrol filling station to include new kiosk, canopy and pumps; new pedestrian footbridge and associated works to Stanier Bridge. (2) Outline with some matters reserved: for the erection of 66 residential units (C3); 8 commercial units (A1, A2, A4, A4 or A5) and 2,169 sq.m creative office space (B1). (3) Outline with all matters reserved: for 10,630 sq.m general office space (B1). (4) Associated works including roads, footways and cycleways, car parks, public realm, landscaping and infrastructure works following the demolition of existing retail unit.
- 8.3. Tesco takes a dismissive attitude to Sainsbury's involvement in this Inquiry in general and its planning application. Tesco wants the SoS to believe that Sainsbury's application is irrelevant to the consideration of this appeal proposal. However, the Tesco proposal cannot be considered without asking what impact allowing it would have on Sainsbury's proposal and consequently the planned expansion of Bath city centre. The Sainsbury's application represents planned private investment in the expansion of the city centre. Without Sainsbury's involvement, the vision for the BWRE area, a vision grounded in existing and emerging development plan policy, stands little chance of becoming reality. If the Tesco proposal is allowed, the Sainsbury's proposal will not go ahead. Sainsbury's inability to move from its present site and to fund the expansion of BWRE would mean that almost a decade of planning for this area will come to nothing.

## The Development Plan & SPD

- 8.4. This deals with development plan policies relevant to the Tesco site, the BWRE area and by Sainsbury's proposal to redevelop that area as a part of a comprehensive mixed use scheme. This approach is essential because the development plan position in respect of the BWRE site is relevant when applying the sequential and impact tests to the Tesco proposal.
- 8.5. LP Policy S.4 (iii), (iv) and (v) remains in conformity with the Framework, setting out the sequential and impact tests central to national planning policy. Tesco accepts<sup>108</sup> that this policy continues to attract full weight in accordance with paragraph 215 of the Framework.
- 8.6. The Tesco site is not identified for convenience retail use in the LP. What the LP says about the general location of the Tesco site is that it is in an area that has some existing retail warehouse development and which may be suitable for further similar development, subject to the sequential and impact tests (CD6.1 page 77 Paragraph B5.29).
- 8.7. As regards the BWRE site, the LP at paragraph B5.30 laid down a marker for the future, stating that the Local Development Framework "*may also aim to make the most of the retail potential of any suitable edge of centre sites, provided that they form a natural extension of the city shopping area, can be truly integrated into it and do not have an adverse impact on its vitality and viability.*" The LP also made a commitment to "*concerted and clearly identified measures*" to secure the implementation of such a strategy, including the use of compulsory purchase powers to assemble sites if necessary. The Framework encourages the expansion of existing city shopping areas, and accordingly this part of the LP must continue to be accorded full weight.
- 8.8. The BWR SPD (2008) was adopted in 2008 under the auspices of the LP with full consultation and that it attracts significant weight was unchallenged (CD7.2). The SPD is silent as regards the appeal site, thereby confirming that it is not part of the BWR regeneration area, that there are no plans for it to form part of the Central Area, and it is not proposed to integrate the appeal site into the city centre or to introduce city centre type uses at the appeal site. This contrasts markedly with what the SPD has to say about the BWRE site. The SPD provides significant support for a mixed use redevelopment of the BWRE area, including support for the retention of a superstore in this area and its relocation on the other side of the river. On this, the SPD makes 3 specific points.
- 8.9. First, reference is made to the LP provision for retail development at BWR. Whilst the SPD does not make specific provision for significant retailing within the BWR, the masterplan within the SPD does allow for "*appropriate*" retail development "*principally in the eastern zone*" i.e. where the Homebase and Sainsbury's are currently situated. Moreover, the Masterplan was specifically designed to be flexible so that it could guide development up to 2021, and therefore it specifically did not rule out additional retail development at BWR beyond 2011 (CD7.2 page 6, paragraphs 1.6.23 & 1.6.24).

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<sup>108</sup> X-Examination of Ms Bartaby & Mr Butterworth.

- 8.10. Second, the Masterplan is based around an express recognition of the fact that Green Park Station is a Grade II Listed Building which *"currently is a missed opportunity as a car park for the Sainsbury's food store. The relocation of Sainsbury's within the scheme allows the opportunity to create a space that will support civic/cultural events to support the proposed uses in this area.... This is a key space in the new public realm hierarchy."* (CD7.2, page 24, paragraph 2.5.10).
- 8.11. Third, the western zone of the BWR area is identified predominantly for residential, but also for local needs, shopping and small-scale commercial uses. By contrast, *"the eastern zone ... will accommodate city centre type uses."* The precise mix would require flexibility, and would be left to the LDF process. Importantly, the SPD expressly foresaw the Green Park Station area hosting city centre retail and associated uses, leisure and business with residential uses on the upper floors. It also made the commonsense point that this would *"require Sainsbury's moving across the river."* (CD7.2, page 48, paragraph 2.12.1 to 2.12.3).
- 8.12. No one has identified any conflict between the aspirations set out in the BWR SPD and the policies in the Framework. Accordingly, the SPD should continue to receive full weight. As regards the application of paragraph 14 of the Framework, the first relevant question is whether the proposal is in accord with the development plan. If the proposal fails either the sequential or the impact tests, it would not be in accordance with the development plan because LP Policy S.4 remains part of the development plan and it requires these tests to be passed. The Tesco proposal does not pass the sequential and impact tests and therefore this limb of paragraph 14 does not apply.
- 8.13. Turning to the second limb of the Framework paragraph 14, the development plan is not absent or silent, and neither are relevant policies out of date. There is a LP that has policies relevant to the provision of retailing and, as explained above, they are not out of date because they conform with the Framework in all the respects that are material to this Inquiry.
- 8.14. That is sufficient to dispose of paragraph 14, but if there were any doubt about its non-application, it is removed by the second indent of the second bullet point. This makes clear that the presumption in favour of permission does not apply if "specific policies" in the Framework "indicate" development should be "restricted". This takes the decision maker back to the sequential and impacts tests, because paragraph 27 of the Framework is very clear and very explicit: a proposal that fails the sequential or impact tests "should be refused." Policies do not get much more specific than this, and it is a policy that does a lot more than "indicate" that development should be restricted. It states in terms that it should be "refused". There are no exceptions, no caveats.
- 8.15. Therefore, no matter how the matter is approached, Tesco can never place itself within that limb of paragraph 14 which states that permission should be refused only if the adverse impacts of the Tesco's scheme falls either at the first hurdle i.e. it cannot demonstrate that the development plan is absent, silent or out of date, or at the second hurdle i.e. there are specific policies in the Framework that indicate that development should be restricted, namely the sequential and impact tests.

- 8.16. There is one final reason why all paths lead to the sequential and impact tests. The presumption in the Framework is in favour of sustainable development, and as Tesco accepts<sup>109</sup> sustainability is to be judged by reference to all of the policies in the Framework taken as a whole. The policies set out in Chapter 2 of the Framework, i.e. ensuring the vitality of town centres, represent a central tenet of national planning policy. A development that breaches these policies, and thereby threatens the vitality and viability of centres either through trade diversion or by taking away planned investment, cannot be described as "sustainable".

#### Emerging Development Plan Policy

- 8.17. Policy B3 in the emerging CS as it relates to the appeal site cannot be fully understood without understanding the policy for expanding the city centre, Policy B2. The ECS shows that the BWRE site in its totality, including the Homebase site, falls within the Central Area (CD 6.3 Diagram 7). The objective of CS Policy B2 is to expand the city centre, and to place city centre uses within that expanded city centre, with the aim of improving Bath's profile and performance, and to make sure that it is a place in which people increasingly travel by walking, cycling or using public transport. The key activities or uses to be accommodated in this area are set out in Section 4 of the policy, and include small to medium-sized comparison retail, 40,000 sq. m of modern office and creative workspace, 2,000 sq. m of convenience of shopping space, 500 additional dwellings, the retention and enhancement of leisure facilities, major riverside access and habitat enhancements, together with cultural elements. The policy is written against the backdrop of what is there already in terms of retail, i.e. a major convenience retail store. The 2,000 sq m of retail proposed is additional to what is already there.
- 8.18. The CS views this area as part of the city centre and the approach is consistent with what paragraph 23 of the Framework requires the lpa to do. Tesco sought to make the point that this area has not been allocated in the CS for large-scale retailing<sup>110</sup>. That is not correct. The fact is that paragraph 23 of the Framework encourages lpas to expand town centres to ensure a sufficient supply of suitable sites, and to allocate appropriate edge-of-centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available, and if sufficient edge-of-centre sites cannot be identified, to set out policies for meeting the identified needs in other accessible locations that are well connected to the town centre. That is precisely what the B&NES has done through CS Policy B2. The lpa has decided and it is agreed by all the main parties, that there are no suitable sites in the existing city centre for large format convenience retailing (ID 1.3 paragraph 6.7(d)). The lpa, as part of its expansion plan for the city centre, views the BWRE area as either an appropriate edge-of-centre site or a site that is easily accessible and well connected to the city centre and therefore suitable for this type of retailing. Sainsbury's take the view that this entire area, when developed in the way envisaged, should be seen as in-centre. However, for present purposes it is sufficient to note that the emerging policy position, which Tesco accepts must be given significant weight, identifies

<sup>109</sup> X-Examination of Ms Bartaby.

<sup>110</sup> X-Examination of Mr Butterworth.

BWRE as the most appropriate location for meeting any additional convenience foods retailing need.

- 8.19. In contrast, the appeal site is not within the proposed Central Area. CS Policy B3 makes clear that the Twerton Riverside area is suitable for a broader range of uses i.e. broader than industrial, and mentions redevelopment to provide business uses falling within the categories B1a-c and housing, with no mention of retail. Retailing at this location without passing the sequential and impact tests would be contrary to the Framework. CS Policy B3 makes clear that the role envisaged for this area is to accommodate those businesses which are forced to move out of the BWRE area. This area has a complimentary role to assist the redevelopment of that area as envisaged in CS Policy B2.
- 8.20. In determining what weight to give to these emerging policies, the Framework at paragraph 216 prescribes 3 tests relating to the stage of preparation, the level of unresolved objections and the degree of consistency with the Framework. The CS is at an advanced stage of preparation. Some examination hearings have already taken place; there has been no criticism from the Inspector of CS Policies B2 and B3 in his interim conclusions, and there has been publication of and consultation on proposed changes. There have been no objections to the principle of expanding the city centre expansion as set out in CS Policy B2. The inclusion of BWRE and the Homebase site within it has been accepted by Tesco who has not made any objections to it. Although Tesco has made representations in respect of CS Policy B3, the representations are limited in their scope. Those representations are based on an acceptance that as presently framed CS Policy B3 rules out retail development on the site. However, even if Tesco's representations are accepted and the policy is changed to make reference to retail uses Tesco acknowledges such uses would nonetheless have to pass the sequential and impact tests. Finally, no one has identified any inconsistency between CS Policies B2 and B3 and the Framework. The Framework is extremely supportive of plans to expand city centres in order to ensure that they remain vital, viable, and competitive and meet needs in full in accessible locations. In light of these matters Tesco accepted<sup>111</sup> that these emerging policies must be accorded significant weight.
- 8.21. Thus in terms of existing and emerging development plan policy, the BWRE location has very strong policy support for city centre expansion, to include convenience retailing. BWRE is seen in the emerging CS as either an in-centre site or a preferred site for main town centre uses, because it is either edge-of-centre or will provide an accessible location that will be well connected to the City Centre. The Tesco site is viewed as out-of-centre and only suitable for uses displaced from the Central Area. The Tesco site is not identified as suitable for retail, and any retail development on it would need to satisfy the sequential and impact tests.

#### National Planning Guidance

- 8.22. The Framework contains all of the national policy that is relevant to the Tesco proposal. Policies in the Framework must be accorded very substantial weight, representing as they do the Government's considered view on the definition of

<sup>111</sup> X-Examination of Ms Bartaby.



sustainable development and how that definition should be applied in practice when operating the planning system. However, the policies set out in section 2 are particularly important, because they represent Government policy of long standing vintage relating to the protection of town centres and the policy is set out in the clearest and most forthright manner regarding what ought to happen to a proposal that fails the sequential or impact tests. Paragraph 27 says that a proposal must pass both the sequential and impact tests and if it fails either, it should be refused. The parties agree that, where it remains consistent with the Framework, the Practice Guidance, which accompanied the now revoked PPS4, should be given weight (ID1.3 paragraph 4.3).

#### The Sequential Test

- 8.23. The Tesco site is not allocated in the LP, and, as Tesco acknowledges, as an out-of-centre site it is required to pass the sequential test (ID 1.3 paragraph 6.2). Tesco's position is that there are no sequentially preferable sites that fall to be considered. It is further agreed between all parties that the only potential sequentially preferable site that falls to be considered is the BWRE site (ID 1.3 paragraph 6.3).
- 8.24. Paragraph 24 of the Framework requires main town centre uses such as the Tesco proposal to be located, first, in *"town centres"*. The glossary defines a town centre as the *"area defined on the local authority's proposals map, including the primary shopping area (PSA) and areas predominantly occupied by main town centre uses within or adjacent to the primary shopping area."* It is clear from the word *"including"* that the town centre is something greater than the PSA and is the area adjacent to the PSA housing main town centre uses.
- 8.25. The LP does not use the terminology of town centre, but does define on a proposals map a City Centre Shopping Area (LP Policy S.1). The BWRE site does not fall within this defined area. However, it would be wrong to view this as the end of the analysis as to whether the BWRE site should be viewed as a town centre site. When applying national planning policy, regard must be had to the underlying objectives of the policy, which, as the heading to the relevant chapter in the Framework makes clear, is to ensure the vitality of town centres. Paragraph 23 makes clear that planning policies *"should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period."* It is clear that significant importance is placed upon having policies that promote the *"growth"* of town centres. The sixth bullet point in paragraph 23 further emphasises the importance of LPs undertaking an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites.
- 8.26. Emerging CS Policy B2 identifies the BWRE site as part of the Central Area and at paragraph 2.16 says that *"a key objective of the plan is for the city centre to expand to encompass the entire Central Area."* There is no outstanding objection to this policy and Tesco accepts that it must be accorded significant weight. In view of this it would be mechanistic to conclude that the BWRE site is not a town centre site because Policy B2 is yet to be formally adopted. Indeed, a connection between proposals to expand a centre and the sequential approach is alluded to at paragraph 7.25 of the Practice Guidance. This says, *"Where there is a clearly defined strategy to promote the expansion of a centre*

*through new development, the potential impact on operator demand or investor confidence, and the risks to the development plan and strategy are likely to be the overriding concerns. In such cases, where there is significant overlap between the proposals being tested, and the aspirations for the town centre, **they are likely to raise related concerns in respect of the sequential approach**<sup>112</sup> as well and their impact on vitality and viability”.*

- 8.27. It is important to note that the concern voiced here in the Practice Guidance is not restricted to impact on investment in an expanded town centre, but extends to the issue of whether the sequential approach is being respected where it is proposed to place a main town centre use somewhere other than in the expanded town centre. There is little point in having a development plan policy to expand a town centre, but to then treat a location which falls within the expansion area as falling outside the town centre for the purposes of applying the sequential test. This would amount to preparing a plan but then not planning in accordance with the plan.
- 8.28. Even if it is not possible to view BWRE as in-centre in reliance of the emerging development plan position, there can be no doubt that the Green Park Station area operates as a de-facto edge-of-centre location (SSL 4b paragraphs 5.3.6 to 5.3.11). Contiguous retail activity occurs outside the CCSA at Kingsmead Square, New Street West and James Street providing the principal pedestrian to and from BWRE. This area is well linked and integrated with the CCSA and functions as part of the primary shopping area. Green Park Station, which forms the eastern edge of BWRE, is an established shopping destination. There is an almost continuous frontage of retail and other town centre uses between the Sainsbury's store and the CCSA. Very considerable pedestrian flows characterise the area between the local plan defined PSF and Green Park station (SSL 5B). Indeed Tesco's own assessment indicates that the Sainsbury's Green Park store achieves about 20% linkage with Bath City Centre, thereby endorsing its edge of centre location (Tesco 6F Annex 2 page 4). The route between the CCSA and BWRE is direct, flat uninhibited save for crossing of Green Park Road, for which there is significant scope for improvement, and includes active city centre uses that provide activity and interest. The emerging CS includes the retail areas at Kingsmead Square and James Street West within the city centre.
- 8.29. Whilst Tesco accepted<sup>113</sup> that, on the ground, the site has become an edge-of-centre location and the route has become established, it sought to suggest the achievement of 20% linkage was not very high, but left unclear what it should be compared to. However, the evidence shows that Waitrose in the very middle of the city centre achieves some 40% linkage. In this context a 20% linkage for an edge-of-centre store is what can reasonably be expected.
- 8.30. It is agreed between the parties that the current location of the Sainsbury's store is not available, and therefore the question that must be answered is whether a relocated Sainsbury's store on the current Homebase site would continue to function as an edge of centre store. Given that the area around Kingsmead Square and James Street West functions as part of the city centre PSA, the relevant measurement is some 410m from the junction of James

<sup>112</sup> Emphasis Added.

<sup>113</sup> X-Examination of Mr Butterworth.

Street West and Green Park Road (Tesco 6G Plan A7 Rev A points H to J). The PG at paragraph 6.5 gives a distance of up to 300m from the PSA for an edge-of-centre site. However, a fully contextualised reading of the guidance demonstrates that the real test is whether the location is well connected to and within easy walking distance of the PSA. That this is the true test is implicitly accepted by Tesco, because although it insists that the current Sainsbury's store is more than 300m from the PSA, it accepts that it functions as an edge-of-centre store. Paragraph 6.6 of the Practice Guidance provides that in deciding whether a site falls within the definition of edge-of-centre, account needs to be taken of local circumstances, including local topography, pedestrians perceptions of easy walking distances, and the strength of the attraction and size of the town centre.

- 8.31. Therefore, in answering the question of whether a relocated store on the Homebase site would operate as an edge-of-centre store, the evidence is that shoppers in Bath are prepared to walk relatively long distances is highly pertinent (SSL 5B Section 4.3). This shows that the strength of the attraction in Bath is very high and, given the quality of the city centre, people are prepared to walk longer distances. Moreover, the route from the Homebase to the exit at Green Park Station is flat. That people are already prepared to walk this distance and to link with the city centre is demonstrated by the fact that some of those who shop at the current Sainsbury's park their cars in the Homebase car park. But most importantly, in making the judgement about whether people will be prepared to walk and link trips between the relocated Sainsbury's and the town centre, regard must be had to what is actually being proposed and not to Tesco's mischaracterisation of it.
- 8.32. The proposal is not simply to lift the existing Sainsbury store and place it on the Homebase site. That would not be consistent with the SPD and the emerging CS, and it is not what Sainsbury propose to do. The entire area would be redeveloped as part of a high quality mixed use scheme, designed, to deliver attractive and stimulating public realm improvements and laid out in a way that would encourage walking and linked trips (SSL 6b & 6D). Sainsbury's scheme would operate so as to stretch the existing primary shopping area and the CCSA westwards. The store would undoubtedly move west; but so would the attractions of the city centre. The scheme insofar as it affects this linkage is a full and comprehensive scheme. Once built out, the entire BWRE area is best seen as forming part and parcel of the CCSA. The new store would therefore be either-in-centre, or certainly be an edge-of-centre store when measured against the Practice Guidance.
- 8.33. Tesco's case is that both the appeal site and the Homebase site are out-of-centre locations. Sainsbury's disagree, but even if Tesco is right, that does not mean that the 2 sites are sequentially equal. Tesco started from the position that there was no requirement to make a choice between 2 out-of-centre sites i.e. provided the application site was accessible, it mattered not that an alternative available site was more accessible. However, this position is clearly wrong. Paragraph 24 of the Framework requires that "*preference*" should be given to accessible sites that are well connected to the town centre. Thus, when there are 2 competing sites, the word "*preference*" clearly requires a choice to be made in favour of the site which is more accessible. The matter

was explained in a very straightforward manner by an Inspector as cited in a recent High Court judgement<sup>114</sup> (LPA 6E paragraph 33). In that case involving the erection of a new foodstore, the Inspector concluded that, *"The Framework provides greater clarity in paragraph 24 ... The wording seems to me to be quite clear and it is reasonable to conclude that there is a single test relating to achieving connections with the centre by a choice of travel modes. There would thus be a sequential advantage if one out of centre site could achieve better town centre linkages than the other."*

- 8.34. This interpretation is supported by paragraph 6.2 of the Practice Guidance, which makes clear that one of the 2 important policy objectives underlying the sequential test is to accommodate main town centre uses *"in locations where customers are able to undertake linked trips in order to provide for improved consumer choice and competition"*. It is therefore undoubtedly a "compare and contrast" approach as between out-of-centre sites, and the matters to which regard must be had in making the choice are set out by the judge in paragraph 49 of the judgment. These are: how well served are the sites by a choice of means of transport; which site is close to the centre and which site has a higher likelihood of forming links with the centre? Whilst the decision makes clear that it is possible for an Inspector to come to the conclusion that both sites are equal, whether they are in fact equal or whether one performs better than the other is a judgment to be made after having regard to these 3 matters.
- 8.35. Despite the evidence, Tesco argues that the appeal site and the Homebase site are sequentially equal. The starting point must be recognition that the lpa has put together a CS, which is at an advanced stage, and which identifies the area within which the Homebase site sits as a suitable area in which to expand the city centre. The lpa has done so because there has long been recognition that this part of Bath provides the best opportunity to expand the city centre in a way that will be fully integrated into the existing city centre. There has been no objection to this approach. For the SoS to find that the Homebase site does not offer the potential for better integration with the city centre he would have to disagree with the approach being adopted by the lpa through its forward planning process.
- 8.36. Even Tesco accepts that the further one goes out from the city centre the likelihood of linked trips decreases. As a generality, this is true but must be subject to the caveat that one must examine the relative attractiveness of the 2 competing routes, and on this criterion the Tesco site simply cannot compete. Whereas the walking route from the Tesco site is so unattractive that it accepts<sup>115</sup> that the prospect of people walking between it and the city centre is very unlikely, the walking route from the Homebase site to the town centre is perfectly acceptable and attractive as matters stand. Moreover, it would become immeasurably better when improved as part and parcel of a comprehensive mixed use scheme specifically designed to encourage pedestrian permeability (SSL 6C Appendix AR 6.2 & SSL 6D).
- 8.37. The statistical evidence demonstrates that the existing Sainsbury's store achieves some 20% linkage, whereas out-of-centre stores achieved only 10%

<sup>114</sup> This Judgement is now the subject of an appeal.

<sup>115</sup> X-Examination of Mr Butterworth.

linkage (Tesco 6F Annex 2 page 4/4). The question therefore becomes whether the linkage currently being achieved by the existing Sainsbury's will fall by 10% to a level achieved by out-of-centre stores. Such a drop seems very unlikely given that the proposal to relocate the store comes as part and parcel of a package designed to make walking much more attractive. The route between the relocated store and the exit to the Green Park Station would provide an interesting and exciting mix of uses designed to stimulate the visual senses and draw people into the centre. Indeed, the level of linkage should increase, not decrease. Tesco's obsession with the extra 285m blinds it to the fact that the route would improve beyond recognition and that some of Sainsbury's customers already park within the current Homebase car park, and despite this the store manages to achieve 20% linkage (Tesco 6G Plan A7 Rev A Points B to J).

- 8.38. Tesco accepts<sup>116</sup> that in terms of pedestrian linkages, whilst there would be no meaningful linkage from the appeal site, there would be meaningful linkage from the Homebase site. No matter how Tesco seeks to underplay the amount of linkage that would occur from the Homebase site, it cannot get away from the fact that there would be more than insignificant linkage. Therefore, it must follow that there is a meaningful and significant difference in terms of pedestrian linkage when one compares the appeal site with the Homebase site. Thus, on the evidence, it cannot be concluded that in terms of pedestrian linkages the 2 alternative sites are sequentially equal.
- 8.39. As regards linkage by public transport there can be little doubt that a store based at the Homebase site provides much better potential linkage than one based at the appeal site. Firstly, the sheer scale of bus services available within easy walking distance from the city centre are at a different magnitude to those available from the appeal site (SSL 5B Section 4.6 & SSL 5C appendix NPB/05). Secondly, Tesco agreed<sup>117</sup> it is very unlikely that a shopper would visit Tesco and then catch the bus into the city centre carrying their shopping with them. The journey in reverse is also very unlikely, because there is no incentive to perform it. A person visiting the city centre who also wants to buy convenience goods can do so from the city centre, and avoid waiting for and catching 2 buses. It will be easier to walk from the city centre to the new Sainsbury's, and catch a bus from the proposed public transport hub outside the store, than to wait for and catch a bus to the Tesco store and then wait again and catch another bus from Tesco to go home.
- 8.40. The same considerations apply to linkages by car. The Sainsbury's proposal would provide people with a car park within easy walking distance of the city centre (SSL 5B page 13 Table 4 & SSL 5C Appendix NPB/04). Using the car park, linking with the city centre, and picking one's convenience goods up on the way out, would prove much more attractive than finding a car park in town, paying for it, doing one's comparison shopping, and then moving the car again to visit Tesco on the Lower Bristol Road.
- 8.41. All of this is common sense to the point of being mundane. It is difficult to see how anyone can seriously suggest that a store located on the Lower Bristol Road holds out the same potential for integration and linkage with the city

<sup>116</sup> X-Examination of Mr Butterworth by the Ipa.

<sup>117</sup> X-Examination of Mr Butterworth.

centre as a store based on the Homebase site and integrated into the Green Park area and beyond through a high-quality pedestrian-friendly mixed-use development.

Is the BWRE site suitable?

- 8.42. This concerns whether the Homebase site is suitable to accommodate the scale and form of development sought to be brought forward by Tesco. For the purposes of this appeal, that is the only relevance of the Dundee case (*Tesco Stores Ltd the Dundee City Council* [2012] UK SC 13). The case is concerned only with the test of suitability, and confirms that suitable means suitable for the proposal put forward by the applicant. There is no dispute between the parties that this is the appropriate test in terms of suitability.
- 8.43. The factors relevant to suitability are set out at paragraph 6.43 of the Practice Guidance and Sainsbury's evidence<sup>118</sup> on this was not challenged. Further, the store proposed by Tesco requires a minimum site area of around 1ha (ID 1.3 paragraph 6.7(b)). The Homebase site measures some 1.8 ha (SSL GD3). Tesco agreed that the BWRE was physically capable of accommodating the proposed development (ID 1.3 paragraph 6.7 (g)). Nowhere, either in the statement of case, in evidence, in rebuttals, or in the SOCG, does Tesco list the matters relevant to suitability that are set out in paragraph 6.43 of the Practice Guidance and argue that the site was not suitable by reference to one or more of the criteria set out.
- 8.44. Indeed it was not until midway through the Inquiry, and without warning, did Tesco suggest<sup>119</sup> that the Homebase site was not suitable because it was surrounded by land in the ownership of Sainsbury's, and, presumably, could not be adequately accessed by anyone else seeking to place a food store on the Homebase site. Land ownership is a matter of public record and can be verified at the Land Registry. If this were a good point, one would have expected Tesco to have done this exercise right at the outset. However, it is not a good point, and the plan submitted by Tesco, taken from Sainsbury's planning application, looked at together with Sainsbury's Briefing Note on BWRE confirms that the Homebase site has direct access to the public highway, not from one access point, but from 2 (Tesco 6J & SSL GD3). Those rights of access exist both as a matter of private law and one of the access routes is the subject of a Section 38 agreement for adoption.
- 8.45. There are no policy restrictions that would prevent the redevelopment of the Homebase site for convenience retailing. Whilst expressing some concern about detail, Tesco accepted<sup>120</sup> that the mixed-use scheme put forward by Sainsbury is policy compliant. The Sainsbury's scheme accords with the broad thrust of what the adopted SPD or the emerging CS anticipates for this area. The relocation of the Sainsbury store across the river has been long contemplated, and for Tesco to argue that it is not the only scheme that will deliver the aspirations for that area is to totally miss the point. The point when considering suitability is whether there is some policy restriction or bar to placing a store on the site which is being put forward as a sequentially

<sup>118</sup> Evidence-in-Chief of Mr Hay.

<sup>119</sup> X-Examination of Mr Butterworth (Day 5).

<sup>120</sup> X-Examination of Ms Bartaby.

preferable site. Far from there being a bar, there is, putting it at its lowest, policy support for redeveloping the BWRE area in a way which moves the existing retail convenience store to the Homebase site so as to free up the Green Park Station area, so that the overall policy objectives set out in a number of policy documents can be realised.

Is the Homebase Site available?

- 8.46. Tesco argues that the Homebase site is not available because it is not available to Tesco. This is a proposition based upon a flawed assertion, that the owner of the site will not make it available to Tesco. Even if an applicant can demonstrate that the site is not available to it, this is not sufficient to eliminate the site on the basis of non-availability. This is made clear by paragraph 6.41 of the Practice Guidance, which says, *"When promoting a proposal on a less sequentially preferable site, it will not be appropriate for a developer or retailer to dismiss a more central location on the basis that it is not available to the developer/retailer in question."*
- 8.47. The above has long been the position in retail planning, and is no doubt based upon a recognition by the SoS that any other approach would render the sequential test meaningless. What is important in policy terms is to ensure that the sequentially preferable site will be developed first (the sequential test is all about ensuring sites are developed in a sequence, with those sites which are better located to ensure town centre linkages developed first). The planning system is indifferent to the identity of the retailer who develops the sequentially preferable site. A site remains available within the meaning of the policy unless and until it is developed for a foodstore. To the extent that the Inspector's decision in the Telford Forge Retail Park case appears to suggest otherwise, it is submitted that the decision is wrong (Tesco 61). Rather, the interpretation of the availability test adopted by the Inspector in the Pershore Road, Birmingham case this to be favoured (SSL GD4). In that case it was clear that the sequentially preferable site was available only to Tesco, but this fact was insufficient to eliminate the site on grounds of non-availability (SSL GD4 paragraph 10). The Inspector applied paragraph 6.41 of the Practice Guidance in the way set out above, and explained that a site remains available until the retail function on it is established (SSL GD 3 paragraphs 37-39). Further reasoning supporting this approach to the policy can be found in this decision which says, *"Moreover, operation of the store on the sequentially inferior site before that on the superior side would result in the establishment of shopping patterns which fail to optimise the accessibility and linked trip objectives of PG paragraph 6.2. These patterns might then be resistant to change with the development of the sequentially superior site."* (SSL GD 4 paragraph 35).
- 8.48. The Inspector's conclusions are in themselves sufficient to dispose of Tesco's "it is not available to me therefore it is not available" argument. However, it is also important to record that the factual situation in this case is not the same as the factual situation in the Telford Forge Retail Park case. In that case the sequentially superior site was under contract to another supermarket operator. In the present case, the Homebase site is not under contract to Sainsbury's. Therefore, it is as available to Tesco as it is to Sainsbury. Tesco's witness

confirmed<sup>121</sup> that as far as he knew Tesco had not made any attempt to try and acquire the Homebase site. Moreover, Tesco does not produce any evidence to the effect that British Land, the owners of the site, or the tenant on site, Homebase, would refuse to make the site available to Tesco. It would not be relevant even if they did produce this evidence, for the reasons above, but the fact is that they have not done so.

- 8.49. The second reason put forward by Tesco to support the proposition that the site is not available is that Homebase have a lease on the site until 2020. However, paragraph 6.37 of the Practice Guide makes clear that “available” does not mean available “now”. A site can be available if it is “likely to become available for development within a reasonable period of time”. What is a reasonable period of time will depend upon the merits of the particular case, and although the matters to be considered when considering the merits of any particular case are difficult to list exhaustively, the Practice Guidance makes mention of the urgency of the need, and at paragraph 6.39 to the impact of the development occurring in edge and out-of-centre locations and the long-term consequences that this would have for the city centre. This establishes that the sequential test is not wholly divorced from the impact test: the decision maker must at all times keep focused on the overall policy objective underlying both policy and guidance which is that of ensuring the protection and growth of town centres. In terms of timescales, whilst paragraph 6.39 of the Practice Guidance makes reference to a period of 3 to 5 years, it does so in the context of making it clear that whether this is the appropriate time period “or a longer time period” will depend upon local circumstances. This is immediately followed by the statement at paragraph 6.40 that “some town centre schemes can take 10 to 15 years to deliver, and require the use of CPO.” It is clear from this that there is no 5-year cap, and much longer time periods can quite reasonably be contemplated.
- 8.50. In this case there is no urgency as regards need. Additional floorspace capacity required by 2016 is negligible at 252 sq. m net, rising to 896 sq. m by 2021, and 1,896 sq. m by 2026 (SSL 4B paragraphs 4.2.7- 4.2.8 & SSL 4C Appendix 5 Table 5). The consented Sainsbury’s extension would take up most of the capacity identified up to the period 2021, and there is certainly no need now for the scale of floorspace proposed by or even as late as 2026. Tesco cannot argue that there is some urgent quantitative need that would make it unreasonable to wait until post 2020 to provide additional convenience retail floor space. Tesco’s attempts to justify development now on the basis of qualitative need were half-hearted and no evidence was presented of overtrading such as queueing, car parking difficulties or empty shelves in existing stores. Moreover, Tesco relies on data collected prior to extensions and improvements which have taken place in terms of providing additional trading floor space.
- 8.51. Given the lack of urgency of the need, there is no reason why development on a sequentially preferential site cannot wait until post-2020. Tesco produced no evidence to suggest that the site will not become available on the expiry of the Homebase lease. Commercial reality would suggest that British Land would have no incentive to turn away Sainsbury’s were the Appellant scheme to be

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<sup>121</sup> X-Examination of Mr Butterworth.



rejected and the Sainsbury's scheme approved. In fact, under this scenario Homebase may decide that it is better off striking a deal now rather than waiting until there is less time left on its lease.

- 8.52. Tesco's argument that urgency of need is not material when applying the availability test because such an approach is contrary to the Framework is not supported by the Scotforth, Lancaster decision (LPA 6G). This is a post-Framework decision by the SoS, where the Inspector's approach of having regard to the urgency of need in deciding what constituted a reasonable period of time when assessing availability was endorsed. It matters not that the period being contemplated in that case was shorter than the period being contemplated in this case; what matters is that regard must be had to urgency of need in making a decision whether it is reasonable to wait until 2020. In a case where there is no meaningful need arising until post 2021, it is perfectly reasonable to wait and meet the need when it arises on a sequentially preferable site. There is no indication in the Framework that its emphasis on delivering development "now" should in any way be read as diluting the sequential test. The Government has given no indication of weakening its commitment to protecting town centres.
- 8.53. The Homebase site is sequentially preferable, it is suitable and it is available. No issues of viability have been raised by Tesco in respect of development of the Homebase site and, given the guidance at paragraphs 6.49 and 6.50 of the Practice Guidance, Tesco accepted<sup>122</sup> that no such argument could succeed. Accordingly, the Tesco proposal fails the sequential test and the appeal must be dismissed.

#### The Impact Test

- 8.54. The first bullet point of paragraph 26 of the Framework requires the decision maker to assess the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal. Paragraph 27 provides that if the impact is likely to be significantly adverse, permission should be refused.
- 8.55. Further guidance is provided at paragraph 7.17 of the Practice Guidance which says, "Where the LPA and/or the private sector has identified town centre development opportunities and is actively progressing them, it will be highly material to assess the effects of proposals on that investment. Key considerations will include: stage at which the proposal has reached; the degree to which key developer/occupier interest is committed; and the level and significance of predicted direct and indirect impacts." There is no suggestion that this part of the Practice Guidance is inconsistent with the Framework. In any event, given the emphasis placed in paragraph 23 of the Framework on ensuring that policies are in place to encourage the growth of centres and to expand centres, any such suggestion would be implausible.
- 8.56. Tesco acknowledged<sup>123</sup> that Sainsbury's application for a mixed-use development at BWRE represents planned private investment. However, whilst the impact the Tesco proposal would have on Sainsbury's planned

<sup>122</sup> X-Examination of Mr Butterworth.

<sup>123</sup> X-Examinations of Ms Bartaby & Mr Butterworth.

investment was a material consideration that could not be ignored by the SoS, Tesco suggests<sup>124</sup> that less weight should be attached to it because it did not represent investment in an existing centre but an investment in a proposed expansion to the existing town centre. This distinction is without merit. Given the overarching policy objective within section 2 of the Framework to ensure the vitality of town centres, and the specific policy injunction to support their growth, it would make little sense to interpret the impact test in a way that would not protect planned private or public investment in the growth or expansion of existing centres. Paragraph 7.25 of the Practice Guidance makes clear that far from ignoring the impact a proposal may have on the planned expansion of a centre, "the risk to the development plan strategy" and the "potential impact of operator demand or investor confidence" should be "overriding concerns" when considering how to respond to an application that threatens a planned expansion.

- 8.57. Here, there is a clear development plan strategy to expand Bath city centre to the west into the BWRE site. This is a policy position of long-standing provenance, and a great deal of work and thinking has gone into it. Several studies<sup>125</sup> have investigated potential ways of achieving what is desired for this area, and all of them have concluded that a mixed use scheme which includes relocating the existing Sainsbury's store across the river provides the greatest opportunity for a successful and integrated expansion of the city centre.
- 8.58. Sainsbury's have spent several years and a great deal of money putting together a scheme which will help make this vision become a reality. If the Tesco's proposal goes ahead, Sainsbury's will not be able to justify proceeding with its scheme (SSL4 4B paragraph 6.2.5 to 6.2.8). There can be no doubt that retail use, and especially large-scale convenience retailing, generates the value that is required to deliver a high quality public realm led mixed use expansion of the city centre. Granting planning permission for an out-of-centre Tesco will suck that value out of the town centre, with grave consequences for the future of any town centre expansion. Not only will it draw resources away from the centre, but because Sainsbury's will have no choice but to continue to trade from his existing store, it will mean that the potential to free up the Green Park Station area and to carry out the enhancement works and improvements to the Listed Building will be lost for a generation.
- 8.59. The risk to the planned private investment in this case is very real, and the realism of the threat has not been challenged. The investment is also very real: the surrounding circumstances and the time and resources which Sainsbury's has committed to its scheme all demonstrate that this is a realistic and deliverable scheme that Sainsbury's is committed to. There is no reason why it should not be committed, given that Sainsbury's stand to gain considerably from it by consolidating its position within a highly regarded city centre, which would improve the value of the site. The proposed investment dovetails neatly into the development plan strategy for the expansion of the city centre. There can be no justification for endangering what is a once-in-a-lifetime opportunity to bring about a sustainable and fully integrated expansion to a city centre, which is a WHS.

<sup>124</sup> X-Examination of Mr Butterworth.

<sup>125</sup> the 2004 opportunities appraisal prepared by NLP on behalf of the Council, the SPD, and the urban design led review in 2009 (see 8.11))

8.60. Tesco's case in response to this argument is conspicuous by its absence. Tesco does not deny that the Sainsbury's application represents planned private investment, and other than its implausible argument that it should be given less weight because it is not an investment directed at an existing centre, it has nothing to say about the impact test. Tesco's case rests wholly upon its argument that because the site is not available now and the investment cannot be delivered now the impact need not be a serious concern. However, having regard to the Practice Guidance, when considering town centre redevelopment it is quite reasonable to work to long timescales and to safeguard long-term investment. Tesco floats the argument that the city centre redevelopment will happen regardless of the Sainsbury's application. This is no more than wishful thinking. No other schemes or operators or investment has been identified, no answer has been provided to how a scheme could be configured with Sainsbury's staying in its existing store, and no strategy has been identified for releasing significant retail value to fund the planned expansion. In summary, the proposal would have a significant adverse impact on the expansion of Bath city centre by effectively scuppering the Sainsbury's scheme. Accordingly, the Tesco proposal fails the impact test and should be refused.

*Building a Strong and Competitive Economy; Impact on Built Design and Conserving and Enhancing the Historic Environment.*

- 8.61. It is accepted that the proposal will make a contribution to economic regeneration by creating jobs both during the construction phase and the operation phase. However, as provided for by paragraph 7.21 of the Practice Guidance, regard must be had to the "significance of the proposed investment, including its contribution to the public realm, infrastructure, employment etc." The proposed investment in this case is not particularly significant. It will create a level of regeneration that is common to all out-of-centre large format retail stores. The scheme provides little if anything at all towards public realm or infrastructure improvements. The employment that it will create needs to be balanced against employment that may be lost in other locations, such as at the MRDC.
- 8.62. More importantly, as paragraph 7.21 of the Practice Guidance goes on to state, the benefits of the proposal need to be "balanced against any adverse effects on planned investment in nearby centres." The investment that would be brought forward as a result of the Sainsbury's proposal, which will be lost if the Tesco proposal is committed, far outweighs the regeneration benefits of the appeal proposal. The Sainsbury's scheme provides much more in terms of housing, office space and public realm improvements. Further, the Sainsbury's scheme provides far greater potential for conserving and enhancing the historic environment. Benefits will accrue to the Listed Green Park Station as a result of removing the Sainsbury's car park from it and allowing the station building to be restored. The sea of surface level car parking around the Homebase store will be removed, thereby improving the setting of the Listed Buildings on the other side of the river. There will be significant riverside enhancements. In contrast, the Tesco design has drawn at best a lukewarm response, and it does very little if anything in terms of improving the public realm.
- 8.63. Tesco has sought to rely upon the office and creative workspace element of the scheme as offering regeneration. However, the creation of office and

creative workspace does not in itself lead to regeneration. It will only lead to jobs and regeneration if there is a likelihood of that office space being occupied. Sainsbury's evidence demonstrates that the overwhelming likelihood is that the space would lie empty (SSL 7B).

- 8.64. The West of England Local Economic Assessment 2011 makes clear that the creative industries are not held back by a lack of available office space (CD8.3). Moreover, the report also makes clear that to the extent that any of this space is required it must be located in the centre of Bath or in the BWR regeneration area. There is overwhelming and incontrovertible evidence that consented office schemes, both in the city centre and outside of the city centre, have not sold. Tesco agrees<sup>126</sup> that the vast majority of the developers who sought consent for such schemes now have no intention of building them out and are seeking alternative permissions.
- 8.65. Tesco's property advisors, as recently as June 2011, failed to sell or let modern, flexible, speculatively built office space at Wearside Court. These advisors are on record as stating that there was simply no market for such space, no matter how high the specification and that it had been designed to meet the needs and aspirations of the vast majority of office occupiers.
- 8.66. Tesco's property evidence rests solely upon an assertion that there has been some significant improvement in market conditions since 2011. However, other than two unusually large transactions in 2012, the underlying trend has been flat (SSL ). There is no evidence either before or since 2012 of any improvement in the demand for modern office space within Bath.
- 8.67. The evidence of supply agreed between Tesco and Sainsbury's demonstrates that there is no shortage of choice for those who want modern office space, either in terms of the reconfiguration available, the size available, or the terms and conditions of the leases available. In fact, it became clear during Tesco's evidence<sup>127</sup> on this issue the cross-examination of SP that it is the case that there was a demand for normal office space, whether that be modern office space or creative workspace. Rather the case being put was that there was a demand for a very specific, niche market, namely small-scale premises within a creative hub that would replicate the Paintworks type scenario that had succeeded in Bristol (SSL JM12 to 15). However, it was accepted<sup>128</sup> that despite attempts, Tesco had no Paintworks type of operator lined up to take the space. Tesco further acknowledged that there were other sites within Bath that Verve Properties (owners of the Paintworks) were interested in. Both the alternative sites are more centrally located and have much more to offer in terms of amenities and access to the city centre. Tesco agreed that there could only be room for one creative quarter in Bath, and if an operator who wanted to run such a location decided to take one of the other sites it would spell the end of the road for the workspace being planned on the appeal site.
- 8.68. It follows therefore that Tesco's approach to the work and office space that it is providing is one of indifference. Commercially, no developer of office and creative workspace would speculatively build out such space in the far-fetched

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<sup>126</sup> X-Examination of Mr Price.

<sup>127</sup> X-Examination of Mr Price.

<sup>128</sup> X-Examination of Mr Price.

hope that it would be successful in attracting a Paintworks type operator (Verve) to a secondary location outside the city centre in the face of competition from much better placed sites. It is a “build and hope” approach, reliant on one plan and one plan only with no fallback position, namely that it may attract a Verve type operator. That in itself is far-fetched enough, before we even factor in the critical consideration that what Tesco are offering is not a creative quarter, or a concept type development like the Paintworks which is a destination in itself and which is large enough to create a critical mass. What Tesco is offering is a very large format convenience food store with some office space stuck onto either side of it. The inescapable impression gained from Tesco’s evidence on this matter is that it could not care less whether the office space is taken up or not, and it has no real belief that it will be.

- 8.69. Having argued at length that there was occupier demand for a Paintworks type development, Tesco<sup>129</sup> then surprised the Inquiry by simultaneously arguing that the creation of such a development was unviable and that the workspace was being cross subsidised by the retail development. No evidence of non-viability has been provided, and such a position is wholly inconsistent with the argument that there is a pent-up demand for a creative quarter in Bath.
- 8.70. The conclusion must be that either Sainsbury’s is correct and there is no demand for office and creative workspace within Bath, especially in a secondary location such as the Lower Bristol Road, or Tesco is correct and there is a market for a niche development along the lines of the Paintworks. If it is Tesco who is correct, it must be the case that if the site is marketed it will sell for a market price that will enable it to be viably redeveloped or refurbished for the type of use identified. No viability assessment has been provided to demonstrate that such a development can only come forward if subsidised. Although it is correct that there is no obligation on Tesco to demonstrate that all other uses are unviable. However, if Tesco wants to argue that the only viable future for the site is the appeal scheme and nothing else, it must be for Tesco to prove this through viability evidence. Tesco has chosen not to do so, and this is no doubt because had it chosen to run such an argument it would have been met with the obvious response that there had been a failure to market the site. As Sainsbury’s explain, Tesco bought the site many years ago and did so not through an open marketing exercise but by buying the site before it could come on the market. The only reasonable conclusion from the totality of the evidence is that what is preventing the re-development and regeneration of this site is Tesco’s hope of large format convenience retail development. As soon as that hope is extinguished, the site is likely to come forward for beneficial development. If the SoS is seeking regeneration and beneficial use of this site, the way to bring that forward is to dismiss this appeal.
- 8.71. Tesco’s evidence on this entire topic is inconsistent, unpersuasive, and flies in the face of all the factual evidence as regards demand and supply. Sainsbury’s evidence is to be preferred, namely that the best future for the site is an industrial re-use for which there is demand and for which there is increasingly limited supply. If the site is “too good” for such a low value use as Tesco suggest, there is no reason why the site will not be bought by a developer who

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<sup>129</sup> X-Examination of Mr Price.

specialises in creating creative workspace. In fact, the site is far more likely to succeed as a destination in its own right and a concept for creatives seeking critical mass if it is developed for this purpose alone, rather than developed for a very large Tesco which offers some office space as an afterthought.

- 8.72. Finally, but importantly, even if the SoS were to conclude that the office space will offer some regeneration benefit, this cannot justify the grant of planning permission if there is a failure to pass either the sequential or impact tests. Tesco acknowledged<sup>130</sup> on behalf of the appellant, paragraph 27 of the Framework provides without qualification or caveat that a failure to pass either of these tests must lead to refusal. Tesco also accepted<sup>131</sup> that if the SoS concluded there was a failure to pass either of these tests, there was no scope for the operation of paragraph 14 of the Framework because the development would not represent sustainable development. Finally, Tesco accepted that it was no part its evidence that a failure to pass the sequential or impact tests the harm caused could be outweighed by any of the benefits of the proposal. It follows that all of the benefits of the Tesco's proposal, even taken at their highest, cannot outweigh the harm caused by the failure to pass the sequential or impact tests.

#### Conclusion

- 8.73. The appeal must be dismissed if there is a sequentially preferable site which is suitable, available and viable. The Homebase site is sequentially preferable because it offers clear advantages in terms of encouraging linked trips with the city centre, especially by sustainable modes of transport. Despite eleventh hour attempts by Tesco to suggest otherwise, even it has, throughout this process, accepted that this alternative site is suitable. No evidence has been brought to the Inquiry to suggest that Sainsbury's development is not viable. The site will become available within a reasonable period of time, if reasonableness is judged, as it should be, by having regard to the urgency of the need and the importance of delivering a sustainable and high quality expansion to Bath city centre.
- 8.74. Sainsbury's will not proceed with its application if this appeal is allowed. This would represent a major loss of planned private investment in the expansion of Bath city centre. Without the involvement of Sainsbury's, both in terms of finance and in terms of its ability to move from its current site, the Ipa's aspirations set out in the SPD and the emerging CS will not come to fruition.
- 8.75. Tesco offers regeneration "now". However, the benefits that an out-of-centre supermarket can offer in terms of regeneration are far outweighed by the significant loss of investment and regeneration that will be caused by Sainsbury's inability to proceed with its much larger mixed use redevelopment scheme at BWRE, a scheme that is grounded in extant and emerging development policy. The regeneration offered by the office/workplace element of the proposal is illusory.

<sup>130</sup> X-Examination of Ms Bartaby.

<sup>131</sup> X-Examination of Ms Bartaby.

## 9. The Cases for Interested Persons and Organisations

- 9.1. Mr Jones, the Director of Estates and Facilities at the *Royal United Hospital (RUH) Trust* reiterated its objection to the scheme because of the adverse transport implications of the proposal and how it could impact on the operation of the hospital (IP2<sup>132</sup>).
- 9.2. Located at Coombe Park to the north-west of the site, the hospital serves the communities of Bath, north-east Somerset, west Wiltshire and south Gloucestershire. The Windsor Bridge Road/Lower Bristol Road junction is on the main route from the RUH to the city centre and to the eastern and southern sides of Bath and beyond. The majority of public transport services and much of the general traffic that serves the RUH passes through this junction.
- 9.3. Notwithstanding the proposed alterations to the junction, the Trust believes that the likely traffic generated by the proposal and the effect on congestion and delay has been underestimated. The increase in congestion and delay at the junction could adversely affect the operation and efficiency of the hospital through delays to staff, patients and emergency vehicles, which would affect the RUH's performance rating and impact on future funding.
- 9.4. *Mr Davies* supports the scheme as a way of reviving a derelict site that blights the area and improving a poor quality junction (IP2). The scheme would provide much needed job opportunities and provide additional competitive supermarket shopping in Bath. Shops at Moorland Road would not be adversely affected as they provide specific services and produce that no supermarket could compete with.
- 9.5. *Mr Lucas* objects to the proposal for 4 reasons (IP3). Lower Bristol Road and Brook Road already experience very poor air quality mainly resulting from vehicle exhaust fumes. The existing unacceptable levels of pollution would be exacerbated by traffic generated by the development which would adversely affect the quality of life and life expectancy of residents. The development would result in additional traffic on Brook Road and at the junction with Lower Bristol Road to the detriment of residents and other road users. There is no need for a large supermarket in this location, which would have an adverse effect on local shops. The loss of the mature line of trees along the Lower Bristol Road frontage of the existing building would harm the appearance of the area.
- 9.6. Mr Rotheram, for the *Federation of Bath Resident's Associations* (IP4) submitted that because of its strategic location on the road network congestion at Windsor Bridge Road/Lower Bristol Road junction affects movement across the city and encouraged motorists to seek alternative routes particularly through the historic city centre and residential areas. Despite the proposed improvements, Tesco's own figures show that the junction would remain unacceptably congested.
- 9.7. Urban air pollution and the effect it has on amenity and health is a problem that can no longer be ignored. Here, air pollution is already close to or above

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<sup>132</sup> The Trust's written objection and Consultant's report has been attached to IP2 for ease of reference.

the legal limits for nitrogen dioxide of 40ug/m<sup>3</sup>. Additional traffic generated by the scheme would exacerbate dangerous levels of air pollution adversely affecting the health and amenity of existing and future residents of the area. This would conflict with LP Policy ES10, which says that development will not be permitted where it would have an adverse effect on the health and amenity of existing uses by virtue of...air pollution. The suggested conditions to deal with air pollution are considered ineffective and unlikely to be enforceable.

- 9.8. *Ms A Robinson* fully supports the submission made by FOBRA and others, particularly the potential unenforceability of the suggested condition on air quality (IP5). Any condition should provide that no construction should start until Tesco can show that the development will not result in an unacceptable impact, monitoring should take place after construction and further measures should be implemented if the approved scheme was not sufficiently effective.
- 9.9. This area is plagued by noisy urban Gulls that have a significant adverse effect on residents through noise and disturbance. Despite indications by Tesco that local concerns regarding nesting gulls had been considered in the design of the building there is no indication that the substantial flat roof of the supermarket has been altered in any way to discourage nesting. A flat roof of this scale conflicts with local guidance and in this context the suggested planning condition is no more than a token gesture and likely to be ineffective.
- 9.10. *Mr Cook* submitted that Bath is already well served by Tesco stores and another, particularly one that that would exacerbate existing congestion is unnecessary (IP6). The site would be better developed as a business park/residential removing the presumptuous but useless Pitman façade.
- 9.11. *Mrs Jones*, whose property backs on to the site, supports the proposal (IP7). With further development at Bath Riverside additional food shops will be required to avoid congestion at Sainsbury's, Green Park. The proposed store would provide additional choice and employment, providing an alternative to Sainsbury's at Green Park or the City Centre. There is congestion on Lower Bristol Road, but this could be alleviated by providing bus lay-bys and dealing with car transporters who block the road when servicing the various car dealerships opposite the site. There are concerns that if Tesco do not develop the site, it will fall into further disrepair, which would have an adverse effect on local residents.
- 9.12. *Mr Parker* supports the proposal (IP8). The site is derelict and needs to be developed. The Tesco scheme would provide much needed investment, competition and a substantial number of jobs in an area that experiences high unemployment. Moorland Road shopping area has adapted itself over the years to meet local shopping requirements and there is no reason to believe that it could not continue to adapt or that shopper footfall would be affected. Whilst traffic is an issue, given the resources of Tesco and the Council, an appropriate solution could be found.
- 9.13. Ms Condon made submissions on behalf of the *Moorland Road Traders Association* who object to the scheme (IP9). The Moorland Road Traders Association represents a group of retailers in MRDC who have significant concern about the effect the Tesco scheme would have on existing businesses and the vitality and viability of the centre. MRDC is an example of how communities continue to thrive around a traditional shopping street. The



centre has a butchers, a bakers, an opticians, a pharmacy, a greengrocers along with many other small independent businesses and is a classic example of what the government was hoping to bring back when the Portas Review was published in December 2011.

9.14. Despite the economic downturn this shopping area has held its own. However, the Tesco Superstore would draw shoppers away from the centre. The result would be:

- closure of businesses, leading to job losses;
- reduced trade to retailers especially the butchers, bakers, greengrocers and newsagents;
- exacerbate the current negative trading environment which is tough for all, in particular the local independent;
- shoppers would lose the need to use Moorland Road as Tesco would offer a one stop shop with extensive parking;
- the displacement of full time jobs by lower paid part-time jobs;
- possible closure of the current anchor shop, the Co-op, which generates linked shopping visits and drives footfall to the other retailers up. As well as the loss of parking that the Co-op provide which enables the quick "pop to the shops" distress visits;
- increased traffic congestion would drive people away from the area.

9.15. Independent retailers cannot compete on price with the giants; they do not have the buying power. The opening of Tesco will result in shop closure, family businesses being destroyed and a loss of the local community feeling that is generated in areas with traditional shopping centres. The area already has some empty units that are unlikely to be re-let in the near future.

9.16. A survey of existing district centre businesses concluded: that market confidence is low; that the commercial base of the Centre is both vulnerable and fragile; several retailers will close their businesses at lease expiry as a direct result of the impact of the Tesco proposals. The resulting increase in retail vacancies would have a severe impact on investment values, given the likelihood of reduced rents (and increased incentive packages) and reduced capital values (due to reduced investor confidence); the lack of both food and non-food retailer demand for space on Moorland Road confirms there will be severe difficulty in securing lettings for the existing vacant units, let alone any further units which become vacant in future. If the Tesco proposals are consented; there will be substantial irrecoverable damage to the vitality and viability of Moorland Road District Centre.

9.17. *Mr Wainwright*, owner of Oldfield Park Bookshop which is located on Moorland Road objects to the Tesco scheme (IP10). This shop has traded successfully since 2002. Since 2004, to assess the performance of the shop time the number of people passing the front door of the store has been monitored. During that time footfall has been remarkably stable in this period, save for 2 instances. The period between the closure of Woolworths in January 2009 and the opening of a Sainsbury's Local on Moorland Road in October 2009 saw a sharp decline of 13.9%, but this was recovered with the new store's opening. The 12-month period following the opening of Sainsbury's store in Odd Down in April 2011 saw a decline in footfall of 12.1%. While some of this may be

ascribed to broader economic factors, that there is a link between the two events.

- 9.18. If Tesco opens, footfall would decline by a minimum of 15%, assuming no traders, including the Co-op, vacate the catchment. Should people quietly stop renewing leases, a 25% decline in turnover is possible. This shop serves 47 customers on a typical trading day, and has maintained a 70 to 75% conversion rate of customers to sales since opening. If this were to drop to 40, as is mathematically possible, the business would be close to break-even point and anything less put the viability of our business at risk. This shop sells 32,000 books a year, but 21,000 of these are Children's books. The shop has close working relationships with local Primary Schools, and its role is that of an important semi-educational support for the Oldfield Park Community. Many businesses on Moorland Road perform similar roles for this community. They are not vast profit centres, and many would close if Tesco open. Tesco simply cannot replicate the services and benefits offered to the Oldfield Park community, and they are the sole beneficiaries from this enterprise.
- 9.19. *Mr Stewart* lives in a house that directly abuts the existing building (Doc ID1.7 Drawing No. PN0501). He objects to the scheme on several grounds (IP11). He is not clear nor has been told what the implication of the demolition of the existing building and the construction of the new store would have on the safety and privacy of his garden. In his view, there are adequate shopping facilities in the locality and there is no need for a large superstore. The development would have an unacceptable effect on traffic volumes in the area and restrict access to South View Road. The proposed store would have an unacceptable effect on the small shops in Moorland Road.
- 9.20. *Mrs Potter* drew attention to the attractive park/play area located between the site and Oldfield Park Infants School on Dorset Road (IP12). The area is well used by local children as it is considered a safe area for play. Supermarkets, such as Tesco, sell cheap alcohol. This would attract street drinkers who are likely to congregate in or near the park and whose anti-social behaviour would reduce its attractiveness and depriving residents and children of a valuable local facility. The presence of another supermarket selling cheap alcohol would conflict with the Council's attempts to reduce alcohol misuse.
- 9.21. *Ms Player* spoke as a local resident and as a ward councillor on behalf of several others (IP16-IP27). The Bath Press site is neglected and does need to be redeveloped. However, rather than being developed for a large superstore there is a need for additional housing and community facilities for the young. This could, if necessary include a small Tesco store. There are enough large superstores in Bath to satisfy existing needs. The scheme would have an adverse effect on the vitality and viability of businesses located in the popular and locally valued shopping centre of Moorland Road. There is an existing serious problem with air pollution and traffic congestion on Brook Road and Lower Bristol Road. A Tesco store of the scale proposed would unacceptably exacerbate both problems.
- 9.22. *Mr Moran* submits that, in addition to concerns over a lack of need for another large supermarket, increased congestion and an adverse impact on the vitality and viability of the Moorland Road District Centre, the development fails to achieve a satisfactory standard of urban and architectural design (IP14).

- 9.23. This area is characterised by a coarse urban grain and low permeability. The length of the site has acted as a barrier to north-south movement with the finer grain of routes in the residential areas to the south coming to an abrupt halt at the southern boundary of the site. Redevelopment provides an opportunity to make connections into the surrounding urban grain. The principles of maximising permeability and making connections to existing routes are best practice in urban design theory.
- 9.24. The BWR masterplan envisages a strong north-south axis linking Lower Bristol Road with the Destructor Bridge across the River Avon. Although presently blocked by car dealerships on Lower Bristol Road, the long term ambition of the masterplan is for these to be replaced by new development that will allow the axis to link with Lower Bristol Road. This would align with the main entrance feature on the store facade. To the north, the axis will link across the river to Victoria Park and its hugely popular children's play area. To the south, through the site, there is the potential to create a link between the new residential areas at BWR with Oldfield Park Railway Station. Conversely the route would link the residents of Oldfield Park with the popular amenities in Victoria Park. BWR would be roughly 5 minutes walk from Oldfield Park Station and Victoria Park would be approximately 7 minutes walk from the residential area of north Oldfield Park. This new north-south route would be a valuable asset to the whole area.
- 9.25. The scheme claims to address the issue of north-south movement but in reality the new route from Dorset Close and the new public square do very little to break down the bulk of the site. The obvious move to make here would be to provide a route from South View Road across the site to Lower Bristol Road and the proposed BWR axis but this is made impossible by the spatial demands of the supermarket footprint. The fixed footprints of the service yard, the loading bay and the sales floor make a connection to South View Road almost impossible. The public square will have insufficient cross flow to make it a successful space. Without a real north-south cross route it will be poorly used and have little urban design value. A redevelopment of the site that consisted of smaller more malleable footprints would allow the Oldfield Park Station-Victoria Park cross route to be established and a much more successful urban design strategy to be implemented.
- 9.26. Lower Bristol Road is an unpleasant pedestrian environment due to the traffic congestion and narrow pavements. The junction with Windsor Bridge Road and Brook Road adds to the unpleasantness with its obstacle course of traffic islands. The junction improvements will only serve to make things worse expanding it into a sea of traffic lanes, islands and tarmac. The scheme demonstrates the negative impact of a large supermarket on the public realm and the incompatibility of the proposal with this site.
- 9.27. The proposal does attempt to improve the lot of the pedestrian by providing a sheltered route away from the traffic behind the retained Bath Press facade. However, this benefit applies to only half of the length of the site and is cancelled out by the treatment of the other half which is dominated at eye level by the blank plinth created by the basement car park. Taken as a whole the effect of the scheme on Lower Bristol Road is a negative one.

- 9.28. The contemporary approach to the design of the new elements is to be welcomed. However, the execution of the design displays a number of flaws. The architectural treatment of the Lower Bristol Road/Brook Street corner is poor, driven more by road geometry than by a proper analysis of the urban structure. The design of the building with its sweeping curved facade accords equal status to both Lower Bristol Road and Brook Street. This is inappropriate as Brook Street is clearly subsidiary in status to Lower Bristol Road.
- 9.29. The design of the buildings around the new public square leaves much to be desired. The design statement correctly identifies the existing hierarchy of a stone prime facade and brickwork secondary facades but the translation of this principle into the new buildings is muddled and lacking in rigour. For example the west facade of the new office building faces the new public square and so logically is higher in status than the south facade which faces the new lane. But the materials tell the opposite story. The muddle seems to stem from the dubious decision to mimic the saw tooth roof profile in the new buildings. Used here the form has no functional legitimacy and indeed becomes almost a veneer on the eastern facade of the supermarket block. As such it is misplaced contextualism and is a regrettable feature. The mistake is compounded by the inclusion of the barrel vaulted element in the office building which sits awkwardly with the roof profile. The attempt to mimic the existing saw tooth roof profile looks forced and unconvincing.
- 9.30. Mr Regwell for the *South-West Transport Network* (SWTN) object to the proposed development (IP15). SWTN fully supports the regeneration of the site for a mixed uses scheme of offices, small business start-up units and housing, for which B&NES is underperforming in its CS. A large superstore on this site would undermine the regeneration of the Western Riverside Enterprise Zone, result in increased and unacceptable traffic congestion and divert trade away from the Moorland Road District Centre as well as undermining local shopping facilities on Twerton High Street.

## **10. Written Representations**

- 10.1. In response to the notification of the appeal, 5 responses were submitted; of these 4 object to the development on the grounds of a lack of need for a another large food store; an adverse impact on the vitality and viability of the Moorland Road District Centre, unacceptable increases in traffic congestion and air pollution. One respondent supports the proposal on the basis that redevelopment of the site with a competitive supermarket would provide additional jobs and the reuse of the site/building would improve the image of the area.
- 10.2. Representations made at the time of the application, reiterate concerns about need, impact on local shops, increase in air pollution and traffic congestion expressed by those who appeared at the Inquiry. In addition several referred to the likely adverse impact on residents adjoining the proposed store through customer and service traffic using the entrances on Brook Road and insufficient customer car parking would be provided resulting in on-street parking in the surrounding narrow streets where access is already difficult and parking is at a premium. The *Bath Preservation Trust* and the *Bath Heritage Watchdog* object to the scheme in terms of its poor design and likely adverse impact the Bath World Heritage site.
- 10.3. Those in support of the application refer to the benefits of developing a derelict site, increased job opportunities, increased retail choice and competition benefitting the consumer and a lack of impact on local shops. Whilst expressing concerns regarding traffic congestion and the commercial viability of the offices/workshop space, *Bath Chamber of Commerce* highlighted the wider benefits to the city of increased economic activity, widening consumer choice and a lack of a significant adverse impact on local shops.

## 11. Conditions and Obligations

### Planning Conditions

- 11.1. Document ID1.6 contains suggested conditions (SCs) and the reasons for them were discussed and agreed at the Inquiry. The numbers in brackets in the following paragraphs refer to the SC as numbered in Document ID1.6.
- 11.2. SC 1 is the standard time limit for the implementation of a full planning permission. Under the heading of *Environmental* there are 7 SCs relating to air quality mitigation measures (SC 2); the carrying out of ground contamination investigations, the implementation of a remedial scheme and the submission of a validation report (SCs 3, 4, 5 & 6), the submission of a demolition method statement for approval and controlling immissions from plant associated with the development (SC8). Interested persons expressed concern that the proposed condition relating to air quality lacked force and given that it related largely to service vehicles there would be no impact on the customer traffic and emission from these vehicles. I understand residents' concerns, however, other than in terms of managing the car park, developing a travel plan for staff which encourages the use of alternative modes of travel, which are the subject of other conditions the encouragement of the use of electric cars and the management of deliveries to minimise trips is, in my view, as much as one developer can do.
- 11.3. SCs 9 and 10 relate to the submission of hard and soft landscape details, the implementation of approved schemes. SC 11 relates to the submission of finishing materials for approval and the implementation of the approved details. Under the heading of *Ecology*, there are 3 SCs relating to protection of nesting birds (SC 12), the submission of details of schemes to control the roof top nesting of gulls (SC 13) for Wildlife Protection and Enhancement (SC14) and their implementation. An interested person expressed concern that given the nature of the roof design the impact of any scheme was likely to be limited. Whilst by definition, the nature and scale of this development would result in an extensive roofscape and I saw and heard the activity of gulls, the proposed condition provides for measures to be submitted and agreed with the lpa that should minimise the impact of these birds. SC 15 provides for the submission of drainage details for approval and implantation of the works. SCs 16 and 17 relate to the submission of details of external lighting for approval and controlling hours of illumination.
- 11.4. Under the heading of *Transportation*, there are 6 SCs relating to the submission of details for the improvement of the Lower Bristol Road/Brook Road/Windsor Bridge Road junction and implementation of the scheme (SC 18); the submission of a car park management scheme (SC19) and a Travel Plan (SC20); the submission of a Construction Management Plan to mitigate the impact of the site works on the highway (SC 21) and a Delivery Management Plan (SC 22) relating delivery vehicles to the proposed uses and making provision for the turning of delivery vehicles for the adjacent public house. SC 23 provides for an off street parking area for residents of South-View Road.
- 11.5. SCs 24, 25 and 26 relate to a programme of archaeological work, including field evaluation and post excavation analysis. SCs 27 and 28 relate to the submissions of schemes to provide for public art to reflect the association of

the site to the development of the Pitman Shorthand System (SC 27), the naming of public areas to reflect the history of the site and a scheme of historical interpretation and access (27).

- 11.6. Under the heading of *Retail and Employment Use* SCs 29, 30 & 31 defining the extent of the creative work space, office floorspace and gross/net retail convenience and comparison floorspace including the exclusion of a post office, an optician, a dry cleaner, a pharmacy and photo-processing from the retail unit). SC 32 restricts opening of the retail store and occupation of the other units until the Windsor Gas Holder Station is decommissioned. SC33 controls hours of opening, SC34 provides for the approval and installation of fume and odour control equipment. SC 35 provides for the provision of crime prevention measures.

#### S106 Agreement and Unilateral Undertaking

- 11.7. The S106 is in the form of a Counterpart Agreement conjoined as one document.
- 11.8. Whilst Tesco agree with the principle of a Strategic Highways Contribution, it does not agree with the Ipa's calculation of the amount sought. In the absence of an agreement with the Ipa, Tesco submitted a UU to provide for the payment of an SHC. I deal with this below.

#### S106 Agreement (ID1.7)

- 11.9. Under the heading of a Education Contribution, Tesco covenants to pay prior to the implementation of the housing element of the scheme the sum of £29,449.77 (index linked) for the purposes of (i) early years provision in the Moorlands Childrens Centre; (ii) primary school provision within a 1.5 mile radius of the site and (iii) youth services provision within Bath. In relation to Affordable Housing, Tesco covenants to provide 4 of the 10 houses as Affordable Housing and to transfer the units to a Registered Social Landlord or other Affordable Housing provider approved by B&NES.
- 11.10. In relation to the Creative Workshop Units and the Community Facilities, Tesco covenants that prior to the occupation of the development to construct the work units and community facilities and submit for Ipa approval and subsequently implement a Creative Workshop Marketing Strategy and a Community Facilities Strategy for the use of the facilities by the community at a reasonable commercial charge.
- 11.11. Tesco further covenants: (i) to agree the method by which it would participate in the West of England Local Enterprise Partnership's initiatives to gain the necessary skills to be able to participate in the workplace; (ii) not to commence the highway works without first entering into a Highways Agreement with B&NES and (iii) include a covenant in all transfers/leases to the residential units such that they shall not be leased or sub-let to full-time students participating in degree or higher level education courses in Bath.

#### S106 Unilateral Undertaking (ID1.8)

- 11.12. The calculation of the SHC required by the DPD is calculated by multiplying the contribution rate per trip of £504.24 by the maximum of trips per day and then applying a discount. In this case the discount is based on the

potential number of trips generated by the extant use of the site. Tesco's and the Ipa's methodologies for calculating the amount of the contribution is set out at Annex 1 of Tesco GD4.

- 11.13. Based on its estimates of trip rates and the potential reuse of the existing building, Tesco calculates that the proposed development would result in net increase in 4,324 daily trips requiring a SHC of some £2,180,333. Of this sum £1,959,000 would be towards the Lower Bristol Road Bus Lane along with associated improvements to the Mill Lane junction which is directly in the vicinity of the site and some £230,333 towards other strategic projects identified in Part 2 of the Obligations SPD. The example given is Rossiter Road bus improvements and expansion of the park and ride on the basis that the impact of the development would not be confined to the immediate locality of the site and there is a need to encourage sustainable travel from all over the city to accommodate the new trips/demand to travel that would arise from this development.
- 11.14. The Ipa disagrees with Tesco's trip rates and the likely level of traffic that would be generated by the extant use of the site and estimates that proposed development would result in net increase in 5,537 daily trips requiring a SHC of some £2,791,976. Of this, £2,500,000 would be directed towards the Lower Bristol Road Bus Lane and associated Mill Lane junction improvements with the balance towards other strategic projects identified in Part 2 of the Obligations SPD.
- 11.15. In addition to the difference over trip rates, Tesco when determining the trips from the existing use, has not used the daily trip rate of 7.5 trips per 100 sq. m of B2 use as specified in the SPD. Tesco has adjusted the figure to 9.064 trips per sq. m to reflect the reuse of the site by a number of smaller B2 users. This over-estimates the number of trips for the discount. In addition, the UU, unlike the S106 Agreement does provide that contributions would be index linked. As there is no guarantee when the sum would be received and what rate inflation would be at the time, the value of the SHC would be eroded. Tesco indicated that if the SoS had any concern on this latter point it was open to him to suggest that the sum be index linked.



## 12. Inspector's Conclusions

[The numbers in ( ) brackets refer to earlier paragraphs in this report or relevant documents.]

- 12.1. The 2 determining considerations relate to retail and highway matters. Before addressing these and to provide a context for their consideration, I address the weight to be attached to relevant LP policies, emerging CS policies and other guidance.
- 12.2. Paragraph 11 of the Framework sets the statutory background that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraphs 13 and 210 indicate that policies contained in the Framework are material considerations. Paragraph 215 says that due weight should be given to relevant development plan policies according to their degree of consistency with the Framework. In relation to emerging development plans, paragraph 216 indicates that weight may also be given to relevant policies according to: the stage of preparation; the extent to which there are unresolved objections to relevant policies and the degree of consistency of relevant policies with the Framework.
- 12.3. Section 2 of the Framework recognises that as part of ensuring the vitality of town centres, planning policy and decision making should, amongst other things, recognise town centres as the heart of their communities and pursue policies to support their vitality and viability; define a network and hierarchy of centres; define the extent of town centres; allocate a range of suitable sites to meet the scale and type of development needed in town centres, including an assessment of the need to expand town centres, and set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres. In terms of the highway considerations, paragraph 32, indicates that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

### *Local Plan*

- 12.4. In seeking to maintain and enhance existing shopping centres, LP Policy S.1 is consistent with the Framework (4.3, 6.3). Other than criteria i and ii, which refer to need and scale, the objective of LP Policy S.4, which provides for the application of the sequential approach to retail proposals outside designated centres, is consistent with paragraph 24 of the Framework. As to the impact on the highway network, subject to reading LP Policy T.24 in the context of guidance contained at paragraph 32 of the Framework, its general objectives regarding highway safety and the operation of the highway network are consistent with the Framework.
- 12.5. Policy GS.1 B1, which identifies BWR as an area for mixed use development, is consistent with the Core Principles of the Framework relating to the reuse of previously developed land and promoting mixed use developments. The BWR SPD where it indicates that the eastern end of the site will provide a new extension to the city centre, based on a mix of uses comprising retail, offices, culture, leisure and residential is consistent with the Framework

objective of ensuring the vitality of town centres through allocating a range of suitable sites (4.12).

- 12.6. In light of the above and having regard to the advice at paragraph 215 of the Framework, the relevant policies of the LP are consistent with the policies and objectives of the Framework. Accordingly, the relevant policies are not out-of-date and the guidance contained at paragraph 14 of the Framework, which says where relevant policies are out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and adversely outweigh the benefits when assessed against the policies of the Framework as a whole, does not come into play (5.9, 8.12).

#### *Emerging Core Strategy*

- 12.7. Emerging Policy CP12, which identifies the hierarchy of retail centres and encourages uses which contribute to maintaining the vitality, viability and diversity of centres within the hierarchy closely reflects LP Policy S.1 (4.19). This policy is consistent with the Framework, is not the subject of objection and can reasonably be considered to attract significant weight (5.10, 6.10).
- 12.8. CS Policy B2 – Central Area Strategic Policy addresses the future role and extent of the city centre (4.18, 4.17 & 6.12). A fundamental element of the policy is the identification of Key Development Opportunities. These are areas that have the *"most capacity for significant change and key regeneration opportunities."* and include the Green Park Station and the Homebase/Pines Way sites (CD6.3 page 35). The vision for the central area by 2029 is that the city centre would expand westwards as key development sites are redeveloped to optimise their location and generate more intensive activity. This is taken further in the emerging CS's approach to BWR and refers to the area now known as Bath Western Riverside East (BWRE), (i.e. the Green Park Station, the Homebase and the Pines Way Industrial Estate sites), being *"conceptualised as forming part of the Central Area because of the commercially led emphasis being sought for this area."* This policy adds more flesh to LP Policy GS.1 B1 and makes plainer the Ipa's strategic intention to extend the city centre to the west and for it to include BWRE.
- 12.9. In the emerging CS, the Tesco site is shown located in the Twerton Riverside Area and the strategic direction for this and the adjoining Newbridge Riverside Area is set out in Policy B3 (4.20). Compared to the Newbridge Riverside Area, Twerton is considered, in policy and land use terms, a more flexible area. Policy B3 envisages this area as a suitable location for a broader range of uses with scope to provide new business premises (Class B1a-c) and housing. The policy recognises that this area has potential to locate businesses displaced by development on BWR and the extension of the Central Area into BWRE.
- 12.10. Given the stage that the CS has reached and the Examining Inspector's concerns, which led to a suspension of the CS Examination, the Ipa suggests limited weight should be attached to emerging Policies B2 and B3 (6.9). At the time of the Inquiry, Examination of the CS had been suspended<sup>133</sup> because of concerns largely relating to the soundness of the housing

<sup>133</sup> I understand That Hearings will resume later this year.

provision. Thus, whilst there is the potential for further change to and delay in adopting the CS, given the LP and SPD background to the Ipa's approach to BWRE, particularly the extension of the city centre westwards, which are unlikely to be materially affected by changes to the CS, I consider more than limited weight can be attached to Policies B2 and B3 (5.11).

#### *Other Local Guidance*

- 12.11. The adopted BWR SPD fleshes out the objectives of draft Policy GS.1 B1 and as such it attracts significant weight (4.13, 4.14). The BWR SPD indicates that the eastern end of BWR, closest to the city, is seen as part of and an extension to the city centre based on a mix of uses comprising retail, offices, culture, leisure and residential, with a higher proportion of commercial uses (4.13, 4.14). The Zonal Masterplan refers to the eastern zone accommodating city centre type uses with the Local Development Framework establishing the role that the eastern zone of BWR has to play in the future of Central Bath. The Masterplan anticipates the Green Park Station area accommodating city centre retail and associated uses which, *"would require Sainsbury's moving across the river"*.
- 12.12. The Bath Economic Regeneration Delivery Plan (4.23) and The Treasure and Transform Our Route to Prosperity (4.25) documents, whilst not part of the development plan or having been the subject to the type and extent of public and stakeholder consultation required of a SPD, are relevant insofar as they reinforce the policy direction the Ipa is pursuing on the nature and extent of the city centre.

#### **Retail Considerations**

- 12.13. Neither the LP nor the emerging CS specifically rules out the type of retail scheme proposed by Tesco at the appeal site, or indeed a retail proposal of a similar scale on the BWRE site. It is accepted that the Tesco site is out-of-centre and as such must be assessed in the context of LP Policy S.4 and paragraphs 24 and 26 of the Framework i.e. that the site/scheme be subject to sequential and impact tests (5.16, 8.22). The Framework at paragraph 27 is unequivocal in saying that if the site/proposal fails to satisfy either test, the appeal should be dismissed.

#### *Sequential Test*

- 12.14. Although the Framework requires a sequential test to be carried out, it does not give an indication of what that test includes. Although published to support earlier national policy in PPS4<sup>134</sup>, which also contained a sequential test, the Practice Guidance on Need, Impact and the Sequential Test remains extant. The Practice Guidance provides advice on how to approach the need and impact tests, albeit on the basis that the sequential test in PPS4 was worded differently and I have had this in mind as I use the Practice Guidance.
- 12.15. The question is whether the BWRE site is a sequentially preferable site to the Tesco site (5.16). To answer this, it is necessary to establish where the Primary Shopping Area (PSA), boundary is. That is because the Framework

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<sup>134</sup> Planning Policy Statement 4 – Planning for Sustainable Economic Growth

defines edge-of-centre and by extension out-of-centre<sup>135</sup> by reference to that boundary. In this case there are 2 potential approaches to identifying a PSA as reflected in the Practice Guidance and the Framework.

- 12.16. Paragraph 6.12 of the Practice Guidance says that *"it may be appropriate to take into account the anticipated future role of the centre and in particular the scope for growth and expansion. In centres where major expansion is planned, it may be appropriate to indicate where the PSA is likely to be extended to, having regard to the potential for achieving effectively integrated development"*. Moreover, whilst it is contained within a section dealing with effects on vitality and viability, paragraph 7.25 of the Practice Guidance says *"...where there is a clearly defined strategy to promote the expansion of a centre through new development... where there is significant overlap between the proposals being tested, and the aspirations for the town centre, they are likely to raise related concerns in respect of the sequential approach..."*. This chimes with the advice in the Framework at paragraph 23 that planning policies, *"should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period."*
- 12.17. There is an explicit and long standing intention of the lpa that the city centre would expand west to include the Green Park Station and the Homebase/Pines Way sites as expressed in the LP, the BWR SPD and the emerging CS. Given my conclusions in paragraphs 12.4 to 12.12 above that the relevant LP policies and the SPD are consistent with the Framework and that more than limited weight can be attached to the emerging CS policies, there is force in the submissions by the lpa (6.28) and by Sainsbury's (8.26-8.27) that the BWRE site could be considered for the purposes of the sequential test to be an edge-of centre site or an in-centre site. If this approach is adopted and the BRWE site is considered, at least, edge-of-centre, then it would be sequentially preferable to an out-of-centre site.
- 12.18. The second approach flows, in part, from the Practice Guidance and from the Framework. Paragraph 6.16 of the Practice Guidance indicates, *"...where the PSA is appropriately defined, the policy status of a site will be clear. Where there is no defined PSA, or the current boundary is out of date (for example by virtue of changes in the pattern of retailing and other uses across the town centre), it will be necessary to judge the extent of the PSA and whether a particular site or proposal is within the PSA, based upon the LDF policies and any other material considerations."* The Framework defines the PSA as an area where retail development is concentrated, generally comprising the primary and those secondary frontages which are adjoining and closely related to the primary shopping frontage<sup>136</sup>. Primary frontages<sup>137</sup> are likely to include a high proportion of retail uses which may include food, drinks, clothing and household goods. Secondary frontages<sup>138</sup> provide greater opportunity for a diversity of uses such as restaurants, cinemas and businesses.

<sup>135</sup> The Framework Annex 2 contains definitions of edge-of-centre and out-of-centre.

<sup>136</sup> Annex 2, The Framework.

<sup>137</sup> Annex 2, The Framework.

<sup>138</sup> Annex 2, The Framework.

- 12.19. Whilst the LP defines Primary Shopping Frontages, it does not explicitly define a PSA. What it does do is identify a City Centre Shopping Area (CCSA) and the emerging CS identifies a City Centre Boundary. Moreover, in the western part of the city centre the pattern of retailing and other uses appears to have changed since the adoption of the LP. Here, between the boundary of the CCSA and Green Park Station, the areas of Kingsmead Square/New Street and James Street West contain an almost unbroken line of food and drink, convenience/comparison retailers and a cinema (Tesco 6G Points A & H, 6.27 & 8.27-8.28). In this context, I came away from my visits to the area with a firm impression that, in this part of the city, the City Centre Boundary identified in the emerging CS is consistent with the definition of a PSA as set out in the Framework.
- 12.20. The definition of edge-of-centre for retail purposes is the same in the Framework as it is in the Practice Guidance, including the reference to taking account of local circumstances. For retail purposes the Framework defines edge-of-centre as a location that is well connected and up to 300m of the PSA. The Framework and the Practice Guidance share the same definition of out-of-centre. In this context, the existing Sainsbury's Green Park Station site is an edge-of-centre site (5.17, 6.27 & 8.27). Taking the south-western edge of the emerging CS City Centre Boundary as the edge of the PSA (Tesco 6G Point H), and using the entrances, as they are currently shown, to the proposed retail stores on the Homebase site (Points J & I) and the Tesco site (Point E) the respective distance of some 410/470m and 930m both sites would be out-of-centre (5.16 & 6.28). I base my conclusion on the definition of out-of-centre contained in the Practice Guidance at paragraph 6.8, i.e. the separation being over 300m it is not within easy walking distance.
- 12.21. There are no sites within the city centre (ID1.3 paragraph 6.7d) and it is common ground that the existing Sainsbury's site is not available (8.29). The next stage of the sequential test is set out at paragraph 24 of the Framework and says, *"...when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre"*. To me, this sentence is quite clear i.e. in a case where there are 2 out-of-centre sites the Framework expects that the decision maker will give preference to the site that would be better at achieving connections with a centre by a choice of transport modes.
- 12.22. In terms of simple distance and nothing else, the Homebase site is closer to the city centre than the Tesco site and the Tesco site is closer to the MRDC than the Homebase site (Tesco 6G). Whilst the city centre is higher than MRDC in the local shopping hierarchy, the test in the Framework refers to town centres and the definition of town centre in the annex includes city centres and district centres with no indication that one type of centre ranks above the other for the purposes of the test. Thus, on this point, there is nothing to choose between the sites. In terms of the relative accessibility of both sites by any means of transport i.e. car, bus and foot, both sites are on a main road and bus routes and both have substantial existing and planned populations within walking distance. Again, there is nothing between sites. Paragraph 6.2, second bullet point, highlights that one of the important policy objectives that the sequential test is intended to achieve is to accommodate main town centre uses in locations where customers are able

to undertake linked trips, which would then serve to reinforce the vitality and viability of the existing centre. On this matter the question to answer is which site has a higher likelihood of forming links with the centre. Key factors in this matter particularly in the ability of pedestrians to undertake linked trips are distance from the centre and the nature of the route. In terms of an ability to form links with MRDC in terms of distance and attractiveness of the route again there is nothing in my view between the 2 sites.

- 12.23. The main difference between the sites is in relation to pedestrian connectivity with the city centre; the higher order centre. Both sites would share the same link from the Homebase site to the city centre. I walked this route at various times of the day and it is not an unpleasant or unattractive route (8.35). In terms of the Ipa's vision for this part of the Central Area, the route from the Homebase site to the PSA has, in terms of its physical and retailing environment, significant potential for improvement (6.39, 8.35). Moreover, given the level nature of the link, and the strength of the city centre as an attraction, the additional distance over and above the 300m regarded in the Practice Guidance as an easy walking distance would not constrain the potential of this site to form substantial linkages with the city centre (5.14, 8.36).
- 12.24. The Tesco site would be between 460m and 520m further on and the key pedestrian route would be the Lower Bristol Road. Notwithstanding the comments contained in the CS and the SHLAA regarding the connectivity of the Tesco site with the city centre (5.16), Tesco accepted that the walking route is unattractive and acknowledged that the prospect of people walking between it and the city centre would be very unlikely (6.39, 8.35). Based on my use and observations of this part of the route, I have no reason to disagree with that conclusion. There is the intention to provide pedestrian links from Lower Bristol Road through the western part of the BWR site to link with the riverside and BWRE (5.16). Although the route would be level, the walking distance could, depending on the layout of the site, be greater and, more significantly, would be a less intuitive route to the city centre i.e. walking north to go east. Whilst the pedestrian environment along Lower Bristol Road could be improved, these improvements would be limited by the proximity of existing buildings to the highway and its status as a major through route for traffic. In these circumstances the route between the Tesco site and the city centre along the Lower Bristol Road would continue to be an unattractive route for pedestrians and significantly constrain the potential of the Tesco site to form meaningful linkage with the city centre.
- 12.25. Taking all these matters together, whilst both sites would be well served by bus and car modes of transport, the BWRE site is closer to the city centre, the higher order centre in the hierarchy, and is the site that has the greater likelihood of forming meaningful links with the city centre. Therefore, in terms of paragraph 24 of the Framework and expressing a preference, the BWRE site is to be preferred.
- 12.26. The sequential test also covers suitability, viability and availability. There is no dispute that the Tesco site or the BWRE site could physically accommodate the proposed development (ID1.3 paragraph 6.7g, 8.42). The BWRE site is not landlocked in terms of ownership (6.33). Moreover,

there is no explicit planning policy bar to the development on either the Tesco or BWRE sites (8.44). No viability study for the BWRE site was put before the Inquiry (5.14). However, that on its own is not fatal. The Practice Guide at paragraph 6.50 indicates that it will rarely be necessary to undertake detailed development appraisals and, given the timescales involved in bringing forward some town centre schemes, it would be inappropriate to reject a more central opportunity as being currently unviable without allowing a reasonable period of time to test whether a viable opportunity is likely to come forward. The Practice Guide at paragraph 6.49 indicates that, *"where alternative sites are being actively promoted for new development by a developer/retailer this is a reasonable indicator that the location is viable."* At BWRE, Sainsbury's have recently submitted a planning application for a substantial mixed use development that would see the relocation of its existing store from the Green Park Station site to the Homebase site and both sites being redeveloped with additional town centre uses. Whilst elements of the Sainsbury's scheme can be criticised, given the development plan and emerging CS policy context for The Central Area, there is nothing to support the assertion that the scheme is a cynical exercise designed to block the Tesco scheme or that it would not be viable (5.14, 8.52).

- 12.27. The final element of the sequential test is availability. The Practice Guidance at paragraph 6.37 defines availability as *"whether sites are available now or are likely to become available for redevelopment within a reasonable period of time (determined on the merits of a particular case, having regard to inter alia, the urgency of the need)."* Thus, the questions to answer are what is a reasonable period of time to assess potential availability, and is the site available?
- 12.28. On this, the Practice Guidance at paragraph 6.39 indicates that the issue of availability and the sequential approach have to be considered together with the impact of development occurring in edge or out-of-centre locations, and the long term consequences for town centres. Thus, whether it is appropriate to assess availability over 3 to 5 years, or a longer time period will depend upon local circumstances. One of the elements of "local circumstances" is the "urgency of need". Retail need is generally expressed in terms of quantitative need or capacity and qualitative need. Here, whilst Tesco and the lpa do not agree over the level of population growth to be used to determine future retail capacity, it is clear from the various estimates of capacity and turnover of the proposed store that there is no urgent quantitative need up to and beyond 2021 (6.36, 8.49, 8.5 & 8.51).
- 12.29. Tesco suggest that there is a substantial qualitative need for additional convenience retail representation, the key elements of which are: that only 3 of the big 5 convenience retailers (Sainsbury's, Morrisons and Waitrose) are represented in Bath resulting in a lack of consumer choice, there is a relative deficiency in western Bath of main food shopping facilities and that the existing stores are over-trading. These are recognised by the Practice Guidance, paragraph 3.10, as factors frequently identified as supporting a qualitative need. The Practice Guide also indicates that qualitative need is also a *"more subjective concept"*. The Household Survey estimates of turnover suggest that the 4 existing main food shopping stores are overtrading (Tesco 6b page 11 Table 5.1). However, overtrading in terms of

turnover is only one part of the equation and whilst the survey suggests some dissatisfaction with the scale and quality of representation (CD2.6 Paragraph 4.51), my visits to the various stores before and during the Inquiry, it was not obvious that the other indicators of overtrading, i.e. crowded aisles and car parks and congestion at tills manifested themselves (8.49). Whilst it is an objective of national policy that there should be consumer choice and competition, there is nothing to suggest that every retail catchment area has to have all of the top 5 main food shopping retailers. Thus whilst there is some evidence of a qualitative need, I do not regard it as urgent and, as such, in terms of assessing the timescale over which a site might be considered as available, it is reasonable to look beyond the 5 years suggested by paragraph 6.39 of the Practice Guidance.

- 12.30. Paragraph 6.40 recognises that some major town centre schemes can take 10-15 years to deliver, and require the use of CPO. Here, given that the Homebase site forms part of BWR as shown in the LP and SPD and is a key element of the BWRE site referred to in the CS, where expansion of the city centre westwards is contemplated and promoted, it would be reasonable to look at availability in the longer term and given the nature and scale of The Central Area aspirations, I consider a period of between 10 to 15 years would not be unreasonable.
- 12.31. A substantial piece of the Homebase site is owned by British Land (Tesco 6J) and Homebase have a lease which expires in December 2020. The lpa suggests, based on correspondence from Homebase in January 2011, that it was willing to consider relocation to a site outside BWR subject to it being suitable and viable (6.37). However, a more recent letter from Homebase, December 2012, says that Homebase, *"...trades successfully from this location and wish to continue doing so and have a lease on the store which extends until 19<sup>th</sup> December 2020"* and that *"having regard to the advice in the National Planning Policy Framework (NPPF) and PPS4 Practice Guidance... the WRE site insofar as it comprises the Homebase store is not in our view clearly not "available"."* (Tesco 6C Appendix 6). It has been suggested that if Sainsbury's obtain planning permission for BWRE, and as the CS recognises that there are out-of-centre sites that might be suitable for uses relocating from BWR, commercial reality could mean that the Homebase site could potentially be available before 2020 (5.19).
- 12.32. Whilst there may be commercial benefits to both Homebase and the landowner for a relocation to occur significantly earlier than 2020 and the uncompromising tone of the December 2012 letter could be construed as commercial posturing, I agree with Tesco that any suggestion that the Homebase site could come forward earlier than December 2020 is speculative (5.19). That said, given my conclusion on what is a reasonable timescale to consider potential availability, I consider a site that would be available in December 2020 would meet the Practice Guidance and test relating to availability and would not be inconsistent with the Framework when taken as a whole.
- 12.33. Drawing all the above matters together, I conclude that the BWRE site is sequentially preferable to the appeal site.



## The Impact Test

- 12.34. Paragraph 26 of the Framework requires the decision maker to assess the impact of the proposal on (i) existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal, and (ii) the impact of the proposal on town centre vitality and viability including local consumer choice and trade in the town centre.

## Public and Private Investment

- 12.35. Paragraph 7.17 of the Practice Guidance says, "*Where the LPA and/or the private sector has identified town centre development opportunities and is actively progressing them, it will be highly material to assess the effects of proposals on that investment. Key considerations will include; stage at which the proposal has reached; the degree to which key developer/occupier interest is committed; and the level and significance of predicted direct and indirect impacts.*" In this aspect, the Practice Guidance is consistent with the emphasis set out in paragraph 23 of the Framework on ensuring that policies are in place to encourage the growth and expansion of centres.
- 12.36. Although the Sainsbury's mixed use proposal (8.2) for the BWRE site is at an early stage in the planning application process, Tesco acknowledged that it represents planned private investment (8.56). The scheme has been in development for some time and Sainsbury's have clearly invested significant sums in the planning application process (8.57). However, Sainsbury's do not own all of the land required for the development and at this stage there is no public indication of negotiations to obtain that land and no indication of potential occupiers for the office space and commercial units. Thus, in terms of the Homebase site, the Sainsbury's scheme is subject to the same constraint in that Homebase have a lease on the site until December 2020. Accordingly, looking at the key considerations identified in paragraph 7.17 of the Practice Guidance in terms of the stage at which the proposal has reached and the degree to which key developer/occupier interest is committed, then less weight would be attached to the impact on Sainsbury's plans.
- 12.37. Notwithstanding the above conclusion, considerable weight should be attached to the level and significance of predicted direct and indirect impacts of the Tesco scheme on the development plan and emerging development plan objectives for the city centre. Whilst, the Green Park Station site is currently an edge-of-centre site and the Homebase site is an out-of-centre site, given the clear and long-standing LP, SPD and emerging CS policies/strategy for the BWR and BWRE site in particular, in terms of expanding Bath city centre, interpreting the impact test in a way that would not protect planned investment in the growth or expansion of existing centres would be inconsistent with the sixth and seventh bullet points of paragraph 23 of the Framework. Indeed, paragraph 7.25 of the Practice Guidance makes clear that the impact a proposal may have on the planned expansion of a centre, "*the risk to the development plan strategy*" and the "*potential impact of operator demand or investor confidence*" should be "*overriding concerns*" when considering how to respond to an application that threatens a planned expansion.

- 12.38. Sainsbury's have indicated that should the Tesco scheme be permitted, its scheme would be unlikely to proceed (6.41, 8.57). Given the scale of the investment and the limited additional convenience goods capacity predicted in the period up to the mid-2020s, I consider this to be a distinct prospect. One of the key elements that would allow the Ipa's aspirations for the BWRE element of the BWR scheme and the westward expansion of the city centre to proceed is the relocation of the existing Sainsbury's store from the Green Park Station site to the Homebase site (4.14). If the Sainsbury's store remains, it would, in my view, have a significant constraining effect on the clear and longstanding development plan strategy to expand the city centre to the west. From my observations of the city centre and its environs there are no obvious opportunities to expand the city centre in any other direction. If the Sainsbury's store remains in its current position and it does not progress its current scheme, there is no indication that there are other developers who would be interested in progressing a similar scheme or that there would be the incentive to undertake the necessary planning to achieve the objective of city centre expansion desired by the Ipa.
- 12.39. The Green Park Station is an imposing and attractive building. Although it contains a number of retail and leisure units, it is an underused resource with the bulk of its space taken up by store car parking. The potential to make greater, more productive use of the building and its space thereby securing its long term future would be lost. Similarly, without the ability to develop complementary city centre type uses on the store site and the opportunity to create synergy and interest with and from the city centre to the Homebase site would be lost. Accordingly, the Tesco proposal would have a significant adverse impact on the expansion of the city centre by blocking the Sainsbury's scheme. Thus, in terms of the Practice Guidance tests at paragraph 7.17 the level and significance of the direct adverse impact of the Tesco scheme on the planned strategy for Bath city centre would be high.
- 12.40. In relation to the Co-op at MRDC, it has indicated this store is scheduled for refurbishment as part of its ongoing store investment programme, where it is rolling out a new shopping format into some 250 stores. The value of this refurbishment would exceed £1.1m and if the Tesco proposal is permitted then the investment in this store will not proceed. There is some force in Tesco's submission that such a strategy is inconsistent with the general approach that, when faced with additional competition, an operator invests so as to withstand the competition (5.25). However, this has to be viewed in the context of the Co-op's predicted trading position if the Tesco store opened. Based on the Household Survey, Tesco's estimates, that the Co-op would be trading at 49% of company average levels. The Co-op's own estimate, based on actual turnover for 2012, is a store trading at some 40% of benchmark. In my experience individual stores of the major convenience goods retailers, generally trade in a range of 50% to anywhere up to 200% of company benchmark turnover. However, given the level of performance predicted by the Co-op and in a situation where investment in stores has to be prioritised there must be a realistic prospect that the scheduled investment in the MRDC store could be diverted elsewhere (7.38). This would have an impact on consumer choice and the attractiveness of the centre.

## Vitality and Viability

- 12.41. It is common ground between the main parties that, having regard to the guidance at paragraph 26 of the Framework, the Tesco scheme would not have a significant adverse effect on the vitality and viability of the existing city centre (5.26, ID1.3 paragraph 7.2). I have no reason to disagree with that conclusion.
- 12.42. With some 60 units, MRDC has a range of convenience, comparison and service units which include a few national multiples; footfall appears steady and whilst there are vacancies and charity shops they do not individually or cumulatively dominate the centre. All these factors suggests that MRDC is a healthy and vibrant centre providing for the shopping and service needs of the surrounding community (5.28, 5.31). Both the LP and the CS recognise the importance and value of MRDC, placing it second in the shopping hierarchy after the city centre and listing it as the only District Centre in B&NES. Consistent with Framework guidance, one of the key objectives of local policy is the protection and enhancement of MRDC (4.3).
- 12.43. The description of the MRDC in the LP does not refer to the Co-op by name or refer to it as an anchor store. However, in my view, it is implicit that the LP regards the Co-op as the anchor store in the centre (4.4). Whilst competition from other retail developments in Bath has had a negative effect on the Co-op's turnover, i.e. reduced it to some £6.9m, it still amounts to twice as much as the remainder of the centre as a whole and almost 3 times that of the Sainsbury's Local, its nearest significant competitor (7.15). Albeit that basket sizes are smaller and visits are more frequent, the evidence suggests that the Co-op continues to play a significant role as a main food store and is the store where the majority of visitors to MRDC for main food shopping do their shopping. The Co-op indicates that some 52% of its trade comes from main food shopping and the company average for a store of this size is some 50.5% (CG 4C Appendix PN11). The Household Survey identifies that 74% of the Co-op's trade comes from main food shopping (6.42, 7.19-7.22). Moreover, with total weekly transactions of some 11,219, the Co-op attracts a significant number of shoppers to MRDC (7.16). Of these, the surveys indicate that some 77% to 80% visit other businesses in MRDC (6.42, 7.19). In this context, I consider that the Co-op store continues to be the anchor store for the MRDC and plays a significant role in maintaining its vitality and viability.
- 12.44. Whilst the scale of the Tesco and the Co-op would be materially different they are both main food shops and it is here where they would compete. Tesco anticipates that some 80% of its convenience turnover would be from main food shopping trips (6.42). I agree with the lpa that the fact that main food shoppers using the Co-op visit slightly more frequently, spend less per visit, and have a higher propensity to walk, than main food shoppers using larger foodstores, is most likely to be a function of the characteristics and personal circumstances of the shoppers, rather than the nature of the store itself. Given that the immediate catchment areas of the Co-op and the Tesco would overlap and contain a substantial population, I can see no reason why they should not shop in the same way at the Tesco store (Tesco 7F). Therefore, a significant proportion of these people undertaking a main food and a top up shop would transfer to Tesco from the Co-op and the

other stores in MRDC if it is more convenient for them to do so (6.43, 6.48, 6.49). Similarly, whilst the Tesco may be able to claw back convenience spending from larger stores outside Bath, I am not convinced that such claw back would bring any benefit to or mitigate the impact of the Tesco on MRDC (6.52). Given the separation between the Tesco site and MRDC at some 670m, the nature of the walking route and the convoluted nature of public transport links, I doubt whether the Tesco store has the potential to form meaningful linked trips to MRDC.

- 12.45. For the reasons set out by the Ipa (6.46 to 6.52) and including the fact that Tesco's estimates have been based on a turnover for the Co-op store derived from the Household Survey of some £7.8m, whereas the Co-op's actual turnover in 2012 was some £6.85m (7.26), I consider the impact Tesco predicts on the Co-op and MRDC to be an underestimate. In this regard, I consider the Ipa's estimate of some £2.3m<sup>139</sup> (6.46) and the Co-op's estimate of £3.25m to be more realistic. The key feature of this impact is that the store would trade at some 40% of company benchmark (7.27). Notwithstanding the significant impact on the store, the Co-op does not indicate it would close, although it has to be a possibility. As indicated earlier, in my experience individual stores of the major convenience goods retailers, generally trade in a range of 50% to anywhere up to 200% of company benchmark turnover. However, given the level of performance predicted by the Co-op, and in a situation where investment in stores has to be prioritised, there must be a realistic prospect that closure could be considered (7.38).
- 12.46. Closure would have a significant impact on the number of trips made to the centre from people who undertake main and top up food shopping at the Co-op; there would be a significant reduction in the level of choice consumers currently enjoy and one of the elements that underpinned the justification for the designation of Moorland Road as a District Centre would be lost. Even if the store did not close, because of the trade diverted, the effect would be far fewer people making trips to the Co-op and trips to the remainder of the centre. Either way the impact on the centre as a whole, particularly in the level of footfall that the other traders enjoy and rely on would be significantly and materially affected. Moreover, having regard to the submissions made by some of the traders, I have no doubt that concerns about the impact of the Tesco store has resulted in a significant degree of uncertainty and fear for the future (7.31, 9.13-9.18). In light of the above, I conclude that the proposed Tesco would have a significantly harmful impact on the vitality and viability of MRDC. This harmful impact would conflict with the objective of local and Framework policy which seeks to ensure the vitality and viability of town centres.

### Highway Considerations

- 12.47. Paragraph 32 of the Framework seeks to ensure that safe and suitable access can be achieved for all users. Decisions should take account of whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development.

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<sup>139</sup> Based on the Household Survey

Development should only be prevented or refused on transport grounds where the residual cumulative impacts of the development are severe.

- 12.48. For most of the day, the Lower Bristol Road/Windsor Bridge Road junction operates without significant delay. However, during the peak hours, the current junction operates beyond its capacity (6.54). On the west bound approach substantial queues of traffic turning right into Windsor Bridge Road form which, in turn, can block the west bound ahead traffic. Similar problems occur on the east bound approach with traffic turning left into Windsor Bridge Road. It is this congestion that the lpa's existing improvement scheme is designed to mitigate.
- 12.49. Tesco's assessment of the impact of the development on the operation of the junction with the development shows a PRC of -11.9% with a potential delay of some 89 seconds per PCU in the a.m. peak and a PRC of -16.2% and a delay of some 129 seconds per PCU in the evening peak. This is to be compared with the operation of the junction as improved under the lpa's current scheme. This would show a PRC of -7.6% with a potential delay of some 64 seconds per PCU in the a.m. peak and a PRC of -11.8% and a delay of some 82 seconds per PCU in the evening peak. The lpa submits that Tesco's assessment, on its own figures, demonstrates that the junction would, during the peak hours, operate well beyond its capacity and the residual cumulative impact would be severe, thus failing the test at paragraph 32 of the Framework. Moreover, the lpa suggest that the inputs used by Tesco in terms of trips rates, pass by rates, traffic growth and an allowance for the extant use of the site result in a very significant underestimate of the impact on the junction and the level of congestion and subsequent delay.
- 12.50. Whilst, the trip rates used by Tesco, in comparison to other developments in Bath, and its application of growth to the traffic figures suggest an element of safety, I do have concerns regarding the impact of the use of the 70% pass by figure and the allowance made for the extant use of the site. TRICS advice, which I have no reason to conclude does not remain relevant, suggests pass by rates of less than 50%. Here, whilst I acknowledge the particular local circumstances of Bath and the restrictions they place on the highway network, I am not convinced that the position of the site at the axis of 2 main routes, Lower Bristol Road and Windsor Bridge Road, justifies the use of a pass by rate as high as 70%. The impact of using a rate of 50%, which having regard to TRICS guidance appear reasonable, would give a PRC of -27.6% and a delay of some 217 seconds per PCU in the evening peak (6.76). In this context, the Tesco's impact of the proposal on the operation of the junction needs to be treated with caution.
- 12.51. In terms of the extant use of the site, I accept that the re-use of the site as a single large B2 user is unlikely and as such would not justify the low traffic generation figures suggested by the lpa (6.62). However, having visited the site and observed the configuration of the accesses and the nature of the building, I agree that the evidence to support the level of traffic activity suggested for the small B2 sector does not support the suggestion that there is a reasonable prospect of the existing building being used in this way (5.44, Tesco 7B paragraph 5.7.11, 6.63). This approach would over estimate the impact of the site on the existing network, when compared to

the post development situation. Whilst I accept that the use of SCOOT and the further works to this part of the highway network funded by the S106 UU could result in some benefits in terms of the operation of the junction (5.51) these have not been calculated. In these circumstances it is hard to conclude what level of mitigation they would have on the impact the development would have on the junction (6.75).

- 12.52. The Framework does not indicate what level of impact would fall within the realm of severe; that has to be judged on the particular circumstances of the local road network. However, I consider the comparison to the Lancaster situation, given that the estimated impacts were based on the use of TRICS data, LINSIG modelling and Temprow growth figures, similar to here, does provide a useful benchmark in assessing whether the residual impact on the highway network is severe. In this case, recognising the particular circumstances of Bath and, as a result, acknowledging that some congestion and delay at peak hours is inevitable (5.43) and treating the Tesco figures as a worst case, it strikes me that a PRC of -11.9% with a potential delay of some 89 seconds per PCU in the a.m. peak and a PRC of -16.2% and a delay of some 129 seconds per PCU in the evening peak would result in unacceptable congestion and would be a severe residual impact.
- 12.53. The LP requirement for car parking is a maximum figure (5.47). Having acknowledged that in comparison to other schemes, the trip rates used by Tesco appear reasonable, the suggested levels of car parking appears to be reasonable. As such the use of the car park and the potential for queuing at the entrance would not unacceptably affect the free flow of traffic on Brook Road.
- 12.54. Whilst the LPA accepted that several of its safety concerns regarding the layout and use of the junction were addressed by the revised layout, it maintained that the junction remained unsafe (6.77, LPA 4D paragraph 1.10 & ID1.5 Appendix D). These concerns relate to servicing for the public house and the alignment of the junction entrance and exit lanes. In terms of the public house and its servicing arrangements, there is a parking area to the rear and vehicular access from Brook Road. However, having observed the area it is clear that that few, if any, customer vehicles use this as a car park and the access is too narrow for a delivery vehicle to park off the highway. In these circumstances, the existing arrangements would continue and delivery vehicles would continue to park on the highway.
- 12.55. I agree with Tesco that whilst imperfect this is an accepted feature of many urban public houses, that the servicing plan for the store would allow for delivery vehicles to turn off the highway and the road where it approaches the junction would be wider. However, to achieve the realignment of the junction the stop line on Brook Road would be pulled back almost in line with the existing vehicular entrance to the public house. Delivery vehicles would have to occupy the area between the stop line and the entrance to the store car park blocking the left turn lane.
- 12.56. The straight ahead exit lane from Brook Road does not align with the entrance to Windsor Bridge Road. Indeed, vehicles are aligned towards the exit lanes from Windsor Bridge Road. A similar situation, albeit to a lesser extent, would occur with the west bound straight ahead lane on Lower

Bristol Road. In both cases vehicles would need to move to the left, and in the case of the Brook Road exit move significantly to the left, to align themselves correctly to exit the junctions. I accept this is not an unusual manoeuvre at many urban junctions and the existing lpa improvement scheme requires similar manoeuvres but not to the same degree. Here, given the severity of the Brook Road exit/Windsor Bridge Road entrance alignment, I consider there is the unacceptable potential for “side-swipe” incidents.

- 12.57. These issues and the need for a planning condition to ensure that large delivery vehicles do not undertake the left turn out of Brook Road (5.48, 6.77) when taken together with the concerns regarding the operation of the junction during the peak hour indicate that the operation of the junction with the proposed development would result in a severe and unacceptable residual impact on the operation of the highway network, contrary to the objectives of paragraph 32 of the Framework.

### **Other Considerations**

- 12.58. As a World Heritage Site, the City of Bath is a heritage asset of considerable local, national and international significance and as the Framework indicates its conservation attracts significant weight. The Bath Press building is, however, of very limited visual and historic significance, largely only to those who had connections with its former operation by Pitman. In terms of its contribution to the street scene, it is the eastern part of the Lower Bristol Road façade that has any significance, which, in itself, is limited. The proposed scheme would retain this façade and link it into the new building. In terms of the overall design of the building, whilst modern, it is consistent with the general style and scale of buildings in the immediate area. In this context, the proposal would conserve the significance of the World Heritage Site and retain and enhance the one key element of the building that is of local significance.

### **Air Quality**

- 12.59. Although, not a reason for refusal, the lpa suggests that the concerns regarding congestion and the potential for Tesco underestimating the impact of traffic generation on congestion would exacerbate existing problems in the area. The Lower Bristol Road falls within an Air Quality Management Area where the objective is to reduce pollutant concentrations and the lpa links high levels of pollution with congestion (4.9, 6.80). Several local residents and local interest groups spoke passionately about the effect of existing levels of air pollution at Lower Bristol Road and the junction with Windsor Bridge Road and their concerns that the development would unacceptably exacerbate this problem (9.7, 9.21, 10.1 & 10.2).
- 12.60. The impact of the development on air quality was assessed as part of the ES on best and worst case scenarios both for the development alone and cumulatively with the BWR development (CD2.15 Appendix B). In terms of Nitrogen Dioxide for both the individual and cumulative developments, and on the basis of treating the best case scenario as overly optimistic and the worst case scenario as unlikely to be achieved, the assessment concluded that there would be slight to moderate adverse impacts at receptors on Lower Bristol Road and in South View Road; the residential area to the rear.

- 12.61. Impacts on air quality relating to construction and in terms of the operation of the store and deliveries could be acceptably controlled by condition which would mitigate some of the impact. However, given the concerns regarding the operation of the junction and the potential for increased congestion, there is the potential for an adverse impact on local air quality. Whilst on its own, it would not be a reason to dismiss this appeal, I consider it adds to the general overall concern regarding the impact of the development.

#### Benefits of the Scheme

- 12.62. Whilst there may be some doubt over the attractiveness of the development/site as "Paintworks" type development, the planning conditions would ensure that the industrial/office units were in place before the store opened and in this situation there would be every incentive for Tesco to ensure the units were marketed appropriately. Thus, the proposed scheme would bring substantial benefits in relation to projected creation of some 600 plus jobs the retailing, office and industrial sectors of this significant mixed use scheme. A substantial job creator providing a range of employment opportunities in an area where there are high levels of unemployment and deprivation and is a benefit that I attach significant weight to (5.5, 5.6, 6.81).
- 12.63. The building has been vacant for some time and whilst it is not derelict, it has significant adverse visual impact on the area and the approach to Bath. It is clear that whilst some residents do not find the proposed scheme acceptable they do acknowledge that the existing building adds little to the area. Whilst elements of the scheme are subject to criticism by individuals and local civic bodies, it would bring about a substantial visual improvement to the Lower Bristol Road area and although not in the BWR area contribute to the ongoing redevelopment and improvement of the wider area. Although a small contribution, the scheme would provide some historical interpretation of the history of the site, provide additional residential accommodation of which part would be available as affordable housing. Similarly, the S106 UU provides a substantial financial sum that would be available to the Council to undertake further improvements to Lower Bristol Road particularly in terms of easing the convenience of public transport, which would contribute to the objective of reducing air pollution (5.51, 4.9). These also add weight in support of the scheme.

#### **Planning Conditions, S106 Agreement and Unilateral Undertaking**

##### Planning Conditions

- 12.64. The list of SCs, which were discussed in detail at the Inquiry and agreed between the lpa and the appellant, are contained at Document ID1.6 and discussed at paragraphs 11.1 to 6 of this report. Where necessary and in the interests of precision and enforceability, I have added to and reworded some of the suggested conditions. The Proposed Planning Conditions are set out in Appendix A and their numbering differs from those contained in Document ID1.6 and in paragraphs 11.1 to 11.6 because I have inserted, at PC 2, a condition requiring the development to be carried out in accordance with the approved plans. This condition is necessary to accord with guidance contained in DCLG Guidance, Greater Flexibility for Planning Permissions (November 2009).



## Section 106 Agreement and Unilateral Undertaking

- 12.65. The Framework and CIL Regulation 122 provides that it would be unlawful for a planning obligation to be taken into account in a planning decision if the obligation does not meet all of the following tests: it is necessary to make the development acceptable in planning terms; it directly relates to the development; and, it is fairly and reasonably related in scale and kind to the development.

### S106 Agreement

- 12.66. I consider the S106 is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. I consider the submitted S106 accords with the tests set out in The Framework and CIL Regulation 122 and as such weight can be attached to its provisions.
- 12.67. The S106 Agreement (ID7 & 11.9 to 11) was submitted as a conjoined Agreement. Counterpart planning obligations are legal documents identical in all respects except that each is signed by a different party or parties. This arrangement may be suitable in conveyancing, where counterpart documents are signed by the respective parties and then exchanged. However, such an approach is not usually appropriate to planning obligations, since they are public law documents entered on the planning register and the local land charges and as such one single executed document is sought. However, in this case, the Ipa and Tesco are content to proceed with a Counterpart Agreement, the individually signed parts are "conformed" within one document and the Agreement itself contains a Clause (19) allowing for the Agreement to be executed in a number of counterparts. In light of these matters, I consider an exception to the above practice can be made. Should the SoS disagree with my conclusion on the acceptability of a Conformed Agreement and my recommendation on the acceptability of the Tesco scheme, it is open to him to require a single Agreement to be engrossed before planning permission is granted.

### S106 Unilateral Undertaking

- 12.68. Whilst Tesco accept the need to make a financial contribution in relation to highways, the difference between the Ipa and Tesco relates to the number of trips the development would generate. The 2 key areas relate to new trips generated by the new development and the allowance made for trips that would have come from the existing uses on the site. Whilst I have concluded that the likely trips generated by the new development would be reasonable I consider the trips from the existing development used by Tesco would be an overestimate. Thus I see no reason why the figure to be used in the calculation should be different from that set out in the Obligations SPD. This results in a potential underpayment on the highway contribution. Moreover, the Undertaking as it stands does not provide for indexing of the sum as is unusual in such cases. This is particularly important in this case, given that the development would not be open for use until the Windsor Bridge Gas Holder Station had been permanently decommissioned. On its own it is not a fatal flaw and the SoS found the development acceptable, Tesco could be given the opportunity to revise the Undertaking.

## Overall Conclusions

- 12.69. The Bath Press site is an out-of-centre site and, having regard to the lpa's strategy as expressed in the LP and adopted BWR SPD and the direction of travel of emerging CS policy, the BWRE site whether it is considered edge-of-centre or out-of-centre is a sequentially preferable site for the retail element of the Tesco proposal. Accordingly, the Tesco scheme would conflict with the objectives of LP Policy S4 (where it remains consistent with the Framework), emerging CS Policy CP12 and paragraph 24 of the Framework. On impact, the Tesco proposal would have a significant adverse impact on planned public and private investment in terms of the promotion and development of the lpa's long standing strategy for BWR and private investment by the Co-op in its store at MRDC. In addition, through a reduction in linked trips from and consequent footfall within MRDC, I conclude the proposal would have a significant adverse effect on the vitality and viability of MRDC as a whole. In these circumstances, the proposal would conflict with the objectives of LP Policies S.1, S.4 and GDS.1 B1, the objectives of the adopted BWR SPD and emerging CS Policies B1 and CP12. LP Policy S4 (where it remains consistent with the Framework), and paragraph 26 of the Framework.
- 12.70. In terms of the impact on highways, the proposed scheme would have an unacceptable impact on the safety and operation of the Lower Bristol Road/Windsor Bridge Road junction. As such the development would conflict with LP Policies T.1, 3, 3, 5, 16 and 24. In this context the proposal would conflict with the guidance contained at paragraph 32 of the Framework, which indicates that development should only be refused where the residual cumulative impacts of development are severe.
- 12.71. The proposal would result in significant employment and environmental gains in terms of the regeneration of an underused and unattractive site in a prominent location, along with benefits relating to affordable housing and transport contributions. However, these matters do not outweigh the substantial harm that would be caused in terms of retail and highway considerations and the conflict with local and national policy. Moreover, in relation to retail considerations on their own, paragraph 27 of the Framework is very clear in that it indicates unequivocally that where a proposal fails to satisfy the sequential test or is likely to have a significant adverse effect on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal and town centre vitality and viability would be harmed, including local consumer choice and trade it should be refused.
- 12.72. I conclude that the appeal should be dismissed. Should the SoS disagree with my conclusions the Planning Conditions contained in Annex A should be imposed for the reasons set out in Document ID1.6.

## Recommendation

- 12.73. I recommend that the appeal be dismissed.

*George Baird*

## **ANNEX A - SUGGESTED CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with Drawing Nos. PN0500 aerial photo; PN0501 existing site plan; PN0502 proposed context plan; PN0503 proposed site plan; PN0504 proposed site plan & Bath Western Riverside; PN0505 existing context plan; PN2009 basement level; PN2010 masterplan ground floor level; PN2011 masterplan first floor level; PN2012 masterplan second floor level; PN2013 masterplan roof level; PN2110 masterplan site elevations; PN2121 masterplan street elevations; PN2122 masterplan public square elevations; PN2123 masterplan rear elevations; PN2124 walkway elevations; PN2200 existing & long section; PN2201 short sections 2 & 3; PN2202 short sections d & e; PN2610 workshop building detailed bay; PN2620 office building typical detail sheet 1; PN2621 office building typical detail sheet 2; PN2630 residential terrace detailed bay; PN2640 façade retention detail; 4664/001 REV P landscape masterplan; 4664/002 REV K public realm detail, Brook Road; 4664/003 REV I public realm detail – Dorset Close; 4664/004 REV H public realm detail – Pitman Square; 4664/005 REV I residential car park detail; 011 02 topographic survey 4 sheets of 4; 030 02 elevation surveys 040; 01 sections: 0059/GA/01 REV D Proposed Junction Improvement Scheme.
3. Prior to commencement of any development at the site details of air quality mitigation measures shall be submitted to and approved in writing by the local planning authority. These shall include the provision of electric vehicle charging facilities and measures to reduce emissions from the retail store's distribution activities. The agreed measures shall be implemented prior to the first opening of the retail store and continued thereafter.
4. Prior to the commencement of development an investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include:
  - (a) a survey of the extent, scale and nature of contamination;
  - (b) an assessment of the potential risks to:
  - (c) human health,
  - (d) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
  - (e) adjoining land,
  - (f) ground waters and surface waters,
  - (g) ecological systems,
  - (h) archaeological sites and ancient monuments;
  - (i) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency "Model Procedures for the Management of Land Contamination, CLR 11". The scheme shall be submitted to and approved in writing by the local planning authority and the development shall not be carried out other than in accordance with the approved scheme.

5. Prior to the commencement of development a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
6. The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given 2 weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority. The development shall not be brought into use prior to the approval of the verification report.
7. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme must be prepared which is subject to the approval in writing of the local planning authority. The development shall not be brought into use prior to the approval of the verification report. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority.
8. Prior to the commencement of any development a method statement for the demolition of the existing building and basement, including details of the retained façade, shall be submitted to and approved by the local planning authority. Demolition shall be carried out in accordance with the approved scheme.
9. Noise from plant associated with the development shall not exceed 32 dB LAeq, 15min (07:00h-23:00h) and 19 dB LAeq, 5min (23:00h-07:00h) 1m from any window on the most exposed façade of Southview Road, Bath and 29 dB LAeq, 15min (07:00h-23:00h) and 20 dB LAeq, 5min (23:00h-07:00h) 1m from any window on the most exposed façade of Denmark Road, Bath.

10. No development shall commence until details of a hard and soft landscape scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include details of all walls, fences, trees, hedgerows and other planting which are to be retained; details of all new walls, fences and other boundary treatment and finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the surface treatment of the open parts of the site; and a programme of implementation.
11. All hard and soft landscape works shall be carried out in accordance with the approved details submitted in accordance with condition 10. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority. Any trees or plants indicated on the approved scheme which, within a period of 5 years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the local planning authority. All hard landscape works shall be permanently retained in accordance with the approved details.
12. No development shall commence at the site until samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
13. No removal of nesting birds shall take place between 1 March and 31 August unless a survey to assess nesting activity on the site during this period and a scheme to protect the birds has been submitted to and approved in writing by the local planning authority. All work shall be undertaken in accordance with the approved scheme.
14. No development shall commence on site until details of the measures to control roof top nesting (by gulls) have been submitted to and approved in writing by the local planning authority. The agreed measures shall be fully installed before first use of any of the development and retained thereafter.
15. No development shall take place until full details of a Wildlife Protection and Enhancement Scheme have been submitted to and approved in writing by the local planning authority. These details shall include:
  - (i) provision of full details of all measures recommended in sections 6.4.6 to 6.4.12, and section 6.6 of Appendix G of the Environmental Assessment;
  - (ii) provision of details of the lighting scheme demonstrating how it is compliant with requirements for bats;
  - (iii) provision of other details to enhance the site for wildlife.

All works within the scheme shall be carried out in accordance with the approved details prior to the occupation of any part of the development, unless otherwise approved in writing by the Local planning authority.

16. No development shall commence on site until a surface water run-off limitation scheme has been submitted to, and approved in writing by the local planning authority. The submitted scheme shall include details of the intended future ownership and maintenance provision for all of the drainage works serving the site. The approved scheme shall be implemented in accordance with the approved programme and details.
17. Prior to the first use of the development an external lighting scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall demonstrate compliance with the Institute of Lighting Engineers Guidance Notes for the Reduction of Obtrusive Lights (2005) for external lighting in town/city centres (Environmental Zone E4). The scheme shall include:
  - a) Details of the orientation, height and design of the lighting scheme for the car park, store building, access roads, public square and delivery area;
  - b) Measures to reduce light spillage beyond the site boundary.

Upon approval in writing, the details shall be implemented and the development thereafter operated in accordance with the approved details.

18. No external lighting on the site shall be illuminated outside the hours of 06:00 and midnight each day on Mondays to Saturdays and 10:00h and 16:00h on Sundays, other than a scheme of limited street and security lighting. Details of the lighting scheme shall be submitted to and approved in writing by the Local planning authority prior to the first use of the development. The development thereafter shall be operated in accordance with the approved details.
19. The development hereby permitted shall not be occupied until the proposed signal controlled junction of Lower Bristol Road/Brook Road and Windsor Bridge Road has been installed and is operating in accordance with details submitted to and approved by the local planning authority.
20. Prior to the first use of the development a car parking management plan shall be submitted to and agreed in writing with the local planning authority. The plan shall include details of any proposed charging and/or enforcement regimes for the basement car park, on-street parking within Dorset Close and replacement parking for the residents in South View Road. These parking areas shall be operated in accordance with the approved plan unless otherwise agreed in writing with the local planning authority.
21. Prior to the first use of any of the buildings on site a Travel Plan shall have been submitted to and approved in writing by the local planning authority. The development shall thereafter be operated in accordance with the approved Travel Plan.
22. Prior to the commencement of the development a Construction Management Plan shall be submitted to and approved in writing by the local planning authority. The plan shall include details of the proposed method of demolition, site clearance deliveries (including storage arrangements and timings), contractor parking and traffic management. The development shall be carried out in accordance with the approved plan.

23. Prior to the commencement of development a Delivery Management Plan shall be submitted to and approved in writing by the local planning authority. The plan shall include:
- (i) provision for the loading and unloading of all delivery vehicles associated with the retail store and commercial buildings;
  - (ii) a delivery routing plan in relation to all delivery vehicles associated with the retail store;
  - (iii) turning provision for delivery vehicles servicing the public house located at the corner of Brook Road and Lower Bristol Road, with such provision being limited to the time that the building remains in operation as a public house.

The development shall thereafter be operated in accordance with the approved Delivery Management Plan.

24. The car parking area adjacent to South View Road will be laid out as shown in Aspect drawing 4664/005 REV I and made available prior to the first occupation of any of the buildings at the site. The spaces will thereafter be made available for parking by residents of South View Road who used to park within the Bath Press site in accordance with details to be submitted to and approved in writing by the local planning authority.
25. No development shall commence until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has first been submitted to and approved in writing by the local planning authority. The programme of archaeological work should provide a field evaluation of the site to determine date, extent, and significance of any archaeological deposits or features, and shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.
26. No development shall commence until the applicant, or their agents or successors in title, has presented the results of the archaeological field evaluation to the local planning authority, and has secured the implementation of a subsequent programme of archaeological work in accordance with a written scheme of investigation which has first been agreed and approved in writing by the local planning authority. The agreed programme of archaeological work shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.
27. The development shall not be brought into use or occupied until the applicant, or their agents or successors in title, has secured the implementation of a programme of post-excavation analysis in accordance with a publication plan which has been submitted to and approved in writing by the local planning authority. The programme of post-excavation analysis shall be carried out by a competent person(s) and completed in accordance with the approved.
28. Prior to the commencement of development at the site a scheme of public art shall be submitted to and approved in writing by the local planning authority.

The scheme shall incorporate works to the Lower Bristol Road elevation of the food store, which reflects the Pitman Shorthand system.

29. Prior to the first occupation of any of the buildings at the site a scheme to reflect the heritage of the site, including the naming of areas within the development and measures to show and make accessible to the public the industrial history and national importance of this history shall be submitted to and approved by the local planning authority in writing. The agreed scheme shall be implemented before any of the development is first brought into use.
30. The employment space hereby permitted shall comprise 4,580 sq. m (gross) of creative work space and 2,610 sq. m (gross) of office space, unless otherwise agreed in writing with the local planning authority.
31. The retail store hereby permitted shall only provide a maximum of 6,300 sq. m of gross floor space unless otherwise agreed in writing with the local planning authority.
32. The net sales area of the retail store hereby approved (i.e. the net floor area to be used for the retail sale of goods, checkouts and lobbies), shall be no more than 3,983 sq. m. The net floorspace to be used for the sale of convenience goods shall not exceed 2,900 sq. m, and the net area to be used for the sale of comparison goods shall not exceed 1,200 sq. m. There shall be no sub-division of the sales floor, nor provision of any of the following in-store facilities: (a) post office, (b) optician, (c) dry cleaner, (d) pharmacy and (e) photo processing.
33. The retail unit shall not open for trade and no buildings on the site shall be occupied until the Windsor Gas Holder Station has been permanently decommissioned and the hazardous substances consent applicable to the 3 gasholders has been revoked. It shall be confirmed in writing to the local planning authority that the decommissioning work has been completed and the hazardous substances consent revoked prior to the first opening of the retail store.
34. The retail use hereby approved shall not be open to members of the public and no customers shall be served on the premises outside the hours of 0:600 - midnight Monday to Saturday and 10:00 – 17:00 on Sundays.
35. No development shall commence until a scheme for treating fumes and odours from the retail store, has been submitted to and approved in writing by the local planning authority. The scheme shall detail the means of treating the fumes and odours to render them innocuous before their emission to the atmosphere. The agreed scheme shall be installed and operational before the retail store is first opened and permanently maintained as such thereafter.
36. Prior to the commencement of any development at the site details of measures to reduce crime at the site shall be submitted to and agreed with the local planning authority. Those works shall be fully implemented prior to the first occupation of the site or other timescale agreed in writing with the local planning authority.



## **ANNEX B - APPEARANCES**

### **FOR TESCO STORES LIMITED**

Patrick Clarkson QC instructed by Berwin Leighton Paisner LLP.

He called:

Ann Bartaby BSc (Hons), Dip TP, MRTPI, FRGS.  
Director, Terence O'Rourke.

Simon Price BSc (Hons) MRICS, FFB.  
Partner, Alder King Property Consultants.

Steven Butterworth BA (Hons), BPI, MRTPI.  
Director, Nathaniel Lichfield & Partners.

Brian Plumb BSc (Hons), CEng, MICE, MCIHT.  
Director, WSP (UK).

### **FOR BATH AND NORTH EAST SOMERSET COUNCIL**

Neil King QC instructed by the Divisional Director of Legal & Democratic Services.

He called:

Matthew Morris BSc (Hons), Dip TP, MRTPI.  
Director, GVA.

Matthew Langdon MSc, DML, CMILT.  
Senior Engineer, B&NES.

Rab Smith BSc (Hons), MSc, DML, CILT, MIHT.  
Team Leader, B&NES Transportation Planning.

Sarah James BA (Hons), MA, MRTPI.  
Senior Planning Officer, B&NES Development Management.

### **FOR THE CO-OPERATIVE ESTATES**

Roger Lancaster of Counsel, instructed by Barton Willmore LLP.

He Called:

Paul Newton BA (Hons), Dip TP, MRTPI.  
Partner, Barton Willmore LLP.

## **FOR SAINSBURY'S SUPERMARKETS LIMITED**

Satnam Choongh of Counsel instructed by CMS Cameron McKenna LLP.

He called:

Amanda Reynolds BArch, MA UD (Dist.) RIBA, UDG.  
Director, AR Urbanism.

Nick Bradshaw  
Director, Connect Consultants.

Chris Hayes MRTPI.  
Associate Director, WYG Planning and Environment.

John Mulholland BSc, FRICS.  
National Director, Jones Lang LaSalle.

## **INTERESTED PERSONS**

Mr H Jones, Director of Estates & Facilities Royal United Hospital, Bath.

Mr R Davies.

Mr J Lucas

Mr Rotherham, Federation of Bath Residents' Associations.

Ms A Robinson.

Mr R Cook.

Mrs J Jones.

Mr C Parker.

Ms C Condon, Moorland Road Traders Association.

Mr H Wainwright, Moorland Road Traders Association.

Mr M Stewart.

Cllr. J Player, Westmoreland Ward.

Mr J Moran.

Mr D Regwell, South West Transport Network.

Ms R Potter.

## **ANNEX C - DOCUMENTS**

### **GENERAL INQUIRY DOCUMENTS**

- ID1.1 - General Planning Statement of Common Ground.
- ID1.2 - First Highway & Transportation Statement of Common Ground.
- ID1.3 - Retail Matters Statement of Common Ground.
- ID1.4 - Bath Business Space Market Statement of Common Ground.
- ID1.5 - Second Highway & Transportation Statement of Common Ground.
- ID1.6 - List of Suggested Conditions.
- I.D1.1 - Certified Copy of a Conjoined S106 Agreement between by Tesco Stores Limited and Bath & North East Somerset Council.
- ID1.8 - Certified Copy of a S106 Unilateral Undertaking submitted by Tesco Stores Limited.
- ID1.9 - Notes of the Pre-Inquiry Meeting.
- ID1.10 - A3 Booklet of Application Plans.

### **TESCO STORES LIMITED**

#### **General Documents**

- TESCO GD1 - Statement of Case.
- TESCO GD2 - Opening Statement.
- TESCO GD3 - Closing Statement.
- TESCO GD4 - Briefing Note re UU and Section 106 Agreement.

#### **Ms Bartaby**

- TESCO 4A - Summary Proof of Evidence.
- TESCO 4B - Proof of Evidence.
- TESCO 4C - Appendices 1 to 8.

#### **Mr Price**

- TESCO 5A - Summary Proof of Evidence
- TESCO 5B - Proof of Evidence.
- TESCO 5C - Appendices 1 to 7.
- TESCO 5D - Rebuttal Proof of Evidence.

#### **Mr Butterworth**

- TESCO 6A - Summary Proof of Evidence.
- TESCO 6B - Proof of Evidence.
- TESCO 6C - Appendices 1 to 8.
- TESCO 6D - Rebuttal Proof of Evidence.
- TESCO 6E - Request for Additional Information.
- TESCO 6F - Response for Additional Linked Trips Information.
- TESCO 6G - Plan A7 Rev A Sequential Sites Walking Distances.
- TESCO 6I - Appeal Decision Telford Forge Retail Park  
APP/C3240/A/2172756 & 2172761
- TESCO 6J - Sainsbury's Land Ownership – Green Park.

### **Mr Plumb**

- TESCO 7A - Summary Proof of Evidence.
- TESCO 7B - Proof of Evidence.
- TESCO 7C - Appendices A to R.
- TESCO 7D - Rebuttal Proof of Evidence.
- TESCO 7E - Extract (Page 51) from SKM Transport Assessment Nov 2011.
- TESCO 7F - 10 Minute Walk Catchments.

### **BATH & NORTH EAST SOMERSET COUNCIL**

#### **General Documents**

- LPA 1 - Statement of Case.
- LPA 2 - Opening Statement.
- LPA 3 - Closing Statement.

### **Mr Langdon**

- LPA 4A - Summary Proof of Evidence.
- LPA 4B - Proof of Evidence.
- LPA 4C - Appendices 1 to 8 & Refs 1 to 4.
- LPA 4D - Revised Summary Note.
- LPA 4E - DRRB TA 86/03 Extract - Layout of Large Signal Controlled Junctions.

### **Mr Smith**

- LPA 5A - Summary Proof of Evidence.
- LPA 5B - Proof of Evidence.
- LPA 5C - Appendices 1 to 8.
- LPA 5D - Update Note Key Issues.
- LPA 5E - Extract from the COBA Manual.
- LPA 5F - TRICS Research Report 95/2.

### **Mr Morris**

- LPA 6A - Summary Proof of Evidence.
- LPA 6B - Proof of Evidence.
- LPA 6C - Appendices 1 to 7.
- LPA 6D - Rebuttal Proof of Evidence.
- LPA 6E - Case No [2013] EWHC 1638 (Admin) Borough of Telford & Wrekin, St Modwen Developments Limited and Secretary of State for Communities & Local Government and Ravenhill Limited, David John Tringham.
- LPA 6F - ID/32 B&NES Core Strategy Examination Inspector's Note.
- LPA 6G - Appeal Decision, APP/A2335/A/11/2155529. West of Scotforth Road, Scotforth, Lancaster.
- LPA 6H - Table 21b Cumulative Impact of Convenience Floorspace Commitments & Tesco Store.
- LPA 6I - Retail Opportunities Appraisal October 2004.

### **Ms James**

- LPA 7A - Summary Proof of Evidence.
- LPA 7B - Proof of Evidence.
- LPA 7C - Appendices 1 to 13.
- LPA 7D - Planning Applications Chronology.
- LPA 7E - ID/30 B&NES Core Strategy Examination Inspector's Note.
- LPA 7F - Blank
- LPA 7G - Note on Core Strategy Policy B3.

### **THE CO-OPERATIVE ESTATES**

#### **General Documents**

- CG 1 - Statement of Case.
- CG 2 - Opening Statement.
- CG 3 - Closing Statement.

### **Mr Newton**

- CG 4A - Summary Proof of Evidence.
- CG 4B - Proof of Evidence.
- CG 4C - Appendices 1 to 11.

### **SAINSBURY'S STORES LIMITED**

#### **General Documents**

- SSL GD1 - Statement of Case.
- SSL GD2 - Opening Statement.
- SSL GD3 - Homebase (British Land) site at Bath Western Riverside.
- SSL GD4 - APP/P4605/A/12/2187738 Land at Pershore Road, Stinchley.
- SSL GD5 - Closing Statement.

### **Mr Hay**

- SSL 4A - Summary Proof of Evidence.
- SSL 4B - Proof of Evidence.
- SSL 4C - Appendices 1 to 6.

### **Mr Bradshaw**

- SSL 5A - Summary Proof of Evidence.
- SSL 5B - Proof of Evidence.
- SSL 5C - Appendices 1 to 14.

### **Ms Reynolds**

- SSL 6A - Summary Proof of Evidence.
- SSL 6B - Proof of Evidence.
- SSL 6C - Appendices 6.1 to 6.4.
- SSL 6D- Sainsbury's Bath Riverside East Design & Access Statement.

## **Mr Mulholland**

- SSL 7A - Summary Proof of Evidence.
- SSL 7B - Proof of Evidence.
- SSL 7C - Appendices 1 to 15.

## **INTERESTED PERSONS**

- IP1 - Mr H Jones, Director of Estates & Facilities Royal United Hospital, Bath.
- IP2 - Mr R Davies.
- IP3 - Mr J Lucas.
- IP4 - Mr Rotherham, Federation of Bath Residents' Associations.
- IP5 - Ms A Robinson.
- IP6 - Mr R Cook.
- IP7 - Mrs J Jones.
- IP8 - Mr C Parker.
- IP9 - Ms C Condon, Moorland Road Traders Association.
- IP10 - Mr H Wainwright, Moorland Road, Traders Association.
- IP11 - Mr M Stewart.
- IP12 - Ms R Potter.
- IP13 - Cllr. J Player, Westmoreland Ward.
- IP14 - Mr J Moran.
- IP15 - Mr D Regwell, South West Transport Network.
- IP16 - Ms K Duce.
- IP17 - Ms P Cox.
- IP18 - Mr J Chapman.
- IP19 - Mr P Cousins & Ms J Wilson.
- IP20 - Mr M Cook.
- IP21 - Mr V Baughan.
- IP22 - Mr D Lovelace.
- IP23 - Ms H Cameron.
- IP24 - Mr D Snook.
- IP25 - Ms J Allott.
- IP26 - Mr & Mrs Stewart.
- IP27 - Ms K Smith.

## **Core Documents**

- CD1.1 Letter from BLP to PINS
- CD1.2 Appeal application form
- CD1.3 Grounds of appeal
- CD1.4 B&NES decision notice
- CD1.5 List of drawings and supporting documents
  
- CD2.1 Planning application cover letter and form
- CD2.2 Planning drawings
- CD2.3 Building condition and repair schedule
- CD2.4 Design and access statement
- CD2.5 Environmental sustainability review
- CD2.6 Town centre and retail statement
- CD2.7 Historic appraisal
- CD2.8 Statement of community engagement

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CD2.9	Arboricultural survey
CD2.10	Environmental non-technical summary
CD2.11	Site statutory utility services investigations
CD2.12	Framework Travel plan
CD2.13	Flood risk assessment
CD2.14	Planning and regeneration statement
CD2.15	Environmental statement
CD2.16	Allegra 2012 NLP commissioned Household Survey
CD2.17	Transport Assessment Report
CD3.1	First supplementary transport assessment
CD3.2	Second supplementary transport assessment
CD3.3	Jubb drainage response
CD3.4	Regeneration benefits statement
CD3.5	General correspondence with B&NES
CD4.1	Third party consultation responses to the appeal
CD5.1	B&NES development control committee report
CD5.2	B&NES development control committee report
CD5.3	B&NES special Council Meeting – Core Strategy
CD5.4	B&NES cabinet report
CD5.5	B&NES development control committee report for Sainsbury's Odd Down
CD5.6	B&NES development control committee report for Sainsbury's Green Park
CD5.7	B&NES development control committee report for Bath Press 10/03380/EFUL
CD6.1	B&NES Local Plan 2007
CD6.2	B&NES Draft Core Strategy
CD6.3	Proposed changes to B&NES submitted Core Strategy
CD6.4	Inspector's Notes (Core Strategy examination)
CD7.1	B&NES Planning obligations (SPD)
CD7.2	B&NES Bath Western Riverside SPD
CD8.1	Bath economic regeneration delivery plan
CD8.2	B&NES treasure and transform
CD8.3	West of England local economic assessment
CD8.4	DTZ/Urban Practitioners Retail Strategy: Evidence and Recommendations to B&NES
CD8.5	Economic strategy for B&NES
CD8.6	GVA Retail Floorspace Quantitative Need Assessment Update 2011
CD8.7	B&NES Public Realm Strategy
CD8.8	WoE 3rd Joint Local Transport Plan 2011-2026
CD8.9	B&NES Urban Design document: 'Creating the Canvas for Public Life in Bath'
CD8.10	Bath Air Quality Action Plan (adopted)
CD8.11	BWR East / Green Park Station, Bath – Urban design led review
CD9.1	Regional Planning Guidance for the South West (RPG10)
CD9.2	North Somerset Joint replacement structure plan (saved policies)

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CD10.1	National Planning Policy Framework
CD10.2	Planning for Town Centres Practice Guidance
CD11.1	Autumn Budget Statement
CD11.2	Measures to reduce bureaucratic barriers to growth and infrastructure (Growth and Infrastructure Bill)
CD11.3	DfT "Guidance on Local Transport Plans"
CD11.4	Transport White Paper "Creating Growth, Cutting Carbon: making sustainable local transport happen" January 2011
CD12.1	11/95 Use of conditions in planning permission
CD13.1	GVA Assessment of Retail Planning Policy
CD13.2	WYG letter of objection on behalf of Sainsbury's
CD13.3	RTP letter of objection on behalf of Co-op
CD13.4	NLP Briefing Note
CD13.5	GVA response to NLP Briefing Note
CD13.6	GR Planning letter and email about Homebase
CD13.7	GVA letter providing additional advice
CD13.8	NLP response to Homebase and GVA
CD13.9	GLH Retail Assessment
CD13.10	GVA Assessment of Retail Planning Policy (Supermarket Proposals)
CD13.11	WYG letter of objection on behalf of Sainsbury's
CD13.12	WYG PPS4 Assessment
CD13.13	RTP letter of objection on behalf of Co-op
CD13.14	RTP letter of objection on behalf of Co-op
CD13.15	GVA advice on Green Park and Bath Press
CD13.16	WYG letter of objection and NEMS 2011 Household Survey
CD13.17	GVA prepared Lidl Retail Assessment
CD13.18	Dundee Supreme Court judgment
CD14.1	TD50/4 Geometric layout of signal controlled junctions and signalised roundabouts.





## Department for Communities and Local Government

### **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 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**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of the Inspector's report of the inquiry or hearing within 6 weeks of 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.