



Ministry of Housing,  
Communities &  
Local Government

Mr Keith Jones  
JLL  
One Piccadilly Gardens  
Manchester  
M1 1RG

Our refs: APP/R0660/V/17/3179610  
APP/R0660/V/17/3179605  
APP/R0660/V/17/3179609  
Your ref: n/a

12 June 2019

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATIONS MADE BY CPG DEVELOPMENT PROJECTS LTD  
LAND AT EARL ROAD, HANDFORTH DEAN, CHESHIRE, SK9 3RW  
APPLICATION REF: 16/3284M, 16/0802M, 16/0138M**

1. I am directed by the Secretary of State to say that consideration has been given to the report of David M H Rose BA (Hons) MRTPI, who held a public local inquiry between 23 January 2018 and 2 July 2018 into your client's three applications for planning permission for retail development on land at Earl Road, Handforth Dean, Cheshire, as follows<sup>1</sup>:
  - Phase 1b - application reference 16/3284M, dated 4 July 2016, seeking outline consent for the erection of 2320m<sup>2</sup> of retail floorspace.
  - Phase 2 – application reference 16/0802M, dated 26 November 2015, seeking outline consent for the erection of four restaurants and three drive-thru restaurant/cafes, along with associated car parking, servicing and landscaping.
  - Phase 3 – application reference 16/0138M, dated 8 January 2016 (amended 16 March 2017), seeking outline consent for construction of 23,076m<sup>2</sup> of class A1 retail floorspace, 2,274m<sup>2</sup> of class A3/A5 floorspace, along with associated car parking, access and servicing arrangements and landscaping.
2. On 4 July 2017, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's applications be referred to him instead of being dealt with by the local planning authority.

<sup>1</sup> The Inspector also considered an appeal for Orbit Investments (Properties) Ltd (ref 15/0400M, dated 24 December 2014, amended 10 November 2015) at the same inquiry. This is the subject of a separate Decision Letter.

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

3. The Inspector recommended that:
  - planning permission be granted for phase 1b
  - planning permission be refused for phase 2
  - planning permission be refused for phase 3
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendations. He has decided to grant planning permission for phase 1b, and to refuse planning permission for phase 2, and to refuse planning permission for phase 3. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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

5. A number of representations were received from parties following the close of the Inquiry. These covered matters including:
  - The health of Stockport and Macclesfield town centres, including post-inquiry changes to them such as the letting of Unit 6 (former Toys R Us unit) in the Peel Centre, Stockport.
  - The introduction of CIL charging by Cheshire East on 1 March 2019
  - The emerging Cheshire East Local Plan Allocations Document
6. The Secretary of State is satisfied that the issues raised do not affect his decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A list of representations which have been received since the inquiry is at Annex A. Copies of these letters may be obtained on written request to the address at the foot of the first page of this letter.
7. An application for a full award of costs was made by CPG Development Projects Ltd against Stockport Metropolitan Borough Council (IR1.39). This application is the subject of a separate decision letter, to be issued in due course.

## **Policy and statutory considerations**

8. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
9. In this case the development plan consists of the Cheshire East Local Plan Strategy (2017) (CELPS), and saved policies from the Macclesfield Borough Local Plan (2004) (MBLP). The Secretary of State considers that relevant development plan policies include those set out at IR1.20-1.25.
10. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), the Stockport Unitary Development Plan Review (2006) and the Stockport Core Strategy DPD (2011). The revised National Planning Policy Framework was

published on 24 July 2018 and further revised in February 2019. Unless otherwise specified, any references to the Framework in this letter are to the revised Framework.

### *Emerging plan*

11. The emerging plan comprises the Site Allocations and Development Policies document, which would replace the saved policies from the MBLP. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Following an initial consultation in September / October 2018, a Publication Draft of the Site Allocations and Development Policies document is being prepared for further consultation in 2019. This emerging document was not considered by the Inspector, and due to the early stage of this document, the Secretary of State considers it carries no weight.

### **Main Issues**

12. The Secretary of State agrees with the Inspector that main issues in this case are those set out in IR9.2-9.4.

### *Loss of Employment Land*

13. The Secretary of State notes that, although not currently in an employment use, this site has been allocated for such a use since the late 1990s, most recently in the MBLP as a site reserved for a “flagship development” (IR9.5). He also notes that the CELPS policy EG3, quoted at IR9.7-9.8, protects existing and allocated employment sites unless certain criteria can be demonstrated.
14. For the reasons set out at IR9.70-9.83, the Secretary of State agrees that site is not inherently unsuitable for an employment use. However, he also has carefully considered the Inspector’s analysis of the viability appraisals submitted (IR9.84-9.98), and agrees with the Inspector’s conclusions in IR9.99-9.101 that the site is no longer viable for an employment use, thereby complying with CELPS Policy 3 1.ii.
15. The Secretary of State has also considered the analysis at IR9.102-9.135 concerning the efforts undertaken to demonstrate that no other occupants could be found for the site. For the reasons given by the Inspector, he agrees this element of EG3 has not been met.
16. For the reasons given in IR9.7-9.28, the Secretary of State agrees with the Inspector at IR9.29 that EG3 3 is also relevant to these applications. He has considered the Inspector’s conclusions on this at IR9.136, and agrees that the loss of this site would not undermine the capacity to maintain an adequate and flexible supply of employment land.
17. Overall, the Secretary of State finds that there is conflict with Policy EG3. However, given his findings on viability, like the Inspector, the Secretary of State attaches limited weight to this conflict.

### *Effect of the proposals on existing retail centres*

18. The Secretary of State notes that CELPS Policy EG5 (IR9.137) promotes a retail hierarchy in Cheshire East based around existing town centres. He agrees with the Inspector (IR9.232-9.234) that there are no sequentially preferable sites available for this proposal.

19. As stated at Paragraph 10 of this Decision Letter, the Secretary of State agrees with the Inspector at IR9.138 that the Stockport Unitary Development Plan Review (2006) and the Core Strategy DPD (2011) are material considerations in this case.
20. Given this, the Secretary of State agrees with the Inspector that the main issues to consider are the impact of the proposal on the vitality and viability of Stockport, Macclesfield, and Wythenshawe, and of the impact of the proposal on planned public and private investment in these centres (IR9.235-9.285).

*Effect of the proposal on Stockport*

21. The Secretary of State has carefully considered the Inspector's analysis of the health of Stockport town centre (IR9.153-9.166), and notes the high vacancy rate against the national average, decline in national rankings, and decreasing footfall along the primary retail frontage. He also notes the studies listed at IR9.159 that identify a causal link between the issues faced by Stockport town centre and out of town shopping in general. He has also considered post-inquiry representations arguing that the letting of unit 6 of the Peel Centre to the Range demonstrates investor confidence in Stockport regardless of the applications being considered in this decision.
22. He has considered the Inspector's analysis of the likely impact of the proposal on Stockport town centre (IR9.235-9.270). He agrees that the food and drink units proposed would likely only serve the proposal, but that there would be a likely loss of fashion retail from Stockport, and likely difficulty in re-letting units (IR9.255).
23. For the reasons given at IR9.256-9.258, the Secretary of State agrees with the Inspector that while there is no evidence that the proposal would impact on the specific schemes listed as currently underway, any impact on core shopping areas would have an effect on the attempts to diversify Stockport town centre (set out at IR9.161-9.164) and be likely to stifle associated future investment.
24. The Secretary of State notes that a "no poaching" planning obligation has been offered (IR9.260), under which the Development Owner would, for five years post-completion, not permit any retailer who trades in either Stockport or Macclesfield to trade from the proposal unless they enter into an agreement with the local authority to continue trading in that centre for the remainder of that period. He agrees with the Inspector (IR9.268) that while this planning obligation would be effective in preventing store relocation, it would also allow retailers to trade from both locations concurrently, with a risk they could close their town centre stores after the five years have elapsed. He agrees with the Inspector's conclusion (IR9.270) that the mere presence of the retail park would weaken retailer and investor confidence in Stockport town centre.
25. Overall, and taking into account the evidence presented both at inquiry and post-inquiry, the Secretary of State considers that the scheme would likely undermine the vitality and viability of Stockport town centre as a whole, and be likely to stifle future associated investment.

*Effect of the proposal on Macclesfield*

26. The Secretary of State has also considered the Inspector's analysis of the health of Macclesfield town centre (IR9.167-9.176) and his assessment of potential impact of the proposal on Macclesfield town centre (IR9.271-9.281). He agrees with the Inspector's assessment that Macclesfield is a significantly more vulnerable centre than Stockport (IR9.273).

27. He agrees that, as the proposal is seeking clothing and fashion outlets, it would threaten the limited but improving offer of Macclesfield town centre (IR9.273). He notes the Grosvenor Centre and the ongoing Churchill Way development as examples of recent and ongoing investment that would suffer impacts (IR9.274-9.275).
28. He also agrees, for the reasons set out at IR9.279, that the vitality of a centre is based on a number of factors, and that proposed mitigation of a £2m contribution (IR9.276-9.281) towards public realm improvements in Macclesfield would provide limited, if any, amelioration of the harm arising from the proposal. He therefore, like the Inspector (IR9.281) does not give any material weight to this proposed mitigation.
29. The Secretary of State notes that the “no poaching” clause covered at Paragraph 24 of this Decision Letter would also apply to Macclesfield, but for the reasons given at that paragraph does not consider it weighs in favour of the proposal here either.
30. Overall, the Secretary of State considers that the scheme would further weaken the vitality and viability of Macclesfield town centre, and would impact on recent investment. In particular, he agrees with the Inspector that, should the Churchill Way leisure development continue to stall, the grant of permission for CPG would put the prospects of that investment in considerable doubt.

#### *Effect of the proposal on Wythenshawe*

31. The Secretary of State has carefully considered the Inspector’s analysis of the potential impact of the proposal on Wythenshawe town centre at IR9.282-9.285, building on the analysis of the Orbit proposal at IR9.224-9.331. For the reasons given there, he agrees that Wythenshawe town centre is a vital and viable centre based on a strong value line-up, and that the proposal is seeking a different type of tenant in home goods and high street fashion retail.
32. He also notes that, while land has been acquired recently to further the ongoing regeneration of Wythenshawe town centre, in the absence of any specific proposals this does not represent demonstrable and quantifiable planned investment (IR9.230, IR9.284).
33. Overall, he agrees with the Inspector’s conclusions at IR9.285 that the proposal would not result in material harm to the vitality and viability of Wythenshawe town centre, nor would it have a significant impact on any planned investment in the centre.

#### *Effects of Phase 1b of the proposal*

34. Notwithstanding the issues outlined in Paragraphs 13-33 of this Decision Letter, the Secretary of State has taken note of the Inspector’s comments at IR9.3 and IR9.352, which states that Phase 1b, representing a small extension to an existing store, could take place in isolation from Phases 2 and 3, and should be considered separately as a result. The Secretary of State agrees that, due to Phase 1b’s small size, there are no overriding unacceptable effects arising from this proposal.

#### *Highway safety*

35. The Secretary of State notes that while Cheshire East Council had no objections to this proposal on highways grounds, Stockport Metropolitan Borough Council (SMBC), in their status as a Rule 6 party to this inquiry, did have such objections (IR9.286) regarding a

roundabout within their jurisdiction, for which they sought a financial contribution as mitigation, and on accessibility by sustainable modes of transport in general.

36. The Secretary of State has considered the Inspector's assessment at IR9.287-9.295, and, for the reasons given, agrees that the evidence presented does not present a need for mitigation, and the financial contribution sought by SMBC does not meet the policy or legal tests for a planning obligation.
37. The Secretary of State has also considered the Inspector's assessment of the site's accessibility by sustainable transport modes at IR9.296-9.301, and, for the reasons given there, agrees with his conclusion that appropriate opportunities have been taken to promote sustainable transport modes.

### **Planning conditions**

38. Concerning phase 1b, the Secretary of State has given consideration to the Inspector's analysis at IR9.353-9.355, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework and that the conditions set out at Annex B should form part of his decision.
39. Concerning phases 2 and 3, the Secretary of State has given consideration to the Inspector's analysis at IR9.356-9.362, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 55 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 55 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing planning permission.

### **Planning obligations**

40. Having had regard to the Inspector's analysis at IR9.335-9.337, the planning obligations for Phases 2 and 3, dated 22 June 2018, paragraph 56 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR9.337 that the obligations comply with Regulation 122 of the CIL Regulations and the tests at paragraph 56 of the Framework, with the exception of the £2m town centre improvement contribution. However, the Secretary of State does not consider that the obligations overcome his reasons for refusing planning permission.
41. The Secretary of State has noted the Inspector's comments at IR9.335-9.337 with regard to the planning obligations contained in the submitted agreement. However, as the Council's Community Infrastructure Levy (CIL) charging regime came into force on 1 March 2019, the terms of those obligations which are included in the charging regime have now fallen away, with those contributions now being subject to CIL. However, this does not alter his overall findings that the obligations do not overcome the Secretary of State's reasons for refusing planning permission.

### **Planning balance and overall conclusion – Phase 1b**

42. For the reasons given above, the Secretary of State considers that the application for Phase 1b is not in accordance with CELPS policy EG3 of the development plan, but is in

accordance with CELPS policies SE1, SE2, SE12, SE9, SE13, and MBLP saved policies NE9, NE11, DC3, DC6, DC8, DC9 and DC63, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

43. The Secretary of State considers that, due to its small-scale and limited nature, Phase 1b can take place in isolation of Phases 2 and 3, and subsequently cannot be seen as having the negative effects that Phases 2 and 3 would have on Macclesfield and Stockport town centres. The loss of this site would not also impact on the ability to maintain a flexible supply of employment land.

44. The Secretary of State concludes that, as there are no material considerations that indicate determination other than in accordance with the development plan, the application should be granted planning permission, subject to conditions.

### **Planning balance and overall conclusion – Phases 2 and 3**

45. For the reasons given above, the Secretary of State considers that the applications for Phases 2 and 3 are not in accordance with Policies EG3 and EG5 of the development plan, and are not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

46. The Secretary of State considers that the conflict with policy EG3 carries limited weight, and that the effects the scheme would have on the vitality and viability of Stockport and Macclesfield town centres, and on planned and future public and private investment in these centres, carry substantial weight.

47. The Secretary of State has gone on to consider some of the benefits of the proposal. It would be of high-quality design, would provide direct and secondary employment, and would also draw back some trade from the wider area, including Manchester city centre and the Trafford Centre. There would be some positives from the planning obligations proposed, including those for highways improvements and environmental mitigation, although no weight can be attached to the proposed contribution towards public realm works in Macclesfield.

48. The Secretary of State has concluded that these benefits do not outweigh the harms of the proposal. As such, there are no material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

49. The Secretary of State therefore concludes that Phase 2 be refused planning permission, and that Phase 3 be refused planning permission.

### **Formal decision**

50. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby

- Grants planning permission for Phase 1b, the erection of 2320m<sup>2</sup> of retail floorspace as per application reference 16/3284M, dated 4 July 2016, subject to the conditions set out in Annex B of this decision letter

- Refuses planning permission for Phase 2
- Refuses planning permission for Phase 3

51. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

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

52. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
53. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
54. A copy of this letter has been sent to Cheshire East Council, along with Orbit Investments (Properties) Ltd, Stockport Metropolitan Borough Council, Peel Holdings (Land and Property) Ltd, St Modwen Properties, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Andrew Lynch*

Andrew Lynch

Authorised by the Secretary of State to sign in that behalf

**Annex A – Schedule of representations**

**Annex B – List of conditions for Phase 1b**



## ANNEX A

### SCHEDULE OF REPRESENTATIONS

#### General representations

| <b>Party</b>  | <b>Date</b>     |
|---|-----------------|
| Savill's  | 6 June 2018     |
| NJL Consulting re Local Plan allocations consultation | 9 October 2018  |
| NJL Consulting re town centre updates                 | 25 October 2018 |
| Cheshire East Council re CIL charging                 | 1 February 2019 |
| JLL re town centre updates                            | 8 February 2019 |

## **ANNEX B – LIST OF CONDITIONS**

### **CPG Phase 1b - APP/R0660/V/17/3179610 (16/3284M) RECOMMENDED PLANNING CONDITIONS**

1. Details of the landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby approved shall take place not later than 2 years from the date of the approval of the last of the reserved matters approved.
4. The development hereby approved shall be carried out in total accordance with the following approved plans:  
  
LRW 7161 L(00)170B - PHASE 1B ROOF PLAN 5  
LRW 7161 L(00)174B - PHASE 1B ROOF PLAN COLOURED  
LRW 7161 L(00)177B - PHASE 1B ELEVATIONS COLOUR  
LRW 7161 L(00)179B - PHASE 1B GROUND FLOOR DEMOLITION PLAN  
LRW 7161 L(00)180C - EXISTING SITE PLAN PHASE 1B  
LRW 7161 L(00)181B - PHASE 1B CAR PARK AMENDMENTS PLAN  
LRW 7161 L(00)187B - ILLUSTRATIVE MASTERPLAN 23  
LRW 7161 L(00)292B - PHASE 1B GROUND FLOOR PLAN-LAYOUT  
LRW 7161 L(00)293B - PHASE 1B FIRST FLOOR PLAN-LAYOUT1  
LRW 7161 L(00)294B - PHASE 1B SITE SECTIONS-LAYOUT1 39  
LRW 7161 L(00)295B - PHASE 1B CAR PARK AMENDMENTS PLAN-LAYOUT1  
LRW 7161 L(00)296B - PHASE 1B FIRST FLOOR COLOURED  
LRW 7161 L(00)297B - PHASE 1B GROUND FLOOR COLOURED  
LRW 7161 L(00)298B - PHASE 1B ELEVATIONS COLOUR  
LRW 7161 L(00)299B - PROPOSED PHASE 1B ALTERATIONS TO EXISTING ELEVATION  
LRW 7161 L(00)301A - ILLUSTRATIVE MASTERPLAN WITH PHASE 1B
5. The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
6. There shall be no subdivision of retail units hereby approved.
7. The gross internal floorspace shall not exceed the following at any time:  
  
Unit 15 – ground floor 580 square metres and first floor 464.5 square metres  
Unit 16 – ground floor 580 square metres and first floor 464.5 square metres
8. Prior to the first occupation of the development hereby approved, improvements to the footway link at the southern end of Earl Road leading to the southern retail park shall be carried out in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
9. No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The

scheme shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and shall include:

- a) Information about the design's storm period and intensity (1 in 30 & 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water;
- b) Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which shall include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
- c) Flood water exceedance routes, both on and off site; and
- d) A management and maintenance regime for any sustainable drainage systems.

The development shall be carried out in accordance with the approved scheme.

10. The Class A1 retail floorspace hereby approved shall be restricted to comparison goods only.
11. The approved development shall not be occupied until space has been laid out within the site for the parking of 207 cars in accordance with drawing LRW 7161 L(00)295B (Phase 1B Car Park Amendments Plan). Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter.

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

**by David M H Rose BA (Hons) MRTPI**

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

**Date: 6 February 2019**

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## **Town and Country Planning Act 1990**

**Appeal by**

**Orbit Investments (Properties) Limited**

**Land off Earl Road/Epsom Avenue, Handforth Dean, Cheshire, SK9 3RL**

**Applications for planning permission by**

**CPG Development Projects Limited**

**Land at Earl Road, Handforth, Cheshire, SK9 3RW**

Inquiry opened on 23 January 2018 and closed in writing on 2 July 2018

File references:

APP/R0660/W/16/3155191; APP/R0660/V/17/3179605; APP/R0660/V/17/3179609; &  
APP/R0660/V/17/3179610

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Inquiry opened on 23 January 2018 and closed in writing on 2 July 2018

File references:

APP/R0660/W/16/3155191; APP/R0660/V/17/3179605; APP/R0660/V/17/3179609; &  
APP/R0660/V/17/3179610

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**APPEAL BY ORBIT INVESTMENTS (PROPERTIES) LIMITED**

**File Ref: APP/R0660/W/16/3155191**

**Land off Earl Road/Epsom Avenue, Handforth Dean, Cheshire, SK9 3RL**

- The appeal was recovered for decision by the Secretary of State by a direction, made under section 79 of the Town and Country Planning Act 1990, on 25 July 2017.
- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant full planning permission.
- The appeal is made by Orbit Investments (Properties) Limited against the decision of Cheshire East Council.
- The application, reference 15/0400M, dated 24 December 2014, as amended on 10 November 2015, was refused by notice dated 8 March 2016.
- The development proposed is:- demolition of existing buildings and erection of five units to be used for Class A1 (non-food retail) purposes, and two units to be used for Use Class A1 (non-food retail or sandwich shop) and/or Use Class A3 and/or Use Class A5, creation of car park and provision of new access from Earl Road, together with landscaping and associated works.

**Summary of Recommendation: The appeal be allowed subject to conditions.**

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**APPLICATION FOR PLANNING PERMISSION BY CPG DEVELOPMENT PROJECTS LIMITED (Phase 1b))**

**File Ref: APP/R0660/V/17/3179610**

**Land at Earl Road, Handforth, Cheshire, SK9 3RW**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 4 July 2017.
- The application is made by CPG Development Projects Limited to Cheshire East Council.
- The application, reference 16/3284M, is dated 4 July 2016.
- The development proposed is:- erection of 2,320 square metres retail floorspace.<sup>1</sup>
- The application is submitted in outline with landscaping reserved for subsequent approval.

**Summary of Recommendation: The application be approved subject to conditions.**

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<sup>1</sup> The application proposed the demolition of the 646 square metres garden centre and conservatory attached to the Next store and the construction of 2,320 square metres of retail floorspace (net increase in retail floorspace of 1,674 square metres); revised plans and supporting information, submitted on 2 February 2017, reduced the new retail floorspace to 2,089 square metres – the description of development remained unchanged.

**APPLICATION FOR PLANNING PERMISSION BY CPG DEVELOPMENT PROJECTS LIMITED (Phase 2)**

**File Ref: APP/R0660/V/17/3179605**

**Land at Earl Road, Handforth, Cheshire, SK9 3RW**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 4 July 2017.
- The application is made by CPG Development Projects Limited to Cheshire East Council.
- The application, reference 16/0802M, is dated 26 November 2015.<sup>2</sup>
- The development proposed is:- erection of four Restaurants and three Drive-thru Restaurant/Café's along with associated car parking, servicing and landscaping.
- The application is submitted in outline with landscaping reserved for subsequent approval.

**Summary of Recommendation: The application be refused.**

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**APPLICATION FOR PLANNING PERMISSION BY CPG DEVELOPMENT PROJECTS LIMITED (Phase 3)**

**File Ref: APP/R0660/V/17/3179609**

**Land at Earl Road, Handforth, Cheshire, SK9 3RW**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 4 July 2017.
- The application is made by CPG Development Projects Limited to Cheshire East Council.
- The application, reference 16/0138M, is dated 8 January 2016 and was amended on 16 March 2017.<sup>3</sup>
- The development proposed (as amended) is:- construction of 23,076 square metres of class A1 retail floorspace and 2,274 square metres of class A3/A5 floorspace along with associated car parking, access and servicing arrangements and landscaping.
- The application is submitted in outline with landscaping reserved for subsequent approval.

**Summary of Recommendation: The application be refused.**

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<sup>2</sup> The application was submitted to the Council on 15 February 2016 and revised through the submission of amended plans and supporting information on 16 March 2017 – the description of development remained unchanged.

<sup>3</sup> Planning permission was originally sought for 'Erection of retail and leisure development comprising A1 retail units, Class A3 cafes and restaurants, Class D2 gym and Class C1 Hotel'.

## **1. Introduction**

### **Procedural matters**

#### **The Inquiry, site visits and documents**

- 1.1 The evidence for the above appeal and planning applications was heard at a Public Inquiry held on 23 – 26 January; 30 January – 2 February; 6 and 8 February; 6 – 8 March; 24 - 25 April; and 29 – 30 May 2018. Closing submissions were made in writing; and the Inquiry was closed by letter dated 2 July 2018.
- 1.2 I made an unaccompanied visit to the sites and their wider surroundings, Stockport, Wilmslow and Wythenshawe before the opening of the Inquiry to gain general familiarisation with locations referred to in the evidence. I also made additional visits both during and after the Inquiry.
- 1.3 Proofs of evidence as originally submitted are included as Inquiry documents; but their content may have been affected by oral evidence, concessions and corrections. Full written closing submissions are also listed.
- 1.4 In this report the local planning authority, Cheshire East Council, will be referred to as **CEC**. Other short-form will include Orbit Investments (Properties) Limited (**Orbit**); and CPG Developments Limited (**CPG**). Rule 6 Parties included Stockport Metropolitan Borough Council (**SMBC**); Peel Holdings (Land and Property) Limited (**Peel**); and St Modwen Properties (**St Modwen**).
- 1.5 During the course of the Inquiry, the National Planning Policy Framework (June 2012) (the Framework) was extant. The revised Framework was published on 24 July 2018. All of the evidence heard, the submissions made, and the reporting of the cases relate to the former. However, the main parties, and the Rule 6 parties, were afforded the opportunity to make written representations following the publication of the revised Framework. These are reported as a discrete supplementary section to the cases for each of the parties. References in my conclusions relate to the Framework (2018).

#### **Recovery, call-in and the matters identified by the Secretary of State**

- 1.6 The Orbit appeal was recovered on the grounds that it would be '*most efficiently and effectively considered with the called-in planning applications involving similar development on adjacent sites (refs 3179605, 3179609 and 3179610) and therefore the appeal is being recovered under the criterion that there are on occasions other cases which merit recovery because of the particular circumstances*'.
- 1.7 The three call-in letters refer to the Secretary of State's policy on calling in planning applications and, in light of the policy, the decision to call-in the applications. The initial matters on which the Secretary of State particularly wished to be informed about for the purposes of his consideration of the applications were:-



- i) *the extent to which the proposed development is consistent with Government policies for building a strong, competitive economy (Framework Chapter 1);*
- ii) *the extent to which the proposed development is consistent with Government policies for ensuring the vitality of town centres (Framework Chapter 2);*
- iii) *the extent to which the proposed development is consistent with Government policies for promoting sustainable transport (Framework Chapter 4);*
- iv) *the extent to which the proposed development is consistent with the development plan for the area and;*
- v) *any other matters the Inspector considers relevant.*

1.8 I indicated at the opening of the Inquiry, in light of the cases to be advanced, that the Secretary of State would need to consider the effect of the proposals (with the exception of the Phase 1b application) individually, and in combination, on the loss of employment land; retail considerations including the sequential approach; the effect of the proposals on the vitality and viability of relevant centres and their impact on existing and planned investment in those centres; the effects on highway safety; and accessibility.

1.9 Further matters would include the consideration of planning obligations and conditions; and thereafter the overall planning balance having regard to the economic, environmental and social benefits advanced in support of the proposals.

#### **Environmental Impact Assessment**

1.10 By letter dated 5 October 2016 it was confirmed that the Orbit proposal would not be likely to have significant effect on the environment by virtue of factors such as its nature, size or location; and its effects would be capable of assessment through the normal planning process. A similar conclusion was reached, in a letter dated 25 September 2017, on the CPG proposals.

#### **Sites and Surroundings**

1.11 The appeal and application sites are located some 2.5 kilometres north of Wilmslow town centre; 14.5 kilometres north of Macclesfield town centre; 8 kilometres south of Stockport town centre; 7 kilometres south-east of Wythenshawe town centre; and 15 kilometres south of Manchester city centre.

1.12 The sites lie to the west of the A34 arterial route between Manchester and Wilmslow (Wilmslow - Handforth Bypass); and to the south of the A6 Manchester Airport Relief Road (**A6MARR**) which is to provide 10 kilometres of dual-carriageway linking the A6 at Hazel Grove to Manchester Airport and the link road to the M56.<sup>4</sup>

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<sup>4</sup> The road is scheduled to open in late summer 2018

- 1.13 The Orbit site is located to the west of the CPG site(s) and has road access from the south, along Epsom Avenue, from the A34 roundabout junction serving the Handforth Dean Retail Park. It is also approached from the north along Earl Road which passes through the Stanley Green Business Park/Retail Park and joins Stanley Road (B5094). In turn, Stanley Road connects to the A34 at a roundabout junction. The CPG site takes access from the retail park roundabout.
- 1.14 The retail park includes Tesco Extra superstore, on 2 floors, and related fuel sales forecourt; one of the largest M&S stores in the country; Outfit (including Topshop, Topman, Miss Selfridge, Oasis, Warehouse, Dorothy Perkins and Wallis); Boots; and the more recent addition of Next, and its associated car park, to the north of the retail park on land which was once held by CEC with the CPG site.
- 1.15 Stanley Green Business Park offers a range of mixed office, industrial, trade counter and leisure uses; and the retail element includes B&Q; Super TK Maxx; Halfords; Furniture Village; HomeSense and Costa Coffee.
- 1.16 Some 3 kilometres to the north of Stanley Green, John Lewis and Sainsbury's Cheadle Superstore and fuel sales forecourt occupy a site on the western side of the A34.
- 1.17 The Orbit site extends to some 1.87 hectares of which 0.41 hectares is in use for office and associated car parking. A warehouse and servicing area occupies 0.75 hectares and the balance of 0.71 hectares is vacant/undeveloped land. The office use would be retained and the warehouse building, currently occupied by Gradus Carpets, would be demolished.
- 1.18 The totality of the CPG site is a little in excess of 4.9 hectares. It is largely hard surfaced, having been used for a 10 year period up to 2010 for car parking associated with Manchester International Airport. There are a number of trees along the northern and eastern boundaries of the land.

#### **The Development Plan**

- 1.19 The development plan comprises saved policies of the Macclesfield Borough Local Plan (2004) (**MBLP**) and the Cheshire East Local Plan Strategy (2017) (**CELPS**). The Statements of Common Ground between Orbit and CEG and CPG and CEC identify a list of relevant policies which will be identified, as necessary, within the cases for the parties and my conclusions. The 'key' policies are set out below.
- 1.20 Saved Policy E2 of the MBLP states:-
- 'On existing and proposed employment land, proposals for retail development will not be permitted. Proposals for businesses where there is an element of mixed retail and business use may be permitted if the retail element is ancillary to the other uses(s) and having regard to:*
- 1 whether suitable sites and premises are available elsewhere; and*
  - 2 the quantitative and qualitative supply of employment land in the area.'*

1.21 Saved Policy E3 confirms:-

*'Proposals for Class B1 uses on a scale appropriate to the size and character of the area, will normally be permitted on the following employment areas: ..... (5) up to 20 hectares at Stanley Green Industrial Estate'.<sup>5</sup>*

1.22 The accompanying text indicates:-

*'Undeveloped land (about 6 hectares) fronting the A34 at Stanley Green, Handforth is regarded as suitable for 'flagship' developments and will be reserved for such schemes'.<sup>6</sup>*

1.23 CELPS Policy EG 3, relating to existing and allocated employment sites, affirms:-<sup>7</sup>

*'1. Existing employment sites will be protected for employment use unless:*

- i. Premises are causing significant nuisance or environmental problems that could not be mitigated; or*
- ii. The site is no longer suitable or viable for employment use; and*
  - a. There is no potential for modernisation or alternate employment uses; and*
  - b. No other occupiers can be found<sup>43</sup>.*

*2. Where it can be demonstrated that there is a case for alternative development on existing employment sites, these will be expected to meet sustainable development objectives as set out in Policies MP 1, SD 1 and SD 2 of the Local Plan Strategy. All opportunities must be explored to incorporate an element of employment development as part of a mixed use scheme.*

*3. Subject to regular review, allocated employment sites will be protected for employment use in order to maintain an adequate and flexible supply of employment land to attract new and innovative businesses, to enable existing businesses to grow and to create new and retain existing jobs'.*

1.24 Footnote 43 states:-

*'To demonstrate that no other occupiers can be found, the site should be marketed at a realistic price reflecting its employment status for a period of not less than 2 years. The Council will require evidence that a proper marketing exercise has been carried out including a record of all offers and expressions of interest received'.*

1.25 Policy EG 5, 'Promoting a Town Centre First Approach to Retail and Commerce' confirms:-

*'The council will support the following hierarchy of retail centres in Cheshire East: the Principal towns will be the main focus for high quality comparison retail, supported by a range of retail, service, leisure, tourism, office and other town centre-type uses .....;*

*2. Town centres will be promoted as the primary location for main town centre uses including retail, leisure, cultural and office development;*

*.....*

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<sup>5</sup> The land referred to includes the Orbit and CPG sites

<sup>6</sup> The land referred to is within the combined CPG application site

<sup>7</sup> CD J1.8 page 98

7. *Proposals for main town centre uses should be located within the designated town centres or on other sites allocated for that particular type of development. Where there are no suitable sites available, edge-of-centre locations must be considered prior to out-of-centre locations. Edge-of-centre and out-of-centre proposals will be considered where:*

- i. there is no significant adverse impact on the vitality and viability of the surrounding town centres; and*
- ii. it is demonstrated that the tests outlined in current government guidance can be satisfied.*
- iii. ....'.*

**Statement of Common Ground: Orbit and CEC<sup>8</sup>**

1.26 CEC refused permission for the appeal proposal for the following reason:-

*'The proposal seeks to provide a retail use on a site allocated for employment purposes. The existing warehouse and office buildings on the site are currently occupied, and it has therefore not been demonstrated that there is no reasonable prospect of the site being used for employment purposes, as required by paragraph 22 of the Framework . The development is therefore contrary to policies E1 and E2 of the Macclesfield Borough Local Plan and policy EG3 of the Submission Version of the emerging Cheshire East Local Plan Strategy'.<sup>9</sup>*

1.27 The two parties are in broad agreement that:-

- a) the proposal would achieve the economic, social and environmental dimensions of sustainable development set out in the Framework;
- b) the delivery of retail floorspace as part of a mixed-use development and the positive economic benefits that this would bring is a material consideration;
- c) the proposal has the potential to provide for increased consumer choice locally;
- d) the retained office building has 120 employees;
- e) seven jobs would be displaced from the existing warehouse;
- f) the appellant sets out that the proposed A1/A3/A5 units would create new additional job opportunities;<sup>10</sup> and, allowing for the loss of the existing warehouse jobs, displacement and multiplier effects<sup>11</sup> there would be potential for up to 347 – 356 net additional jobs (251 - 258 full time equivalent (**FTE**));
- g) the site is in close proximity to public transport;
- h) the proposal would not result in the loss of biodiversity and it raises no ecological issues; the project would not have any unacceptable impact on amenity; the design 'would be in keeping' with the area and there would be no loss of residential amenity; and the scheme would not have a material impact on the local road network; and

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<sup>8</sup> The Statement of Common Ground is to be read as a whole – this section sets out selected relevant background

<sup>9</sup> CELPS was adopted on 27 July 2017

<sup>10</sup> up to 390 – 399 direct jobs (283 – 291 FTE)

<sup>11</sup> Direct job calculations have regard to HCA (2015) Employment Densities Guide 3<sup>rd</sup> Edition and displacement/multiplier job figures are informed by the English Partnerships (2014) Additionality Guide Fourth Edition

- i) on an individual basis, the proposal would not result in a significant adverse impact on any defined centre and there would be no requirement for mitigation in that regard; the proposal would not have a significant adverse impact on existing committed and planned public and private sector investment in centres in the catchment area; and there would not be a significant adverse impact on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to 5 years from the time the application was made.

1.28 The main areas of disagreement are:-

- a) whether the proposal would be in conflict with CELPS Policy EG 3;  
b) whether it is appropriate to safeguard the site for Class B employment use;  
c) whether the loss of employment land justifies the dismissal of the appeal, having particular regard to employment land supply and the prospects of the site as a whole being used for solely Class B employment purposes.

**Statement of Common Ground: Orbit and SMBC<sup>12</sup>**

1.29 The parties agree that all highways and transportation matters arising from the proposed development within Stockport Borough can be appropriately and fully mitigated by way of a financial contribution (£200,548 – subject to indexation from 12 May 2016) to facilitate junction improvements at Earl Road/Stanley Road, Stockport. In addition the parties acknowledge that the site has planning permission for office development and the associated potential for traffic generation.

**Statement of Common Ground: CPG and CEC<sup>13</sup>**

1.30 The Council's Head of Planning and Regulation recommended to the Strategic Planning Board that the application for Phase Ib should be approved subject to conditions; and the applications for Phases 2 and 3 should be refused. The Board resolved to approve all 3 applications, subject to:- subsequent referral to the Secretary of State; the completion of an agreement pursuant to section 106 of the Town and Country Planning Act 1990; and subject to conditions.

1.31 The recommendations for refusal were in identical terms:-

*'The proposal will lead to a loss in the amount of employment land in the Borough, at a time when the Council is allocating Green Belt sites through the local plan process to provide adequate employment land to meet the needs of the Borough to 2030. This is considered to significantly and demonstrably outweigh the benefits of the proposal. It has not been satisfactorily demonstrated that there is no reasonable prospect of the site being used for employment purposes, or that the site is no longer suitable or viable for employment use, required by Paragraph 22 of the Framework and Policy EG3 of the emerging Cheshire East Local Plan Strategy. The proposed development is therefore contrary to policies E1 and E2 of the Macclesfield Borough Local Plan, Policy EG3 of the Proposed Changes Version of the emerging Cheshire East Local Plan Strategy and Paragraph 2 of the Framework'.*

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<sup>12</sup> N1.1 - The Statement of Common Ground is to be read as a whole – this section sets out selected relevant background

<sup>13</sup> N1.3 - The Statement of Common Ground is to be read as a whole – this section sets out selected relevant background

- 1.32 The parties agree that MBLP saved Policy E2 is out of date, relative to the Framework, as it does not allow for a degree of flexibility; and it merits only limited weight.
- 1.33 Further, each of the application proposals comply with CELPS Policy EG 3 as the land is no longer suitable or viable for employment use; there is no potential for other employment uses; and no other occupiers can be found.
- 1.34 Additionally, the application proposals conform with Policy EG 5 as:- they would not have a significantly adverse impact on the vitality and viability of surrounding town centres; and, it has been demonstrated that the retail tests outlined in current government guidance<sup>14</sup> are satisfied.
- 1.35 For completeness, the application for Phase 1b was recommended for approval on the basis that, amongst other things, the area of employment land to be lost to the proposal (over and above that already lost from the Next permission) would be relatively small scale and the retail impact on existing centres was considered to be acceptable.<sup>15</sup>

**Statement of Common Ground: CPG, CEC and SMBC<sup>16</sup>**

- 1.36 This Statement of Common Ground on Transport Planning was tabled on 7 March, immediately prior to the presentation of transport and highways evidence. It sets out agreement on:- the history of the application process; assessment parameters; relevant Local Plan policies; accident data; parking provision; sustainable transport measures; traffic impact; committed developments; and the Public Rights of Way network within the locality of the site.
- 1.37 Matters not agreed by SMBC relate to:- the assessment input parameters for CPG's traffic generation analysis; traffic impact and mitigation; and access by sustainable modes. CEC raises no objections to the CPG proposals on highways and transportation grounds.

**Clarification of SMBC's position on highway matters**

- 1.38 In view of the late submission of the above Statement of Common Ground, and to resolve any uncertainty, I sought direct clarification from Counsel for SMBC on its position in relation to highways and transportation matters, before hearing any related evidence, for both the Orbit and CPG projects. It was confirmed:-
- (a) in relation to CPG, the totality of the highway objection could be met if the impacts were to be mitigated by improvements to A34/Stanley Road (B5094) roundabout by a developer contribution, in the sum of £901,000, secured by a planning obligation;
  - (b) the position with regard to Orbit remained as set out in the relevant Statement of Common Ground;
  - (c) SMBC would pursue its objection to CPG in relation to access by sustainable modes; and
  - (d) SMBC raises no objection to Orbit on access by sustainable modes.

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<sup>14</sup> Extant at 22 January 2018

<sup>15</sup> CD E1.1 page 103

<sup>16</sup> CD N1.4

**Application for costs**

- 1.39 An application for a partial award of costs was made by CPG against SMBC in relation to highway matters. This is the subject of a separate report and recommendation.

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## **2. The Case for CPG Development Projects Limited**

### **Introduction**

- 2.1 CPG seeks permission for 3 phases of development on the application site, which lies immediately to the east of the existing Next store constructed as Phase 1<sup>17</sup> and immediately to the north of the existing retail park which includes M&S and Tesco:-
- (a) Phase 1b: the replacement of the existing 646 sq.m Next garden centre and conservatory with 2 retail units of 2,089 sq m A1 floorspace (16/3284M);<sup>18</sup>
  - (b) Phase 2: the erection of 4 restaurants and 3 'drive-thru' cafes along with associated car-parking, servicing and landscaping, totalling 2,274 sq.m A3/A5 floorspace (this comprises the whole of application 16/0802M and part of application 16/0138M<sup>19</sup> which also includes Phase 3 below);<sup>20</sup>
  - (c) Phase 3: the erection of 14 retail units totalling 23,076 sq m A1 floorspace, with associated car parking, access, servicing arrangements and landscaping (part of application 16/0138M, together with Phase 2 above).
- 2.2 Although divided into phases the applications are a single scheme with Phase 3 embracing Phase 2.<sup>21</sup> This is relevant when considering SMBC's evidence on the sequential approach.
- 2.3 In terms of Phases 2 and 3, the 14 retail units would be arranged in an inverted 'L' shape along the western and northern edges of the site with units ranging from 840 sq m to 5,644 sq m; the restaurants would vary from 199 sq m to 394 sq m; and the cafés would range from 198 sq m to 541 sq m.

### **The Issues**

- 2.4 There are broadly 3 main issues to be considered:-
- (a) The employment issue:- whether there is a reasonable prospect of the application site being used for the allocated employment use.<sup>22</sup>
  - (b) The retail issue:- whether there are sequentially preferable sites that are both available and suitable for the applications, having regard to the need for flexibility in terms of format and scale;<sup>23</sup> and, whether granting permission for the applications is likely to have a significant adverse impact on investment in catchment area centres and town centre vitality and viability.<sup>24</sup>
  - (c) The transport issue:- whether the applications should be refused on transport grounds because the residual cumulative impacts would be severe;<sup>25</sup> and, whether opportunities for sustainable transport modes have been taken up, having regard to the nature and location of the application site.<sup>26</sup>

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<sup>17</sup> CD D1.4 Appendix 1

<sup>18</sup> CD D1.2

<sup>19</sup> 0138M comprises '23,076 sq.m of Class A1 retail floorspace and 2,274 sq.m Class A3/A5 floorspace along with associated car parking, service arrangements and landscaping'

<sup>20</sup> CD B1.2

<sup>21</sup> CD C1.1 paragraph 1.1 and Section 3

<sup>22</sup> NPPF paragraph 22 and CELPS Policy EG 3

<sup>23</sup> NPPF paragraphs 24 & 27; CELPS Policy EG 5

<sup>24</sup> NPPF paragraphs 26 & 27; CELPS Policy EG 5

<sup>25</sup> NPPF paragraph 32, 3<sup>rd</sup> bullet; CELPS Policy CO 4

<sup>26</sup> Framework paragraph 32, 1<sup>st</sup> bullet; CELPS Policies CO 1, CO 2 and CO 4



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**Summary case on the main issues**

- 2.5 In terms of employment, there is not a reasonable prospect of the site being used for the allocated employment use, given the marketing evidence and the compelling fact that the site has remained undeveloped despite its allocation for some 2 decades. MBLP Policy E2, in so far as there is conflict, is out of date. Importantly, the proposals comply with CELPS Policy EG 3 and also with the Framework.
- 2.6 Turning to the retail issue, there are no sequentially preferable sites that are available and suitable for the applications, having regard to the need for flexibility in terms of format and scale. The requirement is for a total of 25,396 m<sup>2</sup> A1 (23,076 m<sup>2</sup> excluding Phase 1b). There is no site anywhere near sufficient size; there is no basis for disaggregation; and SMBC no longer alleges that the applications do not pass the sequential test (subject to the applications being treated as a single indivisible scheme, which is considered below).
- 2.7 The applications would not be likely to have a significant adverse impact on:-
- (a) investment in catchment area centres given the levels of investment in Stockport, their success in diversification and the absence of any evidence of any specific investment being deterred as a result of the CPG and Orbit proposals; and there is no evidence of adverse impact on investment already made in Wythenshawe town centre or of specific investment proposals;
  - (b) town centre vitality and viability as the main centres (especially Stockport and the Peel Centre) should still experience a significant level of growth notwithstanding the impact alleged; and
  - (c) recent changes in the retail market, including the closure of several stores (most notably M&S in Stockport), are an endemic fundamental change to retail patterns; and retailers will either go where they wish in locations such as Handforth Dean, or not at all; and some retailers and branded A3 users will also trade in multiple locations.
- 2.8 In terms of the transport issue, opportunities for sustainable transport modes have been taken up by the applications, having regard to the nature and location of the site.
- 2.9 Overall, the only conflicts with development plan policy relate to the out of date MBLP Policy E2 which is in conflict with the Framework; and, overall, the proposals would be in accordance with the development plan taken as a whole.

**Employment issues****The development plan**

- 2.10 In terms of the saved policies of the MBLP, the proposals conflict with Policies E2 and E3 which allocate the site for employment use:-
- (a) The allocation is founded in the MBLP 1997 and was carried forward into the MBLP in 2004;<sup>27</sup>

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<sup>27</sup> CD J1.7

- (b) the plan period expired in 2011;
  - (c) the old policies are saved pending the adoption of the Strategic Allocations Development Plan Document (**SADPD**) which is at an early stage with the evidence base in preparation;<sup>28</sup> and
  - (d) Policies E2 and E3 pre-date the Framework and are inconsistent with it.
- 2.11 Policy E2 imposes a blanket and unqualified prohibition on non-employment development on the application site; its rigid stance is inconsistent with the flexibility inherent in CELPS Policy EG 3 and the Framework; and it merits little or no weight.<sup>29</sup> The weight should also be reduced as the plan expired in 2011.<sup>30</sup>
- 2.12 CELPS Policy PG1(1) provides:-<sup>31</sup>
- 'Provision will be made for a minimum of 380 ha of land for business, general industrial and storage and distribution uses over the period 2010 to 2030, to support growth of the local economy'*.
- 2.13 CELPS also envisages the loss of existing employment land and makes an allowance of 120 ha to take account of employment land losses; and it provides a 63 ha flexibility uplift, to act as a buffer for issues such as allocated employment sites being no longer capable of delivery.<sup>32</sup>
- 2.14 Although Peel and SMBC suggest that the loss of employment land arising from CPG would cause more land to be taken out of the Green Belt at a future date, in order to meet demand, the losses allowance and the flexibility uplift would collectively be able to absorb this loss. Although employment land losses since the beginning of the plan period have exceeded the proportionate allowance of 6 ha per annum, there is no certainty that the average rate of the last 8 years will continue for the full plan period; it is also a gross figure and overstates the position.
- 2.15 Moreover, against the annual historic take-up rate of 13.5 ha,<sup>33</sup> the true take-up has been 6.75 ha (gross) and 1.82 ha (net) since the plan period commenced. The relatively high employment land losses can therefore be balanced against the relatively low employment land take-up.
- 2.16 Even if further employment land is required, it could logically be taken out of the safeguarded land<sup>34</sup> before the Green Belt. Whilst the purpose of safeguarded land is to cater for demand beyond the plan period, it is obvious that it would be considered in preference to Green Belt releases if, exceptionally, the need were to arise earlier than anticipated.
- 2.17 In terms of SMBC's concerns, whilst the Employment Land Review for the Borough indicates pent up demand for employment land it goes on to suggest that demand can be met through better use of existing sites

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<sup>28</sup> CD J1.5

<sup>29</sup> CPG/6/2 paragraph 4.76

<sup>30</sup> in the sense contemplated by Lord Carnwath in *SSCLG v Hopkins Homes Ltd* [2017] 1 W.L.R. 1865 at [63]

<sup>31</sup> CD J1.8 page 52

<sup>32</sup> See CPG/6/2 paragraph 4.48 et seq

<sup>33</sup> CD J1.3 page 65 - 'Between 1986/87 - 2010/11 a total of 338.46ha of employment land has been taken up resulting in an annual rate of 13.54ha. Of this total The North sub-area totalled 81.92ha equating to an annual rate of 3.28ha'

<sup>34</sup> CELPS Policy PG 4

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- without needing to look at further amendments to the Green Belt. This is carried over to the report's recommendations.<sup>35</sup>
- 2.18 As required by the Framework, CELPS' overall employment land strategy is one of flexibility. Policy PG 7 indicates that Handforth is expected to accommodate *'in the order of'* 22 ha of employment land over the plan period; but it is clear that the figure is indicative, and that the figures for all settlements are *'intended as a guide and are neither a ceiling nor a target'*.<sup>36</sup> When looked at as a whole, the issue of supply is not a cause for concern.
- 2.19 Irrespective of the arguments about employment land losses, the fundamental point is to apply CELPS Policy EG 3 to the proposals as it is the application of this policy which ultimately explains the distinction drawn by CEC between the CPG and Orbit proposals. To the extent that there is any genuine inconsistency between the application of the policy to the two proposals, it should be resolved by granting permission to both schemes.
- 2.20 CELPS Policy EG 3 provides a clear distinction between existing and allocated employment sites. It contains 3 main strands in paragraphs 1 – 3; the first 2 apply to *'existing employment sites'*, and the third, which is applicable to the CPG site, relates to *'allocated employment sites'*. This reflects the distinction in MBLP saved Policy E2 between *'existing'* and *'proposed'* employment land. The CPG site is *'proposed'* employment land for the purposes of E2.
- 2.21 With this in mind it is wrong to suggest that the heading of the policy is indicative of EG 3 applying equally to *'existing'* and *'allocated'* sites. On the contrary, the heading serves to underline that the policy is drawing a distinction between the two, which is then set out in the paragraphs of the policy itself; and the explanatory text adds further to this distinction by reference to *'sites currently in use for employment purposes ..... as well as sites allocated for such uses'*.<sup>37</sup>
- 2.22 Indeed, the wording of EG 3 paragraphs 1 and 2 only makes sense in the context of existing uses/occupiers:-
- (a) *'premises are causing significant nuisance'*;
  - (b) *'no longer suitable or viable'*;
  - (c) *'no potential for modernisation or alternate employment uses'*;
  - (d) *'no other occupiers can be found'*.
- 2.23 It is evident that the plain terms of the policy draws express distinction between existing and allocated employment sites. Moreover, if *'existing'* was intended to embrace *'allocated'* the reference in paragraph 3 of the policy to *'allocated employment sites will be protected .....*' would be pointless in light of paragraph 1. Although CEC sought to add clarity by reference to the history of the policy, the policy has to be construed according to the language used.<sup>38</sup>

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<sup>35</sup> SC/2/2 paragraphs 3.35-3.37; SC/2/8 paragraphs 9.57-9.59; CPG/INQ/009

<sup>36</sup> CELPS paragraph 8.72 states that this figure is *'indicative'*

<sup>37</sup> CD J1.8

<sup>38</sup> In *R. (TW Logistics Ltd) v Tendring DC* [2013] 2 P&CR 9, Lewison LJ, faced with a submission a policy should be considered in the context of the evolution of the Local Plan, held (Aikens and Mummery LJJ agreeing) -

- 2.24 Whilst Peel's planning witness initially appeared to suggest that CPG's interpretation of EG 3 would render it inconsistent with the Framework, he accepted that the requirement for regular review of allocated sites made it compliant. Nonetheless, Peel's Closing re-makes the argument and asserts that its witness was wrong in law. However, the witness' concession was clearly the correct interpretation and, consistent with CPG, it should be preferred. In addition, Peel's complaint that CPG's interpretation of the policy had shifted is not relevant when ultimately the exercise is to ascertain the correct interpretation of the policy as a matter of law.<sup>39</sup>
- 2.25 Within the '*allocated employment sites*', there is a further distinction to be drawn, namely the difference between the old saved allocations, such as the application site's allocation for 20 years without development, and the series of new allocations which were considered and endorsed by the CELPS Examining Inspector.<sup>40</sup> Although the policy justification indicates that '*there are already a number of key employment areas in the borough .....*' it makes no mention of Handforth.<sup>41</sup>
- 2.26 Moreover, SMBC's planning witness accepted that the '*protection for employment use*' provided by EG 3 paragraph 3 is needed primarily to ensure that the new key allocations are not lost to other uses. These new allocations are demonstrably critical to maintaining an adequate supply of employment land. Greater weight should be given to the preservation of new strategic allocations, supported by the CELPS Inspector, than to old saved ones, especially those like the CPG site, which have been allocated for many years and are not in actual employment use. One could expect therefore that the 120 ha employment land losses allowance would contemplate more of the older sites that have not come forward, as opposed to the new CELPS sites.
- 2.27 In summary, there is no policy requirement to consider whether the applications comply with paragraphs 1 and 2 of policy EG 3. CPG must instead demonstrate that:-
- (a) pursuant to EG 3 paragraph 3, the loss of the site will not compromise the ability to '*maintain an adequate and flexible supply of employment land*'; and
  - (b) pursuant to Framework paragraph 22, there is no reasonable prospect of the land being used for the allocated employment use.
- 2.28 These points overlap in that by showing that there is no reasonable prospect of employment use, it follows that the site is not making a contribution to an '*adequate and flexible*' employment land supply and the site can therefore be developed for an alternative use consistent with that flexibility. In any event, there is an adequate supply of employment land.
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<sup>14</sup> *In my judgment this kind of forensic archaeology is inappropriate to the interpretation of a document like a local plan .....*

<sup>15</sup> *The public nature of these documents is of critical importance. The public is in principle entitled to rely on the public document as it stands, without having to investigate its provenance and evolution.'*

<sup>39</sup> It is accepted that the site is an employment site under Policy EG 3; the key point is that it is an '*allocated*' employment site rather than '*existing*' site currently in use

<sup>40</sup> CD J1.8 Chapter 15

<sup>41</sup> CD J1.8 paragraphs 11.25-11.26

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- 2.29 To demonstrate that there is no reasonable prospect of employment use on the CPG site, it is necessary to consider:-
- (a) whether the site is a suitable location for employment uses;
  - (b) whether an employment use (whether alone or mixed with other uses) is viable; and
  - (c) the marketing that has been undertaken for the site.
- 2.30 These are also the relevant considerations when considering '*existing employment sites*' under EG 3. Therefore, if the interpretation of EG 3 above is found to be incorrect, the analysis that follows will also serve to demonstrate compliance with EG 3 in any event.

**Whether the Application Site is a suitable location for employment uses**

- 2.31 Whether or not the application site is a suitable location for employment uses is fundamental to CPG's argument. The evidence demonstrates that it is not so and, despite the efforts of the Rule 6 parties, there is no good explanation for 2 decades of lack of interest in this site by employment uses quite apart from the marketing exercise recently undertaken which reaffirms the lack of interest.
- 2.32 The demand for employment land is concentrated in the south of the borough, and the north has an '*ample supply*' of more attractive employment land, as well as competition from neighbouring authorities.<sup>42</sup> The application site is a secondary employment site; it is located in an area that is changing towards retail and leisure; and it is not attractive to employment uses. Indeed, the last few lettings of otherwise good industrial units on the adjoining Stanley Green Industrial Estate were to a Gym and Trampoline centre.<sup>43</sup>
- 2.33 Demand for employment land is higher in the south of the borough evidenced by significant increases in supply to meet the higher demand in that area including speculative development. This contrasts starkly with the lack of interest in the application site. The office market in Cheshire East is not performing strongly in general and the limited demand is being met on sites more suitable for offices than the application site. These views are endorsed by a variety of respected sources.<sup>44</sup>
- 2.34 The Cheshire East Employment Land Review 2012,<sup>45</sup> undertaken by Arup, includes a qualitative assessment of the application site.<sup>46</sup> It notes the planning status as '*existing allocated site for flagship B1 development*', and under '*market attractiveness*' it states '*excellent prominent site for quality office development. Likely to get interest .....*'.
- 2.35 The initial allocation was for B1 development; and the 2012 assessment is on the premise of suitability for '*quality office development*'. However, it is common ground amongst all parties that office development on the site is

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<sup>42</sup> CPG/1/1 paragraph 3

<sup>43</sup> CPG/1/1 paragraphs 7

<sup>44</sup> CPG/1/3 Appendix 7-10

<sup>45</sup> CD J1.3

<sup>46</sup> CD J1.3 page E1-69 – the site is named '*61MU Site, Stanley Green Industrial Estate (SU-HF01)*'

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- out of the question. Therefore, the basis for Arup's qualitative assessment of the site, which justified continuing the allocation, has gone.
- 2.36 The CPG site lies within an established retail and leisure location. It is adjacent to the existing Next store with Handforth Dean Retail Park immediately to the south. Stanley Green Retail Park is also only 0.5 km to the north, making this a location that has seen significant retail development in recent years.<sup>47</sup>
- 2.37 The last few lettings of modern industrial units on the adjoining Stanley Green Industrial Estate were to leisure uses.<sup>48</sup> During the Inquiry, a planning application was submitted, on greenfield land to the west of Tesco and M&S, for sui generis car showrooms. This contrasts with Arup's review, in 2012, which described the planning status as '*Existing employment area with outline permission for B1 units*'.
- 2.38 It is also relevant to note that Arup's analysis of historic land take-up rates, by reference to north, central and south sub-areas of the borough, suggests that in the years leading up to 2012, take-up rates for employment land in the north (which contains the application site) are significantly lower than those for the south and central sub-areas.<sup>49</sup> This is consistent with CPG's evidence regarding the concentration of employment land demand in the south of the borough.
- 2.39 The Eskogen Study<sup>50</sup> reports:- '*In the North, six of the twelve areas experienced net growth, with the overall levels of growth driven by significant increases in Wilmslow, Knutsford and Handforth ..... The growth in Wilmslow and Knutsford was driven by growth in the professional, scientific and technical sector ..... while Handforth benefited from high levels of construction growth. It should, however, be noted that construction growth is often volatile and can include employees that are registered to a local company address but work elsewhere. This may mean that the high levels of growth experienced between 2009 and 2013, will not be sustained going forward.*'<sup>51</sup>
- 2.40 It continues:-  
*'Between 2003-2008 and 2009-2013, there has been a shift in the balance of employment ..... towards the south of the Borough (although Wilmslow, Handforth and Knutsford continue to support employment growth in the north). The southern growth has been based around Crewe and its satellite centres ..... The ..... Key Service Centres - Handforth and Poynton in the North and Nantwich in the South - experienced employment growth between 2003 and 2008 and again between 2009 and 2013. In this case, there is a need to ensure that sufficient land is allocated to build upon the success that the areas have had in securing growth.'*<sup>52</sup>
- 2.41 However, no reference is made to the earlier qualification that growth at Handforth solely related to construction, rather than B1 uses generally. Moreover, on the basis of this report, the spatial distribution in CELPS
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<sup>47</sup> CD B1.12 Section 4

<sup>48</sup> CPG/1/1 paragraph 7

<sup>49</sup> CD J1.3 Appendix B1

<sup>50</sup> CD J1.6 Technical Support for Cheshire East Local Plan: Alignment of Economic, Employment & Housing Strategy (June 2015)

<sup>51</sup> CD J1.6 paragraph 5.15

<sup>52</sup> CD J1.6 paragraphs 5.18 & 5.21



Policy PG 7 suggests an indicative 22 ha to be accommodated at Handforth, notwithstanding any indication that it was a favourable location for employment uses generally.

- 2.42 Both Peel and SMBC rely heavily on the acceptance of the general conclusions in the Employment Land Review and the Eskogen study by the CELPS Inspector. However, that overlooks important detail, as set out above, in the preceding evidence base for Handforth Dean.
- 2.43 Reference was made, by Peel and SMBC, to a number of other sites as the basis of drawing inferences about demand for employment uses at the application site.
- 2.44 Firstly, Aurora, Stockport was highlighted as a '*very useful comparator*' which had let successfully for employment uses.<sup>53</sup> However, there are significant differences between the two:-<sup>54</sup>
- (a) Aurora is located only 1 km from M60 (J1) via the A560. Although the A34 is dual-carriageway, it is not close to a motorway;
  - (b) access to Aurora is almost exclusively through an industrial and commercial area with other established industrial estates in close proximity which creates a significant centre of gravity. Stockport is recognised as a longstanding popular and active industrial location, with the infrastructure and an environment to support existing businesses and attract new occupiers. The Aurora site would only have been acceptable for industrial use;
  - (c) by contrast, in recent years Handforth has become a retail rather than an employment location and it forms part of an established retail corridor including John Lewis, Sainsbury's, Tesco, M&S, Next, B&Q, and Total Fitness. This context makes it more difficult to sustain or attract industrial and warehousing occupiers; and, this is particularly so on the application site, which shares access with the retail park. As a result of this distinction, market perception of the area in which Aurora is located is markedly different to that of the Handforth area;
  - (d) industrial/warehousing uses require skilled manual C2 labour;<sup>55</sup> Aurora has a significantly higher C2 labour pool within a 5 km radius than the CPG site making it economically attractive for employment development. The same cannot be said of Handforth with its smaller C2 pool thereby deterring speculative employment development;<sup>56</sup>
  - (e) Aurora was the subject of significant public investment by SMBC; there is no public funding available for the application site; and, even with the offer, from Engine of the North, to prepare and service the site it was unable to attract any significant industrial interest when offered to the market.<sup>57</sup>
- 2.45 The second reference was to Alpha, Airport City.<sup>58</sup> This project has seen little take-up, seemingly on the basis of a restrictive planning condition requiring use for cargo facilities only. However, the recent letting to Amazon falls outside this restriction and it appears that there is a wider

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<sup>53</sup> PEEL/3/1 paragraph 5.6

<sup>54</sup> CPG/1/4 paragraphs 23-25

<sup>55</sup> National Readership Survey (NRS)

<sup>56</sup> CPG/1/4 page 11

<sup>57</sup> CPG/1/2 paragraph 29

<sup>58</sup> PEEL/3/2 Appendix 7

- underlying lack of employment demand, despite it being in a prime location and within an Enterprise Zone. Its position will make it a key beneficiary of the A6 MAAR.
- 2.46 Thirdly, Parkgate, Knutsford sits at the western edge of, and is serviced through, an existing industrial estate which has connection onto an easily-accessible road network. It is very different from the established retail location at Handforth Dean. In any event, the end-user demand for Parkgate was very localised, with most of the occupants trading-up from the existing industrial estate.
- 2.47 Finally, North Point, Trafford Park was still available after 2 years and it provides no basis to indicate demand.
- 2.48 It was also claimed, by Peel, that the trade counter users on Stanley Green Estate are not content with their location, and would prefer new units, in a more prominent location, on the application site.<sup>59</sup> However, evidence points to an absence of demand, given unsuccessful attempts to market a consented trade counter scheme, with up to 13 units, on Stanley Green Industrial Estate. The lack of success, over a 2 year period, can be attributed to:<sup>60</sup>
- (a) the existing trade counter representation next door are attracted by the cheaper rents of the older industrial units; and
  - (b) trade operators regard Stockport and Manchester as key locations with Handforth Dean perceived as more of an infill location.
- 2.49 With reference to the above it is clear that trade counters have rejected more expensive, modern, floorspace in a more prominent location than the existing cluster at Stanley Green. There was no evidence to suggest they would act any differently in respect of the application site, especially given the higher rents that would be demanded. In any event, a trade counter use, where goods are sold over the counter, is generally considered to be retail (or at least to have more in common with a retail use than a B class employment use).
- 2.50 Whilst Peel sought to show a lack of employment land within a 5 km radius of Handforth Dean, the wider, immediate, area provides a broad range of existing industrial space and development opportunities:
- (a) Manchester Air Freight Terminal and Airport City – 5.8 km;
  - (b) Hazel Grove industrial area – 5.1 km;
  - (c) Stockport industrial estates – 6.3 km;
  - (d) Sharston industrial estate – 6.1 km; and
  - (e) Roundthorn industrial estate – 7.2 km.
- 2.51 Overall, CPG contends that the location of the application site is unsuitable for employment uses and there is, in any event, inadequate demand for such uses.

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<sup>59</sup> PEEL/3/1 paragraph 5.14

<sup>60</sup> CPG/1/5 Appendix 1



**Viability**

2.52 CPG's evidence, supported by viability appraisals, demonstrates that employment uses on the application site, whether alone or mixed with other uses,<sup>61</sup> would be unviable. Peel and SMBC present competing appraisals which purport to demonstrate a viable employment scheme.

**Critique of Peel's case on viability**

2.53 The key differences between CPG and Peel over employment use viability are:- design quality; floorspace/density; build costs; and rent.

**Design quality**

2.54 Peel's appraisal was based on an employment scheme, of standard design, (produced by Bate & Taylor) without any reference to CEC's expectations for the site. In addition, the red line boundary was shown to be inaccurate<sup>62</sup> which would have resulted in development encroaching on to the steep A34 embankment, and, potentially, on to the hedge adjacent to the stream to the north of the site.

2.55 The Bate & Taylor scheme was criticised by CPG's advisors in the following terms:-<sup>63</sup>

*'It is 'brutal' maximised density of a site taking no account of normal development parameters which would involve more careful thought through design and layout, landscape, plot division and infrastructure, and if planned with these points in mind, and if factored in off plot and also on plot landscape, then the density wouldn't be as high as shown.*

*Given our knowledge of the site and that Cheshire East have been promoting a high-quality scheme, I don't envisage a scheme as drawn gaining planning consent as it is too commercial in its design and takes no account of having to create some form of perimeter landscape, on site design/landscape, and off plot landscape'.*

2.56 Both Peel and SMBC mistakenly consider that CPG's argument for a higher design requirement is based (entirely) on MBLP saved Policy E3. It is suggested that the policy is 'permissive' as to flagship development, but that this is not a requirement. However, that runs contrary to the reasoned justification in its recognition that the land is suitable for 'flagship' development and 'will be reserved for such purposes'. Overall, this suggests a clear intention towards higher design.

2.57 Further, Policy E3 is only the starting point:- the Employment Land Review 2012<sup>64</sup> assesses the application site in the following terms:-

- (a) *'Prominence: High – frontage to A34 Handforth Bypass and HD shopping centre;*
- (b) *Planning status: Existing allocated site for flagship B1 development;*
- (c) *Potential market segment uses: ..... High quality business park;*

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<sup>61</sup> Peel in Closing wrongly states that CPG offers viability evidence only in relation to employment schemes (and not mixed use):- CPG/1/4 page 17; CPG/INQ/030

<sup>62</sup> CPG/INQ/002; CD E1.23, 'Site Location Plan' – No. 7161, Rev. E (first plan in bundle)

<sup>63</sup> CPG/1/5 Appendix 4

<sup>64</sup> CD J1.3 pages E1-69-70

- (d) *Market Attractiveness - Excellent prominent site for quality office development. Likely to get interest from several parties when it is brought to the market; and*
- (e) *Overall reasoning: ..... good quality site.'*
- 2.58 Peel's witness accepted that these descriptions were inconsistent with its standard design; the reference to 'flagship' in the supporting text to Policy E3 applied beyond simply offices; and the extracts from the Employment Land Review were indicative of a more general higher quality requirement for the site. In any event, the prominence of the site itself calls for an appropriate gateway design, as CEC officers advised.
- 2.59 Further support for this can be found in a variety of sources:-
- (a) In the Deloitte report,<sup>65</sup> the options plans, produced in consultation with CEC, show significant landscape buffers as indicative of a high quality design requirement;
- (b) the Report to Cabinet states:- *'the site enjoys a very favourable location as it has excellent visibility from the A34 and is a gateway site for the Borough'*.<sup>66</sup>
- (c) the CBRE Marketing Brochure<sup>67</sup> shows that the site is visually prominent and immediately adjacent to a popular retail centre destination;
- (d) The officers' reports for the applications record:-<sup>68</sup> *'The design is considered to be of a relatively high standard for a retail development, befitting this prominent site at the gateway to Cheshire East, and is in keeping with the local area'; and*
- (e) the officers' report for the Next scheme<sup>69</sup> speaks of the relative prominence of the site compared to the Handforth Dean Retail Park, and it notes a revision to the scheme design to create a *'much more interesting façade to Earl Road'*.
- 2.60 All this assists in the interpretation of the Report by CBRE<sup>70</sup> and its reference to higher quality design:-
- '..... we are advised by Cheshire East Council that whilst the existing Local Plan Policy for the site had sought to retain the site for a 'flagship' B1a Office development, the Council's current position is that this may no longer be appropriate.'*
- 2.61 However, the inappropriate element is the office use rather than the flagship/higher quality requirement. The report continues under the heading 'Design Considerations':-<sup>71</sup>
- 'We are advised that the site is fairly well screened by tree cover to the North and East and given the scale and massing of surrounding developed sites there would be no great sensitivity in terms of the scale of development.*
- It was stated that design would likely be guided by the uses proposed; however, there would be a requirement for some form of structured landscaping, as well as linkages into surrounding areas including Handforth Dean Retail Park, surrounding*

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<sup>65</sup> CEC/2/3 Appendix 7

<sup>66</sup> CPG/3/2 Appendix 10 paragraph 1.3

<sup>67</sup> CPG/3/2 Appendix 13

<sup>68</sup> CD E1.1 page 46

<sup>69</sup> CEC/2/3 Appendix 9 (3 pages back from the site plan)

<sup>70</sup> CD E1.10 paragraph 5.11

<sup>71</sup> CD E1.10 Appendix IV page 5

*residential areas, as well as pedestrian and cycle links into existing infrastructure  
.....*

- 2.62 The reference to 'no great sensitivity'<sup>72</sup> relates to scale rather than negating the need for good quality design. Consistent with the documents above, the text also indicates the need for structured landscaping and linkages to surrounding land uses.
- 2.63 The scheme prepared on behalf of Peel was not fully informed; it was of a standard design and layout better suited to a site within an existing industrial area; and building to the extremities of the site was a notable shortcoming.<sup>73</sup>
- 2.64 Although, the scheme was amended to reflect the correct boundary alignment, and it was claimed that the same scheme could still be accommodated,<sup>74</sup> CPG disagree in that:-<sup>75</sup>
- (a) the scheme amendment causes the turning circles for some units to abut the buildings, thereby rendering them insufficient, particularly given the recent legislation authorising longer HGVs;<sup>76</sup>
  - (b) no reference is made to site specific assumptions regarding setting, prominent frontages, and the relationship with other uses or to higher quality design. Peel's advisors were instructed simply to consider industry and institutional standards;<sup>77</sup>
  - (c) the road layout would create a 'rat run' linking the retail park to Earl Road and cause an unacceptable mix of family and commercial HGV traffic;<sup>78</sup> and
  - (d) review of the scheme by CPG's architects supports the criticisms made.<sup>79</sup>
- 2.65 Although Peel submitted further evidence, CPG considers that:-<sup>80</sup>
- (a) there is no explanation of the disquieting overlap between buildings and turning circles, indicative of cramped overdevelopment;
  - (b) Peel's stance on the flexibility of design appears to be predicated on the scheme not being speculative development, which is inconsistent with its market view that the development must be speculative;
  - (c) Peel's view that larger HGVs would not service such small units as proposed in its scheme is inconsistent with the evidence of other schemes with comparably sized units and turning circles well in excess of 25 metres; and
  - (d) Peel has confirmed that its case on viability is dependent on there being no requirement for a higher standard design for an industrial scheme.<sup>81</sup>
- 2.67 It follows that if Peel is wrong, its stance on viability is untenable.

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<sup>72</sup> PEEL/INQ/013 paragraph 80(iv)

<sup>73</sup> PEEL/3/2 Appendix 10-12

<sup>74</sup> PEEL/INQ/004

<sup>75</sup> CPG/1/6

<sup>76</sup> CPG/1/6 paragraphs 3-4

<sup>77</sup> CPG/1/6 paragraphs 6-9

<sup>78</sup> CPG/1/6 paragraph 12

<sup>79</sup> CPG/1/6 paragraph 13

<sup>80</sup> PEEL/INQ/009; CPG/INQ/030

<sup>81</sup> PEEL/INQ/013 paragraph 80(iv)

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**Floorspace/density**

- 2.66 The effect of higher quality design would influence the assumed development density on the site. CPG's scheme (B2 only) would achieve a gross site density of 32.6% and a net site density of 38.8%.<sup>82</sup> The figures for Peel's scheme, 39.7% and 46.7% respectively, are significantly higher and above those for a number of other named schemes. The critical point is that the institutional standard of 40% derives from the net developable area. On this basis, Peel's scheme would be over-developed.
- 2.67 Whilst reference was made to higher densities elsewhere, the Aurora development in Stockport (42.9%) is a less sensitive site than Handforth Dean; and Alpha at Airport City (51%) is an undeveloped industrial plot with a terraced design between 2 existing industrial sites. They are not comparable.
- 2.68 Peel's advisors appear to have continued to operate on the unsupported view that 40% is based on the gross site area rather than the net developable area; and its revised scheme perpetuates the error.<sup>83</sup> It has not provided any evidence to support its position; and Peel has no answer to CPG's analysis.<sup>84</sup>
- 2.69 A point, fairly made by Peel, shows that CPG's scheme lacks an articulated vehicle hammerhead. Its inclusion would impinge on the land available for development, thereby reducing floorspace.<sup>85</sup> Thus, if anything CPG's scheme over-estimates the capacity of the site making the viability exercise over-generous.
- 2.70 Finally, it is telling that Peel could not explain why the schemes produced on its behalf had a different gross site area (11.6 acres and 12.0 acres); nor to point to market evidence to justify the additional 10% ancillary first floor office content for some units, rather than the standard 5% (such as found at Aurora).<sup>86</sup> This has implications for the assumed floorspace and gross development value.<sup>87</sup>
- 2.71 Overall, Peel's density assumption is no more than a strained attempt to maximise floorspace to inflate viability without regard to an appropriate density; the more appropriate high-quality design requirements for the site; and the institutional expectations for such units. This in turn undermines the floorspace assumption and gross development value.

**Build costs**

- 2.72 Peel's assumptions on build costs are uncorroborated whereas CPG's are supported by an external costs consultant's appraisal.<sup>88</sup> Moreover, Peel's position is contingent on lower quality design.

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<sup>82</sup> CPG/1/4 pages 14-15; CPG/1/5 Appendix 5

<sup>83</sup> PEEL/INQ/004; CPG/1/4 pages 14-15; CPG/1/6 paragraph 11

<sup>84</sup> PEEL/INQ/009; CPG/INQ/030

<sup>85</sup> PEEL/INQ/009; CPG/INQ/030

<sup>86</sup> PEEL/3/2 Appendix 16

<sup>87</sup> CPG/1/6 paragraph 10

<sup>88</sup> CPG/1/4 paragraph 66; CPG/1/5 Appendix 9

2.73 CPG has allowed £500,000 for the construction of a sub-station and related infrastructure; £1,079,000 for piled foundations based on the experience of developing the adjacent Next store; £250,000 for investigation and remediation of potential radioactive material; and £100,000 for additional site investigations.<sup>89</sup>

**Rent**

2.74 CPG started from the premise of rental levels of £7.25 sq ft for the larger units and £7.50 sq ft for the smaller units. This resulted in a loss on the scheme of £1.34 million (-6.58%). Comparison with Peel's preferred comparator, Aurora, Stockport is more than robust in that the CPG site is in a less favourable location and, whilst the rents asked at Aurora were up to £7.50 sq ft, the rents achieved were between £6.95 and £7.15 sq ft.<sup>90</sup>

2.75 Moreover, a further CPG appraisal using a rental of £6.50 sq ft, reflecting the rents at Multiply, Bolton (£6.50), Mere Grange, St Helens (£6.50), Apollo, Crewe (£6.25) and S-Park, Stockport (£6.66) shows a loss of around £5.33 million even with adjustment to other variables, including reducing the cost of piling by 50%. Moreover, even if the receipts from the sale of Next were to be used to cross subsidise the development, the project would only just fall into profit.<sup>91</sup>

2.76 As a sensitivity test, CPG re-ran Peel's assumptions including:- 5% first floor accommodation; rents at £7.25 - £7.50 sq ft; a 4 month rent free period; build costs of £55 and £65 sq ft; and reduced piling costs. This produced a loss approaching £800,000.<sup>92</sup>

2.77 The outcome of a further exercise, based on the above floor area with all of Peel's assumptions in play, produced a profit approaching £900,000 amounting to a return of less than 5% and a conclusion that it would not reach the required profit margin.<sup>93</sup>

2.78 CPG also ran a mixed scheme with a car showroom which showed a loss of £3.66m (-24.37%).<sup>94</sup> Whilst Peel ran a similar scenario showing a profit on costs of 22.24%,<sup>95</sup> this was based on the sale of the showroom land and its other assumptions criticised above. Even allowing for the sale of the land on Peel's valuation, and adopting CPG's assumptions, it would not turn sufficient profit to approach viability.

**Summary**

2.79 Overall, the development appraisal for the employment scheme provides a loss in the order of £1.34 million (a loss of 6.58% on cost); and it could be as high as £5.33 million. Even at its best it would not allow a private developer to undertake development on the site.<sup>96</sup>

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<sup>89</sup> CPG/1/2 paragraphs 84-89; CPG/1/4 paragraphs 69-72

<sup>90</sup> CPG/1/2 paragraph 82; CPG/1/3 Appendix 12

<sup>91</sup> CPG/1/4 paragraphs 82-83; CPG/1/5 Appendix 17

<sup>92</sup> CPG/1/4 paragraphs 73-74; CPG/1/5 Appendix 13

<sup>93</sup> CPG/1/4 paragraph 75; CPG/1/5 Appendix 14

<sup>94</sup> CPG/1/5 Appendix 16

<sup>95</sup> PEEL/3/2 Appendix 22

<sup>96</sup> CPG/1/2 paragraph 95

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2.80 Thus, CPG's evidence on viability is to be preferred as Peel's adopts an incorrect approach to design, site coverage and gross development value and the lack of supporting information on a number of key matters.

**SMBC's case on viability**

2.81 SMBC's evidence was given by an officer of the Council, and not by an independent expert. Whilst numerous criticisms are made of his evidence,<sup>97</sup> the fundamental issue on the approach taken, which undermines SMBC's case on viability, is the treatment of land value.

2.82 The RICS guidance paper '*Valuation of Development Land*' lists 2 approaches to the valuation of development land:-<sup>98</sup>

- (a) inputting the land value as a development cost into the appraisal (the approach taken by CPG, Orbit and Peel, who all assumed a market price for industrial land of £350,000 per acre); or
- (b) assessing the value of the scheme as completed; and deduction of the costs of development (including developer's profit) to arrive at the underlying land value (the residual method).

2.83 SMBC's appraisal does neither in that it assumes a nil land value reflecting the public funding approach taken by SMBC at Aurora.<sup>99</sup> The effect of a £350,000 per acre land value converts a profit of £4.44 million to a loss of nearly £770,000. It cannot be assumed that the Aurora scheme was commercially viable; and there is no evidence to suggest that CEC has funding available, still less support, to do this.

**Conclusions on viability**

2.84 Employment development, whether alone or as part of a mixed use, would not be viable. Peel and SMBC's appraisals fail to disturb this. Moreover, the results of marketing undertaken and the 20 years of lack of interest lend support to the lack of commercial viability for B class uses.

**Marketing**

**Overview of Marketing**

2.85 Between 2010 and 2015, 3 distinct marketing exercises were undertaken comprising marketing for temporary let in 2011; soft market testing/expressions of interest in 2012; and formal marketing in 2014.<sup>100</sup> In addition, the site had been well known to the development community over a long period.

**Policy**

2.86 If CPG is wrong about the application of CELPS Policy EG 3 1.ii.b. to the application site (which would mean that it does apply), then it is necessary to consider how this sub-paragraph is intended to operate. The policy requirement is to demonstrate that '*no other occupiers can be found*' (i.e. other than the existing occupier).

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<sup>97</sup> CPG/1/4 paragraphs 55-62

<sup>98</sup> PEEL/3/2 Appendix 17 paragraph 1.3

<sup>99</sup> Sum not disclosed by SMBC but publicly announced at £12m

<sup>100</sup> CPG/3/1



- 2.87 Footnote 43 to the policy sets out how this is to be fulfilled. In *R. (Khan) v Sutton LBC* [2014] EWHC 3663 (Admin), Patterson J at [51]-[52] applied the distinction made by the Court of Appeal in *R. (Cherkley Campaign) v Mole Valley District Council* [2014] 2 E.G.L.R. 98 between planning policy and the supporting text to a footnote.<sup>101</sup> Footnote 43 is not the policy, and its purpose is to give guidance on how to interpret the policy.
- 2.88 This distinction is ignored by Peel - the policy falls to be applied in a flexible manner, having regard to the purpose of the exercise, to ascertain demand for the site. The real question is to ask whether the marketing undertaken was reasonable and sufficient to identify the market interest in the application site.
- 2.89 The application site has been well-known to the market for years; it has been allocated for employment use since 1997; and the airport parking use prior to 2010 was a temporary revenue expedient. That is why when formal expressions of interest and proposals were invited, a significant response was received. The objectors' attempts to apply Footnote 43 rigidly, and as if it were policy, ignore the reality of the application site in the market and the true purpose of CELPS Policy EG 3. Their approach is also inconsistent with Framework paragraph 22.

**Overall process**

- 2.90 Although the Rule 6 parties set out to show that the process undertaken by CEC, Engine of the North and CBRE, between 2010 and 2015, was a series of disconnected and separate marketing exercises,<sup>102</sup> Peel's witness ultimately accepted that each stage was '*part of a decision-making process*', and that the strategy changed as the process evolved and did so on the basis of expert advice. Nonetheless, Peel's closing submissions ignore this evolution of process. Moreover, the allegation of inconsistency between CEC's promotion of the site for employment uses, its simultaneous disposal for retail development and due haste, to maximise capital receipts, are not consistent with the facts.

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<sup>101</sup> Patterson J. held -  
'50. In *R (on the application of Cherkley Campaign) v Mole Valley District Council* [2014] EWCA Civ 567 Richards LJ said:

*'16. .... it seems to me, in the light of the statutory provisions and the guidance, that when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy. I do not think that a development that accorded with the policies in the local plan could be said not to conform with the plan because it failed to satisfy an additional criterion referred to only in the supporting text. That applies even where, as here, the local plan states that the supporting text indicates how the policies will be implemented.*

*.....*  
*21. .... The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy. I do not accept that such a requirement is implicit in the policy or, therefore, that paragraph 12.71 makes explicit what is implicit. In my judgment paragraph 12.71 goes further than the policy and has no independent force when considering whether a development conforms with the Local Plan .....'*

*51 ..... I reject the claimant's submission that Cherkley is inapplicable. It clearly is. It restates in very clear terms the relationship between a planning policy and the supporting text which is one of the points in issue in the instant case.'*

<sup>102</sup> SC/INQ/015 paragraph 24

- 2.91 The site has remained allocated without interest for 2 decades; CEC spent some 4 years considering and assessing options for the site, starting with the clear objective of delivering employment uses in line with planning policies. In the process, it advertised the site nationally as suitable for employment uses. This was followed by a detailed evaluation of alternative forms of development and alternative mechanisms for delivering employment uses on the site. When it became clear that it would not be viable to develop the site in its entirety for employment use, the site was marketed for a range of uses but with specific measures taken to attract and deliver employment occupiers.
- 2.92 Indeed, contrary to Peel's closing submissions, its witness did not allege that CEC did not act *bona fide* throughout; he accepted that CEC's exercise seeking expressions of interest was directed towards employment development, and that CEC's expectations only changed based on professional advice (from Deloitte). Moreover, the Council's general approach, until it considered it necessary to proceed differently, was to seek employment use in accordance with the development plan.

**Soft market testing - 2012**

- 2.93 The marketing exercise in 2012 sought expressions of interest for the whole or only part of the site by either potential developers or end users.<sup>103</sup> Tenure was offered as a 125 year ground lease, in either the whole site or serviced plots, and the Council would also consider developing plots for interested end users. Peel's witness accepted that the latter option would have positively facilitated interest; and whilst initially critical of lack of opportunity for freehold acquisition, some freehold expressions of interest were made.<sup>104</sup>
- 2.94 Expressions of interest are much easier to make than offers as they require less due diligence, and no development appraisal is needed. The 8 responses showing interest for employment uses were not indicative of strong market demand – had there been vast pent-up demand, a much higher level of interest would have been expected.
- 2.95 The criticisms made about the 5-week time-period and the '*lack of follow-up*' to the expressions of interest<sup>105</sup> failed to understand that the invitations were part of a single overall strategy and designed to inform the development of the strategy. In effect, it was a preliminary process to gauge interest and on that basis to justify further investigations,<sup>106</sup> which led to the Deloitte Report. In addition, CBRE has confirmed that all expressions of interest were followed up in the formal marketing exercise.<sup>107</sup> The allegation that the exercise was inadequate is inconsistent with the fact that it generated a total of 23 responses.<sup>108</sup>

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<sup>103</sup> CPG/3/2 Appendix 6

<sup>104</sup> CPG/INQ/003 Annex 1

<sup>105</sup> PEEL/INQ/013 paragraphs 87-88; SC/INQ/015 paragraphs 30 and 32

<sup>106</sup> The Cabinet resolutions were 'i) Take all necessary action to bring forward, through phased direct development, the Council's landholding at Earl Road, Handforth for employment led uses in line with current planning policy. ii) Invest up to £130,000 towards the cost of financial appraisal, site investigation and masterplanning work. iii) Commence marketing of serviced plots in order to ensure timely delivery on site.'

<sup>107</sup> CPG/3/5 Appendix 2 paragraph 4

<sup>108</sup> CPG/INQ/003 Annex 1 lists 26 responses



- 2.96 The expressions of interest informed a range of delivery options that were presented to Cabinet in January 2013. The stated aim was to bring forward development for employment led uses in line with planning policies. There is nothing to suggest that, had the site been marketed differently or for a longer period, further expressions of interest would have altered the options put forward or the strategy adopted. It is clear that the Cabinet Report and Minutes suggest a firm intention to pursue employment development.<sup>109</sup>
- 2.97 Peel's witness agreed that it was prudent for CEC:-
- (a) to appoint independent and nationally reputable experts (Deloitte) to assist in developing a strategy for the site; and
  - (b) to follow its advice that offices/light industrial only would deliver a negative residual land value, and that CEC should widen its strategy to consider a mixed-use scheme with retail.<sup>110</sup>
- 2.98 This subsequently led to the report to Cabinet in March 2014 and the reference to the strategic priority to maximise capital receipts.<sup>111</sup> However, this has to be seen in the context of all the other objectives being pursued by CEC as part of the process for enabling development on the site.<sup>112</sup> There was nothing unreasonable about deciding on the implications for disposal value as well as the use. Indeed, CEC had a legal duty to dispose of the site for best value.
- 2.99 In respect of the Recommendations and Reasons for Recommendations, Peel's witness agreed that:-
- (a) it was reasonable and prudent for CEC to agree to take '*all necessary action*' to achieve disposal, for '*all potential land uses*', not just employment;
  - (b) employment use was not ruled out - Recommendation 3 refers to the provision of shared site infrastructure to facilitate employment end users; and
  - (c) there was nothing suspicious in referring to the adjacent Next store as indicative of favouring retail - it was a fact highly relevant to the disposal of the site.
- 2.100 The Reasons for the Recommendations provided:-<sup>113</sup>
- 'The Deloitte report concludes that delivering an exclusively employment led scheme will be a significant challenge and potentially not viable given the competition from other more preferable/established sites in the area ..... The suggested delivery strategy is to promote the site as a high-quality mixed use development with retail and other uses in order to facilitate significant new employment opportunities and generate substantial capital receipts on a redundant site at a key gateway location to the Borough.'*
- 2.101 The recommendations were reflected in the Cabinet's resolution on 4 March 2014 which became the basis on which CBRE was engaged to formally

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<sup>109</sup> CPG/3/2 Appendix 7 and 8

<sup>110</sup> CPG/3/2 Appendix 9 paragraphs 6.2 & 6.5

<sup>111</sup> CPG/3/2 Appendix 10 paragraph 1.4

<sup>112</sup> PEEL/INQ/013 paragraph 92 (on CEC/2/3 Appendix 6 paragraph 1.5) misrepresents what the referenced document actually says:- '*EotN's brief from the Council is to accelerate the disposal of this site in line with the Council's corporate objectives and existing and emerging planning policy whilst maximising capital receipts.*'

<sup>113</sup> CPG/3/2 Appendix 10 paragraph 3.3

market the site.<sup>114</sup> It is clear that CEC officers were still hopeful of achieving employment uses on the site.

**Formal marketing - 2014**

- 2.102 It is claimed that the marketing brochure was likely to unfairly encourage retail over other uses; and the lack of employment interest was of no surprise.<sup>115</sup> However, Peel's witness accepted that:-
- (a) although the proximity of the application site to nearby retail uses would have been apparent, as evidenced by the aerial photograph, so too was Stanley Green Business Park; nobody would have been misled;
  - (b) employment was the first potential use listed in the Development Overview;
  - (c) it was reasonable to restrict individual plot acquisition to leasehold rather than freehold, in light of obvious estate management issues, and that this would have had no impact on interest in the site;
  - (d) half of page 2 was taken up by the first option, to offer serviced plots with shared site infrastructure and assistance with design and build solutions which would have been seen as an advantage to some with the effect of widening the range of interest by employment end users;
  - (e) speculative developers had the option of instead taking the whole site;
  - (f) the Informal Tender offered Engine of the North's assistance to end users, and there was nothing in the list of offer requirements that would have deterred any potential bidder; and
  - (g) overall, whilst the brochure was aimed at a range of uses, it specifically focuses on facilitating employment end users.
- 2.103 The marketing exercise began in mid-May 2014; the formal exercise was preceded by informal contacts made by CBRE to 'warm up the market'; and the formal exercise was conducted through a range of marketing media. CBRE reported:- *'[a]lmost immediately we received a host of enquiries for the site from a range of developers and end users. Numerous telephone enquiries were received and we met with many of the interested parties to discuss the site and their potential interest'*. The deadline of 27 June 2014 was only imposed *'following considerable interest in the site'*.<sup>116</sup>
- 2.104 The results of the marketing exercise are explained in CBRE's letter dated 13 December 2017.<sup>117</sup> Peel's witness agreed that:-
- (a) He did not doubt what was said by CBRE in this letter;
  - (b) the response of 53 offers indicated a "fantastic" level of demand;
  - (c) there was no need to market the site for a longer period;
  - (d) the site was very well known to the market;
  - (e) he had no evidence that potential occupiers had insufficient time to make a bid, or that anyone was prevented from bidding;<sup>118</sup>

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<sup>114</sup> CPG/3/2 Appendix 11

<sup>115</sup> PEEL/INQ/013 paragraph 94; SC/INQ/015 paragraphs 36-37; CPG/3/2 Appendix 13

<sup>116</sup> CPG/3/2 Appendix 12

<sup>117</sup> CPG/3/2 Appendix 12

<sup>118</sup> PEEL/INQ/013 paragraph 97 and SC/INQ/015 paragraph 37 – the assertions that speculative developers were put off is supposition

- (f) he would have heard through agency contacts if there had been concerns about the adequacy of the exercise;
- (g) he was not instructed by any clients to put forward any complaint about lack of time given for responses; and
- (h) the responses indicated that everyone who needed to know about the exercise did know; and anyone with any interest responded immediately.

2.105 The CBRE letter explains:-

*'These offers confirmed prior discussions with interested parties that the main body of demand was from developers seeking to pursue a retail /leisure development. This form of development generated the highest value and for many of these developers, they either did not wish to pursue an employment use scheme or did not believe an employment use scheme was viable, notwithstanding its allocation in the Local Plan. In conversations at the time, several developers articulated their concerns regarding the ready supply of better employment use land/accommodation in the south Manchester area, and the difficulty in leasing existing employment use stock.'*

2.106 The letter notes that mixed use proposals were received, but that:

*'..... the majority of offers received for mixed use schemes were submitted by developers who had also submitted proposals for a wholly retail/leisure development. For these developers, it was clear that employment use was secondary, generally included only in response to the Local Plan allocation and anticipating that the Council might favour mixed use proposals that included a small element of employment use.'*

2.107 Peel's witness also accepted that the inclusion of an element of employment was generally a "stalking horse" for other uses, and was only included 'to ensure conformity with the planning allocation'. CBRE confirmed that 3 proposals were received for mixed use development of the whole site where the employment use was dominant. However, there were serious concerns about the deliverability and genuineness of these proposals.<sup>119</sup>

2.108 Fourteen offers were made by occupiers/end users; contrary to Peel's closing, none of the offers from occupiers was for employment use, despite the marketing brochure offering shared site infrastructure to facilitate such use.<sup>120</sup> This indicates that, even if an employment or mixed-use developer offer had been genuine and deliverable, it would not have had the underlying occupier demand to support it. Indeed, the lack of such end user demand reinforces the lack of viability and genuineness of the developer proposals.

2.109 CBRE received one offer for development of the whole site for employment use which was rejected:-<sup>121</sup>

*'The offer ..... had no named end users and the offer price itself was very low when compared with other offers received and even low relative to other comparable employment land values in the North West. This further raised concerns about the deliverability of the scheme, particularly as the offer was conditional on a site*

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<sup>119</sup> CPG/3/1 Paragraphs 5.8-5.9; CPG/3/2 Appendix 12 pages 4-5

<sup>120</sup> CPG/3/2 Appendix 12

<sup>121</sup> CPG/3/2 Appendix 12 page 4

*investigation and we anticipated that poor ground conditions would likely increase development costs.*

*In addition, this party indicated in their offer that they had the funds to complete, but also reserved the right to bring in bank or JV [joint venture] funding during the procurement process. This raised further concerns regarding their ability to fund the transaction even at the very low level of their offer.*

*Finally, the offer itself pointed to overage being payable upon the implementation of the 'Next' consent together with overage for other retail accommodation which may be consented in the future. This rather suggested that the developers had some interest in buying the land under the pretence of an employment use whilst then pursuing a retail scheme shortly thereafter.'*

2.110 CBRE also explained that:-

*'In considering these offers, consideration was given to a range of factors including deliverability, fundability, price, land use, cost, risk, quality and track record of purchaser, quality of development and overall planning context'.*

2.112 In addition to the lack of underlying demand from employment end users, CBRE identified a further reason for rejecting a piecemeal approach to the site:-

*'..... the prospect of selling the site in plots raised a number of planning, legal and practical issues and the cost of creating the infrastructure did not justify accepting offers for parts, which were generally lower than the offers for the whole. Ultimately, therefore, the alternative approach of selecting a single purchaser for the whole of the site was pursued primarily on viability, economic and practicality grounds.'*

2.111 When considering the exercise as a whole, Peel's witness ultimately accepted that it was valid, adequate and conducted with integrity, subject to two points:-

- (a) the dispute about the time-scale; and
- (b) the lack of an employment agent on the CBRE marketing team.

2.112 However, the former appeared to be related to compliance with CELPS Policy EG 3 Footnote 43 rather than any substantive criticism of the length of marketing in light of his acknowledgement of the level of interest generated and inability to show that anyone was excluded. As to the latter, no real quibble was raised with CBRE's credentials.

2.113 Indeed, CBRE, in replying to the witness' proof, confirmed that all of the offers received were given full consideration and explained that the reasons for rejecting mixed use proposals was generally for one or more of 3 reasons, namely:- inefficiency; tokenism; or intention to secure a retail consent later.<sup>122</sup>

2.114 All of these could be good reasons to discount a particular bid on a commercial basis.

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<sup>122</sup> CPG/3/5 Appendix 2

**Conclusions on employment**

- 2.115 In conclusion, there is no reasonable prospect of an employment use coming forward on the application site, because:-
- (a) the site is not a suitable location for employment uses and there is no demand for such uses;
  - (b) an employment use (whether alone or mixed with other uses) is not viable; and
  - (c) this is demonstrated by the long term availability of the site without any interest in employment development; and the marketing exercise undertaken in respect of the site.
- 2.116 The applications are therefore in accordance with CELPS Policy EG 3 and Framework paragraph 22.

**Retail issues**

**The Development Plan**

- 2.117 CELPS Policy EG 5(7) embodies Framework paragraphs 24, 26 and 27 into the development plan. On this basis the following fall to be considered:-
- (a) whether there are sequentially preferable sites that are both available and suitable for the applications, having regard to the need for flexibility in terms of format and scale;
  - (b) whether granting permission is likely to have a significant adverse impact on investment in catchment area centres; and
  - (c) whether granting permission is likely to have a significant adverse impact on town centre vitality and viability.
- 2.118 The SMBC UDP and Core Strategy are not part of the statutory development plan for the purposes of the applications and are no more than material considerations. However, they are out-of-date and should not be given significant weight since they predate the Framework (2012), the Greater Manchester Combined Authorities Report and the Stockport Prospectus (2<sup>nd</sup> edition.).<sup>123</sup>

**Sequential test**

- 2.119 Framework paragraph 24 provides:-
- 'Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to 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. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.'*
- 2.120 St Modwen accepts that the Rowlandsway site in Wythenshawe was neither 'suitable' nor 'available' as a sequentially preferable site for the

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<sup>123</sup> CD J1.12; CD J1.13

applications; and SMBC confirms that if the scheme is regarded as one indivisible scheme, then it passes the sequential test.

- 2.121 On this basis, CPG needs only satisfy the Secretary of State that the scheme should be regarded as a single scheme. SMBC does not put forward a positive case why it should not.
- 2.122 In the event that either the Inspector, or the Secretary of State, regards the scheme as divisible, the sites in contention will be considered after the question of disaggregation is addressed (for the avoidance of doubt).

***Disaggregation***

- 2.123 The applications are a single scheme of retail development with restaurants to support the retail uses:-
- (a) the reason the development was divided into separate applications reflected a contractual obligation imposed by Engine of the North, who anticipated that some elements would be less sensitive than others;
  - (b) the applications have been put together as a single comprehensive scheme that fitted together;
  - (c) all of the masterplans show the applications as a single scheme.
- 2.124 SMBC's retail and planning witness indicated that he would have given weight to the comprehensive nature of the scheme had there been contractual commitment by individual retailers to the scheme. However, as he accepted, that:-
- (a) retailers will not contractually sign up to a scheme until permission is granted;
  - (b) Primark, Sofology, Mothercare, Starbucks, KFC and McDonalds have agreed terms and solicitors have been instructed (as far as anyone will go without planning permission);<sup>124</sup>
  - (c) discussions regarding terms were ongoing with a number of other operators;<sup>125</sup>
  - (d) with the above anchor tenants in place, there would not be any difficulty in attracting other retailers to the location; and
  - (e) the situation was very far from being a speculative scheme.
- 2.125 Moreover:-<sup>126</sup>
- (a) the applications are detailed applications with only landscaping as a reserved matter;
  - (b) the applications were amended in 2017 to reflect retailer and operator requirements - it is a fully worked up scheme with unit sizes and locations fixed following operator input; and
  - (c) the applications have a clear 3 year timescale for delivery.

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<sup>124</sup> CPG/4/2 paragraph 7.8

<sup>125</sup> CPG/4/3 Appendix 14

<sup>126</sup> CPG/4/4 paragraph 3.6



- 2.126 This case is therefore very different from the Tollgate appeal decision relied on by SMBC, in which the Inspector remarked that '*[i]t is difficult to conceive of a more open ended proposal*'.<sup>127</sup> The Tollgate scheme was outline only, had no confirmed operators, and no delivery timescale.
- 2.127 There is support at the highest level for CPG's approach, which focuses on what in reality the developer is actually proposing, i.e. the applications taken together as a single scheme, rather than some artificial sub-division (in this case imposed by Engine of the North on CEC's behalf). In *Tesco v Dundee Lord Hope* said:-<sup>128</sup>
- '...the whole [sequential] exercise is directed to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer.'*
- 2.128 The same approach is taken by Ouseley J in *Aldergate Properties Ltd and Mansfield District Council*.<sup>129</sup>
- 2.129 For these reasons, CPG submits that the applications should not be considered separately and, if this is correct, the sequential test is passed.
- 2.130 If the applications are considered separately, it is necessary to look at only Phase 1b and 2 in isolation and there is no justification for further disaggregating Phases 1b or 2. SMBC's witness accepted that the Secretary of State in Tollgate did not expressly endorse the Inspector's acceptance of disaggregation.<sup>130</sup> Moreover, there is no reference to disaggregation in the Framework or the Planning Practice Guidance; and that it had been deliberately omitted when the former PPS4 was replaced.

***Suitability and availability***

- 2.131 Even if disaggregation were applicable, none of the sites listed are suitable and available. When considering the suitability and availability of sites for Phases 1b or 2:-
- (a) *SMBC's witness accepted that sites must be capable of accommodating something 'closely similar' to the proposed scheme;*<sup>131</sup> and
- (b) *the sites must be 'currently available'. This was the approach taken by the Secretary of State in the Rushden call-in decision.*<sup>132</sup> *Although SMBC's witness suggested that a subsequent decision from Gloucester*<sup>133</sup> *indicates that 'available' should be construed flexibly so as to not require sites to be 'immediately available for occupation' this was inconsistent with Rushden and with national policy.*<sup>134</sup>

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<sup>127</sup> CD K1.4 IR 12.3.11

<sup>128</sup> CD K1.1 paragraph 38

<sup>129</sup> CD K1.2 paragraph 47

<sup>130</sup> CD K1.4 IR 12.3.1-12.3.22

<sup>131</sup> This was the approach adopted in Tollgate (CD K1.4 IR 12.3.6 and DL 13) as shorthand for the approach in *Aldergate*; CPG/4/5 Appendix 5 DL 25

<sup>132</sup> K1.3 DL 17 and IR 8.55

<sup>133</sup> SC/3/2 Paragraphs 5.10-5.11; SC/3 Appendix 12 DL17

<sup>134</sup> CPG notes that the draft NPPF currently proposes a revised approach at [87]:- '*only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.*' Even on this revised test, the sites relied do not suffice

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**Individual sites**

- 2.132 SMBC's witness conceded that none of the sites to which he had referred was capable of accommodating anything approaching either the CPG single scheme or even Phases 1b and 2:-
- (a) in light of the recent letting of the former BHS unit to Poundland, the site was no longer available;
  - (b) at Redrock, only 2 units were now available, which would accommodate only half of the Phase 2 restaurants and would not be suitable for the drive-thru units of Phase 2. This site could not therefore accommodate development '*closely similar*' to Phase 2;
  - (c) at the Merseyway Shopping Centre, units would only be available for letting in 2022, and not consistent with the '*currently available*' test as set out in Rushden or as rehearsed in Gloucester;<sup>135</sup>
  - (d) unit 6 of the Peel Centre, according to CPG's understanding, is receiving significant interest from Wren Living and Smyths Toys following the closure of Toys R Us. CPG adopts Orbit's position on the suitability and availability of the unit; and, in any event, the unit would be too large to be suitable for Phase 1b; and
  - (e) the Morbaine site, Water Street, is likewise too large for Phase 1b. It is also unsuitable as a site for retail in that it is separated from the town centre by the M60; it is out-of-centre; inaccessible; and has a constrained layout. Hence, it has remained unimplemented since it was allowed on appeal in 2007.<sup>136</sup>

**Impact on Investments**

- 2.133 Framework paragraph 26 requires an assessment of '*the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal*'. It is only if the impact is '*significantly adverse*' that paragraph 27 indicates permission should be refused.
- 2.134 The centres in question are:- Stockport; Macclesfield; Wythenshawe; and Wilmslow. No party has advanced any evidence of significant impact on Wilmslow, which is one of the most viable town centres in the area under analysis, and it will not be considered further.<sup>137</sup>
- 2.135 As a preliminary point, it is to be noted that Peel's market and retail impact witnesses lack important relevant experience. The former admitted that this case was the first work he had done for Peel for 10 years, and that he was not engaged in any other work in Stockport; and he had not undertaken any high street retail agency work in Stockport or Macclesfield or even in Cheshire East over the last 20 years. The latter confirmed that he did not give evidence as an agent or property specialist with experience in lettings/rent reviews/valuations etc. By contrast, CPG's witness had considerable, lengthy and recent experience of the retail and commercial markets and of the significance of recent changes in the market.

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<sup>135</sup> For the same reason, the Merseyway Shopping Centre cannot even be said to be '*expected to become available within a reasonable period*' under draft NPPF 87

<sup>136</sup> CPG/4/2 paragraphs 4.33-4.38; CPG/4/4 paragraphs 3.33-3.40

<sup>137</sup> CPG/4/2 paragraph 5.57



**(a) Stockport**

- 2.136 SMBC's case on investment impact was more of a generalised concern about impact on investor confidence and the town centre as a whole, and the indirect knock-on effects this may have on individual investments, rather than the direct jeopardising of specific schemes. This is not the correct approach to assessing investment impact, and blurs the distinction in Framework paragraph 26 between impact on investments and impact on town centre vitality as a whole. In any event, these generalised concerns depend on SMBC's retail evidence as to the impact on town centre vitality, which will be considered below.
- 2.137 It is also relevant that SMBC's evidence should be judged in the light of the development plan components and retail policies being out of date as they predate: -<sup>138</sup> the Framework and Planning Practice Guidance; Greater Manchester Combined Authority Town Centres Project Concluding Report March 2013; the Stockport Prospectus 2nd edition July 2014; and the Stockport Retail Update August 2014.<sup>139</sup>
- 2.138 Moreover, the Core Strategy's suggestion of '*a significant increase to the existing level of convenience and comparison goods A1 use floorspace in Stockport Town Centre*' is out of step with the current approach to concentrating retail and diversifying town centres.<sup>140</sup> As the Stockport Prospectus sets out:-
- 'The Changing Face of Town Centres -
- Town centres lie at the heart of communities but face many challenges, including the growth of online retail and out-of-town shopping centres.*
- As noted in the 2013 Greater Manchester Town Centres study, the restructuring and shrinkage of traditional town centre retail means that centres such as Stockport must look to consolidate existing town centre functions within a smaller footprint, whilst attracting a range of other forms of activity to drive footfall and bring new customers, visitors and investment. A combination of interventions will be required to meet these evolving demands.'*
- 2.139 That latest Stockport Prospectus sets out the planned investments for the town:-
- 'This second edition of the Town Centre Development Prospectus brings together the latest evidence to provide a single point of reference for the future development of Stockport town centre. The town centre is a key component of Stockport's economy and is well positioned to act as the main centre in south Greater Manchester by complementing Manchester city centre, combining commercial property opportunities with the town's distinctive history and character.*
- Stockport Council has ambitious plans for the town centre, which are both realistic and informed by market analysis. At a local level, for example, the Council helped to inform the 2011 and 2013 Greater Manchester Town Centres studies and it has also taken into account findings from national studies undertaken by Mary Portas (The Portas Review) in 2011 and by Bill Grimsey (The Grimsey Review) in 2013. One of the initiatives to emerge from the Portas Review was the creation of 'Portas*

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<sup>138</sup> CD J1.12 footnote 73 page 75 and text of CS 6

<sup>139</sup> SC/1/2 Appendix 3 and 7; CD H1.10; CD H1.11

<sup>140</sup> CD J1.12 paragraph 3.148

*Pilot' areas, and Stockport was one of the first 12 town centres in England to successfully bid for this status.*

*The Council has a proactive strategy for achieving change, purchasing both land and individual properties so that it can make strategic interventions to help derisk schemes to attract private investment, and leading delivery where market failure is evident. The Council's main focus is on ensuring Stockport's key assets such as the shopping centre, market, train station, St. Peter's Square etc. work to optimal effect.'*

2.140 It is notable that with respect to that planning investment:-

- (a) it has been advanced with success regardless of the knowledge of the CPG applications; and
- (b) no evidence was produced which supported the view that the CPG applications had or would undermine that investment, still less would have a significant adverse effect. Indeed, the investment which SMBC made in purchasing Merseyway Shopping Centre demonstrates there has/will be no such effect.

***Stockport Exchange***

2.141 On 19 February 2018, SMBC published a press release<sup>141</sup> concerning the approval of the reserved matters application for Phase 3 of the Stockport Exchange development, which follows the Phase 1 multi-storey car-park and the Phase 2 offices and public realm improvements. The press release notes that:-

- (a) *Urban regeneration specialists Muse are delivering the £145 million Stockport Exchange scheme in partnership with SMBC;*
- (b) *Phase 3 is for a new 60,000 sq ft office building next to the existing 50,000 sq ft Phase 2 office building, which was completed in December 2016;*
- (c) *Phase 3 'builds on the success of the second phase which saw the office space let within six months of completion and which was not sufficient to soak up the latent demand for quality accommodation which exists in Stockport'*
- (d) *Phase 2's Holiday Inn Express 'frequently achieves over 90% occupancy, and is trading ahead of forecasts'.*

2.142 It was confirmed that there was a realistic aspiration to start Phase 3 in the summer, with completion forecast for 2020; and it was realistic to expect no difficulty letting the space given the 'latent demand' and the experience with Phase 2. All this was in the full knowledge of applications by CPG. Indeed, there is no reference to Handforth Dean in the Officer's Report for Phase 3 which demonstrates how unaffected the Stockport Exchange scheme is by the applications.<sup>142</sup>

2.143 In this regard, the Tollgate Inspector found it relevant that a number of investments had been made *'in the lifetime of the appeal proposal.'*<sup>143</sup>

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<sup>141</sup> CPG/INQ/017

<sup>142</sup> CPG/INQ/018

<sup>143</sup> CD K1.4 IR 12.4.32 & DL 18

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**Redrock**

2.144 In the short space of time since practical completion in November 2017, it was agreed that the lettings of the Redrock scheme had been remarkably successful, with only 3 A3 units remaining unlet, and a number of bids being received and considered during the Inquiry. The A3 units have a relatively small catchment area and are likely to see Handforth Dean and Stockport town centre as separate locations offering dual representation.<sup>144</sup> There is no evidence of potential Redrock A3 tenants not wanting to take a lease at Redrock because of the applications. Like Stockport Exchange, Redrock has progressed and will continue to progress in full knowledge of the applications.

**Merseyway Shopping Centre**

2.145 The purchase of the Merseyway Shopping Centre by SMBC in April 2016 also post-dates CPG's proposals in Handforth Dean. The assessment of impact must have regard to the evidence that the overall health of the retail centre is strong, with a very low agreed vacancy rate. The Cabinet Report dated 19 December 2017 indicates that the investment plans are at a very early stage with approval sought for further feasibility work to be undertaken.<sup>145</sup>

2.146 When considering whether the situation in Merseyway Shopping Centre constitutes '*planned investment*' within the meaning of Framework paragraph 26, it is important to have regard to what the Tollgate Inspector said, as endorsed by the Secretary of State: -<sup>146</sup>

*'Objectors argue that Vineyard Gate has made progress since the Council ended its agreement with Caddick last year and maintain that it can be considered planned investment despite a CPO possibly being required. They state there is little basis for the contention that Vineyard Gate would have to be at 'a very advanced stage' to be considered as planned development.*

*Notwithstanding this the SoS's decision in Scotch Corner indicates that a project must be 'at a very advanced stage'. The PPG states that a key consideration in assessing whether investment is sufficiently advanced is whether contracts are established. There are no contracts in place in respect of Vineyard Gate. There is no overall land ownership and there is no developer, confirmed scheme, or planning permission. Moreover there is no timetable for delivery. A planning performance agreement was only signed during the course of the inquiry. Any development at Vineyard Gate, even if it could overcome the obstacles, is many years away.'*

2.147 It cannot be said that the plans for Merseyway are '*at a very advanced stage*'. In any event, the proposals do not include any retail floorspace other than '*semi-permanent retail and leisure pods*' and are instead focused on refurbishment and the creation of a food court.

2.148 Even if the proposals were to contain retail floorspace aimed at the same retailer type, the same point as above applies: Stockport and Handforth Dean are two separate markets allowing dual representation.

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<sup>144</sup> CPG/4/2 page 19 Table 2

<sup>145</sup> SC/1/3 Appendix 18

<sup>146</sup> CD K1.4 IR 12.4.35-36 & DL 18)

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**Marketplace & Underbanks**

- 2.149 SMBC, Carillion and CBRE launched a programme to create a hub for independent retailers and creative industries; and SMBC has invested £7m into the programme with the aim to attract new businesses, events and visitors. A number of new tenants have recently opened. A collaborative partnership with Manchester Metropolitan University has launched an initiative to provide start-up business support to creative graduates.<sup>147</sup>
- 2.150 The proposed CPG development will not impact on this strategic investment as it intends to facilitate and support the development of independent retailers and creative businesses which will not overlap with national multiple occupiers at Handforth Dean.
- 2.151 In any event, the catchment for food/drink operators is significantly smaller than for retail with pitches in multiple locations. Therefore, even if the same kind of retailers would potentially be interested in both Marketplace and Handforth Dean (which is not the case), they would happily locate themselves in both as separate catchments and distinct markets.
- 2.152 This is accepted by SMBC in closing, which only suggests a general and indirect impact due to reduction in footfall. This is too vague, unsupported by evidence, and not specifically directed at the impact of the applications on the investment in this programme.

**The Peel Centre**

- 2.153 It was said that the Peel Centre was experiencing difficulties with tenants expecting more favourable lease terms; and Unit 6 (formerly Toys R Us) had become vacant following the demise of the retailer. Although it was claimed that 5-year leases were a sign of the Peel Centre struggling, this accords with the national average of 5.4 years and a reflection of the market generally.<sup>148</sup> Overall, Stockport does not provide any particular cause for concern.
- 2.154 Nothing is known about the marketing of Unit 6 since the announcement of the closure of Toys R Us in early March 2018, or of any interest received, or Peel's intentions. Part of the problem at the Peel Centre was the inconvenient timing of multiple lease renewals coinciding. Nonetheless, it would be a material factor in Peel's plans that a significant amount of public investment in Stockport had been directed towards a diversification and strengthening of the town centre.
- 2.155 It was put to Peel's witness that there were 3 reasons why it was in Peel's interest to not provide information relating to progress at Unit 6:-
- (a) it would jeopardise Peel's case on the sequential test in respect of Orbit if a tenant were to be interested or lined up;
  - (b) it would impact on prospective turnover for Stockport; and
  - (c) it would be relevant to the interested retailers in Stockport.

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<sup>147</sup> CPG/4/2 paragraph 5.26

<sup>148</sup> CPG/2/4 page 43

- 2.156 Although CPG understood that there was serious interest in Unit 6 from Smyths Toys and Wren Living, Peel's witness was unable to assist. It was however confirmed that this was the only vacant unit in the centre, and that a previously vacant unit (Unit 5b<sup>149</sup>) had quickly been re-let to Wilkinson. The assertion in Peel's closing of limited interest in the unit is unsupported.
- 2.157 Overall, in the absence of any relevant evidence of its own position at the Peel Centre, Peel's evidence on Unit 6 provides an insufficient basis to attach material weight to the alleged adverse impacts.
- 2.158 Moreover, the pessimistic outlook for the established Peel Centre is at odds with the claim that there is a reasonable likelihood that Peel would develop the adjacent Gas Works site in the next 5 years (see below). Such confidence, which presupposes sufficient health to not only fill the existing Peel Centre but also justify further expansion, betrays the true position in respect of the current state of the Peel Centre.

***The Gas Holder site***

- 2.159 As with the Merseyway Shopping Centre, plans for the Gas Holder site are not at a sufficiently advanced stage to constitute '*planned investment*'. There is no evidence of any pre-application discussions regarding retail development (or any intention to implement the extant car park permission). In any case, Peel does not control the site and it may not be the only potential buyer; it was not known when National Grid's decommissioning work had started or would finish or whether additional works would be required by a subsequent purchaser; and nothing was known of any heads of terms agreed. On this basis it was conceded that there was no reasonable basis to conclude that the Gas Holder site would, on the balance of probabilities, be developed within 5 years.

**(b) Macclesfield**

- 2.160 Peel's concern is the impact on existing investments at Churchill Way and the expansion of the Grosvenor Centre. However, its commercial property market witness accepted that the Churchill Way scheme demonstrated that Macclesfield, like Stockport, was diversifying to leisure uses to increase footfall and evening dwell times. The article in the Macclesfield Express<sup>150</sup> (February 2018) suggests delivery of the scheme within two years.
- 2.161 Peel's witness also claimed that the leisure scheme was dependent on the supporting restaurants, for which there would be competition from the CPG proposals. It is CPG's case that the restaurants interested in Churchill Way and Handforth Dean are the kind of multiple chains that would regard the locations as separate catchments.
- 2.162 As for the Grosvenor Centre, the extension has an anchor tenant, TK Maxx (one of the UK's major retailers), opening by July 2018. None of this progress has been slowed or said to be conditional on the CPG proposals.

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<sup>149</sup> PEEL/1/3 Plan 13

<sup>150</sup> CPG/INQ/025

It is notable that the latest letters from Eskmuir Securities, owner of the Grosvenor Centre, do not contradict this.<sup>151</sup>

- 2.163 Indeed, it is the Barracks Mill development, Macclesfield which is the main concern and it is no surprise that progress at the Grosvenor Centre was tempered before the appeal decision (27 September 2017) confirmed a maximum 10% floorspace restriction on clothing retail at Barracks Mill. That said, the degree of impact would be limited given Barracks Mill is largely a bulky goods scheme, a sector not strongly represented in the town centre.
- 2.164 Whereas Eskmuir Securities participated as a Rule 6 Party at the Barracks Mill Inquiry it was absent in the Handforth Dean proceedings. Had there been any concerns about the impact of the CPG proposals on Macclesfield town centre, Eskmuir would have sought fuller involvement in the Inquiry. Its late letters cannot be given significant weight, and they are in any event robustly countered:-<sup>152</sup>
- (a) the demise of M&S in Northampton, a poor performing store over many years, is more to do with competition from a nearby Primark. In any event, M&S has reported a 62% fall in pre-tax profit in the year to March 2018 and its concession that it is unable to maintain its position as the leader in fashion retailing. By contrast, Primark is on track to overtake Next, as the UK's second biggest clothing retailer, by continuing to take market share from M&S. Primark and Next are located at Rushden Lakes and maintaining their stores in Northampton;
  - (b) M&S Kettering is another poor performing store and is designated for closure. Although M&S in Macclesfield is close to Handforth Dean, unlike Stockport, it has not been listed for closure;
  - (c) there are many examples of retailer successes in the current challenging market conditions but the old established names, when they fall out of favour, get all the press;
  - (d) the Northgate Quarter development in Chester has been scaled back from a large retail led scheme to a focus of regeneration with significant increases in its residential and mixed/diversity of use;
  - (e) the lease taken by TK Maxx in Macclesfield is for 15 years (with a break option at the tenth year), which indicates that the retailer sees Macclesfield as a strong opportunity regardless of the Handforth Dean proposals; and
  - (f) Eskmuir's concerns about variations to the planning permission at Barracks Mill to increase garden centre floor space and convenience goods floorspace reflect changing operator requirements and viability; and neither element would compete with the Grosvenor Centre.
- 2.165 It follows that there would be no '*significant adverse impacts*' on investments in Macclesfield should the applications be approved.
- (c) Wythenshawe**
- 2.166 St Modwen's objection is solely related to the issue of impact on '*planned investment*'. The simple response is that there is no planned investment in Wythenshawe town centre.
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<sup>151</sup> dated 31.5.18 and 8.6.18

<sup>152</sup> MISC/14



2.167 The context in which to assess any impact is Wythenshawe town centre's status as a 'district centre' in the Manchester Core Strategy.<sup>153</sup> Policy C1 indicates that: - '[d]evelopment in these centres should primarily respond to the needs of the catchment'.<sup>154</sup> Policy C7, relating to future development in Wythenshawe, must be read in this context. The provision for 3,000 sq m of comparison retail up to 2027 is very small when seen against what is proposed by the applications. The policy provides for a larger amount of convenience retail (5,000 sq m) in the plan period, which forms no part of the applications.

2.168 St Modwen's witness accepted:-

- (a) the applications would simply be adding to the existing significant competition from Manchester city centre, the Trafford Centre, Stockport town centre, Altringham and other retail centres, rather than creating something new;
- (b) Wythenshawe town centre was performing well when measured against its status as a district centre serving neighbourhood needs, as evidenced by the low vacancy rates which are generally restricted to the periphery of the shopping area;
- (c) the lower rents can be explained by the fact that Wythenshawe has relatively low affluence;
- (d) the letter from Manchester City Council<sup>155</sup> is heavily qualified when considering the applications: Wythenshawe's plans '*could be forestalled*'. This suggests concern about a '*potential*' significant impact, rather than a '*likely*' significant impact as required by the Framework; and
- (e) the statement from St Modwen<sup>156</sup> says nothing at all about impact.

2.169 The threshold of '*likely*' is also set out in the third bullet of the following extract of the Planning Practice Guidance:-<sup>157</sup>

*'Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:-*

- *the policy status of the investment (i.e. whether it is outlined in the Development Plan);*
- *the progress made towards securing the investment (for example if contracts are established);*
- *the extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence.'*

2.170 Firstly, St Modwen's claim that regeneration works would be starting on site in 2020 has to be considered in light of the statement which also speaks of:-<sup>158</sup>

- (a) '*significant research into the viability of the further regeneration of the centre*';

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<sup>153</sup> CD H1.2 Policy C1, C7

<sup>154</sup> CD H1.2 paragraph 10.13

<sup>155</sup> SM/1/3 Appendix 11 final paragraph

<sup>156</sup> SM/1/3 Appendix 2A

<sup>157</sup> CD J1.10 Paragraph: 016 Reference ID: 2b-016-20140306

<sup>158</sup> SM/1/3 Appendix 2A page 2

- (b) *the need for 'further masterplanning'*;
  - (c) *the need for 'more detailed assessment'*;
  - (d) *St Modwen and Manchester City Council 'working together to appoint a more detailed master plan exercise'; and*
  - (e) *'invitations to architectural practices' having been sent out.*
- 2.171 The works will also require an EU procurement exercise and development agreement before a planning application could be submitted, given that Manchester City Council own a majority of the freehold; planning conditions would need to be discharged; and the development would potentially be phased.
- 2.172 Secondly, as to the draft Wythenshawe Strategic Framework (December 2016),<sup>159</sup> there is still significant uncertainty surrounding the proposed options and it was accepted that:-
- (a) there was no evidence before the Inquiry as to the level of investment proposed by St Modwen or Manchester City Council;
  - (b) the decisions made so far to progress with devising a plan for regeneration of Wythenshawe had been made in full knowledge of CPG's applications;
  - (c) according to CPG's '*worst case*' assessment<sup>160</sup> (which St Modwen's witness did not dispute), the negative percentage turnover impact on Wythenshawe town centre would be 1.9% for 2022 (a diversion to CPG of £0.1m), and the centre would still experience overall growth of 8.53% by 2022. This would be a highly relevant consideration for investor confidence;
  - (d) no evidence had been provided to support the view that investor confidence would be affected, or that the applications had had any effect on Wythenshawe's plans; and
  - (e) recent letting particulars for retail units in Wythenshawe<sup>161</sup> were seeking tenants on a '*full repair and insurance*' basis, suggesting longer term leases, inconsistent with short term major regeneration.
- 2.173 Overall, in considering planned investment (within the meaning of the Tollgate appeal decision):-
- (a) no contracts are established;
  - (b) there is no overall landownership (given that Manchester City Council own some of the land and will need to undertake a procurement exercise); and
  - (c) there is no developer; no confirmed scheme; no planning permission (or even planning application); no timetable for delivery; and no planning performance agreement.
- 2.174 The situation in Wythenshawe is therefore even less advanced than in Tollgate. It is evident that St Modwen confuses actual '*planned investment*' within Framework paragraph 26, which requires specificity as to the proposals, with a more general policy aspiration for regeneration. The position in Wythenshawe is no more than the pre-plan stage before there is a plan in place for specific investment.

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<sup>159</sup> ORB/INQ/006

<sup>160</sup> CPG/INQ/008 Table 37 (Sensitivity Test 2)

<sup>161</sup> CPG/INQ/014



2.175 There is no basis for considering that there would be a significant adverse impact on investment in Wythenshawe.

**Conclusions on investment impact**

2.176 The applications are therefore consistent with Framework paragraphs 26 and 27 in respect of investment impact.

**Impact on Town Centre Vitality and Viability**

2.177 Framework paragraph 26 requires an assessment of:-

*'the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to 5 years from the time the application is made. For major schemes where the full impact will not be realised in 5 years, the impact should also be assessed up to 10 years from the time the application is made.'*

2.178 If the impact is likely to be '*significantly adverse*', paragraph 27 directs that the applications should be refused. CPG's preliminary submissions are:-

- (a) the Framework does not prescribe how a '*significant adverse impact*' is to be judged;
- (b) the retail impact numbers are not determinative, and a more rounded qualitative assessment is required; and
- (c) the assessment requires a judgment to be made about the health of the affected town centres.

2.179 Two decisions of the Secretary of State (Rushden<sup>162</sup>) and (Tollgate<sup>163</sup>) support an approach of assessing the significance of impact by comparing town centre turnover in the base year of the assessment against predicted turnover with the proposed development in place as at the 'design year' of the assessment. If the town centres will continue to grow even with the applications, then the adverse impact cannot be described as '*significant*'.

**Health of the town centres**

**Stockport**

2.180 When assessing the health of Stockport, SMBC's witness agreed that it was more than simply an exercise in totting up the vacancies across the town centre using the Goad survey. Instead, it is important to visit the town centre, assess the accuracy of the Goad survey, and form a judgment taking into account (a) the location of the vacant units and (b) the role they play towards the health of the town centre. This is the exercise that underpins CPG's evidence; but not SMBC's.

2.181 The vacancy rate in this context is no more than a starting point rather than the key indicator. Even on this measure, whether by reference to floorspace or number of units, the position has seen a marked improvement in the last few months.

2.182 Following a joint visit to Stockport town centre on 5 February 2018, SMBC found 120 vacant units (24.2%, against a UK average in 2017 of 12.1%

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<sup>162</sup> CD K1.3 IR 8.86 and DL 24

<sup>163</sup> CD K1.4 IR 12.4.6 and DL 17

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- and a decrease from 132 units in the October 2017 Goad survey<sup>164</sup>) whereas CPG identified 110 (20.11%) vacant units. The latter is the correct figure in that SMBC:-<sup>165</sup>
- (a) counted first floor vacant spaces separately despite it not being possible to separately occupy them;
  - (b) counted units that are now part of a redevelopment project;
  - (c) counted the multi storey former Sorting Office as vacant retail – it has never been so used and it is intended for residential and hotel development;
  - (d) counted an empty vacant site as a vacant shop; and
  - (e) counted 3 properties that are to be redeveloped for residential occupation.
- 2.183 In terms of floorspace, the correct figure applying the above is 12.7% vacancy (against a UK average in 2017 of 10.8% - a decrease from 18.9% in the October 2017 Goad survey).<sup>166</sup>
- 2.184 SMBC's witness subsequently accepted that 8 of the 10 disputed units were not available for retail use and subject to redevelopment proposals;<sup>167</sup> but maintained that they should continue to be included for reasons associated with the Experian methodology.<sup>168</sup> CPG does not agree.
- 2.185 Irrespective of the remaining dispute, on a crude analysis of vacancy rates alone, the position is positive even on SMBC's figures. The position is most positive in respect of the floorspace percentage; and on CPG's figures, the floorspace vacancy rate is only less than 2% higher than the national average.
- 2.186 The greater positivity in floorspace terms, in comparison with unit numbers, is that the vacancies are primarily affecting smaller units.<sup>169</sup> SMBC's witness agreed that the size of the vacant units makes them unsuitable for the kind of retailers who would occupy the units in the CPG scheme; and further accepted that this analysis makes the vacancy rate "*less of a concern*" than it might otherwise be when assessing health.
- 2.187 As to the location of the vacancies, which is the key point, there are virtually no vacancies in 1.2 km of prime retail frontage, from Debenhams at the western end of the Merseyway Shopping Centre to the eastern end of the Peel Centre. In assessing the health of the town centre, it would be wrong to treat each unit equally, irrespective of location.
- 2.188 Both Peel and SMBC's Closings notably avoid considering the vacancies in prime pitch and focus on peripheral locations. This is inconsistent with the latest retail strategy set out in the Greater Manchester Spatial Framework background Paper (October 2016) and by SMBC in its Prospectus which mark very clearly the current direction of travel of policy and strategy and SMBC's programme of significant investment.<sup>170</sup>

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<sup>164</sup> SC/3/2A Table 3.1 and new 3.1A

<sup>165</sup> CPG/INQ/028

<sup>166</sup> SC/3/2A Table 3.2 and new 3.2A; CPG/INQ/028

<sup>167</sup> SC/INQ/012 paragraph 1.10

<sup>168</sup> SC/INQ/015 also appears to include them wrongly as 'vacant' at [62]

<sup>169</sup> CD F1.1 paragraph 4.14

<sup>170</sup> SC/3/3 Appendix 7 and 13

- 2.189 In this regard, the relatively high level of vacancies in smaller units located in secondary and tertiary areas of the town centre is consistent with and explains Stockport's diversification agenda for the future of the town centre leading to the implementation of non-retail led regeneration projects such as Stockport Exchange, Redrock and Covent Garden Village (residential).
- 2.190 The Market area and Underbanks is secondary frontage which will have a special role in facilitating independent retailers and business innovation among young people. This is entirely distinct from the national retailers that would populate the CPG scheme at Handforth Dean.
- 2.191 This diversification and movement away from a retail focus has backing in Planning Practice Guidance. In determining the health of town centres, paragraph 2b-005 provides that:-
- 'Not all successful town centre regeneration projects have been retail led or involved significant new development. Improvements to the public realm, transport (including parking) and accessibility as well as other measures promoted through partnership can also play important roles.*
- Any strategy should identify relevant sites, actions and timescales, and be articulated clearly in the Local Plan, where it can be considered by local people and investors. It should be regularly reviewed, assessing the changing role and function of different parts of the town centre over time'.*
- 2.192 Stockport's diversification strategy for addressing excessive retail space in secondary areas has roots in recent documents charting the future of the town centre, and is a response to the rise of e-commerce and the recent economic recession:-<sup>171</sup>
- (a) a key theme of the Portas Review (December 2011), the Grimsey Review (September 2013) and the Taskforce Report: Beyond Retail (November 2013) is:-
- 'a recognition that there is a need to diversify town centres, so as to encompass other non-retail functions such as housing, offices, food/drink, arts/culture, healthcare, education, hotels and leisure activities';* and
- (b) the Stockport Town Centre Development Prospectus (Second Edition, June 2014):-<sup>172</sup>
- 'accepts that the restructuring and shrinkage of the traditional town centre retail function means that centres such as Stockport must look to consolidate existing town centre functions within a smaller footprint, whilst accommodating new kinds of activity so as to attract footfall and bring new customers into the Town Centre'.*
- 2.193 Stockport has therefore reviewed its strategy, following the Greater Manchester Combined Authority 2013 report, and this is critical to assessing the health of the town centre and the impact of the applications (which are promoting a kind of retail which all experts agree has no place in the future of Stockport). However, this has not yet been reflected in Stockport's out-of-date development plan in that the extant Core Strategy provides:-<sup>173</sup>

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<sup>171</sup> SC/3/2 paragraphs 2.6-2.16

<sup>172</sup> SC/1/2 Appendix 3

<sup>173</sup> CD J1.12 paragraph 3.148 (the CS was adopted in 2011 and its evidence base is some years earlier)

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*'The Core Strategy seeks to retain a high proportion of comparison goods shoppers in Stockport, thereby contributing to sustainable shopping patterns. This will involve a significant increase to the existing level of convenience and comparison goods A1 use floorspace in Stockport Town Centre, in order to help grow and at least maintain its market share from the position in 2009'.*

- 2.194 The Core Strategy is therefore out-of-date as to the stated intention to increase retail in the town centre; and it is entirely at odds with more recent documents setting out current plans. The health of Stockport town centre needs to be assessed against the up-to-date and recent published documents; and the assessment needs to take into account the recent and proposed initiatives that are part of the strategy for improving Stockport which take account of the current economic and retailing climate.
- 2.195 Part of the exercise of planning judgment as to Stockport's health is to probe the underlying causes of recent or intended closures, rather than leaping to the conclusion that they signify an unhealthy town centre. This is not an exercise undertaken by Peel or SMBC. It is CPG's evidence that none of these closures is the result of Stockport or the other centres failing but a national structural shift in consumer shopping habits.
- 2.196 In this regard, the closure of BHS in Stockport was a corporate failure affecting stores nationwide; and, unlike many other vacated stores, the Stockport premises have been re-let (Poundland).
- 2.197 The underlying cause of the closure of the Stockport M&S, contrary to the cases advanced by Peel and SMBC, is not the fragility of the town but the general state of M&S as a retailer nationally, with an intention to close stores country-wide; and, specifically, competition from Primark (who opened its store in Stockport in 2011) and the failure of M&S's fashion offer. Indeed, the town's store had happily co-existed with the Handforth Dean M&S since 1995.
- 2.198 It is known that M&S has significant structural issues, and that its Head of Property was made redundant in April 2018. It is telling that M&S in Macclesfield, which does not have a Primark, will remain open. Although an article from 22 January 2018 appeared to contemplate its closure, the later formal announcement made no mention of Macclesfield, which if anything demonstrates that the town's M&S was considered and expressly rejected for closure.
- 2.199 The Peel Centre is an example of the stable health of the town centre; whenever there are vacancies, the units are re-let quickly; the rents have been rising recently; and the new charging regime for the car park is another marker for success and popularity.
- 2.200 The Annual Monitoring Report for Stockport (April 2015-16)<sup>174</sup> indicates that Stockport remains highly ranked in terms of retail performance and presents an optimistic picture with regard to ongoing initiatives for the town centre at Redrock and Stockport Exchange.

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<sup>174</sup> SC/3/8 paragraphs 5.155-5.156

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- 2.201 To understand the context for the health assessment and reviewing the potential impact of the applications, it is necessary to appreciate that:-
- (a) Handforth Dean has been an established and competing retail centre for 20 years, with major stores and other stores in close proximity;
  - (b) recent decisions on significant investment in Stockport (Merseyway, Redrock, Stockport Exchange, and Market and Underbanks) have all taken place in full knowledge of the applications; and
  - (c) the levels of yield can reflect many factors, and is therefore not a useful health check indicator.
- 2.202 The initiatives for Stockport are not advanced as contingent on the applications; rather, they are being promoted because Stockport wishes to pursue them in any event. Peel's retail market witness accepted that the applications, if granted permission, would not be creating a new retail destination to draw the crowds away from town centres as the retail hub is already established.
- 2.203 The A34 currently provides dual carriageway access, and the importance of the A6MARR<sup>175</sup> has been overstated by the objectors in that it will support the accessibility of Stockport as well as Handforth Dean. While the road will clearly make the CPG site more easily accessible for people living along its route, there is unlikely to be a significant shift in shopping habits as journey times will not shorten markedly. However, the road will also allow Handforth Dean to better compete with the Trafford Centre and to attract back some expenditure currently leaving the area.

**Macclesfield**

- 2.204 The health of Macclesfield town centre is considered to be good in that retail space is focused on Mill Street and the Grosvenor Shopping Centre which is undergoing extension with some £11 million investment. Some 66 units are vacant in the central area representing 13%, slightly above the UK average of 11.5%. The majority of vacancies are to be found in secondary and periphery areas; and the vacancies in the Grosvenor Centre are likely to reduce once the new extension is completed. Leisure facilities are set to improve with the redevelopment of the Churchill Way car park including proposals for a 7-screen cinema and several restaurants. The uncertainty which has blighted Macclesfield for some 20 years is set to be reversed.<sup>176</sup>
- 2.205 Progress on the Grosvenor Centre and the Churchill Way scheme<sup>177</sup> indicate that Macclesfield, like Stockport, is successfully diversifying into non-retail town centre uses (in particular leisure). CPG also highlights its proposed £2m contribution to public realm improvements in Macclesfield if permission is granted.

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<sup>175</sup> South East Manchester Multi Modal Strategy, A6 Manchester Airport Relief Road

<sup>176</sup> CPG/2/2 Section 6; CPG/4/2 paragraphs 6.3-6.15

<sup>177</sup> CPG/INQ/23-CPG/INQ/25

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**Retail impact assessment**

- 2.206 The respective retail impact assessments have all been undertaken without taking into account the various regeneration initiatives above, which will be in place by 2022. This makes the various assessments unduly pessimistic.
- 2.207 Even so, (and whilst SMBC's and Peel's assessments are not accepted), the figures relied on by SMBC forecast turnover growth in all the centres between 2015 and 2022 (except for Wilmslow):-<sup>178</sup>
- (a) Stockport town centre's turnover will grow from £517.6m to £573.6m, an increase of £56m (9.3%);
  - (b) The Peel Centre's turnover will grow from £84.5m to £93.7m, an increase of £9.2m (9.3%);
  - (c) Stockport, including the Peel Centre, will grow by 10.7%;
  - (d) Macclesfield will grow by 0.6%; and
  - (e) Wythenshawe will grow by 20%.
- 2.208 If CPG's evidence is preferred, the anticipated growth would also be healthy:-<sup>179</sup>
- (a) Stockport would increase by 5.4%;
  - (b) Peel Centre would increase by 12.9%;
  - (c) Stockport, including the Peel Centre would increase by 6.7%;
  - (d) Macclesfield would increase by 7.7%; and
  - (e) Wythenshawe would increase by 12.9%.
- 2.209 Applying the approach taken by the Secretary of State in both the Rushden and Tollgate decisions, the overall growth in turnover means that the adverse impact cannot be characterised as '*significant*'. SMBC's witness confirmed that he took no issue with CPG's arithmetic on the growth figures; but simply disagreed with the Secretary of State's approach.
- 2.210 Peel's witness accepted that he did not offer evidence regarding overall growth in turnover, notwithstanding this being a key test in the Secretary of State's assessment of retail impact. Peel's approach in closing does not justify departing from the Secretary of State's consistent and rational approach in previous cases.
- 2.211 There are further insights to be drawn from the Tollgate decision to assist the Secretary of State in determining whether the adverse impact is '*significant*':-<sup>180</sup>
- The Tollgate Inspector stepped back from the competing figures and considered in more general terms whether there was evidence that the out-of-centre development would lead to closures, and whether, if there was, the closures might be followed by re-occupation:-

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<sup>178</sup> CPG/INQ/007 Appendix 2; CPG/4/4 paragraph 5.35 (Table 5)

<sup>179</sup> CPG/INQ/007 Appendix 2

<sup>180</sup> CD K1.4 IR 12.4.18 & DL 17



*'In respect of trade diversion, the three main parties have made differing assumptions and also used different figures. Little evidence has been provided by either the Council or the Rule 6 Parties to support the view that retailers would close or not look at the Town Centre if the proposal went ahead. In any event, closure in itself would not indicate an adverse impact as the unit may be reoccupied, like Primark recently taking over the vacated BHS unit'.*

- 2.212 Applying the same approach here, there is no evidence of any retailers closing their existing stores in Stockport town centre as a result of the proposals at Handforth Dean. The evidence suggests precisely the opposite in that retailers consider Handforth Dean, Stockport and Macclesfield to be separate catchment areas with distinct markets.<sup>181</sup> Whilst there may be an impact in quantitative terms on turnover, the impact in commercial terms will not result in any retailers closing.
- 2.213 The closure of Mothercare, is for reasons unrelated to CPG's proposals; the same is true of M&S; and the closure of the BHS unit has led to re-occupation. There is simply no evidence put forward to support assertions that to permit the applications would lead to closures or a decline in retailer interest in town centre locations.
- 2.214 The Tollgate Inspector said:-<sup>182</sup>
- 'Whether there would be an impact on the vitality and viability of the Town Centre depends on more than retail. The wider cultural and other attractions of the Town Centre must be taken into account. Even if the 'worst case' of an anticipated 14.0% impact is accepted, given the current health of the Town Centre I consider that the proposal would not cause a significant adverse impact'.*
- 2.215 Although it is not possible to give a number to what percentage impact would be significantly adverse, it is at least useful as a guide. All of CPG's impact percentages are around half of this figure, or less.

#### **SMBC's retail impact assessment**

- 2.216 SMBC's retail and planning witness confirmed that it was for reasons of "expediency" that he had not undertaken a new household survey centred on the application site itself, whereas CPG had.<sup>183</sup> Instead, he chose to simply combine the two separate Retail Studies (Cheshire Retail Study and Stockport Retail Study) despite inherent differences:-
- geographical area – the Cheshire survey extends far into Wales;
  - date of survey – Stockport was in February 2014 whereas Cheshire was in September 2015 and January 2016;
  - number of zones – Cheshire has 15 and Stockport has 19;
  - percentage of population surveyed – Cheshire's telephone survey was of 2,100 people out of a 1,509,214 population, which equates to 0.14% of the population. Stockport's telephone survey was of 2,000 people, out of a 539,815 population, which equates to 0.37%;

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<sup>181</sup> CPG/INQ/004

<sup>182</sup> CD K1.4 IR 12.4.24-12.4.25 & DL 17

<sup>183</sup> SC/3/2 paragraph 6.10



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- (e) questions – while both questionnaires ask the same first question for a series of comparison goods, i.e. *'where did you last go to make a purchase of clothes or shoes'*, the questions then diverge; and
- (f) in Stockport, the only other question is: *'and the time before that, where did you go to make a purchase of clothes or shoes?'*; whereas the Cheshire study asks 3 more questions relating to frequency, travel and linked trips. The Cheshire questions are likely to miss a significant tranche of trips as it only asks about the last destination. The Stockport questions do not provide the level of detail concerning frequency, travel and linked trips.
- 2.217 It also emerged that the witness had selected the extent of the Cheshire East Retail Study area by reference to the drive times once the new A6MARR is completed, despite the study survey pre-dating the completion of the road.
- 2.218 Overall, it was right for CEC to suggest that SMBC's approach was statistically inept as a result of the above.
- 2.219 By contrast, CPG used a single study area, based on a single recent household survey, asking a single set of questions, avoiding all of the statistical problems with combining two very different surveys. CPG's evidence base is significantly more reliable as a result.
- 2.220 Further flaws in SMBC's methodology were exposed including:-<sup>184</sup>
- (a) according to Table 5, merging of the 2 survey areas led to a total turnover in Macclesfield of £138.2m in 2015. However, the Cheshire Retail Study shows a turnover in Macclesfield in 2015 of £166.9m, a difference of 21%.<sup>185</sup> This results in an underestimation of turnover in Macclesfield, which in turn leads to erroneous conclusions about health and impact; it helps explain why SMBC's conclusion on percentage turnover impact on Macclesfield is so much higher than CPG's; and it also demonstrates that the surveys cannot easily be matched together and will produce an inaccurate result;
- (b) in Table 7a, the assumed turnover for Barracks Mill was £61.7m when it should have been £26.62m (according to the Inspector in the Barracks Mill decision<sup>186</sup>), thereby overstating the effect of the Barracks Mill commitment in 2022 on the town centres; the CPG Phase 1b floorspace had been double counted; and, consequently, the turnover and impact of the applications is therefore overstated by 1,154 sq m;<sup>187</sup>
- (c) in Table 7b, it was accepted that the trade draw assumptions for a number of SMBC's commitments<sup>188</sup> were significantly different to the existing trade draw (based on survey data of shopping patterns). A common theme is that the trade draw assumptions for the commitments is higher than existing for the nearby zones and lower than existing for the zones further away. The suggestion that the new commitments would have a smaller catchment than the locations in which they are situated cannot be right. Although CPG accepts that the commitments would not have a significantly different trade draw to the existing locations, the logical consequence of this is to keep the trade draw percentages for each zone consistent with those that currently

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<sup>184</sup> SC/3/2A Tables

<sup>185</sup> CD H1.8 Appendix 6 Table 25

<sup>186</sup> CD K1.6 DL 37

<sup>187</sup> CPG/INQ/008 Table 3

<sup>188</sup> in particular Unit 6 and PC World in the Peel Centre; the additional floorspace at Stanley Green Retail Park; Next at Handforth Dean; and 22-26 Castle Street, Macclesfield

exist. The effect of SMBC's assumption leads to absurdity:- for example, the Peel Centre gets 6.4% of its trade from shoppers in Zone 7 – but these shoppers are assumed to visit the Peel Centre but not spend any money in the new commitments; and

- (d) in Tables 11 and 12, there is no allowance for the commitments at the Peel Centre and in Macclesfield to uplift the turnover by increasing the overall attractiveness of their existing locations.

2.221 For these reasons, SMBC's retail impact assessment is flawed and should not be relied on; and if it is, it demonstrates overall turnover growth for Stockport by 2022, which is a key reason against there being a 'significant adverse impact'.

**Peel's retail impact assessment**

2.222 Peel's assessment relies on the same approach of using the same separate Retail Studies as SMBC, and is therefore subject to the same criticisms.

2.223 In terms of sales density,<sup>189</sup> Peel relies on a figure of £8,900 sq m for the existing Handforth Dean Retail Park to calculate a net comparison goods sales area of 13,719 sq m and to generate a sales density between circa £8,500 and £11,500 per sq m and to criticise CPG's lower sales density assumption as not being robust. The £8,900 figure is taken from WYG's Appraisal of Retail Issues on behalf of CEC (October 2016);<sup>190</sup> but that is not WYG's view of the sales density of the retail park:-

- (a) WYG considered that a sales density between £5,000 per sq m and £8,900 per sq m, including that applied by CPG (i.e. £6,514 per sq m) was robust because *'the wider scheme is unlikely to trade at the level achieved at Handforth Dean due to the potential for trade to be diluted across the wider destination'*; and

- (b) a full and fair reading of WYG's analysis endorses CPG's sales density.

2.224 Overall, Peel's conclusions as to retail impact are exaggerated arising from flaws in its assumptions which overstate impacts in terms of trade draw; trade diversion; and the turnover of the CPG scheme.

2.225 Trade draw is an estimation of the proportion of the turnover of a development that will come from the residents of a given survey zone. While CPG's trade draw for the scheme is empirically rooted in existing trade draw patterns in Handforth Dean, Peel's assumptions bear no resemblance to existing patterns.<sup>191</sup>

2.226 For example, while almost 8% of residents of Zone 11 currently visit the existing retail park, Peel assumes that none of these shoppers would visit the new scheme and would continue to only visit the existing shops. In addition, the assumed trade drawn from Zone 1 in the CPG scheme is over 5,000% higher than the existing draw. This approach is not credible.

2.227 The apparent rationale is that the A6MARR will increase draw from the edge of the catchment (since the site will be more accessible to these

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<sup>189</sup> PEEL/INQ/006

<sup>190</sup> CD B2.17 paragraph 4.39

<sup>191</sup> CPG/4/5 Appendix 10

areas). If this had foundation, it would, for example, justify an increase in draw from residents of zone 18 – Marple.<sup>192</sup> However, inexplicably, the outcome indicates that draw will decrease by 43% from this zone.<sup>193</sup>

- 2.228 Furthermore, while Peel argues that the A6MARR will increase accessibility of the site to the east, the same must be true for towns to the west such as Altrincham and Hale. Whilst this was accepted,<sup>194</sup> no allowance is made for any trade to be drawn from residents living in and around Hale and Altrincham because these towns fall outside Peel's notional catchment.<sup>195</sup> This reveals the dangers of applying a series of unsupported assumptions rather than using existing trade patterns. CPG, despite criticism to the contrary, does not ignore the A6MARR – it is assessed in Sensitivity Test 2.
- 2.229 Trade diversion is the analysis of the likely pattern of trade diverted from existing town centres and other shopping destinations to the proposed development. Peel's approach to the trade diversion for commitments<sup>196</sup> (which deploys WYG's figures) is at odds with its approach for the CPG scheme (which has no evidential basis). This can be illustrated by comparing the trade diversion figures for CPG to those assumed for Next. The diversion patterns are completely different despite the 2 sites being adjacent and the developments trading in the same type of goods. For example, Peel assumes that:-
- (a) 55% of trade at Next will be diverted from Cheadle Royal and Stanley Green but only 4% of the CPG scheme's trade will be diverted from these destinations;
  - (b) 10% of trade at Next will be diverted from Stockport, but this leaps to 50% for the CPG scheme; and
  - (c) 5% of trade at Next will be diverted from Macclesfield, but this jumps to 20% for the CPG scheme.
- 2.230 These percentage differences indicate that Peel has not undertaken a reliable or realistic analysis and has:-
- (a) exaggerated the diversion to CPG from the town centres to maximise impact; and
  - (b) minimised the effect of competition with similar retail park destinations such as Cheadle Royal and Stanley Green.
- 2.231 Underlying these assumptions is the notion that the CPG scheme will '*be a driver of changing retail patterns in its own right*', rather than acknowledging that Handforth Dean is an established retail destination which the proposals will increase. The A34 corridor, without the CPG scheme, already has nearly two-thirds of the comparison goods floorspace of Stockport (including the Peel Centre).<sup>197</sup> In addition, Peel's assessment fails to allow any diversion from the rest of Handforth Dean to the CPG scheme (cannibalisation). This is unrealistic.<sup>198</sup> Peel's assumptions on

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<sup>192</sup> PEEL/1/3 Plan 8

<sup>193</sup> CPG/4/5 Appendix 10

<sup>194</sup> PEEL/1/6 paragraph 4.32

<sup>195</sup> PEEL/1/3 Plan 8

<sup>196</sup> PEEL/1/5 Appendix 1 Tables

<sup>197</sup> CPG/5/4 page 25 (Table)

<sup>198</sup> PEEL/1/2 Appendix 25 paragraph 1.51

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- trade diversion are an outlier – nobody else, including SMBC, suggests so much diversion from town centres, and so little from nearby locations.
- 2.232 In terms of the assumed turnover of the CPG proposals, Peel recommends its 'Scenario 3', which applies a 50% uplift in sales density (and therefore turnover) above the average benchmark.
- 2.233 This relies on 2 other retail parks (Monks Cross in York and New Mersey in Liverpool) which are reported to be trading at around 50% above average rates. However, those destinations will trade against the backdrop of an entirely different set of circumstances such as the extent and composition of their catchments; the location and nature of competing schemes and centres; trading patterns in the area; and the retailers present on the schemes and the retailers already present in the catchment. Indeed, both of these schemes are on an entirely different scale to Handforth Dean and there is no evidence to suggest how the locations could be comparable.<sup>199</sup>
- 2.234 Peel's updated evidence,<sup>200</sup> maintained the position that the A6MARR will increase the catchment area of the CPG scheme, increasing the population and spending power of the catchment, which will result in additional trade draw to Handforth Dean and diversion from Stockport. The errata acknowledges a very large over-estimation of the additional spending (circa 100% increase, equivalent to circa £400m).
- 2.235 However, there is no corresponding adjustment to the figures for diversion from Stockport to Handforth Dean; and it is unclear that what was admitted as a "*major error*" does not have any implications for the impact assessment. It reveals that the various tables and figures are not connected and inter-related, and the conclusions rely too heavily on the exercise of judgment.
- 2.236 The failings identified above explain why Peel's conclusions as to impact are very much outliers in comparison with other assessments, for example in terms of Stockport:<sup>201</sup>
- (a) CPG's cumulative impact (of CPG and Orbit) in 2022 is -7.8% or -8.7% depending on the turnover assumption about the proposals (the sales density based on the likely line-up or a higher sales density) and SMBC's revised cumulative impact on Stockport in 2022 has reduced to -8.4% or -9.4%;<sup>202</sup> and
  - (b) by contrast, Peel's figures are -18.6% (Scenario 2) or -16.3% (Scenario 1).<sup>203</sup> This is broadly double the other 2 retail impact assessments. For Scenario 3, the impact on Stockport has moved from -20% to -21.9% - i.e. triple the other 2 assessments.<sup>204</sup>
- 2.237 Unlike others, Peel has not offered an assessment of the overall impact on turnover in the affected centres between 2015 and 2022 on the basis of disagreeing with the correctness and value of such an assessment.

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<sup>199</sup> CPG/INQ/026; CPG/INQ/027

<sup>200</sup> PEEL/1/6 paragraph 3.3

<sup>201</sup> CPG/4/4B page 19 Table 3

<sup>202</sup> SC/INQ/012 page 2

<sup>203</sup> PEEL/1/5 Appendix RB1 Tables 24-25

<sup>204</sup> PEEL/1/4 page 26 Table 1

However, this is the approach accepted by the Secretary of State and it makes logical sense to see whether the impact of an out-of-centre development will actually prevent a town centre from experiencing turnover growth in the longer term. Again, Peel's approach lies well outside the approach of the other retail experts.

- 2.238 Peel's retail impact assessment is therefore fundamentally flawed and CPG's assessment is to be preferred. The criticism in Peel's Closing of CPG's adjustments to its evidence ignore the following points:-
- (a) the adjustments made by CPG's witness did not affect his conclusions;
  - (b) CPG's witness volunteered corrections and made further correction in order to assist the Inquiry with regard to the outcome of his analysis; and
  - (c) Peel's evidence also underwent multiple corrections; and, moreover, Peel's preoccupation with CPG's *'indicative tenant line-up'* ignores the fact that this was just a sensitivity test, rather than CPG's central case and it was always to be regarded as indicative. Further, Peel's challenge to CPG's approach to weighting, ignores the fact that the weighing assumptions are clearly set out and that the weightings were those suggested by WYG<sup>205</sup> (it is notable that SMBC adopted the same approach).
- 2.239 Other alleged *'errors'* in CPG's evidence identified in paragraph 206 of Peel's Closing are easily rebutted:-
- (a) Table 12a was introduced to explain further a point - it is not an error but a helpful additional explanation of CPG's evidence base;
  - (b) the alleged *'missing'* explanation [206(b)] can be found at paragraph 2.2 in CPG/4/4;
  - (c) The point at [206(c)] was explained in cross-examination in that Table 12 is a function of the turnover calculated in the individual goods category tables - the amendment to the overall level of turnover affects turnover of individual goods categories, thus affecting Table 12;
  - (d) the assessment of the impact of Barracks Mill is a difference of opinion between retail experts, not an *'error'*;
  - (e) the adjustments to trade draw figures (Table 30) were all fully explained in cross-examination; and
  - (f) Peel accuses Table 31 of being a new table introduced during oral evidence, but it was always part of the impact assessment. It is not clear how Peel failed to appreciate this.
- 2.240 Standing back from the figures, as noted above, the Tollgate Inspector<sup>206</sup> found:-
- 'In respect of trade diversion, the three main parties have made differing assumptions and also used different figures. Little evidence has been provided by either the Council or the Rule 6 Parties to support the view that retailers would close or not look at the Town Centre if the proposal went ahead. In any event, closure in itself would not indicate an adverse impact as the unit may be reoccupied, like Primark recently taking over the vacated BHS unit'.*
- 2.241 The same point can be made in this case.
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<sup>205</sup> CD C2.25 page 9

<sup>206</sup> CD K1.4 IR 12.4.18; DL 17

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**Water Street**

- 2.242 Given that this site is unlikely to be developed for retail use, and that this site alone provides a substantial proportion of the impact from commitments on town centres, SMBC confirms that, if the site is discounted, the percentage cumulative impact of CPG and other commitments on Stockport town centre in 2022 significantly reduces from 7.3% - 8.1% (central and sensitivity case respectively) to 5.9% - 6.6%.<sup>207</sup> Peel also accepted that if Water Street is unlikely to come forward (meaning £16.8m would not be diverted from Stockport to the scheme<sup>208</sup>), this would represent a material factor in reviewing its retail impact assessment.

**Trafford Centre and Manchester City Centre**

- 2.243 CPG's impact assessment reveals that each year Manchester City Centre draws £279m from the study area and the Trafford Centre draws a further £274m.<sup>209</sup> Peel's figures for trade diversion to CPG from Manchester City Centre (£10.8m) and the Trafford Centre (£12.4m) are not dissimilar to those for CPG (£18.6m and £14.2m respectively). If anything, the CPG scheme would strengthen the ability of Handforth Dean and the north of the borough to counteract the draw from these sources and make Handforth Dean and the South Manchester area a more sustainable retail location.<sup>210</sup> If expenditure is retained in the area, it assists the local economy even though not all of the money would be spent in the town centres.

**Multiple representation**

- 2.244 Debate arose as to whether, if the CPG proposals were approved, it would cause retailers to choose Handforth Dean instead of Stockport (including the Peel Centre) or Macclesfield, and would not seek multiple representation. Peel's retail market witness accepted that his evidence of retailer interest in Handforth Dean, Stockport and Macclesfield<sup>211</sup> did not answer the critical question of whether retailers would opt for multiple representation. Instead, it merely gauged interest in being present at each of the locations (with a number of retailers not interested in Handforth Dean). The fact that a number of retailers indicated more than one location is itself evidence of multiple representation. However, this does not demonstrate that retailers will select Handforth Dean instead of, rather than in addition to, the town centres.
- 2.245 The attempts by Peel and SMBC to impose the evidential burden on CPG to prove multiple representation is wrong. The question is what the evidence before the Inquiry shows and whether it supports any particular contentions. In any case, CPG has provided evidence to show that many retailers will co-locate (and are already co-locating in the region) because Handforth Dean is regarded as a separate retail catchment in addition to, and not in substitution for, a town centre location.

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<sup>207</sup> SC/INQ/012 page 3

<sup>208</sup> PEEL/1/5 Appendix RB1 Table 14

<sup>209</sup> CPG/4/5 Appendix 1 page 23 Table 12

<sup>210</sup> CPG/2/2 paragraphs 9.16 and 11.17

<sup>211</sup> PEEL/2/1 6.7



2.246 Primark and TK Maxx<sup>212</sup> are instances of retailers co-locating at Handforth Dean/Stanley Green and Stockport/Macclesfield respectively. This can be seen from the Silverlink Shopping Park, Newcastle<sup>213</sup> with multiple representation alongside the city centre and in a location with significantly less separation than would be the case between Handforth Dean and Stockport/Macclesfield.

#### **Conclusion on retail issues**

- 2.247 For reasons set out above, the sequential test is passed. There are no suitable or available sites that can accommodate the proposals, which should in any event be taken as a single comprehensive scheme of development.
- 2.248 As to retail impact, CPG's evidence should be preferred, rooted firmly in commercial and retail market evidence, and CPG recommends the approach to impact assessment applied by the Secretary of State in both the Rushden and Tollgate decisions. Overall, the applications are compliant with Framework paragraphs 24, 26 and 27 and therefore with CELPS policy EG5. SMBC's development plan policies on retail strategy in the town centre are out-of-date because as they fail to take account of the current strategy in Stockport and Greater Manchester generally of diversification away from retail. In any event, the policies on protecting town centres add nothing to what is not already in the CELPS and the Framework.
- 2.249 It follows that there are no retail grounds for refusing the applications which carry several advantages in terms of retaining expenditure and generating economic development in the locality, as CEC accepted in supporting the applications.

## **Highways**

### **The evolution of SMBC's case**

#### ***Pre-inquiry***

- 2.250 SMBC's initial participation in pre-application discussions indicated support for CPG's proposals. Despite this, SMBC lodged an objection to the applications, maintained in its Statement of Case<sup>214</sup> and in evidence.
- 2.251 SMBC's evidence subsequently contained a number of points that had not previously been raised with CPG and departed from previously agreed issues in pre-application discussions.<sup>215</sup> For the first time it set out 4 proposals for works that would provide 'adequate mitigation' of the CPG scheme.
- 2.252 CPG's Highways Rebuttal Proof demonstrated that there were significant flaws in SMBC's analysis:-

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<sup>212</sup> CPG/INQ/023-024 – TK Maxx is the anchor tenant at the extension of the Grosvenor Centre, Macclesfield

<sup>213</sup> PEEL/2/1 paragraph 4.12; PEEL/2/2 Appendix 4.4b and 4.5b

<sup>214</sup> CD L1.6 page 25

<sup>215</sup> CPG/5/4 Section 3



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- (a) its traffic impact assessment was undermined by a number of problems with the modelling relating to mezzanine floors;<sup>216</sup> trip linking;<sup>217</sup> the Saturday figures;<sup>218</sup> and also which commitments should be taken into account;<sup>219</sup>
- (b) it had failed to assess the impact of the applications as distinct from the total impact in combination with the North Cheshire Growth Village;
- (c) even assuming the correctness of SMBC's traffic impact assessment, the outcome could not conceivably constitute evidence of a 'severe' impact as required by national policy; and
- (d) the evidence on opportunities for sustainable transport appeared to have ignored a number of important measures being brought forward by both the applications and the earlier Next development at Handforth Dean.
- 2.253 SMBC then advised that only 2 of its 4 mitigation proposals were necessary, namely, relating to the A555/A34 junction and the Stanley Road/A34 junction at a cost of £4.5m.<sup>220</sup>

***The March 2018 hearings***

- 2.254 SMBC's highway case was subject to ongoing and unexplained changes and a failure to agree a Statement of Common Ground until the very last moment. In relation to the contribution sought from CPG towards SMBC's proposed highway mitigation scheme the figure of £1.5m reduced to £901,000 without any explanation of the derivation and breakdown of the new figure.<sup>221</sup>
- 2.255 Shortly before hearing evidence,<sup>222</sup> an email from SMBC appeared to suggest, for the first time, that only the works to the Stanley Road/A34 junction would be necessary;<sup>223</sup> and that these works would require a £901,000 contribution from CPG. The sum was said to be derived from figures relating to '*Traffic over Stockport Boundary (AM+PM)*' for both CPG's scheme and the North Cheshire Growth Village, but no explanation of the derivation of these figures, or the total mitigation cost, appeared in the email. There was also a suggestion that the cost was '*pro-rata to the Orbit contribution*' but, again, this was not explained. In any event, the agreed Orbit works did not relate to the A34.
- 2.256 On the morning of 7 March 2018, SMBC confirmed CPG's interpretation that only one junction was still in issue and CPG's witness proceeded to give evidence on this basis.

***SMBC's oral evidence***

- 2.257 SMBC's highways witness was unable to explain the derivation of the £901,000 and confirmed that the documents before the Inquiry could not

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<sup>216</sup> CPG/5/2 paragraph 4.2.9; CPG/5/4 paragraph 3.2.10

<sup>217</sup> CPG/5/4 paragraph 3.2.5

<sup>218</sup> SMBC's witness accepted that his Saturday figures, being simply based on Friday's modelling, were derived by a "fairly crude" method and should be "treated with caution". See also CD C1.14 pages 45-53 and CPG/5/4 paragraph 3.1.5

<sup>219</sup> SC/4/2 paragraph 8.2.10

<sup>220</sup> CPG/5/4 paragraphs 3.3.5-3.3.6

<sup>221</sup> reduced from £4.5m; CPG/5/4 paragraph 3.3.6

<sup>222</sup> CPG/INQ/019

<sup>223</sup> it also appeared to imply that SMBC were abandoning its sustainable transport objection

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assist; and it was agreed that no further documents would or should be provided to attempt to substantiate the figure.

- 2.258 SMBC's case was therefore the subject of continuous change and contradiction, culminating in acceptance that SMBC had not provided sufficient evidence to justify the financial contribution sought for the purposes of determining whether the figure was '*necessary to make the development acceptable in planning terms*' under regulation 122 of the Community Infrastructure Levy Regulations 2010. This was, and remains, fatal to SMBC's highways case.

#### **Highway impact**

- 2.259 CPG's witness provided a critique of a number of modelling input assumptions made by SMBC, relating to mezzanine floors;<sup>224</sup> trip linking;<sup>225</sup> and the Saturday figures.<sup>226</sup> These debates are ultimately inconsequential, in that the critique challenges SMBC's case on its own evidence. CPG's evidence is to be preferred, and SMBC's modelling is therefore overly-robust.
- 2.260 SMBC's modelling also makes false assumptions as to which '*commitments*' should be taken into account<sup>227</sup> when assessing the cumulative impact of the applications and it was accepted that:-
- (a) Phase 1b had been included in both the application scheme itself and also as a separate commitment, which is double-counting;<sup>228</sup>
  - (b) the Seashell Trust application had been refused permission;<sup>229</sup>
  - (c) SMBC failed to comply with national guidance<sup>230</sup> by including the growth village as a '*commitment*' without any consideration as to whether there was '*a reasonable degree of certainty*' that it would proceed within the next 3 years. Given the absence of a planning application, and the fact that the CELPS indicates it is to be delivered '*over the Local Plan Strategy period*'<sup>231</sup> (i.e. by 2030), there is no reasonable degree of certainty at all.
- 2.261 Moreover, SMBC's witness accepted that the inclusion of the growth village had been done without taking into account the sustainable transport measures required there by paragraphs (g) and (h) of CELPS Policy 33 and, thus, traffic generation is likely to have been over-estimated.
- 2.262 However, even if all of SMBC's modelling assumptions were accepted, and the above commitments included, the resultant impacts on increases in journey times and driver delay would be minimal.<sup>232</sup> The applications, plus the growth village, would either have a positive impact or no impact at all on A34 journey times in the morning peak period.<sup>233</sup> The same can be said for southbound journeys in the afternoon peak period and the Saturday

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<sup>224</sup> CPG/5/2 paragraph 4.2.9; CPG/5/4 paragraph 3.2.10

<sup>225</sup> CPG/5/4 paragraph 3.2.5

<sup>226</sup> Footnote 219 above

<sup>227</sup> SC/4/2 paragraph 8.2.10

<sup>228</sup> CPG/5/4 paragraph 3.2.11; CD C1.14 paragraph 3.1.1

<sup>229</sup> SOCG paragraph 2.8.4

<sup>230</sup> CPG/INQ/021 paragraphs 14-15

<sup>231</sup> CD J1.8 Policy LPS 33 (page 295)

<sup>232</sup> SC/4/2 Table 8.4

<sup>233</sup> CPG/5/4 Table IJM/3-3 & 3-4 (after paragraph 3.3.8)

peak period. The only negative impact would be on northbound journey times in the afternoon and Saturday peaks. These constitute increases of 18 and 22 seconds respectively across 1,600m (equating to 0.011m/s and 0.014m/s).<sup>234</sup> This cannot reasonably be described as a 'severe' impact for the purposes of Framework paragraph 32.

- 2.263 Although SMBC tried to suggest that the correct approach was to aggregate all the individual delays across the network, the 'VISSIM User Manual'<sup>235</sup> makes it clear that the relevant impact is concerned with 'average total delay per vehicle'. SMBC's witness could point to no guidance to support his aggregation argument.
- 2.264 Likewise, the impact (including the growth village) on queue lengths at the only junction remaining in dispute (A34/Stanley Road) would be virtually non-existent based on SMBC's own VISSIM modelling.<sup>236</sup> Although SMBC directed criticism at CPG's Scenario 2, which suggests major traffic impacts, this scenario involves the CPG scheme and the growth village with zero mitigation. Such a scenario would not materialise in reality. Scenario 1 (the 'do minimum' base-line scenario without the CPG scheme) already has congestion around the A34/Stanley Road junction, which is a relevant consideration when determining whether the CPG proposals would have a severe impact.
- 2.265 Therefore, even on SMBC's own modelling, no evidence was produced to suggest, still less support, a severe residual cumulative impact likely to be caused by the applications.
- 2.266 The final point to consider is the safety of the mitigation scheme proposed by WYG for the Stanley Road/A34 junction. The context for this scheme arose during the CELPS process when it emerged that the growth village would cause traffic problems as a result of the A6MARR signalisation scheme that is currently being implemented. WYG therefore devised a scheme that would mitigate these problems by the removal of signal control from the side roads (Stanley Road) arms of the junction. This scheme was proposed at the Examination in Public in association with the delivery of the growth village. Having passed through the examination process, it is reasonable to assume that a scheme of this nature is acceptable subject to detailed design.
- 2.267 As explained above, CPG does not consider the growth village to be a 'commitment'<sup>237</sup> to be included in a cumulative impact assessment. It was only modelled in order to give members of CEC assurance that the applications would not jeopardise the delivery of the growth village on traffic impact grounds. Be that as it may, CPG made a contribution offer via CEC to SMBC of £100,000 towards the implementation of the WYG mitigation scheme.<sup>238</sup> No response was received from SMBC.

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<sup>234</sup> CPG/5/4 paragraph 3.3.13

<sup>235</sup> CPG/INQ/020

<sup>236</sup> CPG/5/4 paragraph 3.3.16 sets out the relevant numbers (not disputed by SMBC). See also SC/4/4 Appendix B

<sup>237</sup> CPG/INQ/021 page 8

<sup>238</sup> CPG/5/2 paragraph 5.5.13

- 2.268 SMBC's Statement of Case raised safety concerns about the A34/Stanley Road junction but did not explain them or subsequently provide evidence.<sup>239</sup> Accordingly, for the avoidance of doubt, CPG commissioned an independent road safety audit which made a series of recommendations – all of these could be resolved at the detailed design stage of the WYG scheme.<sup>240</sup>
- 2.269 SMBC disclosed a rival road safety audit, dated 10 January 2018, the night before the highways evidence was heard in March. In response to CPG's request for disclosure, the emails provided by SMBC<sup>241</sup> reveal that the request was not at all objective, casting considerable doubt as to the independent nature of the audit.
- 2.270 In this regard, the request was made by SMBC's witness to those working under him. He referred to the WYG proposal (i.e. the scheme to be audited) as a '*horrid scheme*', and asked his officer to '*drop everything*' because '*a lot is at stake*'. The implication is that the audit needed to be undertaken to support his evidence at the Inquiry. The email concludes with '*needs must when devil drives .....*'. Despite this, the witness claimed his officers would have been entirely uninfluenced by the terms of his instructions.
- 2.271 Moreover, SMBC's witness confirmed that:-
- (a) accident data had been taken into account, but without any apparent regard to the unrepresentative nature of any such data given the A6MARR major road works in progress;
  - (b) deflection – a standard means of controlling speed towards a roundabout – was not explored as a solution to Problem 1;
  - (c) modelling data had not been provided to the auditor, which meant that the capacity issue identified as Problem 2 could not have been quantified. A less interventionist recommendation like signal optimisation (rather than requiring full signal control on all four arms) was not explored; and
  - (d) the other problems could be dealt with at the design stage.
- 2.272 CPG's Note,<sup>242</sup> reviewing in detail the SMBC Road Safety Audit, confirms the applicant's initial assessment which informed its evidence; it goes into further detail; and concludes that '*there are clear and effective solutions to all problems (one to six) that can be implemented*'.
- 2.273 Framework paragraph 32 provides that '*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*'. That test has not been met in this case.

**Sustainable transport**

- 2.274 SMBC has inconsistently objected on sustainable transport grounds to CPG's proposals but not Orbit's on the basis that the latter site has an existing employment use. However, that is irrelevant to the question of whether the proposed development in each case has '*taken up*'

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<sup>239</sup> CD L1.6 page 25; CPG/5/2 paragraph 5.5.14

<sup>240</sup> CPG/5/3/E; CPG/5/2 paragraph 5.5.16

<sup>241</sup> SC/INQ/007

<sup>242</sup> CPG/5/5

opportunities for sustainable transport measures for the purposes of Framework paragraph 32 which strikes a pragmatic note by asking 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'.*

2.275 Out-of-centre sites will inevitably have less 'opportunities' for sustainable transport than town and edge-of centre locations. SMBC's position<sup>243</sup> is to apply a different and less pragmatic test, which appears to set a threshold of 'appropriate' sustainable access for all retail development (regardless of location) which must be satisfied:-

*'[SMBC] consider that the site does not benefit from the level of accessibility by sustainable modes of travel that is considered appropriate for retail development and, as a consequence, it will prove to be high in car trip dependence.'*

2.276 Much of SMBC's evidence appeared to hold the application site up to the standard achieved by the Water Street site, a completely different location in Stockport. This was a fruitless exercise which served to distort the witness' judgement about the applications.

2.277 The witness appeared unfamiliar with Framework paragraph 32; he was also unable to explain why the objection on sustainable accessibility grounds bore no relevance to Stockport's area; and he couldn't explain why SMBC was objecting in light of an earlier site visit with representatives of CPG, CEC and SMBC to determine the improvements to be made for sustainable access.

2.278 In relation to SMBC's concerns, the site can be accessed by rail, by bus, on foot or by bicycle.<sup>244</sup> SMBC's objection on sustainable transport grounds was not properly made and was inconsistent with its earlier position. Two points need to be clarified:-

(a) the Statement of Common Ground<sup>245</sup> sets out SMBC's concern about an earlier contribution arising from the Next store being insufficient to support bus service 312 'into the foreseeable future'. However, the contribution was to pump-prime the service by allowing it to operate on a more attractive half-hourly basis. An increased level of retail development would boost patronage levels and improve the prospect of viability. SMBC has provided no evidence to suggest that it would not be viable.

(b) SMBC repeatedly maintained that some pedestrian/cycle routes fell short of the standards set out in the Design Manual for Roads and Bridges TD 36/93 Subways for Pedestrians and Pedal Cyclists – Layout and Dimensions.<sup>246</sup> However, this is guidance for new routes and in assessing existing routes, it is important to look at how the route is actually used.

2.279 SMBC's case on sustainable modes of transport is likewise unsound.

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<sup>243</sup> SoCG Paragraph 3.4.1

<sup>244</sup> CPG/5/4 paragraphs 4.2-4.5

<sup>245</sup> SoCG paragraph 3.4.3

<sup>246</sup> SC/4/2 paragraph 4.5.13

**SMBC's closing submissions on highways**

2.280 To underline the flaws in SMBC's highways objection, the issue of highways in SMBC's closing submissions occupies less than one-and-a-half pages of a 71 page document. Moreover, the text itself does not refer to the evidence heard at the Inquiry or provide any analysis of the issue.

**Conclusion on highways**

2.281 The applications show compliance with Framework paragraph 32 and other national policies on transport, and with CELPS Policies CO1, CO2 and CO4.

**Benefits**

2.282 In assessing the application, CPG also rely on a number of important benefits which serve as material considerations in favour of granting permission, in addition to development plan compliance on the matters identified by the Secretary of State. Even if any conflict is found with the development plan, the benefits would fall to be weighed against any such non-compliance in terms of section 38(6) of the 2004 Act.

2.283 This first, and arguably most significant, benefit would be job creation. CPG relies on Regeneris' conservative estimate of 880 new FTE jobs.<sup>247</sup> SMBC's argument that the applications, if granted, would result in a net loss of jobs<sup>248</sup> is to be set against Regeneris' credentials as a nationally known and expert body dealing with the issue of job creation.<sup>249</sup>

2.284 SMBC's witness adopted a different figure for gross jobs to CPG, and then applied downward adjustments in light of various concepts.

**Gross figure**

2.285 Regeneris suggests that the proposed scheme is more akin to a high street retail scheme (which carries an employment density of 15-20 sq m per job)<sup>250</sup> than a retail warehousing scheme (90 sq m per job). Regeneris recognises that the scheme might not have direct parity with the high street and adopts a figure of 30 sq m per job to generate 880 FTE jobs inclusive of café jobs.

2.286 In contrast, SMBC's witness crudely took a mid-point employment density of 54 sqm per job for retail uses to yield 538 FTE jobs inclusive of cafés. This mid-point does not reflect the nearer match of the proposal to the high street rather than a bulky goods trader. Accordingly, the figure should be weighted closer to 20 sq m and further from 90 sq m. On this analysis, Regeneris' density assumption should be preferred.

**Adjustments**

2.287 SMBC's witness applied downward adjustments for 'leakage', 'displacement' and 'deadweight'. These all derive from the HCA Additionality Guide which was prepared to help government funding appraisers examine the cost/benefit ratios on alternative funding interventions. It has no

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<sup>247</sup> CPG/6/3; CPG/6/5; CPG/INQ/010

<sup>248</sup> SC/2/1 paragraph 4.1

<sup>249</sup> CPG/6/4 Appendix 1

<sup>250</sup> in the HCA Employment Density Guide



recognition in the Planning Practice Guidance and it has no application to the determination of how many jobs will arise from a proposed development.

- 2.288 In any event, it has no application on the specific facts of this case, even if it could be applied more generally in the planning context:-
- (a) Leakage:- SMBC's 20% reduction to the gross figure for 'leakage' is misplaced. Leakage<sup>251</sup> is a concept designed to account for situations where the job benefits leak out of a target area for a government intervention (i.e. they are taken by residents of a neighbouring authority). Here there is no specific target area for the jobs beneficiaries and the leakage would be zero.<sup>252</sup> In any event significant cross-boundary commuter flows exist.
  - (b) Displacement is *'the proportion of intervention outcomes accounted for by reduced outcomes elsewhere'*; and displacement is relevant where a new project may take market share and lead to a loss of trade and staff elsewhere.<sup>253</sup> However, turnover at the proposed development would draw on an expanding volume of overall retail spend, which also ensures that there would be no deterioration of the current total retail spend at other centres in the catchment. SMBC's own evidence shows growth by 2022. Displacement would therefore be nil rather than 70% claimed by SMBC. Moreover, it is the displacement of real, existing jobs on other centres that is the concern in HCA terms, and not the displacement of future hypothetical jobs that do not actually yet exist in other centres.<sup>254</sup>
  - (c) Deadweight is defined<sup>255</sup> as what is likely to happen on the site should the project/intervention not go ahead. If that were to be the case, there is no reasonable prospect of an employment development coming forward. SMBC's argument lacks credibility.
- 2.289 Possibly, in recognition of the above, there was no attempt to engage with this issue in SMBC's Closing.
- 2.290 Alongside job creation, there would be a number of other benefits:-
- (a) the creation of economic development which would, with the existing retailers at Handforth Dean, draw back trade from wider afield (e.g. the Trafford Centre and Greater Manchester) and bring money into the local economy;
  - (b) an indirect knock-on impact (impact caused by the occupants and employees of the development) creating a further 260 FTE jobs in the wider economy;<sup>256</sup>
  - (c) £23 million construction investment, supporting 260 construction workers per annum over the 18 month build period and a local employment plan to prioritise recruitment from the local area;<sup>257</sup>
  - (d) the provision of an environmental mitigation package, comprising a replacement area of 9.6 ha of woodland habitat, along with a commuted sum of £180,000, consistent with CELPS Policy SE4;<sup>258</sup>
  - (e) estimated employee expenditure of £12m annually;

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<sup>251</sup> CPG/6/3 paragraph 3.5

<sup>252</sup> CPG/6/5 Appendix page 23 - *'where there is no specific target beneficiary then leakage will be zero'*.

<sup>253</sup> CPG/6/5 Appendix paragraphs 4.3.1-4.3.2

<sup>254</sup> CPG/6/3 paragraph 3.14

<sup>255</sup> CPG/6/5 Appendix page 17

<sup>256</sup> CPG/6/2 paragraph 5.9

<sup>257</sup> CPG/6/2 Appendix 1 paragraph 3.1

<sup>258</sup> CPG/6/2 paragraph 4.64



- (f) between £2.5m and £2.8m in annual business rate contributions;<sup>259</sup>
- (g) a financial contribution of £2m towards public realm improvement works in Macclesfield town centre; and
- (h) a financial contribution of £10,000 towards monitoring the travel plan that will be prepared to encourage use of sustainable modes of transport.

### **Planning obligation**

- 2.291 With reference to SMBC's claim that the obligations would not protect SMBC, because it is not a party to it, is misconceived in that, if followed to its logical conclusion, it would be necessary to accept that many or most large retail developments might potentially affect more than one administrative area. It is entirely appropriate for CEC to enter into the obligation, as local planning authority, and be in a position to enforce on SMBC's behalf. The suggestion that it would not do so is misplaced.
- 2.292 Likewise, the suggestions that CPG and retailers would deviously try to circumvent the restriction has no commercial reality. CPG and traders would not take a risk in subverting a clearly-drafted '*no poaching*' clause. In any event, SMBC's submission is unrealistic as it is predicated on CPG starting, but not completing, its development.
- 2.293 It is also unacceptable that SMBC has sought to criticise the wording without proposing an alternative. If the Inspector and Secretary of State form the view that an alternative wording (e.g. practical completion of the majority of the site) could address SMBC's (unwarranted) concerns, then CPG would be willing to make an amendment should it be considered necessary.

### **Overall Planning Balance**

- 2.294 Framework paragraph 14 has effectively been given development plan status in CELPS Policy MP1.
- 2.295 CPG's primary position is that the applications accord with the development plan when taken as a whole. The allocation under the old saved Policy E3 of the MBLP can be overridden in the event of compliance with CELPS Policy EG 3, which is precisely the case here. It has been demonstrated that there is no reasonable prospect of the application site being developed for the allocated employment use.
- 2.296 The applications also accord with Policy EG 5 on retail impact and Policies CO 1, CO 2 and CO 4 on transport matters. Policy MP 1(2) requires that development must be approved without delay where it accords with the development plan. No material considerations would justify a departure from this plan; and, instead, they provide further support for the applications.
- 2.297 In the alternative, if it is decided that there is conflict with the development plan as a whole on account of Policies E2 and E3, then Policy MP1(3) applies. These old saved policies are acknowledged to be out-of-date in that they are both time-expired and inconsistent with the

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<sup>259</sup> CPG/6/2 paragraph 5.9

Framework. Peel's attempt to suggest that these policies are somehow not '*relevant*' policies is wrong in law.<sup>260</sup> They are clearly relevant for the purposes of MP1(3), albeit significantly out-of-date. Peel also argued in Closing that there are '*restrictive*' policies in the Framework (i.e. paragraphs 24-27) which dis-apply the tilted balance. This is also wrong in law in that they are not restrictive policies as contemplated by Framework paragraph 14 (or MP1). In any case, they are complied with by the applications for reasons given above.

- 2.298 Accordingly, on this secondary argument, the objectors must demonstrate that the harms that might be caused by the applications '*significantly and demonstrably*' outweigh the benefits. Given the lack of harm arising from the loss of employment land, retail impact and highways impact, and the countervailing significant benefits, the outcome of the tilted balance is self-evident.
- 2.299 Finally, even if the applications are contrary to the development plan as a whole (due to Policy E2 and E3) and the titled balance does not apply, this is still a case where it is clear the material considerations would justify a departure from the development plan. This would be so even if CPG were to lose on one of the three main issues in this Inquiry. Success on the other issues and the many benefits to the proposals would still be enough to outweigh the loss.

## **Conclusion**

- 2.300 The applications accord with the development plan as a whole, with particular regard to CELPS Policies EG 3 (employment), EG 5 (retail) and CO 1, CO 2 and CO 4 (transport). The material considerations including significant benefits further strengthen the justification for granting permission in accordance with the development plan. Any conflict with the plan found to exist, e.g. with the saved policies of the old MBLP should be given limited or no weight.

## **Post Inquiry representations**

### **National Planning Policy Framework 2018<sup>261</sup>**

- 2.301 The new Framework continues to promote a flexible approach to supporting economic growth, taking account of wider opportunities for development (paragraph 80). Section 11 sets a requirement for planning decisions to promote an effective use of land in meeting all uses (paragraph 117); paragraph 120 requires planning decisions to reflect changes in the demand for land; and policies and decisions should recognise and address the specific locational requirements of different sectors (paragraph 82).
- 2.302 The need for a flexible approach to economic development, which applies to both policies and decisions, reflects and supports the approach taken by CPG in its demonstration that the uses for which the site has been allocated for some 20 years cannot be viably delivered and that the site is

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<sup>260</sup> SMBC makes a similar argument in their closing at paragraph 5

<sup>261</sup> Misc/15

- not suitable for many employment uses as it does not meet the specific locational requirements of those sectors.
- 2.303 As such, the changes to the Framework do not materially affect the consideration of the application proposals in relation to the loss of allocated employment land.
- 2.304 In terms of town centre policy, set out at paragraphs 85 to 90 there is an increased focus on the need for local authorities to support diverse town centres, allowing growth and diversification in a way that can respond to rapid changes in the retail and leisure industries and allowing a suitable mix of uses (including housing).
- 2.305 This is of key importance when considering impact, specifically in relation to Stockport town centre where weaker peripheral and secondary areas need to be the focus of a greater diversity of uses. It is fundamental to CPG's case that diversification away from retail is the solution for Stockport, as evidenced by SMBC's own approach and recent investment in the town centre. On this basis, the revisions to the Framework add greater weight to CPG's case on retail impact.
- 2.306 In relation to the sequential test, the only material change is in paragraph 86 which states that sites which are expected to become available within a reasonable period should be considered as available. It is considered that this has no effect on the consideration of CPG's proposals in that Peel advanced no case on the sequential test concerning CPG and St Modwen's Rowlandsway site in Wythenshawe was conceded to be unsuitable as a sequentially preferable site, regardless of availability. In any case, the site will not be available within a reasonable period either.
- 2.307 SMBC's Closing Submissions conceded that the CPG proposals pass the sequential test, and the policy change has no effect on this. Accordingly, this change to policy has no impact on the conclusion that the application proposals pass the sequential test.
- 2.308 Importantly, the concept of disaggregating a single proposal over numerous sites was not introduced, despite it having been the subject of discussion in recent appeal decisions. This amounts to a conclusive rejection of the principle of disaggregation in applying the sequential test.
- 2.309 With regard to the test of impact, the only material change relates to impact on vitality and viability and the introduction of a requirement to ensure the catchment considered is applicable to the scale and nature of the scheme. However, this does not affect the assessments of impact presented by CPG as 5 years remains an appropriate assessment period for consideration of impact and that the catchment area identified reflects the nature and scale of the scheme.
- 2.310 However, as SMBC and Peel adopted a catchment which related to Stockport town centre, rather than the proposed development, the revisions to the Framework reduce the weight that can be given to these assessments of impact.
- 2.311 Having regard to the above, the changes to the Framework add further weight to the case made by CPG in respect of the importance of the need

for a greater diversity of uses within town centres to promote places where people live, work and carry out a range of retail and leisure activities, and places which are more than just shopping facilities. On the technical aspects of the sequential and the impact tests, the changes reduce the weight that can be given to the cases presented by the Rule 6 parties.

2.312 Turning to sustainable transport, paragraphs 102 to 111 present no significant change in national policy and CPG's case remains unchanged.

2.313 Overall, the changes to national policy add weight to the approach taken by CPG in respect of the key areas of economic development, town centre and sustainable transport policy. The conclusions drawn in respect of the conformity of the application proposals with national policy remain unchanged; and the application proposals are in full conformity with policies contained within the Framework.

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### **3. The Case for Orbit Investments (Properties) Limited**

#### **Introduction**

- 3.1 The Public Inquiry sat for 19 days, a distinct minority of which was devoted to the consideration of Orbit's appeal, and inevitably reflects the comparative controversy of the 2 schemes. It is difficult to avoid the inference that had the CPG applications never been submitted then the extent of interest in the Orbit proposals by opposing parties would have reduced to the level of disinterest.
- 3.2 Nonetheless, it has been Orbit's contention from the outset that it is important that a fair assessment is made of the Orbit proposal on merit and not as part of the CPG scheme.
- 3.3 Whilst it is right that the Secretary of State may wish to consider the schemes in combination, if both the CPG scheme and the Orbit schemes are considered acceptable in their own right, Orbit has chosen not to present a cumulative assessment upon which the Secretary of State can place reliance. Rather, at a corporate level, Orbit concluded that it wished the evidence of Orbit to address only the issues arising from its own scheme (the 'solus' effects) and that it would be disproportionate to expect Orbit to provide a professionally and thoroughly assessed view of a scheme on which Orbit take a neutral stance.
- 3.4 Nonetheless, if the Secretary of State concludes that the CPG scheme is acceptable in its own right (based on the evidence of CPG's planning and retail evidence) then it should follow that reliance is then placed on his cumulative assessment (i.e. that the cumulative effects of CPG and Orbit are acceptable).<sup>262</sup> Conversely, if that is not the case, it would only be the solus effects of Orbit which the Secretary of State would need to consider.
- 3.5 Save for that observation, Orbit's case, as set out below, reflects the effect of Orbit alone, and where reference is made to any of the evidence relating to CPG it is only to illustrate the assessment of the Orbit scheme. Orbit, and the wider Emerson Group have taken no position on the acceptability or otherwise of the CPG scheme.

#### **Overview and summary**

- 3.6 It is known that 'big' points win Inquiries. To that end the following simple points are made arising from the evidence which point inexorably to the proposition that the appeal proposal would not give rise to any substantive conflict with policy, nor that significant land use harm arises. To the contrary, the Orbit proposal would result in obvious benefits and fulfil the economic and social aspects of sustainable development.

#### **Employment**

- 3.7 Around half of the appeal site is undeveloped. However, CEC does not claim that the site, in whole or part, could be viably re-developed for employment purposes. Nonetheless, it maintains that the existing warehouse, occupied

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<sup>262</sup> if the largest CPG application is rejected but one or both of the smaller proposals are accepted then the same logic would follow – as the impacts would be little more than Orbit solus impacts

- by Gradus, could be beneficially re-used for employment if Gradus relocates as intended. The Council's notion that the building could be renovated to a standard sufficient to attract a new occupier is unsupported by evidence.<sup>263</sup>
- 3.8 Over a period of years Orbit has actively promoted the appeal site for employment use and with adjacent land it has secured planning permissions, built speculative offices, and invested significantly in marketing the site. Moreover, although it holds approval to demolish the warehouse and to construct offices the failure to secure an occupier has impeded implementation.
- 3.9 Moreover, CEC has made no request of Orbit to market the site for non-B1 uses in advance of the determination of the application or to request marketing of the Gradus building. There is, thus, no basis for CEC and others to allege that there is a want of evidence to support the proposition that the appeal site can be reasonably expected to come forward for non-B1 class uses.
- 3.10 At the end of the Inquiry, the evidence establishes unequivocally that Gradus are moving from the site to consolidate its operation in one location at Lyme Green, in Macclesfield; and a planning application has been submitted with an anticipation of imminent approval.<sup>264</sup> Once granted there can be no doubt that Gradus will leave the site; and there is nothing to gainsay the evidence of Orbit which leads to the proposition that the building has no long term economic future. If this is accepted, the sole reason for refusal would fall away.
- 3.11 It was only Peel who laid claim to the potential viable redevelopment of the site; and this was shown and conceded to be wrong on the basis of Peel's inputs into its assessment. Later reworking<sup>265</sup> was also found to be implausible (for example the notion that floorspace below a mezzanine would have the same rental value as vertically unconstrained floorspace).<sup>266</sup>
- 3.12 All of the above points mean that even though Orbit did not market the site as required by Footnote 43 of CELPS Policy EG 3, it did seek to promote the site over a much longer period of time alongside building speculative offices on the adjacent site. Overall, give the absence of any formal request to market the site and the lack of viability, any supposed non-compliance with the footnote is academic and of no practical meaning when understood in context.
- 3.13 In this regard, if that evidence is accepted, any marketing would have been no more than a pointless box ticking exercise given the otherwise substantive compliance with the objectives of Policy EG 3 and Framework paragraph 22. Any notional tension with the policy would be an issue of process rather than substance.

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<sup>263</sup> CEC relies upon a throw away comment by a witness acting for CPG which was unsubstantiated by evidence

<sup>264</sup> ORB/INQ/007; ORB/INQ/008; ORB/1/2 Appendix 9; ORB/1/5 Appendix 4

<sup>265</sup> PEEL/INQ/005

<sup>266</sup> ORB/INQ/010

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**Retail**

- 3.14 The sincerity of this issue, run by Rule 6 parties, is tainted insofar as one of those parties has a clear commercial interest in securing the dismissal of the appeal, and the other has a prime interest is in the impact of CPG.
- 3.15 Only Peel attempted to maintain a sequential case based on the availability of Unit 6 of the Peel Centre albeit with the concession that the consented scheme for the subdivision of the building would need to be revisited.
- 3.16 All of the witnesses accepted that the gauge of flexibility, when judging the suitability of a sequentially preferable site, does not involve disaggregation and that the benchmark most recently applied by the Secretary of State is whether the site can accommodate a scheme which is '*closely similar*' to that proposed. Neither Unit 6 of the Peel Centre (including the permitted scheme), nor any other site, could accommodate a '*closely similar*' proposal to the appeal proposal. Hence, the sequential argument is without merit.
- 3.17 In terms of trade diversion, the recent Barracks Mill Inspector<sup>267</sup> concluded that the project would have a 9.6% cumulative impact on Macclesfield town centre. It is notable that Peel's assessment of the cumulative effect of Orbit plus Barracks Mill and all other commitments would be no more than 7.4% and well below the level of trade diversion found to be acceptable by the Barracks Mill Inspector.<sup>268</sup>
- 3.18 For Stockport town centre, based on a realistic bulky goods sales density (reflecting the proposed restrictive goods condition put forward by Orbit), the scheme's turnover diverted from Stockport would be at most £7.2m by 2022. However, by that date, without Orbit, Stockport's turnover would have risen by £80.3m and, if the appeal is allowed, Stockport would retain 90% of its forecast growth. Moreover, both SMBC and Orbit agree that the solus effect of the Orbit scheme would be just over 1% impact on the overall turnover of the town centre. That would be below the threshold of perceptibility let alone significance.
- 3.19 Peel's stance relied on a sales density very much higher than adopted by any other party. Its assessment also ignored other committed projects and it is notable that the primary element of the cumulative impact (around £22m by 2020)<sup>269</sup> on Stockport town centre would be from a long standing approved but unimplemented permission at Water Street, Stockport. SMBC's witness discounted this site as "*unrealistic*" when assessing an application by Lidl in 2016,<sup>270</sup> and he agreed that the prospect of retail development was not any more realistic in 2018. If the impact of that scheme were to be discounted, the cumulative effect of the appeal scheme would become trivial and below the level of significance.
- 3.20 In terms of impact on investment, St Modwen's witness accepted that the supposed investment in Wythenshawe was nowhere near the point at which the Planning Practice Guidance advises that weight should attach; and conceded that "*there is no plan*". Without a plan there could be no impact.

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<sup>267</sup> CD K1.6

<sup>268</sup> ORB/1/2 paragraph 6.73

<sup>269</sup> ORB/1/5 Appendix 9 Table 10

<sup>270</sup> ORB/1/5 Appendix 5



- 3.21 On Stockport town centre, SMBC's case rested on its own endeavours to revitalise the town centre and its aversion to out of town retail development which might undermine those efforts. However, it could not point to a single project or a scheme whose future might be jeopardized by allowing the appeal. Only Peel seemed to identify actual sites whose delivery might be impacted by an out of centre permission. However, the suggestion that it would prejudice bringing forward the Gas Holder site, lacked credibility in that Peel did not own the site, remediation by the landowner was ongoing, and there were no firm proposals or timescale.
- 3.22 Peel's primary focus was on the re-letting of Unit 6, and it was shown that during the Inquiry interest had been shown by a number of parties, albeit none had come to fruition. However, Peel could not identify any negative effect arising from the Orbit proposal since the interest from the likes of Smyths and Wren and Tappi arose during the course of the appeal.
- 3.23 In reality neither Peel nor Stockport came close to proving an adverse impact on investment (let alone a significant adverse impact) within the meaning of Framework paragraph 26.

**Overall**

- 3.24 The case against Orbit is a baseless employment objection from CEC which runs counter to its case on CPG. Moreover, there is contradiction between the reason for refusal, which was based on the loss of employment land, and its case relating only to the loss of the warehouse building.
- 3.25 Peel's objection on impact and sequential issues lacked foundation and was commercial in character; SMBC's opposition floundered as it was unrealistic to include the Water Street permission as a commitment; and St Modwen's case struggled against CPG let alone Orbit.
- 3.26 Thus, the Orbit scheme is consistent with the objectives of Government policies for building a strong, competitive economy in terms of job retention, job creation and in terms of providing a viable and beneficial realistic use for this land. The alternative is, if the appeal is dismissed, the 7 jobs on the site will be lost when Gradus leaves, the building will be demolished (to avoid empty rates and a security liability) and the site will sit pointlessly empty and unused for the foreseeable future.
- 3.27 Furthermore, the Orbit proposal is consistent with Government policies for ensuring the vitality of town centres. There are no sequentially preferable sites, no unacceptable impact on existing, committed and planned public and private investment in a relevant town centre nor significant adverse impact on the vitality and viability of any relevant town centre.
- 3.28 It is common ground between Orbit and all relevant highway authorities that the proposal is consistent with Government policies for promoting sustainable transport.<sup>271</sup> It is not contended that the Orbit scheme gives

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<sup>271</sup> CEC raises no highways nor transportation sustainability objection; and SMBC has entered a SoCG with Orbit (N1.1) which provides that the 'parties agree that all highways and transportation matters arising from the proposed development within Stockport Borough can be appropriately and fully mitigated by way of a financial contribution to be provided by Orbit to facilitate junction improvements at Earl Road/Stanley Road in Stockport'.

rise to any adverse effects on highway safety or capacity; and there is no other objection on any other technical land use grounds.

- 3.29 Orbit has decisively shown that the proposed development is consistent with the development plan taken as a whole (even if there is a technical breach of EG 3) and, in any event, there are strong material considerations which weigh heavily in favour of the grant of planning permission.

### **Loss of Employment Land**

- 3.30 CEC's case is founded solely on the prospect of reusing the Gradus building. However, this was not supported by any evidence on the cost of repairs to any level or market support. CEC's case also runs contrary to Peel's opposing stance of the supposed viability of redevelopment.
- 3.31 Although CEC's witness claimed that the release of the appeal site would put pressure on future green belt release, it is clear that the appeal site was not identified as part of the 380 ha employment land allocation in the CELPS. In this regard, the 22 ha ascribed to Handforth Dean comprises up to 12 ha at the North Cheshire Growth Village and 3 sites, which do not include the appeal site, as providing a further 9.72 ha. This is made up of 6.0 ha on the Next/CPG site; 3.2 hectares at Lower Meadow Road; and 0.52 hectares on land west of Epsom House.<sup>272</sup>
- 3.32 In short, the appeal site does not form part of the identified employment land allocation, and so its loss would not result in any reduction of that supply. In addition, the site has never been included in part of the anticipated CELPS supply, despite it being carefully considered in the Employment Land Review.<sup>273</sup>
- 3.33 Furthermore, even if the site had been part of the allocation, the 380 ha contains flexibility in the assumption that there would be an annual loss of some 6.73 ha over the plan period to other uses. Whilst it was contended that actual losses were running ahead of that average, the latest monitoring report<sup>274</sup> records a nil loss on allocations in 2016/17 and only just over 4 ha from other sources, showing that CEC's evidence was overly pessimistic. Indeed the running average is now below the allowance.
- 3.34 That said, it is accepted that the land is in employment use and subject to CELPS Policy EG 3, albeit that the current use generates only 7 jobs. It is common ground that its identification in MBLP Policy E2 is out of date. Moreover, whilst it is caught by EG 3, only part of the site which is proposed to be redeveloped is actively in employment use and even that is coming to an end shortly.
- 3.35 However, CEC's witness accepted that the blanket protection of EG 3 arose from MBLP Policy E2, and that it was intended that the emerging Allocations DPD would identify land that needed to be protected for employment purposes. Even so, it is unlikely that the appeal site will be allocated since CEC concedes that redevelopment for employment use is not viable.

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<sup>272</sup> CEC/1/1 paragraphs 3.4 & 3.11; CEC/INQ/002

<sup>273</sup> CD J1.3 pages E1-68-E1-74

<sup>274</sup> ORB/INQ/22

- 3.36 The loss of less suitable employment land is recognised in the CELPS as a necessary element of upgrading the overall provision (including with Green Belt release) in the right locations,<sup>275</sup> whilst allowing the flexibility to lose land to other uses by the means of a buffer of 183 ha (of which the Orbit land at 1.48 ha is 0.8%). Indeed, such an exercise is obligated by Framework paragraph 22.
- 3.37 Even then, CEC does not allege that the site warrants any protection; and it accepts that if the warehouse building is demolished (as it will be) then the site would not be viable for redevelopment. As such there would be no interest if the site was marketed as a vacant site (confirming the point that marketing the site in accordance with the footnote to EG 3 would be pointless and an unnecessary application of policy).
- 3.38 Orbit has considered in detail the nature of the existing warehouse building and its future use either as a single entity or through subdivision. A detailed report sets out the need for extensive repairs in that a number of elements have reached the end of their economic life with a total estimated cost of £1.8 million to bring the premises to modern standard.<sup>276</sup>
- 3.39 In addition, a re-development appraisal demonstrates lack of viability in that a scheme to replace the building with 4 units ranging from 10,000 to 16,000 sq ft would result in a loss approaching £0.5 million; and a scheme to replace the existing building with a single unit of 50,000 sq ft shows a loss of over £700,000.<sup>277</sup>
- 3.40 Orbit has also undertaken 2 development appraisals:- a 62,862 sq ft single unit scheme (40%) site cover; and a multi-unit scheme with the same floor area and site coverage.<sup>278</sup> The former shows a profit on cost of 10.14% and the latter 13.69% against the industry standard of a minimum of 15%. These were produced to test Peel's assumptions.<sup>279</sup>
- 3.41 Peel's initial position assumed a single unit floor area of 73,500 sq ft or 69,300 sq ft in 4 units with 10% first floor office accommodation. Site coverage was 46% and 42% respectively. The resultant profit on cost was calculated to be 25.43% and 27.15%.<sup>280</sup>
- 3.42 Peel's reassessment of the 4 unit scheme, following agreement with Orbit on a number of the inputs, showed a profit of 15.65%, increasing to 18.13% if Orbit's finance costs were to be used and rising to 19.5% if a rent of £7.50 per sq ft is assumed.<sup>281</sup>
- 3.43 However, Peel's revised appraisal over-estimates the prospects of development:-<sup>282</sup>
- (a) the provision of 10% offices on a speculative scheme is inappropriate in that it is more common to make provision to meet end user requirements; first floor accommodation reduces the usable height of the ground floor below and space

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<sup>275</sup> ORB/1/2 paragraph 5.10-11; ORB/2/2

<sup>276</sup> ORB/3/1 section 5

<sup>277</sup> ORB/3/1 paragraphs 2.1-2.6

<sup>278</sup> ORB/INQ/002; ORB/INQ/003

<sup>279</sup> ORB/INQ/010 paragraph 6.1

<sup>280</sup> PEEL/3/1 paragraphs 9.16-9.17, 9.39

<sup>281</sup> PEEL/INQ/005

<sup>282</sup> ORB/INQ/010

is lost to vertical circulation; and it raises issues of equality of access for users of the building;

- (b) the cost of finance, for a 6 month period coinciding with the construction of the building, makes no allowance for pre-construction and a minimum 3 month lead in time;
- (a) Peel's build costs of £52.50 sq ft are too low and inconsistent with the body of evidence; and Orbit's £65.00 sq ft for the multi-unit scheme is more robust; Peel's building costs insufficiently differentiate between a multi or single building scheme – Peel's case was made essentially on the multi-unit scheme, a form of development involving greater costs – a differentiation between £52.50 sq ft and £50.00 sq ft is not realistic;
- (c) Peel's 6 months rent free sum is mathematically incorrect; and Aurora is not an appropriate comparator in this respect;
- (d) professional fees have not been provided to the total construction costs; and
- (e) the rental yields taken are too low and are not supported by robust comparator information (e.g. Broadfield Business Park, Heywood is of different scale and location).<sup>283</sup> Orbit's use of locally relevant information is to be preferred.

3.44 Overall, the principal differences between Orbit and Peel are site coverage/floor area and build costs. Applying a sensitivity test<sup>284</sup> it can be shown that using Peel's site coverage and construction costs the profit would be 14.24%; 10.82% with a build cost of £55.00 sq ft; falling to minus 1.05% at £65.00 sq ft. The equivalent figures based on Orbit's floor area are 10.62%; 7.41%; and minus 3.77% respectively.

3.45 On this basis there should be no issue on the correct robust measure of site density; and viability should not be assessed other than by reference to this well understood bench-mark. Although SMBC's evidence sought to criticise CPG's evidence on the viability of the CPG proposals, part of that criticism related to seeking a site coverage of 40%, thereby underscoring Orbit's position.<sup>285</sup> Peel's approach of seeking to use 42% and 46%, in respect of a multi or single unit scheme respectively, for the notional viability appraisals was an unconvincing departure from the use of robust assumptions (and looked suspiciously like retrofitting the input in order to secure a profit in excess of 15%).

3.46 In terms of the prospect or refurbishing the Gradus building, CEC accepted that Gradus is not a long term viable option for the site; and, the structural condition report prepared by Martin Willis<sup>286</sup> is to be preferred to the earlier Aherne report.<sup>287</sup> It is evident that the building requires very substantial refurbishment which was not viable to conduct in order to extend the life of the building for 10-20 years. This was the only properly informed evidence on the point.<sup>288</sup> No rational landowner would refurbish the existing building on the evidence in this case.

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<sup>283</sup> PEEL/3/1 paragraph 6.4

<sup>284</sup> ORB/INQ/010 paragraph 7.3 and tables

<sup>285</sup> SC/1/2 paragraph 5.17

<sup>286</sup> ORB/3/2 Appendix 4

<sup>287</sup> ORB/3/2 Appendix 9

<sup>288</sup> This report was attached to the evidence submitted by CEC for the original inquiry – but not provided by CEC for this conjoined inquiry.

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- 3.47 Accordingly, whilst there is no issue with the accepted understanding that vacated premises can be recycled – but in the present case, it is very clear that the building is not suitable for recycling and it would require an unviable level of investment to be capable of re-use. The building is at the end of its economic life and is in occupation in a short term rolling lease until a relocation option has been devised.
- 3.48 Peel's attempt to distinguish between the suitability of a use and the viability of a use took the matter no further in that it would serve no purpose to market the freehold of the site to properly satisfy the policy marketing requirement if the evidence already demonstrates that it is not viable to reoccupy or redevelop the site for non B1 office use.
- 3.49 The evidence from Gradus shows that the current premises are not suitable for its current and future needs. Its relocation requirements favoured a location nearer to its manufacturing facilities in Macclesfield;<sup>289</sup> and, since 2016, the situation has become more urgent in that changes in the business meant that the current building was being used in a very inefficient manner.<sup>290</sup> However, Gradus is committed to leaving the building (whatever the outcome of this appeal)<sup>291</sup> and move to the new site by mid-2019 at the latest.<sup>292</sup> In such circumstances there will be no legal or practical impediment to the demolition of the building.
- 3.50 Accordingly, it is clear that the building is not suitable for its present occupier and cannot viably support the works necessary to secure the future of the building in terms of institutional letting.
- 3.51 Orbit is an experienced investor and developer with a proven track record of building speculatively to meet market demand where it is viable to do so. The adjacent Epsom House, built speculatively for offices, lay dormant for many years prior to being taken by Pets at Home. Orbit's unique position has allowed it to assess the future of the appeal site in all classes of B class use. If there was a market in speculatively building for light industry, B2 or B8 it would have done so.
- 3.52 Whether the building is removed or stays there is no long term viable use for this site in employment use on the evidence. In such circumstances, it is obvious that marketing for non-B1 uses would be a meaningless exercise.
- 3.53 The marketing campaign for a nearby superior building (4 Brooke Park, Epsom Avenue) meeting modern requirements for industrial space (unlike the appeal building) did not result in that building being taken up for industrial uses.<sup>293</sup> It is accepted that each building is different – but in the present context the differences detract from, rather than add to, any case for marketing for industrial uses.

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<sup>289</sup> ORB 3/3 Appendix 2 paragraph 3.21

<sup>290</sup> ORB/3/4 Appendix 2 paragraph 18

<sup>291</sup> ORB/INQ/008

<sup>292</sup> ORB/INQ/007

<sup>293</sup> ORB/3/2 Appendix 7

- 3.54 Although Peel suggested that marketing should involve offering the freehold for sale, there is nothing to indicate an untapped reserve of potential buyers willing to buy the site to develop it for non-B1 uses when it could have been secured on a long rental basis.
- 3.55 Having demonstrated that there is no viable future for the building, it would be needless to require a developer to dispose of its interest in order to satisfy a policy marketing requirement in that it would amount to an unwarranted fetter on land use; it is not what the policy stipulates; and, it is an unworldly requirement open to misuse. Importantly, this was not suggested by CEC.
- 3.56 As the evidence shows, there is no reasonable basis on which the land would come forward for a letting on appropriate terms under a long lease. Whilst marketing for such terms would satisfy the marketing requirement, the only reasonable conclusion is that marketing would serve no purpose.
- 3.57 The loss of employment land argument, which was the sole reason for refusal, is evidentially unsupported. Had CEC really believed that the proposals involved the demolition of a crucially important building, it would not have approved its demolition and redevelopment (twice). Moreover, had it believed that the site was a valuable employment site, it would have run a case to that effect.

**The Retail issues**

- 3.58 CEC makes no claim of a significant adverse retail impact from the Orbit scheme, which is a powerful starting point in support of this appeal. Whilst a cynic might draw comparison for its support for the CPG schemes, the Orbit application long pre-dated the CPG proposals.
- 3.59 Orbit's case is unashamedly made on the basis that its scheme, with properly identified commitments, raises no justifiable concerns in terms of retail impact. Given the way in which it has unwillingly been drawn into a conjoined Inquiry, there was no reason for it to consider the combined effect with the CPG proposals.

**Disaggregation & the Sequential Test**

- 3.60 All parties accept that there is a requirement to assess sequentially preferable sites to see if they are available and could suitably and viably accommodate the appeal proposal subject to a degree of flexibility. In considering that flexibility the test is whether the scheme that could be accommodated is one which is '*closely similar*'. A test to assess the proposal in a disaggregated form is not required at any level of policy. To that end Orbit identifies a number of simple propositions on the correct approach :-
- (a) a decision made by the Secretary State should be read with care in relation to any paragraph of an Inspector's Report which the Secretary of State is adopting as the reasoning of the decision;
  - (b) properly read the decision in the Tollgate appeal does not materially depart from the decision of the Secretary of State in Rushden Lakes;
  - (c) a decision from the Secretary of State on the meaning of policy should '*trump*' any individual Inspector's decision;



- (d) neither the Framework nor the Planning Practice Guidance support the view that an appeal proposal should be disaggregated – neither say that and nor does the draft Framework under consultation; and
- (e) flexibility must be understood in the context of the sequential site being '*closely similar*' in terms of accommodating the development proposed. These are the words expressly endorsed by the Secretary of State.
- 3.61 SMBC's retail and planning witness accepted that the BHS store in Stockport was no longer available or suitable; the former M&S store did not meet the tests; the Water Street site was not '*closely similar*'; and Redrock could not accommodate the appeal proposals.
- 3.62 Thus, only Peel was left running a sequential case with its focus on Unit 6 of the Peel Centre which became vacant during the course of the Inquiry. However, on the evidence, there is clear interest in the re-letting of the unit, potentially for the Range, albeit a number of other possible occupiers have expressed clear interest. Moreover, Unit 6 cannot be seen as suitable either presently or as proposed to be reconfigured.
- 3.63 The underlying criteria in judging a sequential site rests on the nature of the development proposed:-
- (a) a site area not dissimilar to Orbit's 1.48 hectares site;
- (b) be able to accommodate approximately 6,000 sq m gross internal area of retail floorspace at ground floor level, employing a reasonable but limited degree of flexibility;
- (c) easy access to level car parking (approximately 173 spaces); and
- (d) be available within the same time frame as the appeal site.
- 3.64 In relation to Peel's evidence for the original Inquiry (scheduled for June 2017 but postponed), Peel's witness was clear that:-<sup>294</sup>
- 'Unit 6 at the Peel Centre could only be considered as suitable in conjunction with the Gas Holder site, as it is not large enough on its own to be considered suitable for the development, therefore this no longer constitutes a sequentially preferable site for the Appeal Development [the Orbit proposal]'*.
- 3.65 Whilst Peel's position has now changed the Toys R Us unit has not altered in any way (other than it is not occupied). Although any professional is entitled to change his mind, here there was no cogent explanation. The Toys R Us unit, as proposed to be reconfigured, is not a suitable alternative to the appeal site, having regard to the materially different scale and configuration of the 2 schemes.<sup>295</sup> In any event, Peel's witness accepted that the permitted scheme was not commercially attractive and would require reconsideration and, by implication a new planning permission for an as yet unknown layout, in order to attract operators.
- 3.66 It is evident that in order to overcome the drawbacks of the permitted scheme, reconsideration would lead to a reduction in floorspace. In

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<sup>294</sup> PEEL/1/1 paragraph 8.2

<sup>295</sup> Peel's witness accepted that Unit 6 was not closely similar although he referred to scope for adapting the planning permission - he accepted that he had provided no alternative layout.



addition, there is no basis to suppose that the Gas Holder site would become available within the same timeframe to the appeal proposal.

**Wythenshawe**

- 3.67 Neither St Modwen nor Manchester City Council expressed any objection to the initial application by Orbit or appeal due to be heard in the summer of 2017. The only proper inference is that it was not considered that the solus impact of Orbit warranted refusal of planning permission; and their real concern was that of the cumulative effects of both Orbit and CPG.
- 3.68 Nonetheless, St Modwen's witness accepted the following:-
- (a) there is no sequentially preferable site (despite the initial suggestion that the Rowlandsway site is sequentially preferable);
  - (b) there is no quantification of retail impact on Wythenshawe and no case to contradict Orbit's evidence on this;
  - (c) St Modwen is not making a case based on significant adverse impact on the vitality and viability of Wythenshawe town centre;
  - (d) Wythenshawe is a healthy and vibrant District Centre with low vacancy rates;
  - (e) the case for St Modwen was confined to seeking to make a case based on the impact on planned investment;
  - (f) St Modwen was unable to identify any existing or committed investment that would be affected; and
  - (g) St Modwen was also unable to identify any '*planned investment*' against which to test impact; and there was no scheme the subject of investment nor planning permission, contract, development management agreement nor any other step in an investment process that has been shown to exist let alone harmed.<sup>296</sup>

**Retail Impact<sup>297</sup>**

- 3.69 Whilst the evidence of Peel is an outlier compared to all other retail impact assessments before the Inquiry, Orbit has demonstrated that, even based on that evidence, the impact of the scheme on Stockport town centre would be acceptable and would meet the policy tests. Comparison of the retail evidence presented to the Inquiry shows that Orbit's assessment sits comfortably alongside that of SMBC's, and based on that '*sense check*' it can be assumed to be reliable.<sup>298</sup>
- 3.70 The retail evidence from CPG does not find any issue with the appeal proposals. In addition, CEC has been independently advised by WYG who found no significant adverse impact caused by the appeal proposals subject to appropriately worded conditions. This is despite finding a higher level of impact on the town centre of Macclesfield than that found by the evidence of Orbit's planning witness.
- 3.71 In terms of impact on Stockport town centre, CEC's assessment arrives at an impact from commitments of 4.8% and a combined impact of

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<sup>296</sup> STM's witness accepted that there was no planned investment which came close to *being 'at a very advanced stage'* as per Tollgate (CD K1.4)

<sup>297</sup> ORB/INQ/004A

<sup>298</sup> ORB/INQ/004A; ORB/INQ/13 (with and without Waters Street)

commitments and Orbit of 6.1%. SMBC's evidence on impact is broadly consistent with corresponding figures of 3.6 % and 4.7 %. In turn, this is not out of alignment with Orbit's 'worst case' scenario of 4.5% and 6.1%. None of these assessments show cumulative impact anywhere approaching the level of significance within the meaning of Framework paragraph 26.

- 3.72 SMBC's witness indicated that usually an impact of about 5% would not give rise to a significant adverse effect; albeit, in this case it might be justified by reference to the fragility of the position of Stockport's town centre. However, the Planning Practice Guidance<sup>299</sup> makes plain that it is the impact of a single development as opposed to cumulation with other proposals.
- 3.73 In this regard, the solus impact on Stockport town centre is assessed within a range of 0.9% to 1.6% by all except Peel. In terms of trade diversion, the range is £6.6 m to £11 m with the similar exception of Peel. The figures placed before the Inquiry in closing by SMBC are a diversion of £8.2 m leaving town centre turnover at £711.4 m and a reduction of turnover of 1.1%.
- 3.74 This is in the context of a centre with a turnover of £688 m to £743 m within the corresponding assessments. These figures destroy any suggestion of any significant adverse impact.
- 3.75 Moreover, SMBC had accepted that the majority of trade diversion would come from commitments and notably from the Water Street site which is acknowledged to be unlikely to proceed. Further, as Orbit's evidence shows, the diversion arising from the appeal proposal would amount to around 10% projected growth of the town centre of Stockport in the period 2018-22 – i.e. by 2022 Stockport will have retained 90% of its growth and all of its present turnover if Orbit is approved.

#### **Health of Town centres**

- 3.76 SMBC's evidence overstates the fragility of Stockport town centre. The centre is receiving significant investment and improvement, and it is a centre in which the trajectory for vacancy levels had been one of improvement.
- 3.77 It has to be recognised that vacancy levels fluctuate over time and whilst recent national events on the high street have to an extent post-dated the agreed count – there is nothing occurring that is a concern peculiar to either of the 2 main centres in issue.
- 3.78 In terms of Stockport, it was apparent that a more optimistic view of the health of the centre in terms of vacancies was evident from a report on vacancies (November 2016).<sup>300</sup> Moreover, the most up-to-date survey of vacancy levels shows that there had been improvement compared to

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<sup>299</sup> PPG paragraph ID: 2b-017

<sup>300</sup> ORB/INQ/005 paragraph 3.7 *'The trajectory for occupancy levels with previous levels of investment and support would at best be to continue at a relatively high but stable level, hence the need for investment into the town centre. With the investment already in progress and that which is planned, the trajectory is for increasing levels of occupancy, and this is supported by the evidence of recent lettings as development and activity is increasingly visible in the town centre.'* [see also CD F1.1 at paragraph 4.53]

previous vacancy levels as the centre benefits from investments in leisure, office schemes and the public realm.

- 3.79 Whilst the high street has been suffering nationally in the period prior to the final hearing sessions of the Inquiry, vacancies or predicted vacancies resulting from this process can only properly be looked at as part of a comprehensive reappraisal of vacancy rates.

**Investment in Stockport**

- 3.80 SMBC has made significant investment in the centre of Stockport which has progressed during the currency of the Orbit proposal. There is no evidence that existing, committed or planned investment has been curtailed in any way. The fact that it has continued to take place is by far the most significant evidence.

- 3.81 There is nothing to suggest, if permission is granted, that SMBC will not continue to invest in the centre. Indeed, all the evidence indicates to the contrary. Stockport Exchange is a success with a further phase of office development planned; Redrock is making good progress towards being fully let; and the core retail area of Merseyway can look forward to investment and support from SMBC. Whilst the Council has taken the step of seeking to protect its investment further by taking Rule 6 status, 2 general submissions are made in respect of this position:-

- (a) the overriding impression is that the motivation, evidence and reasoning of appearing at the Inquiry is directed overwhelmingly at CPG as opposed to Orbit; and
- (b) there is a difference between seeking to protect an investment for understandable commercial reasons and providing evidence which supports refusal on retail grounds.

- 3.82 In terms of assessing the health of a town centre, Orbit's planning witness conceded that he had not expressed a written view on each and every one of the factors identified in the Planning Practice Guidance<sup>301</sup> although he considered that there was material before the Inquiry on matters sufficient to form a positive view on the health of the town centre. In any event, on the basis of a negligible solus impact on the town centre, there could not conceivably be any harm to the health of the town centre.

**Peel's Evidence**

- 3.83 Having regard to the evidence from CEC and its retail advisors, and that of SMBC, the inevitable conclusion must be one of acceptability. Peel's evidence has all the hallmarks of a case based on protectionism advanced on the part of a commercial rival. Its evidence was unsatisfactory in a number of ways:-

- (a) in terms of numerical impact, Peel's figures fit less comfortably within a spectrum of otherwise broadly consistent figures provided by other retail experts;

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<sup>301</sup> PPG paragraph 2b-005

- (b) in terms of consistency, in that Peel's evidence changed on the sequential suitability of Unit 6 of the Peel Centre; and on the viability of redeveloping the Orbit site for B1 uses; and
- (c) in terms of logical credibility, where the steps to inform a professional opinion are clear, well considered and supported there is reason to enhance the weight to a particular view. The converse is also the case as illustrated by the lack of logic of Peel's position in relation to Unit 6, the Gas Holder site, and sales density figures.

**Macclesfield**

- 3.84 In reality, other than late written representations by Eskmuir after all of the evidence had been heard, there is no alleged solus impact of Orbit on Macclesfield town centre. In this regard, the impact would be materially less than the impact accepted by the Inspector in the Barracks Mill appeal.
- 3.85 It can therefore be robustly submitted that there is in reality no meaningful solus impact on Macclesfield town centre, either in terms of the impact on vitality and viability or an impact on investment. Given that Macclesfield is the largest town in the same district as the appeal proposal, it follows that the alleged impact on Stockport has been grossly overstated.

**Highways Evidence and accessibility**

- 3.86 It is common ground that the Orbit scheme would not give rise to any highways objection and that it would suitably mitigate scheme effects. There is no sustainability objection, including in terms of access to non-car modes.

**The planning balance**

- 3.87 The appeal proposal would provide clear economic benefits. The technical reports that accompanied the resubmission application included an Employment Land and Economic Benefits Assessment<sup>302</sup> which underpins the views of Orbit's planning witness:-
- (a) it is anticipated that the proposal would create 97 person-years of construction work, or 10 FTE jobs, assuming a 12 month build programme. It is reasonable to expect a proportion of construction employment positions to be filled by the local workforce, contributing to a reduction in unemployment within Cheshire East;
  - (b) it is considered that some businesses in the local and regional economy would benefit from trade linkages established during the construction. Businesses would also be expected to benefit to some extent from temporary increases in expenditure linked to the direct and indirect employment effects of the construction phase;
  - (c) an additional 146 indirect jobs (or 15 FTE jobs) could be supported over the 12 month construction period within firms (in addition to direct employment);
  - (d) the capital spending associated with the proposal could deliver an additional £563,000 of direct Gross Value Added (GVA) and a further £794,000 of indirect GVA<sup>303</sup> over the period of construction. This is a clear economic benefit although not all of this will be retained locally;

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<sup>302</sup> ORB/1/3 Appendix 8

<sup>303</sup> ORB/1/2 paragraph 7.5

- (e) the proposal would retain the Stanley Court office block and safeguard some 120 jobs. This is an important feature of the proposals in the balance and mix of benefits; and
  - (f) the only job losses would be the 7 associated with Gradus (to be relocated) which would be mitigated in a meaningful way by the employment contribution under the Unilateral Undertaking.
- 3.88 The proposals are enhanced further by the gains for the Gradus relocation:-
- (a) these jobs are being relocated within the area;
  - (b) this is being achieved by adding to the stock of employment land at the relocation site, which was not previously in employment use;
  - (c) this will add to the portfolio of employment land held by the appellant as an experienced and successful property company; and
  - (d) this will increase the resilience of Gradus as a local company and employer.
- 3.89 The proposal would create in excess of 390 direct jobs (or 283 FTEs) generated as a result of the appeal proposal, which is to be regarded as a significant benefit:-
- (a) any displacement of retail jobs is likely to be towards the lower end of any range. Taking into account the effects of displacement and the loss of existing jobs, the net on-site employment change is estimated to be between 287 and 303 jobs (207- 213 FTE jobs);
  - (b) the estimated net additional jobs could also result in between 60 and 64 (44- 45 FTE) '*spin-off*' jobs across the local area, in addition to between 109 and 115 (79 - 81 FTE) '*spin-off*' jobs within services and other businesses in the wider north west area; and
  - (c) Orbit assesses net additional direct FTE jobs created in the proposed retail floorspace could deliver between £8.9 m and £9.2 m of GVA per year, once completed and fully operational.
- 3.90 Other benefits include:-
- (a) it is estimated that the retail floorspace proposed would generate approximately £787,000 - £800,000 in gross business rates per annum, with direct benefit to CEC;
  - (b) the proposal would contribute to a wider regeneration programme and improved local environmental quality through well considered public realm design and the use of high quality materials and employing strong design and build principles;
  - (c) it is expected that the proposal would make a contribution to the local community by means a local employment plan secured through the Unilateral Undertaking;
  - (d) the proposal would support the creation of a strong, vibrant and healthy community by increasing the supply of community services;
  - (e) the proposal would provide additional services for the residents of Cheshire East. Commercial retail units would increase choice and contribute to more sustainable patterns of shopping and reduce the need to travel; and increased choice available locally would strengthen the Handforth community;

(f) the development would enhance the natural and built environment using natural resources prudently and addressing climate change through sustainable development. Notably:-

- no designated nature conservation sites would be affected by the proposal;
- there would be no adverse impact on any heritage assets;
- adequate mitigation would ensure that habitats and protected species would not be adversely affected;
- the proposal would deliver improved access to the site; and
- existing trees and hedgerows would be accommodated where possible and new landscaping would be provided.

3.91 Having regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, Orbit firmly considers that the proposal generally conforms with the Development Plan and that material considerations (including national policy and guidance) support the proposed scheme. Even if it is found that there is a technical breach of CELPS Policy EG 3, this would be decisively outweighed by other factors, not least compliance with national retail policy.

### **Response to the cases for other parties**

#### **Response to Peel**

3.92 As a result of the unorthodox conjoining of a section 78 appeal opposed by CEC and recovered applications supported by the same local authority, both for retail and on neighbouring sites, Peel took a lead role purporting to argue a case that the public interest is best served by the rejection of both the Orbit and CPG schemes. That happens to coincide with its private interest.

3.93 Peel has also taken something of a scattergun position, challenging everything that could be plausibly challenged. Thus:-

- (a) CEC and SMBC do not allege that the Orbit site can be redeveloped viably, but Peel does;
- (b) CEC and SMBC do not allege that there is a sequentially preferable site for the Orbit scheme, but Peel does;
- (c) CEC and SMBC do not allege an impact on the Gas Holder site investment, but Peel does;
- (d) the retail advisors to CEC and SMBC both posit sales densities which are in line with those of Orbit, and only Peel's sales density is substantially higher.

3.94 In respect of all of those points, Peel is the outlier in its professional assessment, and if the mainstream of professional opinion is to be preferred then each of its concerns falls away.

3.95 In terms of employment land, a number of points need to be raised in response to Peel's closing. In this regard, the closing submissions set out a mathematical assessment of Peel's employment case. However:-

- (a) as the Orbit site falls outside the defined employment land supply, its loss would not diminish the 380 ha allocation figure by a single square metre;



- (b) annual losses of employment land to other uses need to be considered on a rolling average;
  - (c) the mechanism of deducting commitments from the employment land supply before assessing annual average losses inflates the resultant figure; and
  - (d) in terms of Handforth Dean, the CELPS was prepared in the full knowledge that there was unused land next door to Gradus and that Next had been constructed. However, no part of the appeal site was identified as been needed to allocate or to otherwise be part of the 12 ha of employment land needed at Handforth. Had there really been a need for additional land in excess of the 0.28 ha residual requirement, then CEC would have sought to make further provision in the CELPS.
- 3.96 The reality is that losses year on year are on track and planned within the substantial head room of the CELPS and the appeal site is not part of the identified land in Handforth or part of the 380 ha allocation. Whilst Peel claim that "*a loss is a loss*", the loss in this case would be of non-allocated land.
- 3.97 For the avoidance of doubt, in order to warrant continued protection as employment land it is emphatically a pre-requisite that such land is viable. In terms of CELPS Policy EN3:-
- (a) the rationale for safeguarding existing employment land only arises for land that is viable for continued employment use;
  - (b) the text envisages the loss of land which is in fact viable in circumstances where such loss would not cause harm to business or employment opportunities;
  - (c) the reasoned justification has a proper role in explaining how a policy should be applied. The Orbit proposal is on land which is neither viable for redevelopment in employment use nor can the current Gradus building viably sustain employment use. Moreover, the proposal has a mix of uses which would enhance rather than harm employment opportunities; and
  - (d) it would serve literally no function to require a further marketing exercise on the basis that the evidence shows that the land is not so viable.
- 3.98 Orbit accepts that Footnote 43 to CELPS Policy EN 3, in terms of a marketing exercise, has not been complied with in respect of the full range of B class uses. However, the rationale for the policy is to safeguard viable employment land. If the Secretary of State accepts that the evidence shows that the land is not viable for redevelopment for B2 and B8 uses, there would be no harm to the policy arising from not completing an exercise which gives a detailed requirement to demonstrate precisely the same point.
- 3.99 This could not be properly claimed to be a substantial, or even a meaningful, failure of policy. In this regard, it is always right when judging the weight to be afforded to a breach of policy to consider the actual degree of land use harm.
- 3.100 The crux of the failure of the case against Orbit is that the evidence shows that the land is not viable for redevelopment in employment use. Indeed, Peel's witness was unable to show a viable, notional scheme on parameters essentially of his own choosing. Moreover, even the attempt to recast the evidence based on an unrealistic site coverage failed. Overall, the evidence



has not come close to showing this land to be viable for future employment use on the balance of probabilities.<sup>304</sup>

- 3.101 In terms of sequential assessment, the case for Unit 6 Peel Centre as a sequentially preferable site also failed. The test of '*closely similar*' is derived from the Tollgate decision which should be applied in the present case and in terms of consistency of decision making. Although the test is not contained in policy, it is the Secretary of State's application of his own policy, and therefore carries authority.
- 3.102 The approach of Orbit to the '*suitability*' of Unit 6 has remained consistent and coherent. CEC takes no point on this and neither does SMBC, the authority in which Unit 6 sits. Peel's position has been inconsistent and no credible explanation has been offered. Moreover, even its own witness accepted that the approved plans for the reconfiguration could be described as a "*dogs breakfast*"; a new permission would be needed; and it was not known what form of development, in terms of units and layout, might be brought forward. Quite how one could conclude that an as yet unknown new scheme is nonetheless '*closely similar*' is difficult to understand.
- 3.103 Whilst it might be claimed to be difficult to let a unit whilst the Orbit appeal is undetermined, the evidence points the other way since interest has arisen during the currency of this appeal. Similarly, any claim that allowing the appeal could hinder the delivery of the Unit 6 permission, the extant permission is agreed to be less than satisfactory and in need of re-planning. On this basis the claim of impact would be to a scheme that does not yet exist.
- 3.104 In terms of retail impact, the case for Peel contained little of consequence. To suggest that it is wrong to focus on the numbers is a submission which can only be made by a party that realises that its own witnesses' numbers' are unsupportable and that on the basis of the overwhelming weight of evidence before the Inquiry that the inevitable conclusion is that the impact of Orbit plus commitments – would be truly '*de-minimis*'. Once this inevitable conclusion is accepted, the remainder of the analysis is academic.

#### **Response to St Modwen**

- 3.105 The brief response to the case for St Modwen is that nowhere within the evidence is there a substantiation of any harm to the centre of Wythenshawe, in terms of retail impact and investment in the centre.
- 3.106 Wythenshawe continues to be a relatively successful centre in its own terms with a limited local catchment. There is no evidence that the Orbit scheme would significantly undermine this centre in any respect. This is true in the current circumstances and will remain the case on the opening of the A6MARR.

#### **Response to the case of Stockport MBC**

- 3.107 It is evident that the real target for SMBC was the CPG scheme and not the Orbit proposal. In this regard, it did not adduce evidence against orbit in

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<sup>304</sup> ORB/INQ/002; ORB/INQ/010

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respect of employment land; it made no criticism of the case made by Orbit on viability and marketing. On retail matters there is no longer any sequential site relied on by SMBC.

- 3.108 In terms of retail impact, the solus impact of Orbit plus commitments cannot be shown to be at a level which remotely approaches significance. Whilst SMBC points to the health of Stockport town centre, the alleged impact is dwarfed by the theoretical impact of Water Street and the likelihood, common to Orbit's position and SMBC's earlier analysis, that it will not proceed.
- 3.109 In terms of sales densities, Orbit's position compares across the range of evidence presented to the Inquiry; and, even on SMBC's evidence, the impact of Orbit on Stockport town centre would be trivial and well below the level of significance.
- 3.110 Whilst SMBC has invested in the town centre, its investment has progressed and been successful leading to further investment. It is a positive picture that has continued over the course of Orbit's application and appeal and despite a very challenging national retail environment. The evidence shows that the health of the centre is sufficiently vital and vibrant to take a development of the size and nature proposed by Orbit.

**Response to CEC**

- 3.111 In terms of the status of Footnote 43 to CELPS Policy EG 3, Orbit maintains that it serves as elaboration to the text of the policy rather than as policy itself. What matters is the wording of EG 3 1.ii.b., in that the footnote merely explains how the policy will be applied. Further, the wording of the footnote is not necessary to understand the policy itself and securing marketing without reason is not a policy objective in its own right.

- 3.112 In *R on the application of Cherkley Campaign Ltd v Mole Valley DC [2014] EWCA Civ 567 Richards LJ* said:-

*'It should already be clear why I disagree with that reasoning. The policy is what is contained in the box. The supporting text is an aid to the interpretation of the policy but is not itself policy. To treat as part of the policy what is said in the supporting text about a requirement to demonstrate need is to read too much into the policy. I do not accept that such a requirement is implicit in the policy or, therefore, that paragraph 12.71 makes explicit what is implicit. In my judgment paragraph 12.71 goes further than the policy and has no independent force when considering whether a development conforms with the Local Plan. There is no requirement to demonstrate need in order to conform with the Local Plan either in its original form or as saved'.*

- 3.113 The words '*No other occupiers can be found*' are in the policy box as is the footnote number but in order to identify what that means it is necessary to look elsewhere below the explanatory text of paragraphs 11.22 to 11.25. Both the footnote and the explanatory text are explaining the application of policy and as such the footnote wording has no greater status than paragraph 11.23 which provides :-

*'In order to provide a range of employment sites, particularly for inward investment and limit the need for development on greenfield land, it is vital that existing employment sites, premises and allocations that are viable for continued*

*employment use are safeguarded. This will make sure that job opportunities are maintained and the economic health of the borough is protected. The release of viable employment sites or premises to other uses may only be made where their loss would not cause harm to business or employment opportunities, or where there are unacceptable amenity impacts for local residents'.*

- 3.114 Whilst it is accepted that exceptional circumstances had been shown to sanction Green Belt release of land in the north of the borough for employment purposes, the evidence in respect of the Orbit land does not support the proposition that acceptance of the proposal would increase the likelihood of further Green Belt release.
- 3.115 CEC makes clear that it (along with everyone else) accepts that office use is not viable nor is redevelopment of the site and it has also sanctioned the demolition of the existing building. Thus far, therefore, the position of CEC supports the Orbit appeal. It also acknowledges that with the demolition of the warehouse building, the cleared site would not be materially different to the CPG land, and, logically, the reason for refusal would fall away.
- 3.116 Overall, Orbit is being chastised for acting honourably in safeguarding the existing employment use pending the relocation of Gradus. Gradus' search for more suitable premises is well documented; relocation will be secured; and the building will be demolished. Ironically, in terms of the proposed development, Gradus has intimated that it is keen to take one of the new units in order to operate a showroom on site for its carpet and flooring products.
- 3.117 Overall, CEC's case belies the profound lack of a proper evidential foundation. Thus, the evidence presented by CEC:-
- (a) provides no assessment of the physical condition of the Gradus building;
  - (b) provides no assessment of how the building can continue to meet employment needs of any industrial occupier;
  - (c) provides no assessment of any range of investment below that identified as necessary by Orbit which could and should be done;
  - (d) provides no assessment of the likely rental that would be supported by any such investment in the building; and
  - (e) provides no assessment of how such rental would enable any such investment in the building so identified.
- 3.118 Orbit's evidence on the negative viability of repair and reuse has not been challenged or countered by CEC. Moreover, any suggestion that the occupation of the building by Gradus to date provides evidence of continued suitability and viability for employment uses is misplaced and unsupported. There is no doubt, based on Orbit's specialist Building Condition Survey and Schedule of Repairs,<sup>305</sup> up-to-date evidence, that the building is in need of major investment and the notion that a lesser renovation might result in a beneficial re-letting again has no evidential foundation.

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<sup>305</sup> ORB/3/2 Appendix 4

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- 3.119 There can be no surprise that the position in respect of Gradus' occupation of the building has changed over time. Gradus and Orbit have a rolling very short term tenancy in place to facilitate a rapid relocation once a suitable site has been identified – meaning that neither side has a commercial interest in expending huge sums on the existing building.
- 3.120 The evidence is clear on the deficiencies of the existing building; the inability of the building to meet Gradus' operational needs; the lack of suitability for adaptation to meet those needs; and the intention to vacate to more suitable premises. In this respect, CEC's evidence<sup>306</sup> is inadequate, incomplete and out of date as are the conclusions drawn.
- 3.121 Moreover, there is no foundation for the view that a vacant building requiring major (uneconomic) investment must be re-let without that investment or that viability should be assessed other than by reference to the conduct of a rational land owner. The viability evidence has not been contested by CEC, yet to continue to demand a market testing exercise, is to ignore the objective of the policy for safeguarding land which that exercise is supplementary to.
- 3.122 In terms of planning obligations and conditions there is general consensus:-
- (a) Orbit accepts the justification for the financial contributions to pedestrians/cyclists facilities (£65,372); the public transport contribution (£65,372); and the junction improvements at Earl Road/Stanley Road (£200,548);
  - (b) Orbit accepts that the public open space and sport and recreation contributions can only be permitted if found to be properly justified;
  - (c) Orbit has provided the employment generation contribution in the sum of £282,000 and has provided a bespoke piece of evidence in support of that contribution which shows how the sum is calculated and how it serves to mitigate the loss of the Gradus jobs.<sup>307</sup> This shows that the CIL tests have been met;
  - (d) all matters relating to the conditions are agreed save for the position in respect of condition 22;
  - (e) there is agreement that a '*no-poaching*' obligation is not required as a result of the solus impacts of Orbit – principally because of the proposed restrictive goods condition; and
  - (f) if the Secretary of State decides to grant planning permission for the Orbit and CPG proposals, the restrictive goods condition would serve to restrict the range of goods sufficiently and over the longer term in a manner which would be likely to offer greater protection to the objectives of protecting the town centre than a 5 year '*no-poaching*' clause'.
- 3.123 Overall, the case put against Orbit is weak, confused, contradictory and undermined by the case that CEC puts in support of CPG. In trying to face in both directions at once, unsurprisingly CEC has failed to properly assess the Orbit proposal and it remains a complete mystery why the Orbit scheme was refused.

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<sup>306</sup> CEC/2/2 paragraph 8.14

<sup>307</sup> ORB/INQ/011

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**Conclusion**

- 3.124 Having heard all of the evidence it is submitted that no party has come close to demonstrating that any significant harm will arise. The critical points in favour of allowing the appeal are:-
- (a) the 'employment' which the reason for refusal professes to protect amounts to 7 jobs which will in any event be relocated and, by contrast, the appeal scheme would generate (net) over 20 times that number of jobs;
  - (b) CEC's case rests on the re-use of the existing building but permission exists for its demolition and that is the action Orbit intends to take; there is no evidence to support beneficial reuse; and CEC has never sought additional marketing of the site;
  - (c) only Peel alleges that the site can be viably reused, but its evidence lacks standing;
  - (d) if the appeal is dismissed the site will, following relocation of Gradus, will lie empty and unused, whereas the grant of permission would result in job creation and millions of pounds of private sector investment;
  - (e) both SMBC and Peel have failed to demonstrate that there would be a significant adverse impact on Stockport town centre in that:-
    - the inclusion of the Water Street commitment was unrealistic;<sup>308</sup>
    - the future of the Gas Holder site is yet to be determined and there was evidence of interest in Unit 6 of the Peel Centre;
    - the suggestion that a reconfigured Unit 6 would be sequentially preferable awaits a new and yet unknown scheme and its consideration for planning permission; and
    - Stockport's admission that that the effect of Orbit alone would not have a significance adverse effect on investment in Stockport town centre;
  - (f) St Modwen's case was undermined by the absence of any positive proposals on which to measure alleged impacts; and
  - (g) In terms of Macclesfield, letters from Eskmuir are ill-directed and primarily aimed at CPG.
- 3.125 In the real world the Orbit scheme ought to have been uncontroversial and had the CPG scheme not been promoted it must be doubted whether Orbit would even have been refused. Barracks Mill might be usefully thought to be a comparator – a scheme for a much larger floorspace, closer to the town centre was allowed in 2017 based on a mistakenly inflated impact on Macclesfield town centre, but providing a less restrictive bulky goods condition than proposed in the Orbit appeal. Given that when the figures properly reworked show that the impact of Barracks Mill with Orbit would be lower than was thought acceptable for Barracks Mill,<sup>309</sup> it is difficult to see how a retail concern in relation to Macclesfield could ever have been substantiated, and it is to CEC's credit that it has never made one.
- 3.126 This is not a marginal case in that the evidence overwhelmingly points to allowing the Orbit scheme subject to the imposition of the suggested conditions and the planning obligation as provided.

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<sup>308</sup> ORB/1/5 Appendix 5 paragraphs 3.39-369: ORB/1/4 page 14

<sup>309</sup> ORB/1/2 paragraph 6.73

## **Post Inquiry representations**

### **National Planning Policy Framework 2018<sup>310</sup>**

- 3.127 The 2012 Framework is superseded and its content can be disregarded as a material consideration, with weight instead afforded to the new Framework.
- 3.128 There are large parts of the Framework where there is no material change, including ensuring the vitality of town centres.<sup>311</sup> However, paragraph 8a provides greater support for economic/employment development but a key message is ensuring that sufficient land of the right types is available *'in the right places'* and at the right time to support economic growth. An overriding principle remains that planning policies (including allocations) should be based on sound commercial reality.
- 3.129 Evidence has demonstrated that the appeal site is not at all the right place to best meet the employment needs of existing and future businesses wishing to occupy premises in Cheshire East.
- 3.130 Paragraph 11 of the revised Framework generally mirrors paragraph of its predecessor with the clear message that government wishes development plans overall to have an in-built flexibility that enables an easy transition from one use to another where there is good reason. This message is consistent with paragraphs 8a and 82 of the Framework and has particular relevance to the Orbit site given its status as an existing employment site but without any foreseeable future for employment use.
- 3.131 The evidence before the Inquiry demonstrated that the appeal site does not meet the locational requirement of any sub-sector of employment uses (other than the retention of the existing office building), but does meet the locational requirements of retail uses. Paragraph 82 acknowledges that *'planning policies ..... should recognise and address the specific locational requirements of different sectors'*.
- 3.132 Making Effective Use of Land is a new chapter in the revised Framework. Paragraph 117 sets out that *'planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses'*. In this regard the appeal proposal would be an effective use of the appeal site which would otherwise remain under-utilised and potentially vacant.
- 3.133 Overall, there are no changes between the 2012 and 2018 version of the Framework that alter the case for the appellant. On the contrary, the Framework now adds weight to the appellant's case.

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<sup>310</sup> Misc/16

<sup>311</sup> National Planning Policy Framework 2018 paragraphs 85-90



## **4. The Case for Cheshire East Council**

### **Summary**

- 4.1 The Council's case is that the Orbit appeal should be dismissed and the CPG applications should be granted planning permission.
- 4.2 The Orbit scheme was refused permission on the basis of the loss of employment land. CEC raises no objection to the Orbit scheme on other grounds.
- 4.3 Notwithstanding the reason for refusal, the policy position has subsequently changed with the adoption of the CELPS; and some policies of MBLP, including Policy E1, have been replaced and no longer form part of the development plan.
- 4.4 In addition, although the Orbit proposal is contrary to MBLP saved Policy E2, CEC accepts that the blanket restriction on retail use in the policy is not consistent with the Framework and therefore Policy E2 should be accorded limited weight.

### **CELPS**

- 4.5 CELPS Policy EG 3<sup>312</sup> is most relevant to the assessment of the Orbit proposal and it is common ground that it is an up-to-date policy that is consistent with the Framework and should be accorded full weight.
- 4.6 The supporting text (at paragraph 11.24) notes that the policy applies to all sites currently in use for employment purposes (B1, B2, B8), as well as sites allocated for such uses.<sup>313</sup> Both the Orbit and the CPG sites are located within an '*existing employment land area*' allocation, as defined in the MBLP.<sup>314</sup>
- 4.7 CEC does not agree with the interpretation of EG 3 first suggested by its own witness in his oral evidence, (contrary to his written evidence, and at odds with the position of all the other parties), that it is not necessary for CPG to demonstrate compliance with EG 3 1. or EG 3 2., because the CPG site is not a site in existing employment use. CEC's position is that the site is an existing employment site; it has been allocated as employment land for many years (in the MBLP<sup>315</sup>, but not the CELPS) and forms part of the employment land supply in the borough.
- 4.8 The need to assess nuisance and/or the suitability and viability of sites applies equally to existing and allocated sites as EG 3 does not draw distinction. The definition of employment land includes Classes B1, B2 and B8 of the Town and Country Planning (Use Classes) Order 1987, but not land for retail development.<sup>316</sup>

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<sup>312</sup> CD J1.8 page 98

<sup>313</sup> CEC/2/2 paragraph 5.13

<sup>314</sup> CD J1.7 Policy E3 PEEL/INQ/008 (Proposals Map)

<sup>315</sup> Proposals Map - as part of an '*existing employment land area allocation*'

<sup>316</sup> CD J1.8 page 391



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- 4.9 The CPG and Orbit land is identified for those employment uses and there is no requirement in Policy EG 3 for the land to be 'in use' for the entirety of EG 3 to apply. Although CPG's planning witness sought to explain a strained construction of the policy and an artificiality in approach, there is no good reason why the newly adopted employment policy should seek to give *less* protection to allocations, compared to land in existing employment use, particularly when CEC has only recently had to demonstrate exceptional circumstances to justify substantial Green Belt release for employment uses.
- 4.10 The Council seeks to protect employment sites, consistent with paragraph 22 of the Framework, unless the criteria in Policy EG 3 are satisfied. It is to be noted that the CELPS places particular emphasis on the provision of employment land within the north of the borough, an area that has the key sectors to sustain economic success, but which faces the greatest constraints in terms of restrictive Green Belt boundaries, hence the need for the 'careful balance' the CELPS seeks to strike. The loss of employment land to other uses is a serious issue in the borough and the protection of suitable sites for employment use is important to enable sustainable economic growth.<sup>317</sup>
- 4.11 CELPS Policy PG 1 identifies an employment land requirement of 380 ha over the plan period to 2030.<sup>318</sup> 195 ha is for net employment growth; 120 ha is for existing employment land loss to other uses; and 63 ha is for contingency and to allow a range and choice of sites.<sup>319</sup> Orbit claims that there is therefore a 'substantial buffer' built into the CELPS employment allocation.<sup>320</sup>
- 4.12 The identification of most of the CELPS strategic employment allocations in the north of the borough has required the removal of land from the Green Belt on the basis of the Council having satisfied the CELPS Inspector that there were exceptional circumstances to so do.<sup>321</sup> The sanctioning of Green Belt release, demonstrated that suitable employment land in the north of Cheshire was in short supply.
- 4.13 The 120 ha (for loss to other uses) is 6 ha per annum over the plan period, based on past rates of loss. In the first 6 years of the plan period, employment land losses across the borough averaged 6.73 ha per annum, ahead of the historic loss rate.<sup>322</sup> Although the loss for 2016/17 was 4.14 ha,<sup>323</sup> reducing the overall average, the rate of loss remains above the historic loss rate. Moreover, for most of the post 2010 plan period, prior to adoption in July 2017, both employment and greenfield land was granted permission for a large quantum of housing, in the absence of a 5 year housing land supply.

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<sup>317</sup> CEC/1/1 paragraph 2.16

<sup>318</sup> CD J1.8 Policy PG1

<sup>319</sup> CD J1.6 page 29 - total 278 ha rounded up to 380 ha in the CELPS

<sup>320</sup> ORB/1/2 paragraph 4.46

<sup>321</sup> CEC/1/1 paragraphs 3.12, 4.2-4.3

<sup>322</sup> PEEL/1/6 Table 11

<sup>323</sup> ORB/INQ/022

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- 4.14 Orbit's point that not all of the losses since the start of the plan period have been on allocated land, does not reduce the importance of suitable employment land being retained. In this regard, the loss of suitable employment land in the north of the borough adds to the risk of further future Green Belt release being required and undermines the pattern and nature of the sustainable development envisioned in the CELPS.
- 4.15 Although it is acknowledged that, on paper, there is only a need to identify 0.28 ha additional land to fulfil the 22 ha in the CELPS for Handforth (12 ha at the North Cheshire Growth Village + 9.72 ha of existing supply<sup>324</sup>), the growth village figure is 'up to' 12 ha and may turn out to be less; the Next site (1.3 ha) has been lost to retail; and land to the west of Handforth Dean Retail Park (Lower Meadow Road) (3.2 ha) is the subject of an application for a car showroom.
- 4.16 CEC's concern that there may already be a shortfall of employment land in Handforth over the plan period is in the knowledge of the loss of other employment sites to alternative uses, e.g. Unit 1 Epsom Avenue; and CEC members' resolution to permit the CPG scheme.<sup>325</sup>
- 4.17 It is accepted that the need to find further Green Belt release is not '*..... a matter of a night follows day proposition, but it increases the probability .....'*. If the rate of loss continues to exceed the 6 ha pa, such that it became likely that there would be a shortfall in employment land before the end of the plan period, there is some scope for smaller scale Green Belt release within part two of the plan, or a future Local Plan review.
- 4.18 Orbit's contention of an overprovision in Handforth is misplaced in that it is wrong to apply upward flexibility (30%) to the Employment Land Review's conclusion that the maximum employment land requirement for Handforth was an additional 2.79 ha to 2030 thereby reaching a supposed figure of 3.63 ha.<sup>326</sup>
- 4.19 It was also pointed out that the Employment Land Review<sup>327</sup> identified the CPG site as part of Site '61MU – Stanley Green Industrial Estate' to be considered for employment allocation, recording it as a good quality site, on basis of it being an existing allocated site for flagship B1 development and an '*excellent prominent site for quality office development. Likely to get interest from several parties when it is brought to market*'.<sup>328</sup> The Handforth Dean Business Park (including the Orbit site) was assessed in the Employment Land Review as having potential for general/industrial business use and that it should be considered for employment allocation.
- 4.20 However:
- (a) that was the position recorded in 2012, since when there has been an increased allocation in the CELPS (351 ha to 380 ha);

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<sup>324</sup> The 9.72 ha comprises 6 ha (CPG site + Next); 3.2 ha (Lower Meadow Rd); 0.52 ha (land west of Epsom House)

<sup>325</sup> CEC/1/1 page 14

<sup>326</sup> ORB/1/2 paragraph 5.145 on the 2012 ELR [CD J1.3]

<sup>327</sup> CD J1.3 Appendix E1 page E1-69

<sup>328</sup> CD J1.3 Appendix E1 page E1-70

- (b) the inclusion or exclusion of any site in the Employment Land Review does not determine whether the site is suitable for future employment development;<sup>329</sup>
  - (c) the Employment Land Review assessment is dated – although forming part of the evidence base of the CELPS, it predates the Ekosgen Report;<sup>330</sup> and
  - (d) it predates the marketing exercise undertaken for the CPG site.
- 4.21 In any event, it is the role of the CELPS to make adequate employment provision to reflect the objectives and aims of the plan, including the particular emphasis on the provision of employment land within the north of the borough.
- 4.22 The exceptional circumstances that justified the alteration of the Green Belt boundaries in the CELPS are based on the need to allocate sufficient land for housing and employment development, combined with the adverse consequences for patterns of sustainable development of not doing so, since it was not practicable to fully meet the assessed development needs of the area without amending Green Belt boundaries.<sup>331</sup>
- 4.23 All the CELPS allocations of employment land in the north of the borough (except Parkgate and South Macclesfield Development Area) were removed from the Green Belt, including the 12 ha at North Cheshire Growth Village, in order to maintain a viable and flexible supply (together with the existing sites in the employment land supply). Whilst the requirement in the north of the borough had increased, the Handforth figure had remained at 22 ha (whereas Macclesfield and Wilmslow had increased), thus making it important (in light of losses and evidence of demand) that existing suitable employment sites are retained.<sup>332</sup>
- 4.24 Having satisfied the CELPS Inspector that Green Belt release was required, employment land should not be developed for other uses without proper justification. The employment land supply is vital to achieving sustainable economic growth in line with the vision and objective of the CELPS.<sup>333</sup>
- 4.25 Although Peel questioned the rationale for the plan to progress to adoption, seeking to protect employment sites (including the CPG site), when, a year earlier, CEC had resolved to grant permission to CPG, neither the CPG nor Orbit sites are strategic sites in the context of the CELPS. Whilst CEC has made continued efforts to use the sites for employment development, the mechanism of CELPS Policy EG 3 provides flexibility for alternative uses. Had the policy tests not been met (as in the case of Orbit), the CPG land would have remained as employment land for the purposes of the CELPS.
- 4.26 It is common ground that the warehouse and yard occupied by Gradus and some vacant land within the red line application site to the south of the building, is suitable for employment uses (the site is in employment use and Orbit has planning permission for offices). However, CEC accepts that office use on the site is unlikely to come forward in the foreseeable

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<sup>329</sup> CD J1.3 Appendix G of the ELR page G1

<sup>330</sup> CD J1.6

<sup>331</sup> CEC/1/1 paragraph 4.2

<sup>332</sup> CEC/1/1 paragraphs 3.13-3.14; CEC/2/2 page 33

<sup>333</sup> CEC/1/1 paragraph 4.4

future.<sup>334</sup> Further, the Council does not take issue with the viability appraisal (for redevelopment of the site with new industrial buildings) that shows such redevelopment would not be viable at present.

4.27 However, the Orbit appeal scheme fails the EG 3 tests for 2 reasons:

- (a) the building on site is in employment use and has been for many years; and
- (b) no marketing has taken place to demonstrate that if Gradus does vacate in future, there would be no market interest in occupying the premises for continued employment use.

4.28 As Gradus and Pets at Home operate on site, this cannot be the sort of site contemplated by Framework paragraph 22 - that policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being used for that purpose.

### **The Orbit appeal**

4.29 The position of Gradus was a moving target during the course of the Inquiry. The evidence given by Orbit's witness (instructed to consider the suitability of the warehouse premises, yard and land for ongoing uses/redevelopment) was based on being advised that Gradus has '*expressed a desire to relocate from the premises as it is no longer suitable for purpose*'.<sup>335</sup> However, this was without any direct contact with the company in order to understand its position.

4.30 The Gradus lease expires in July 2020; it has a rolling break clause allowing either landlord or tenant to terminate on 4 months' notice.<sup>336</sup> Gradus has occupied the site for some 18 years; no notice to quit has been served; and the site remains occupied for employment use. It is clear that the site is, and has been, sufficiently suitable for Gradus to carry out its day-to-day commercial operations during this period.

4.31 In 2016 Gradus wrote to say that the building did not provide for efficient operation, particularly due to its age, height and split floor level, but it did not take issue with Orbit's ambitions to redevelop as it could plan for relocation.<sup>337</sup> Since then, Gradus has remained in occupation. The first indication of any relocation plans emerged in January 2018:- '*while [Gradus] remain in occupation there is a strong likelihood this will end shortly*'.<sup>338</sup>

4.32 The letter,<sup>339</sup> on which this view was expressed, following a meeting between Gradus and Orbit, refers to ongoing inefficient arrangements in the building and indicates a desire to move. The meeting notes refer to a discussion about a possible future move to Lyme Green or the South Macclesfield Development Area (and a rationalisation by Gradus of its premises at Stanley Green and elsewhere). However, no premises were said to be available and no timescales for a possible eventual departure were provided.

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<sup>334</sup> CEC/2/2 paragraph 8.16

<sup>335</sup> ORB/3/1 paragraphs 2.2 & 2.7

<sup>336</sup> ORB/3/1 paragraph 6.1

<sup>337</sup> ORB/3/2 Appendix 3

<sup>338</sup> ORB/3/3 page 6 & Appendix 2

<sup>339</sup> ORB/3/4 (dated 12 January 2018)

- 4.33 A letter to the Inquiry from Gradus, on 7 March 2018,<sup>340</sup> reiterates that *'the current warehouse is demonstrably unsuitable for our present purposes ..... it is wrong and regrettable that Cheshire East should seek to maintain that somehow Gradus will remain in the warehouse into the future .....'*. As of that date Gradus says that, as a result of detailed work with Orbit, it has decided to relocate to Lyme Green, Macclesfield and had submitted a planning application for a new purpose-built building, next to an existing Gradus facility. Gradus states that it hopes to have vacated the appeal site by mid-2019.
- 4.34 CEC has never purported to second guess Gradus' intentions; what it has done, is to highlight (correctly and un-regrettably) that Gradus has been a long-term occupier, operating a successful commercial enterprise, partly based on the appeal site, and that none of the evidence presented earlier by Orbit demonstrated otherwise, or that there was any certainty that Gradus would vacate.
- 4.35 What Orbit's evidence does not address is whether, if and when Gradus vacate, there would be a market for the building to be occupied by a (probably locally-based) occupier willing to rent an older building for a more modest rent than somewhere newer. Whilst it was thought unlikely, by Orbit, that a new tenant would be forthcoming within a reasonable time, it was conceded that there is no evidence to demonstrate any lack of interest.<sup>341</sup>
- 4.36 The 1980s steel framed warehouse building, with ground and dock level loading bays, is structurally sound and has many years of remaining life expectancy. It is noted that it is considered that works are required to the roofing, drainage, cladding and loading facilities etc. CEC does not take issue with the likely costs, albeit those are based on putting the building into a condition for a long term letting, on institutional terms.<sup>342</sup>
- 4.37 Further, Orbit acknowledges<sup>343</sup> that if it decided to refurbish the building, some of that cost - an unknown proportion - would be borne by Gradus;<sup>344</sup> and it would not be necessary for all the works listed to be carried out to re-let the premises in an improved condition but by a more modest specification. It was also accepted that there is no evidence to support the view that the identified schedule of works would be required to attract a replacement tenant.
- 4.38 The Gradus building is plainly dated and requires work; but that is not unusual in the context of existing employment stock in the borough. Property Consultants, in 2016, expressed the view that the building still met many of the requirements of modern day businesses and that there was a large stock of industrial warehouse space constructed around the same time in the wider locality which remained in active use as an important part of the overall industrial stock. It was further considered

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<sup>340</sup> ORB/INQ/007

<sup>341</sup> ORB/3/3 page 5; ORB/1/2 paragraph 5.32

<sup>342</sup> ORB/3/1 paragraph 5.5; ORB/3/2 Appendix 4 paragraph 3.2

<sup>343</sup> ORB/3/1 paragraph 6.2

<sup>344</sup> although Gradus has a full repairing and insuring lease, it is limited by a schedule of condition and the Landlord and Tenant Act 1927

- that there would be occupier demand for the building for the next 10-20 years, without Orbit having to undertake significant capital expenditure.<sup>345</sup>
- 4.39 The same consultant, appearing at the Inquiry for CPG, remained of the view that the building had a future, provided it was refurbished and priced accordingly.<sup>346</sup> Moreover, demand for industrial space increases year on year in the borough and whilst most demand is for premises in the south, there is demand in the north and a market exists for older premises.<sup>347</sup>
- 4.40 Although the site coverage of the building is marginally higher than the industry standard, the layout is reasonably efficient and there is an extensive yard. Further, the plot of land south of the building (approximately 0.51 ha) could provide expansion space/additional yard area, that might be attractive to a future occupier.<sup>348</sup>
- 4.41 Whilst the appeal site has been marketed in the past for office use, it is common ground that there has been no marketing of the site, either for occupation of the existing building for B2/B8 use, or the redevelopment of an industrial or storage building. Therefore, the Orbit proposal fails to comply with CELPS Policy EG 3 and paragraph 22 of the Framework.
- 4.42 The failure to comply with EG 3 is not, contrary to Orbit's planning witness, merely a *'technical breach'*. An assertion that any interest in industrial use of the site would have been known to Orbit, such that any marketing would have been *'academic'* is unsupported by evidence. Indeed, it was conceded that the appeal site has not been marketed for B2/B8 and Orbit cannot demonstrate that no other occupiers can be found. There is therefore no evidence to demonstrate any lack of interest.
- 4.43 The notion that it has not been possible effectively to market the Gradus part of the site, because it is occupied, is misconceived as Gradus occupies on a rolling 4 month notice period (that can be triggered by either landlord or tenant); and, in any event, Gradus' occupation has not prevented Orbit from marketing the site for office redevelopment.
- 4.44 Although CELPS Policy EG 3 post-dated the determination of the application and the lodging of the appeal, Policy EG 3 of the submission version Local Plan, made clear the marketing requirements for employment land, where alternative uses were proposed. Irrespective of whether or not Orbit was asked to provide marketing evidence, when the application was submitted (it is accepted that there is no documentary record of any request) aside from the requirements being apparent on the face of Policy EG 3, the need for marketing evidence to demonstrate that the site is no longer required for employment uses has been clear since at least the March 2016 Report to the Strategic Planning Board on the Orbit application.<sup>349</sup>

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<sup>345</sup> CEC/2/2 paragraph 8.14; ORB/3/2 Appendix 9

<sup>346</sup> CPG/1/4 paragraph 84

<sup>347</sup> CEC/2/2 paragraph 8.2

<sup>348</sup> ORB/3/2 Appendix 9 page 2

<sup>349</sup> CD A2.2



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- 4.45 Orbit's planning witness made a further, unconvincing, claim<sup>350</sup> that the Orbit proposal was consistent with EG 3 as it included an element of existing employment floorspace, as part of a mixed use scheme, namely the Pets at Home office use. However, it was accepted that the proposal related to a retail scheme with the existing Pets at Home office use outside the red line application boundary.
- 4.46 As set out above, the Council takes no issue on the Orbit appeal in relation to retail or highways matters, subject to the imposition of necessary conditions and obligations. It should be noted that the Council's decision not to take issue on retail grounds was revisited, prior to the Inquiry, in light of the Barracks Mill decision, having instructed WYG to review the retail implications, in particular the cumulative impact.<sup>351</sup>

**Planning Obligations and Conditions**

- 4.47 If, contrary to the Council's case, the Orbit scheme is granted planning permission, the highways contributions that are required to be secured by section 106 obligation comprise: £137,744 towards pedestrian facilities and public transport and £200,548 for junction improvements at Earl Road/Stanley Road (within SMBC's highway area).
- 4.48 In addition, Orbit offers an employment generation contribution in the sum of £282,000.<sup>352</sup> However, given the loss of an employment site that is currently in active use, and the significant need for more sites within the northern part of the borough, it is not clear how such a contribution could be used with good effect.
- 4.49 Aside from that difference between CEC and Orbit, the Council confirms that the Orbit section 106 obligation provides a satisfactory and effective mechanism in respect of the contributions secured. It is also common ground that the highways contributions are in accordance with the CIL Regulations.
- 4.50 A list of conditions has been agreed between Orbit and CEC, with the exception of condition 22 and whether this restrictive goods condition should be replaced by a '*no poaching*' obligation in the event that both the Orbit and CPG proposals succeed.<sup>353</sup> As the basis for the Council seeking the obligation is set out in detail in relation to the CPG scheme, this matter is addressed further below. However, it is the Council's case that the condition proposed by Orbit would be insufficient to address the issue and that a '*no poaching*' obligation, as agreed with CPG, is required.

**Planning Balance & Conclusions on the Orbit Appeal**

- 4.51 Overall, the Orbit appeal is consistent with Development Plan and National policies for ensuring the vitality of town centres and for promoting sustainable transport.<sup>354</sup> However, the scheme would be inconsistent with, and contrary to, Government policies for building a strong, competitive

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<sup>350</sup> CEC/1/2 paragraph 5.55

<sup>351</sup> CEC/2/3 Appendix 8

<sup>352</sup> ORB/1/2 page 83; CEC/2/2 paragraph 8.43

<sup>353</sup> CEC/INQ/005

<sup>354</sup> CELPS Policies EG 5 & CO 1; Framework Chapters 2 & 4



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economy.<sup>355</sup> In particular, Orbit has failed to demonstrate that the appeal scheme, when assessed against the criteria in CELPS Policy EG 3, justifies the loss of employment land.

- 4.52 The warehouse building is occupied by Gradus Carpets and despite its age and the fact that some renovation work is required, it remains suitable for B2/B8 use. It is accepted by the Council that neither the warehouse building, nor the site (other than the building occupied by Pets at Home), is likely to be used for offices in the foreseeable future. However, Orbit has not undertaken any marketing work to establish that the warehouse building would be unlikely to remain in employment use in future. Accordingly, Orbit has failed to comply with CELPS Policy EG 3 and the Framework.
- 4.53 The Council acknowledges that the benefits of the Orbit proposal, including job creation, constitute important material considerations in favour of the scheme. However, none of the benefits, individually or cumulatively, justify granting permission contrary to the Development Plan and the Framework. In particular, the proposed development would result in the unjustified loss of employment land in the northern part of the borough, where it has been necessary to remove land from the Green Belt to make requisite provision over the plan period to 2030, in order to maintain a flexible supply of employment land and achieve sustainable economic growth, in line with the vision and objectives of the CELPS.
- 4.54 Accordingly, the Orbit appeal should be dismissed.

### **The CPG applications**

- 4.55 The 3 CPG applications, (together with a duplicate Orbit application), were taken to the Council's Strategic Planning Board on 24 May 2017. Other than the Phase 1b application by CPG, the applications were recommended for refusal by officers, solely on the basis of the loss of employment land. However, members resolved to grant permission,<sup>356</sup> on the basis that:-
- (a) CPG had demonstrated that the loss of employment land was justified, when assessed against the criteria in (then draft) CELPS Policy EG 3, in particular, that the site was no longer suitable, or viable, for employment use and no other occupiers could be found, after appropriate marketing;
  - (b) there are no sequentially preferable sites and that there would not be significant adverse impact on town centre investment, or on vitality and viability, with the mitigation measures offered (consistent with CELPS Policy EG5 and the Framework);
  - (c) highways and ecology impacts could be satisfactorily controlled by conditions and planning obligations; and
  - (d) a substantial number of jobs would be created on the application site.

### **Employment**

- 4.56 The Council's case is that the lengthy period that the CPG site has been vacant, the long-standing lack of interest in the site for employment uses,

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<sup>355</sup> CELPS Policy EG 3; Framework Chapter 1)

<sup>356</sup> CEC/2/2 page 25

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- and CPG's marketing and viability evidence, demonstrate that the site is no longer suitable, or viable, for employment use.<sup>357</sup>
- 4.57 As CEC's Principal Planning Officer explained, he had not had direct involvement in any of the marketing exercises carried out in relation to the site, the drafting of the Cabinet Reports on marketing, viability and the possible future development on the site, or the assessment of the expressions of interest and offers made by various parties.
- 4.58 In this regard, Engine of the North is CEC's wholly owned development company. It was instructed by the Council in 2013 to lead on the sale of the CPG site and has overseen all marketing activity since.<sup>358</sup> CEC's witness' understanding is based on documents of others.
- 4.59 It is clear from a fair reading of the relevant documents, the Council made significant efforts to attract employment uses on the CPG site over a considerable period of time. Although the evidence on this issue is addressed principally by CPG, the paragraphs below set out a number of particular points in response to the criticisms of CEC by Peel and SMBC in relation to the loss of employment land.
- 4.60 There was a continuous process of marketing from 2010 to June 2014 and, throughout the entire period, a marketing sign was displayed, and the site was advertised.<sup>359</sup> The various different departments of the Council (regeneration, commercial, planning etc.) would have been aware the site was available and any interest registered was fed through to the commercial team and, subsequently, to Engine of the North. It is to be noted that Peel's commercial property witness agreed that the request for expressions of interest in 2012 and the request for offers in 2014 were part of a series of actions taken by the Council to establish what was feasible for the site in the market.<sup>360</sup>
- 4.61 The same witness also accepted that until the CBRE marketing (see below) the Council bona fide sought to dispose of the site as an employment site. He acknowledged that the position changed 'on advice' after CBRE's marketing of the site. Indeed, he agreed that, as at January 2013, the Council was "hell bent" on doing all it could to pursue employment on the site.<sup>361</sup>
- 4.62 However, as a result of Deloitte's expert analysis of what was likely to be viable, the Council was advised not to proceed with an employment scheme, but to seek a mixed use scheme, including retail. Peel's witness further agreed that CEC had appointed independent experts to evaluate the position; Deloitte is a national, independent firm and that it was prudent for the Council to appoint an independent expert and follow the advice given; and, "offices were dead at this point" as an option.)

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<sup>357</sup> CEC/2/2 paragraph 7.17

<sup>358</sup> PEEL/3/2 Appendix 9; CPG/3/1; CPG3/4

<sup>359</sup> CPG/3/1 Sections 2-5

<sup>360</sup> It is CEC's position, contrary to PEEL's claim in closing, that each of the 6 week periods of marketing, taken as a whole, was adequate and satisfactory and there was no conflict with CELPS Policy EG 3 – there is no contradiction in CEC's position relative to CPG and Orbit

<sup>361</sup> CPG/3/2 Appendix 7

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- 4.63 The March 2014 Cabinet Report noted inter alia that:-<sup>362</sup>
- (a) *'the land has been held as a strategic employment site for years (1.1);*
  - (b) *Engine of the North is ideally positioned to support the Council in maximising the capital receipt that can be generated through the site as well as delivering investment and employment opportunities (1.2);*
  - (c) *the site enjoys a favourable location as it has excellent visibility from the A34 and is a gateway site for the Borough. This means it will be of national interest to a significant number of occupiers, developers, and investors for a wide variety of land uses other than simply employment (1.3);*
  - (d) *Engine of the North has been instructed to bring this site forward as a strategic priority to maximise jobs growth and capital receipts (1.4); and*
  - (e) *Engine of the North's brief is to accelerate the disposal of this site in line with the Council's corporate objectives and existing and emerging planning policy, whilst maximising capital receipts. In order to deliver these objectives in a reasonable timeframe, a wider range of land uses should now be considered (1.5)'.*
- 4.64 The recommendations made at section 2 (which were adopted) were:-
- (a) *'to take all necessary action to dispose of the site to maximise capital receipts and deliver jobs on an accelerated timescale;*
  - (b) *to approve disposal for all potential land uses including employment, retail, leisure and sui generis use such as car showroom; and*
  - (c) *to take all action necessary to bring the site forward for development, including potentially creating site infrastructure, such as spine roads and appropriate servicing'.*<sup>363</sup>
- 4.65 At paragraph 3.2, the Report acknowledged the reality of the Next planning permission as establishing the principle of mixed use development in this location, and, at paragraph 3.3, that the Deloitte Report concluded that delivering an exclusively employment-led scheme would be a significant challenge and potentially not viable. The suggested delivery strategy was to promote the site as a high quality mixed use development with retail and other uses, in order to facilitate significant new employment opportunities and generate substantial capital receipts on a redundant site at a key gateway location to the borough.
- 4.66 It is important to note that CPG's marketing activity witness rejected the proposition that the Council had simply sought to maximise capital receipts and increase jobs on an accelerated timescale – rather than conduct a marketing exercise on the basis of the employment status of the land. He remained steadfast that *"there is no doubt about Cheshire East's aspirations, it was very determined to see the site developed for employment uses"*.
- 4.67 The Report noted the obligation on an authority to dispose of land at best value;<sup>364</sup> and, that it is possible to dispose for less than best value if such a disposal would be likely to contribute to the achievement of the promotion or improvement of the economic, social and/or environmental wellbeing of

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<sup>362</sup> CPG/3/2 Appendix 10 page 121

<sup>363</sup> CPG/3/2 Appendix 11 page 143 records that the Cabinet's resolution reflected the recommendations in the Report

<sup>364</sup> the best consideration reasonably obtainable (section 123 of the Local Government Act 1972)

- the area.<sup>365</sup> Peel's witness agreed that, in the circumstances, the Council has a legal obligation to obtain best consideration, so it was right and indeed mandatory that it consider disposal value; and also accepted that there was "*nothing suspicious*" about the fact that the Council was looking to meet its legal duty under the Local Government Act.
- 4.68 Further, the same witness agreed that what constitutes best value depends on what can be achieved on the site. The Council received expert advice in relation to mixed use being appropriate, with implications for site value; there was nothing improper or underhand in acting on that advice; and, to the contrary, it would have been acting improperly if it had not considered such matters.
- 4.69 It is clear that CEC takes its legal obligations in relation to land disposal very seriously and careful consideration is given to price and the obligation to achieve best value.<sup>366</sup> CBRE, in marketing the site, was always clear that it was not bound to accept the highest offer, or indeed any offer, and that the process of consideration would take account of all factors, only one of which was price.<sup>367</sup>
- 4.70 Other factors included deliverability, fundability, land use, cost, risk, quality and track record of purchaser, quality of development and the overall planning context, together with the Council's aspiration for a '*flagship*' development. The likelihood of the sale completing was also relevant. All proposals, including those of a mixed use nature, were given very considerable consideration. In this case, all the offers were conditional (on planning and site investigation etc.), and lower employment values meant such developments would have been less able to absorb abnormal costs and therefore deliverability was more questionable.
- 4.71 The objections raised by Peel and SMBC to the process by which CEC reached its decision to sell the site to CPG have been shown to be contrived and over-stated. In particular, Peel's witness agreed that disposal of the site for uses including employment and retail was in accordance with independent expert advice; that the move from employment to mixed use was based on Deloitte's analysis as to what was feasible; and that employment was still included and had not been ruled out, and that the Council was still willing to provide infrastructure to facilitate employment - if any interest was expressed.
- 4.72 Moreover, the Report to Cabinet makes clear that CEC still sought employment use, but was focused on job creation, as well as maximising capital receipts.<sup>368</sup> It was on that basis that CBRE was instructed.
- 4.73 Peel's minor point about the contacts there not being employment agents has to be seen in context in that:- the company is vastly experienced regionally and nationally; the named extremely experienced contact had access to other colleagues; there was nothing in the marketing particulars

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<sup>365</sup> CPG/3/2 Appendix 10 paragraphs 8.1-8.2

<sup>366</sup> CPG/3/4 paragraph 3.30

<sup>367</sup> CPG/3/5 Appendix 2 paragraph 8

<sup>368</sup> CPG/3/2 Appendix 10 paragraph 3.3

that would deter potential bidders, or put off any employment interest; and that parties would know that the Council was open to a mix of uses, including employment, and sub-division of the site.<sup>369</sup> It is crystal clear that no employment uses were dissuaded and that all bids were carefully considered.<sup>370</sup>

- 4.74 The Council's brief to Engine of the North, acting on behalf of the Council to manage the marketing and disposal process, was *'to accelerate the disposal of the site, in line with the Council's corporate objectives and any new emerging planning policy whilst maximising capital receipts. It is expected that to balance these objectives in a reasonable timeframe, a wide range of land uses should be considered'*.<sup>371</sup>
- 4.75 There is no dispute that CBRE made efforts to encourage employment uses (offers were encouraged *'no matter what the use'*). However, its conclusion was that there was no underlying demand for employment on the site, taking into account the level of interest, comprising 53 bids over the 6 week period in 2014.<sup>372</sup>
- 4.76 Overall, Peel's witness confirmed that he was content that the marketing exercise was a proper one, carried out with integrity and validity and that, other than minor quibbles, it was an adequate and appropriate marketing exercise to test interest. Additionally, there was nothing to show that the marketing was inadequate, or the period too short, or that any party was dissuaded on grounds of use or price. The 6 week marketing period needs to be seen in context; and it was a call for offers at the end of an extended marketing period, that included soft market testing, and letting the market know the site was coming to market, (including the call for expressions of interest in 2012).
- 4.77 In short, there was a fantastic and immediate response in a short period; there was no evidence of late bids, or complaints any bidder was shut out; the market was very aware of the site; and even Peel's witness accepted that, as the industrial agency world is small, he would have heard on the grapevine if there had been a problem.
- 4.78 As to the bids received for mixed uses, including employment uses, after investigation, CBRE discounted them on the basis of inefficiency, tokenism and intentions as to retail (the stalking horse approach). That was a sensible position, for good commercial reasons. Whilst Peel insisted that tokenism was not a good reason to discount a bid, because if the Council was *'desperate to retain an element of employment'* it could have done so, it overlooks the fact that CBRE carefully analysed the bids and advised the Council as to whether each would generate a sensible scheme.
- 4.79 Prior to the Inquiry, Peel pressed for release of details of the marketing exercises via Freedom of Information requests. Offers arising from the marketing exercise had been withheld on grounds of commercial

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<sup>369</sup> CPG/3/2 Appendix 13

<sup>370</sup> CPG/3/2 Appendix 12; CPG/3/5 Appendix 2

<sup>371</sup> CPG/3/2 Appendix 10 paragraph 10.7

<sup>372</sup> CPG/3/2 Appendix 12; CPG/3/5 Appendix 2

confidentiality;<sup>373</sup> and there was no suggestion that the Council had acted improperly in reaching that decision.

- 4.80 In terms of evidence, CPG's witness confirmed:- *'I am not able to disclose confidential commercial information held by the Council. I have had access to this information. I have reviewed it; I have analysed it; I have cross-checked it with CBRE and I have tried to present it a meaningful way that would assist the planning authority and the Inquiry to decide whether footnote 43 of Policy EG3 is met.'*<sup>374</sup>
- 4.81 In the circumstances therefore, CEC is right to conclude<sup>375</sup> that the CPG applications comply with CELPS Policy EG 3.<sup>376</sup>
- 4.82 In that context, the Report to Strategic Planning Board needs to be read in full.<sup>377</sup> Under the heading '*Conclusion on Loss of Employment Land*', the Report makes clear that officers:-
- (a) considered the marketing details to be satisfactory (and that there had been very little interest from potential employment users);
  - (b) accepted the Viability Report conclusions demonstrated that employment development was unviable;
  - (c) recorded that the site is in a prime location and the CELPS increases employment land provision;
  - (d) stated that '*[v]iability work for office use on the site also needs further exploration*'; and
  - (e) set out the concluding paragraph which SMBC's retail/planning witness had quoted without context.
- 4.83 The only element missing from the report was viability for office use and that was rectified in the subsequent Update Report to the Board which records that an office viability assessment had been submitted and showed a loss.<sup>378</sup> It is acknowledged that the recommendation (to refuse permission) remained the same, but members did not follow that recommendation, and it is common ground that office use is unlikely in the foreseeable future.
- 4.84 Overall, Peel and SMBC have both failed to show that a commercially deliverable employment scheme can be accommodated on the site. Consequently, CEC considers that the CPG schemes comply with CELPS Policy EG 3. Contrary to the suggestion made, there is no '*inconsistency in Cheshire East's case*', nor does the '*logic of the refusal of Orbit, lead to the refusal of CPG*'.
- 4.85 The claim that both Orbit and CPG should be determined in the same way overlooks the fact that there are 2 key differences that justify the Council reaching different decisions for Orbit and CPG:- the fact that the building and yard on the Orbit site is in existing employment use; and the absence

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<sup>373</sup> CPG/3/5 Appendix 3

<sup>374</sup> CD/3/4 paragraph 3.16

<sup>375</sup> CEC/2/2 paragraph 7.21

<sup>376</sup> The officer's position is made clear in CEC/2/2 paragraph 1.4; given that members resolved to grant permission for Phase III, the officer's revised recommendation for Phase II was both logical and perfectly proper

<sup>377</sup> SC/2/2 paragraph 3.31; CD E1.1 pages 29-30

<sup>378</sup> CD M1.7 page 4



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of any marketing exercise by Orbit to demonstrate that the site is unsuitable for employment use, or that there is no market interest in employment use on the site (other than in respect of offices).

4.86 As set out above, the CPG schemes comply with EG 3 (and the other development policies referred to above) and the Framework. The Orbit scheme conflicts with the same policies. There is nothing to support the proposition that CEC has failed to produce any evidence supporting its resolution to approve the CPG applications, or that the applications fail to comply with the Development Plan, in light of the unacceptable impact of Orbit.

4.87 As set out above, the Council takes no issue on the CPG proposals in relation to retail<sup>379</sup> (having commissioned an independent review by WYG), or highways matters, subject to the imposition of necessary conditions and obligations.

#### **Planning Obligations and Conditions**

4.88 The following obligations are secured by the CPG Phase 2 and Phase 3 section 106 Agreements:<sup>380</sup>

- (a) Travel Plan contribution: each phase would provide a sum of £5,000 for the monitoring of travel plan measures in the vicinity of the site;
- (b) Highways contribution – Phase 3 would provide a sum of £91,000 as a contribution to the provision of 4 approach lanes on the A34 to B5094 Stanley Green roundabout; the provision of 4 approach lanes on the southbound approach to the roundabout; and the provision of 4 approach lanes to the A555/A34 junction. The Phase 2 agreement secures a highways contribution in the sum of £9,000 towards the 3 schemes;
- (c) Habitat Planting contribution: sums of £114,000 (Phase 3) and £66,000 (Phase 2) would be provided to be utilised by the Council for the provision of replacement woodland habitat planting;
- (d) Town Centre Improvement contribution: Phase 3 obligates £2 million to be utilised by the Council for improvements to the highways/wider area at Castlegate, Castle Street and Exchange Street, or such other schemes within Macclesfield town centre as the Council considers require improvements;
- (e) A '*no poaching*' obligation: with regard to Phase 3, for a period of 5 years from practical completion of the development, the owner shall not permit any retailer (except Mothercare in Stockport) who at the time of practical completion, or within the preceding 6 months, trades from a store, or other retail unit, in either Macclesfield or Stockport town centre, from being able to occupy or trade from any part of the development, unless the retailer has first entered into a binding agreement with the Council not to cease trading from the town centre retail unit, during the 5 year period; and
- (f) Local Employment and Skills Plan: with regard to Phase 3, a local employment agreement, designed to facilitate the dissemination of information relating to employment opportunities arising from the development.

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<sup>379</sup> St. Modwen's objections to both the CPG and Orbit schemes relate to alleged retail impact on Wythenshawe town centre – CEC's position is that there is no objection on retail grounds to the schemes before the Inquiry (subject to appropriate mitigation)

<sup>380</sup> CPG/INQ/032; CPG/INQ/033



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4.89 The substantive content and the detailed drafting are agreed and it is common ground between CEC and CPG that the obligations in the Agreements are necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related in scale and kind and therefore accord with the CIL regulations and the Framework.<sup>381</sup>

**Compliance with the CIL Regulations in relation to the retail obligations**

4.90 As set out above, CEC considers that the retail impact of the CPG scheme is required to be mitigated in 2 particular ways:- payment of a £2 million contribution to Macclesfield town centre public realm improvements and a 'no poaching' clause, preventing retailers within Stockport and Macclesfield town centre relocating to the new proposed units at Handforth Dean and closing their stores within the centre, for a period of 5 years.

4.91 Despite the position of Peel and SMBC, the contributions meet the legal tests set out in the CIL Regulations 2010 and relevant case law. Regulation 122 states that:-

*'A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is –*

*(a) necessary to make the development acceptable in planning terms;*

*(b) directly related to the development; and*

*(c) fairly and reasonably related in scale and kind to the development.'*

4.92 The commitment to the renewed and improved public realm within the town centre would be concentrated on works that would have the potential to retain shoppers and expenditure and would be likely to make the streets more attractive to current and prospective operators, and to shoppers. In doing so, the improvements would help reduce vacancies, encourage footfall and generally make these streets more attractive places to visit. Accordingly, the proposed measures would mitigate the impacts arising from the development, in part.

4.93 The town centre improvement measures are directly related to the proposed development (they are directed at Macclesfield town centre, where a likely significant adverse impact has been identified); are fairly and reasonably related in scale and kind relative to the appeal proposal; and are necessary to make the development acceptable in planning terms.

4.94 Peel's claim that the proposed mitigation would not be a meaningful benefit, or mitigate the impact at all, because 'environment' is considered to be a positive factor in the Macclesfield health checks, does not mean there is no need for town centre improvements.<sup>382</sup>

4.95 Costed works for a number of town centre improvements include public realm enhancements, as well as shop frontage and parking improvements, which form part of an overall public realm strategy that aims to boost footfall and trading, promote investor confidence and increase

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<sup>381</sup> CPG/INQ/001 paragraph 35

<sup>382</sup> PEEL/2/1 paragraph 5.50

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- attractiveness of the area.<sup>383</sup> The Project Director for Macclesfield Regeneration notes that the contribution would make a significant difference to the Regeneration Team's ability to deliver a transformational quality public realm in the town - a key element of CEC's regeneration programme.<sup>384</sup>
- 4.96 WYG's concern, in terms of the adverse impact of the CPG development, was that without safeguards such as the contribution and the no poaching obligation, '..... if the claw back and the trade diversions as indicated by HOW [on behalf of CPG] do not materialise, the potential for the development(s) to have a significant adverse impact on Stockport and Macclesfield town centres could be enhanced and a 'finely balanced' position could veer to that which could be considered significant adverse .....'. Therefore, WYG's advised that such mitigation was necessary to reduce some of the retail impact and ensure it reflected that which was estimated by WYG (and HOW).<sup>385</sup>
- 4.97 In September 2017, the Barracks Mill appeal decision was issued. The Inspector, inter alia, concluded that an impact on Macclesfield town centre of -9.6% would not be significantly adverse.<sup>386</sup> The WYG Update re-ran the retail impact figures, post Barracks Mill, and concluded that there would be a cumulative impact (CPG + commitments) on Macclesfield town centre of -11.0% (and -11.0% on Stockport town centre) at 2022, which would amount to a significant adverse impact, without mitigation.<sup>387</sup> When combined with the Orbit scheme, the cumulative impact rose to -13.0% and -11.5% respectively at the same date, which would amount to a significant adverse impact, without mitigation. WYG advised again as to the necessary mitigation to make the proposals acceptable.<sup>388</sup> The Council has followed WYG's expert advice.
- 4.98 It is not necessary to quantify a particular degree of impact mitigation required to make the development acceptable in planning terms. Similarly, there is no requirement to quantify the degree of mitigation that might be achieved by specified measures. Therefore, where an authority concludes that some level of mitigation is required, it is entitled to exercise its planning judgment about how that mitigation is achieved and weighed in the balance, if it does so consistently with Regulation 122.
- 4.99 In this regard, WYG advised that the effect on Macclesfield (as with other out of centre schemes, such as Fosse Park, Five Towns at Castleford and Rushden Lakes, where similar conclusions were reached as to similar town centre mitigation) could significantly reduce an adverse quantitative impact. On this basis, the proposed mitigation would have a material benefit in quantitative and qualitative terms.
- 4.100 The approach adopted by CEC is consistent with the judgment of the Court of Appeal in *R (Tesco Stores Limited) v Forest of Dean District Council & Others [2015] EWCA Civ 800*.<sup>389</sup>
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<sup>383</sup> CEC/2/3 Appendix 9

<sup>384</sup> CD C2.27

<sup>385</sup> CD B2.15

<sup>386</sup> CD K1.6

<sup>387</sup> CEC/2/3 Appendix 8; CEC/2/2 paragraph 7.26

<sup>388</sup> CEC/2/2 paragraph 7.27

<sup>389</sup> CEC/INQ/007 Appendix 2

- 4.101 In that case, the section 106 mitigation measures sought (including town centre and shop front improvements) in relation to the impacts arising from a large out of centre retail unit, in Lydney, were one of the grounds of challenge to the local planning authority's decision to grant planning permission. Tesco's claim for judicial review was dismissed in the High Court and that decision was upheld in the Court of Appeal.
- 4.102 When considering the impacts arising from the proposed retail development, members formed a view that some mitigation was required in order to make the development acceptable in planning terms. Officers gave consideration to a proposed package of mitigation measures and concluded that this could mitigate in part the harm to the town centre but it was not possible to specify the degree to which mitigation would be secured. As a consequence, in reaching their decision, members were not able to, and did not, quantify the extent to which the adverse impact would be mitigated by the obligations.
- 4.103 *'..... The weight to be attributed to the 'wider benefits' was a matter for the members' planning judgment and they were entitled to come to a view that the employment benefits of the proposal so outweighed the significant adverse impact on the town centre that, even in the absence of any measures to mitigate that impact, permission should be granted..... Members were satisfied that the package of measures in the section 106 agreement was the best that could be achieved by way of mitigation. Accordingly, it was unnecessary for them to seek to quantify the extent of the mitigation that would be achieved'.*
- 4.104 The Court of Appeal further found that:  
*'..... while a planning decision-maker must approach the assessment of the three requirements in regulation 122(2) with appropriate rigour, what is appropriate will vary depending on the circumstances of each case. There will be cases where some form of quantification will be necessary because the decision-maker will have concluded that an adverse impact has to be reduced by a certain amount, or to a particular level, or in a certain way, if it is to be acceptable in planning terms; but it does not follow that 'quantification' will be necessary in every case, or that it was necessary in this case given the basis upon which the Members' decided that this application should be approved.'*
- 4.105 In the present case, the obligations comply with requirements (a), (b) and (c) in Regulation 122(2); there can be no difficulty with requirements (a) and (b) - this is not a case in which either officers or members were saying that, even in the absence of any mitigation, any significant adverse impact on the town centre was outweighed by the wider benefits of the proposed development. Members considered that some mitigation of the adverse impact on the town centre was necessary in order to make the CPG and CPG and Orbit developments acceptable in planning terms, and that could be achieved by the package of measures included in the obligations.
- 4.106 As to requirement (c), the obligations imposed by the Agreement are fairly and reasonably related in scale and kind to the development because there was adequate expert information and advice upon which an informed judgment could be made as to the effect of those obligations. Members were advised that the retail element of the proposed CPG development

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(and CPG and Orbit cumulatively) could have a significant adverse impact on the health of Macclesfield and Stockport town centres.<sup>390</sup> However, it was not claimed that the impact could be entirely overcome or mitigated to a particular degree. The overall conclusion reached was based on the reasonable exercise of planning judgment.

- 4.107 In terms of scale, measures that merely mitigate, but do not obviate, a significant adverse impact are likely to be fairly and reasonably related in scale to that development. Each case will be fact sensitive. Whilst there might well be cases where the cost of such mitigation measures would be so excessive that the obligation would be out of scale with the proposed development even though they would not obviate its adverse effects, there is nothing to suggest that the overall cost of the Macclesfield town centre mitigation measures is out of scale with the substantial CPG, or CPG and Orbit, retail proposals.
- 4.108 As set out above, in the *Tesco v Forest of Dean* case, the Court of Appeal accepted that there are cases, (and the Council submits that the present case is one), in which it would not be possible to express in numerical terms the relationship between the scale of the benefits to be provided under a planning obligation and the scale of the development which to be permitted.
- 4.109 Therefore, in the present case, the mitigation measures proposed are necessary to make the application acceptable in planning terms and they are an important material consideration to which officers and members properly had regard in exercising their planning judgment. The Council invites the Inspector and the Secretary of State to reach the same conclusion.<sup>391</sup>
- 4.110 Peel's criticism that the agreement does not contain an express obligation on the Council to spend the town centre regeneration payment is misconceived.<sup>392</sup> The definition of 'Town Centre Improvement Contribution' specifies that it is '..... to be utilised by the Council for improvements .....' within Macclesfield town centre.
- 4.111 Clause 6.1.2(b) of the CPG Phase 3 Agreement<sup>393</sup> provides that the Council covenants with the Owner: 'to apply [the Town Centre Improvement Contribution] only for the purposes specified in this Deed .....'.
- 4.112 Clause 1.4 of the Second Schedule further provides that the Council covenants:- 'in the event that any of the said Town Centre Improvement Contribution has not have [sic] been expended, or contractually committed to be spent, at any time before the tenth anniversary of the date of the receipt thereof by the Council, then the Council shall (if required by the person who paid it) repay

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<sup>390</sup> CD E1.1

<sup>391</sup> At paragraph 213 of Peel's Closing submissions, reference is made to 'R v Forest of Dean [2013] EWHC 1908 and *Trilogy Developments* [2014]' in support of the statement that 'a s.106 obligation providing mitigation without any proper assessment of how such improvements would overcome the retail harm to the town centre is unlawful'. The judgement pre-dates the Court of Appeal judgment in *Tesco v Forest of Dean* – the cases are distinguishable on the facts and the circumstances in the present case are materially different

<sup>392</sup> PEEL/INQ/018 paragraph 13

<sup>393</sup> CPG/INQ/033

*the person who paid it, the Town Centre Improvement Contribution or the balance thereof .....*

- 4.113 The agreement works in an entirely usual way, in respect of a particular contribution secured: the monies are to be applied only for the purposes specified in the obligation and in the event that any or all of the said sum is unspent at the end of a 10 year period, it would be repayable.
- 4.114 Although there is no contribution payable to SMBC,<sup>394</sup> that arises from that authority, as is its prerogative, not to engage with either CPG, or CEC, in seeking or negotiating a similar contribution. In the circumstances, SMBC's failure, or unwillingness, to negotiate a contribution (even without prejudice to its objection to the CPG scheme) is not a matter that can fairly or properly be turned into a criticism of CEC.
- 4.115 As to the proposed '*no poaching*' clause, Peel believes that this could be "*disastrous*", because retailers could pull out of the town centre (in advance of the CPG scheme), in order to go into the CPG development.<sup>395</sup> Relocation in this unrealistic way would require an established retailer to cease trading and incur considerable costs over a lengthy period before opening again on the site. There is no evidence that such a speculative and unsubstantiated scenario would be likely to occur.
- 4.116 SMBC's allegation that the definition of '*practical completion*' in the obligation would allow CPG not to complete its development and prevent the clause ever taking effect is supposition.<sup>396</sup> There is no evidence to show any likelihood of occurrence or that it has happened elsewhere. Any breach of the obligation would be readily identifiable, and the mechanism provides an effective means of enforcement.
- 4.117 Whilst it is the case that Orbit alone would not result in a significant adverse impact, and thereby not requiring mitigation the CPG scheme requires the mitigation measures specified to make it acceptable in planning terms. If both CPG and Orbit are permitted, it is CEC's assessment that the £2m town centre contribution from CPG would be sufficient to provide adequate mitigation. It is however, considered that the '*no poaching*' clause would be necessary to be applied to both schemes if they were both to be permitted.
- 4.118 Whilst Orbit, at one stage, offered a no poaching clause to prevent first-letting occupiers closing stores in Macclesfield or Stockport for 5 years, during the Inquiry it instead offered to restrict the sale of goods by condition.<sup>397</sup> The proposed condition would ensure that no more than 15% of total floorspace in any one unit would be used on an ancillary basis for:-
- (a) the sale of A1 food & drink (except sandwich and coffee shops);
  - (b) fashion clothing, fashion footwear, fashion accessories & jewellery;
  - (c) pharmaceutical goods; and

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<sup>394</sup> PEEL/INQ/011

<sup>395</sup> PEEL/INQ/011 paragraph 18; PEEL/INQ/013 paragraph 216; SC/INQ/015 paragraph 144

<sup>396</sup> SC/INQ/015 paragraphs 143-144

<sup>397</sup> ORB/INQ/018

- (d) that there should be no sale of these goods other than in accordance with the 15% threshold.
- 4.119 The Council does not take issue with the drafting of the condition if permission for Orbit alone was granted. However, it would not provide an adequate control, or limitation, if both CPG and Orbit were permitted. The proposed condition would not prevent some existing retailers leaving the centres (for example: Argos, Currys, Dunelm, DfS, Harveys, Home Bargains, Hobbycraft and Wilko in Stockport, and B&M Bargains, Poundland, and The Works in Macclesfield). In other words, a number of retailers could be '*poached*', even if the restrictive goods condition now proposed by Orbit was in place.
- 4.120 It is no answer to say, as Orbit might, that some of the existing town centre occupiers could operate 2 stores (one in the town centre, the other on the Orbit site) - as they could do under the no poaching obligation, because the crucial difference is that the no poaching obligation would prevent the closure of the town centre store for 5 years. The condition now proposed would not prevent a store opening on site and then a town centre store subsequently closing. Therefore, the no poaching obligation is the way in which the necessary control needs to be secured.
- 4.121 Accordingly, members and officers properly and justifiably considered that the financial contributions towards town centre improvement schemes in Macclesfield, and an obligation to ensure that retailers within Stockport and Macclesfield town centres could not relocate to the new proposed units at Handforth and close their stores within the centres for a period of 5 years, were adequate to ensure that the retail impacts of the proposals were reduced to a satisfactory level, so as to make the CPG, or CPG and Orbit, schemes acceptable in planning terms, and to comply with CELPS policy EG5.
- 4.122 Finally, both Peel and SMBC express a lack of faith in CEC enforcing the obligations with any rigour.<sup>398</sup> There is no basis for such an assertion. The Council, as a public authority, takes its duties and responsibilities seriously; there is no evidence to support the concerns; a breach of the obligations would be readily identifiable and actionable by the Council; and CEC and SMBC have a good history of cross-border cooperation on planning and other matters.
- 4.123 A list of conditions has been agreed between CPG and the Council.<sup>399</sup>

**Planning Balance and Conclusions on the CPG applications**

- 4.124 CEC supports the CPG applications, subject to the imposition of appropriately worded conditions and section 106 obligations.
- 4.125 The applications are consistent with the Development Plan and National policies for:-

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<sup>398</sup> PEEL/INQ/011 paragraph 20; SC/INQ/015 paragraph 141

<sup>399</sup> CEC/INQ/006



- (a) building a strong, competitive economy (CELPS Policy EG 3 and Framework chapter 1), and in particular that the scheme, when assessed against the criteria in EG justifies the loss of employment land;
  - (b) for ensuring the vitality of town centres (CELPS Policy EG 5 and Framework chapter 2);
  - (c) for promoting sustainable transport (CELPS Policy CO 1 and Framework chapter 4); and
  - (d) CELPS Policies MP1, SD1 and SD2.
- 4.126 In terms of the planning balance, although it was alleged that CEC had omitted a material consideration, notably not taking account of the pressure on the Green Belt caused by the release of employment land on the CPG site, the CELPS makes provision for existing employment losses and provides some flexibility, in circumstances where (as with CPG) compliance with Policy EG 3 is demonstrated.
- 4.127 In respect of both the Orbit and CPG schemes, CEC accepts that the estimated job creation constitutes a material consideration in favour of granting permission. However, in the circumstances of Orbit, CEC does not consider that the job creation (and other) benefits justify a grant of permission. Although SMBC made a series of criticisms of the way in which the projected job numbers had been calculated, CEC is satisfied, on the basis of the cases for CPG and Orbit, that these were comprehensively addressed and shown to be misconceived.<sup>400</sup>
- 4.128 It is necessary to make clear that CEC does not accept SMBC's assertion that members were likely to have placed too much weight on benefits of job creation from the schemes. Likewise, the Council rejects Peel's view on the weight, nil, to be attributed to the jobs that would be created (by both schemes) as jobs-led growth is an important economic objective of the Council.<sup>401</sup> As to the nature and quality of the jobs, the key point is that if EG 3 is satisfied then there is no realistic likelihood of any alternative employment provision on that land in the foreseeable future. CEC's position in relation to the schemes is therefore also consistent with Framework paragraph 22:-
- 'planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose...Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable communities'.*
- 4.129 Accordingly, the Council considers that:-
- (a) the CPG applications accord with the Development Plan and the Framework and should be permitted; and
  - (b) the Orbit appeal should be dismissed because of the loss of employment land, and its conflict with CELPS Policy EG 3 and the Framework.

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<sup>400</sup> SC/2/2; CPG/1/4; ORB/1/4

<sup>401</sup> PEEL/1/1 page 91



## **Post Inquiry representations**

### **National Planning Policy Framework 2018<sup>402</sup>**

- 4.130 CEC notes that there is no material change in terms of retail policy, and whilst there are some differences between old paragraph 22 and revised paragraph 120 on the employment land issue, the Council's case remains unaltered in respect of both the Orbit and CPG schemes

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<sup>402</sup> Misc/16

## **5. The Case for Stockport Metropolitan Borough Council**

### **The Applications by CPG**

#### **Introduction**

- 5.1 The case is structured so as to address the principal issues identified by the Inspector in his note of 5<sup>th</sup> March 2017. The submissions set out the case of SMBC separately in respect of each proposal, dealing with CPG first. Where SMBC wishes to raise issues in relation to the Orbit proposal which involve the same issues as for CPG, clear references are made to where the issues appear to avoid too extensive repetition.

#### **The Employment Issues**

- 5.2 CEC's opposition to the Orbit proposal, on the basis of loss of employment land, and its support for the CPG proposal rests on the proposition that the CPG site as a whole has been properly marketed for employment uses and that an employment user cannot be found in accordance with CELPS Policy EG 3. Otherwise, all of the points which CEC makes about the Orbit site and the harm which would be caused to employment land supply, would logically apply to the CPG site, given the far greater loss of employment land involved.
- 5.3 Moreover, CEC confirmed that the concerns arising from the Orbit proposal would apply fully to other sites in the area. On this basis, it is only satisfaction with the CPG marketing process that could provide the rationale for taking such a different stance. Hence, if the marketing exercise for the CPG site is found to be defective, that justification would fall away.
- 5.4 Saved Policy E2 of the MBLP prohibits the loss of employment sites to other uses; such a prohibition is not consistent with the Framework; and the proper approach is to regard the policy's blanket restriction as being overtaken by the tests in CELPS Policy EG 3. Given that hierarchy of an earlier policy being overtaken by an up-to-date policy, it cannot be said that Policy E2 is a relevant policy which is out of date, triggering the tilted planning balance in paragraph 14 of the Framework. Even if the tilted balance had been engaged, the Framework's impact test policies are restrictive ones for the purposes of paragraph 14 and footnote 9, thus disengaging the tilted balance.<sup>403</sup>
- 5.5 The genesis of Policy EG 3 predates the submission of the CELPS for examination in May 2014 and CEC has therefore known, for a considerable period, what approach it would expect developers to take to the release of employment land.
- 5.6 The CELPS allocates a minimum of 380 ha of land for employment purposes, which requires a net increase in employment land of 195 ha, with an inbuilt allowance of some 6 ha per annum to be lost to other uses.<sup>404</sup> Since 2010, the rate of loss has averaged 6.75 ha per annum.

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<sup>403</sup> CPG/6/2 paragraph 4.88

<sup>404</sup> CEC/1/1 paragraph 3.3

- 5.7 The adopted plan recognises the importance of the northern part of the borough for employment purposes<sup>405</sup> based on a combination of (i) the opportunities present in the north of the borough because of its economic success and (ii) the constraints which are presented by the boundaries of the Green Belt. However, only 21% of the land allocated for employment use is in the northern part of the borough compared to a housing distribution which has 31% in the north.<sup>406</sup> Nonetheless, the CELPS examining Inspector accepted that the employment land provision could not be increased because that would have unsustainable implications for travel patterns.<sup>407</sup>
- 5.8 Even so, Part 2 of the Local Plan will have to remove additional land from the Green Belt, in addition to the 50.1 ha already removed in the CELPS for employment purposes.<sup>408</sup> If employment land is lost in excess of what is envisaged, new and additional allocations would be needed in the context of the examining Inspector's view that there are no potential sites in the Handforth area which are outside the Green Belt.<sup>409</sup>
- 5.9 It is no answer for CPG to say that the first resource called upon would be safeguarded land in that it is a reserve of land which has been removed from the Green Belt to potentially provide for longer term needs, but only to be released for that use after a plan review.<sup>410</sup> To use safeguarded land would not resolve the issue of the shortage of land outside the Green Belt either for employment use or for potential longer-term needs.
- 5.10 Demand for employment uses in the northern part of CEC's area is healthy<sup>411</sup> with the prospect of supply running out in 10 months at the current rate of take up. Indeed, CPG do not deny that the industrial market is buoyant. As a result, CEC has rightly adopted the approach, laid out in Policy EG 3, of resisting the loss of employment land in the northern part of the borough.
- 5.11 SMBC endorses these concerns in that Handforth, in general, and the CPG site in particular, are extremely close to the Stockport border. Although there is sufficient employment land for the near future in Stockport, any additional land required in the borough for employment would put the Green Belt in Stockport under pressure.
- 5.12 It is of note that CEC's evidence does not explain how or whether the release of the CPG site would accord with the tests in Policy EG 3 despite the admission that compliance with the requirements of EG 3 needs to be demonstrated by robust evidence. It was also accepted that it was particularly important to show compliance with Policy EG 3 when the local planning authority was also the landowner which stood to gain financially from the release of the land for retail use.

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<sup>405</sup> CD J1.6

<sup>406</sup> CEC/1/1 paragraph 3.8

<sup>407</sup> CD J1.16 paragraph 50; CEC/1/2 Appendix 6

<sup>408</sup> CEC/1/1 paragraphs 3.12 & 4.4

<sup>409</sup> CEC/1/2 Appendix 6 paragraph 220; CEC/1/2 Appendix 16

<sup>410</sup> Framework paragraph 85

<sup>411</sup> CEC/2/2 paragraph 8.1; Appendix 14 & 17

- 5.13 It is important to understand how policy EG 3 operates.<sup>412</sup> Part 1 of the policy is relevant to development management decisions involving the use of an existing employment site for non-employment uses. Existing employment sites will be protected for employment uses unless 2 main conditions are met. The first does not apply to the CPG site, as it relates to premises which cause significant nuisance or environmental problems which cannot be mitigated. The second, which is relevant, requires that:-
- (a) the site is no longer suitable or viable for employment use; and
  - (b) there is no potential for modernisation or alternate employment use uses; and
  - (c) no other occupiers can be found.
- 5.14 Each of those conditions has to be met if a non-employment use on an employment site is to comply with EG 3.
- 5.15 Paragraph 1.ii.b. of EG 3 has a footnote (43) which provides:-
- 'To demonstrate that no other occupiers can be found, the site should be marketed at a realistic price reflecting its employment status for a period of not less than 2 years. The council will require evidence that a proper marketing exercise has been carried out including a record of all offers and expressions of interest received'.*
- 5.16 Whilst there was some exploration of whether the footnote is part of the policy, explanatory text or some status lower than that of explanatory text, the footnote's precise status is not critical in this case as there is no reason why a footnote connected to policy text cannot be regarded as part of the policy. Even if that is wrong, it is at the very least part of the policy's explanatory text and can be used as an aid to interpretation of the policy; and, in that case, as the marketing exercise fell so far short of what would reasonably be required, there is a demonstrable failure to comply with the policy.
- 5.17 CEC's reasons for concluding that the CPG site can be released from employment use relate to the site's vacancy since 2010, the absence of an active use and the marketing undertaken.<sup>413</sup> However, the criteria drawn from Policy EG 3 are not applied; and there was a shift in evidence in that was claimed that parts 1 and 2 did not apply to allocated sites. The latter claim begs the question why the marketing and viability evidence was produced.
- 5.18 That interpretation of the policy is untenable as there is nothing in part 1(ii) of the policy to indicate such an approach is warranted, and part 1(i) does not arise in this case. As parts 1(i) and 1(ii) are connected by the word 'or', it is clearly inappropriate to assume that part 1(ii) deals only with sites in employment use. Further, paragraph 11.24<sup>414</sup> puts the matter beyond doubt by providing:-
- 'For clarification, this policy applies to all sites currently in use for employment purposes (B1, B2 and B8 uses in the Use Classes Order) as well as sites allocated for such uses'*

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<sup>412</sup> CD J1.8 page 98

<sup>413</sup> CEC/2/2 paragraph 8.34

<sup>414</sup> CD J1.8 page 98

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- 5.19 The text does not say that allocated but unused sites engage only part of the policy.
- 5.20 In terms of the evidence presented, CPG failed to provide any first-hand knowledge of the marketing process; and the witness charged with the task had expertise in retail matters, not employment marketing, and held no part in the marketing exercise on which CPG relied.<sup>415</sup>
- 5.21 Both CEC and CPG confirm that there were 3 separate phases of marketing.<sup>416</sup> However, vague assertions that the market knew the site was available at all relevant times and that if interest existed it would have manifested itself cannot properly be called market testing. The whole point of EG 3 is that a formal marketing exercise which complies with its terms allows outsiders to assess transparency and whether the market has or has not been properly tested.
- 5.22 The first phase of marketing was a mere 6-week period in 2011 when the site was offered for short term letting only. The terms are not known but the results of even that marketing exercise, set out in a report to Cabinet, are very instructive:- *'Regular enquiries have been received however for the freehold interest of the site'*.<sup>417</sup>
- 5.23 Whilst the majority of those enquiries did not relate to employment use, the report recommended investigating the options for development of the site *'..... to maximise the employment opportunities and financial returns for the Council'*, and in acknowledgement that the site was recognised as commercially attractive.<sup>418</sup>
- 5.24 It is beyond argument that the process cannot be used to substantiate the claim that no employment user could be found, as the expressions of interest in freehold purchase were not pursued.
- 5.25 A period of *'soft'* marketing, again for 6 weeks, ending on 6 April 2012 followed.<sup>419</sup> Expressions of interest in taking a 125-year ground lease were sought. The report to Cabinet in January 2013 recorded 26 expressions of interest, 10 of which, with the potential for 400 – 800 jobs, were fully compliant with the policy designation, and that the marketing exercise *'demonstrated strong interest in the site'*.<sup>420</sup>
- 5.26 The report again referred to the site's commercial attractiveness and proximity to Greater Manchester and the airport<sup>421</sup> and recommended that the site be taken forward for employment led uses *'in line with current planning policy'*. Despite the market believing that development of the CPG site for employment uses could be viable, there is nothing to show that CEC ever followed up any of the policy-compliant expressions of interest. This coincided with the consideration by the Council of an application by Next on part of the site.

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<sup>415</sup> CPG/3/1 paragraph 1.6

<sup>416</sup> CPG/6/2 paragraph 4.26; CPG/3/1 paragraph 7.3

<sup>417</sup> CEC/2/3 Appendix 4

<sup>418</sup> CEC/2/3 paragraph 10.1

<sup>419</sup> CPG/3/2 Appendix 5 last page

<sup>420</sup> CD E1.5 paragraphs 10.4; 11.1-11.3

<sup>421</sup> CD E1.5 paragraph 10.2.

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- 5.27 The proposed uses set out in the expressions of interest remained undisclosed until part way through the Inquiry when a partially un-redacted version of Appendix 1 of the Deloitte Report 2013 was released.<sup>422</sup> Five parties expressed interest in taking the whole site for all uses within Use Class B (although 2 of them did refer to small elements of retail or to retail and D1 uses if permissible). There were 8 expressions of interest in taking the whole of the site for mixed use which included B Use Classes; and 3 expressions of interest which sought part of the site for wholly employment uses.
- 5.28 It is clear that, even with the limitations of 6 weeks of 'soft' market testing, the process elicited a lot of interest in developing employment uses on all or part of the site as part of an employment or mixed-use scheme. Nonetheless, it is curious that the Cabinet Report<sup>423</sup> did not contain an option for a future strategy which included disposing of the freehold of the site for B2 or B8 uses. The inference is that an employment use could have been found for the site.
- 5.29 The subsequent Deloitte report (August 2013) was prepared to assist in the site forming an early component of the then newly established Engine of the North ('EoTN'). The proximity of the site to the A34 was highlighted; and the land was described as having a very prominent location.<sup>424</sup> Despite the outcome of earlier soft marketing, the report did not suggest any employment-led option for the site.
- 5.30 Although there is reference to a development which contained only offices and light industry uses not being viable, no detail is given of the scheme tested or why it would not be viable. However, it was said that using the receipts from the Next site to cross-subsidise employment use would present positive land values, albeit '*modest*'.<sup>425</sup>
- 5.31 Nonetheless, it can be seen from a meeting note in May 2014 that CEC officers were still hopeful of achieving employment uses on the site; the land was still viewed as an employment site; and it was relevant to consider the retention of at least a portion for employment uses.<sup>426</sup>
- 5.32 The third phase of marketing took place in 2014, supported by a brochure prepared in May of the same year, with offers invited by 27 June 2014.<sup>427</sup> However, the literature did not properly reflect the employment land allocation of the site in that:-
- (a) it was replete with references to existing neighbouring retail uses on the annotated aerial photograph and in the 'Development Overview';
  - (b) the list of uses for which the site might be suitable was described as a '*wide range*' subject to planning consent;
  - (c) the description of its location opened by referring to the adjacent '*highly successful Handforth Dean Retail Park*'; and

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<sup>422</sup> CEC/2/3 Appendix 7; CPG/INQ/003

<sup>423</sup> CD E1.5 paragraph 13.1

<sup>424</sup> CEC/2/3 Appendix 7 paragraphs 1.1-1.2

<sup>425</sup> CEC/2/3 Appendix 7 paragraph 6.2 (bullets 1 and 2)

<sup>426</sup> CD E1.10 Appendix IV, bottom of page 1 of the Note; third paragraph of the Note; paragraph 5.12

<sup>427</sup> PEEL/3/1 Appendix 9

- (d) in the section dealing with '*Planning*' the brochure refers to the employment allocation, but immediately follows that with a reference to the grant of planning permission to Next for a store '*on part of the site*', clearing alerting the reader to retail potential.
- 5.33 A reader would have known that the Council was at least open to the prospect of retail use on the site which would command a significant increase in the land value. Such disparity would have tended to dissuade employment based bids in conflict Policy EG 3 and its requirement that marketing should reflect the employment status of the site. Although the marketing period was short, 53 offers were received and, despite the potential for retail uses, one expression of interest was for a purely employment use on the whole of the site and one offer for wholly employment use on part of the site. Further, 21 of the offers included some element of employment uses within them.
- 5.34 In summary, the first marketing exercise can be disregarded as it sought expressions of interest for '*short term*' lets only; the second lacked rigour; and the third would have been off-putting to employment users. Even so, employment interest was received, which was not followed up. The only sensible explanation for not doing is that CEC was not interested in achieving employment uses but was intent on maximising the revenue from the site.
- 5.35 There might be room for debating the adequacy of a marketing exercise if that exercise was only slightly different from the requirements of Policy EG 3 including its footnote and if one could determine that the exercise which was carried out was rigorous enough, and did serve to show that employment users were not going to be attracted to a site, if the marketing had continued.
- 5.36 However, the exercise in this case was woefully inadequate when compared to the requirements of the policy and CPG cannot credibly argue that the marketing was sufficiently robust to allow the decision maker to be satisfied that the process has demonstrated that employment use was not going to be attracted to the site. Indeed, the marketing exercises, as limited as they were, drew interest from employment users which seems to have been ignored.
- 5.37 It follows that the overall conclusion must be that there has been a very serious failure to comply with Policy EG 3. This weighs very heavily in favour of dismissing the applications by CPG to the extent that it would be sufficient reason for refusing the CPG applications.

**Viability**

- 5.38 CPG argues that whatever the amount of marketing done for the site, employment use is not viable. However, the requirement for marketing is not an alternative to viability testing - rather it is complementary to it and so one argument cannot be used to make good the defects in another; and the evidence does not show that employment uses could not viably be brought to the CPG site.
- 5.39 Whilst SMBC's evidence on viability is limited to the assumption of a nil land value, consistent with the manner in which the authority pursued the



development of land in its own ownership, at Aurora, for employment use, there is nothing to suggest that CEC or Engine of the North turned their mind to pursuing a similar scheme. The closest Engine of the North seems to have come is to offering remediated and serviced plots with access from a spine road which it would provide, as set out in the 2014 marketing exercise.<sup>428</sup> Whilst disposal of a site by a public authority demands best consideration, the retention of the site and the offer of units to let would not engage the full strictures of section 123 of the Local Government Act 1972.

- 5.40 In addition, it is contended that the site coverage of a theoretical employment scheme could be increased to around 40% by providing units which were to some degree terraced (as at Aurora) rather than detached as shown in CPG's theoretical scheme.
- 5.41 Moreover, the release of the Next site from employment to retail, in August 2013, was taken in the context of the employment land requirement identified in the 2012 Arup report, which the CELPS Inspector was later to say was too low. In other words, the pressure to allocate and retain employment land has increased since the decision to release the Next site was made. It is of note that a financial contribution forming part of the planning obligation accompanying the Next permission was expressly for the encouragement of employment use on the balance of the site, further showing that the Council even then wanted and expected employment uses to come forward on the CPG site.
- 5.42 In terms of the historic expectations for development, Policy E1 of the MBLP, prior to it not being saved, allocated land at the CPG site for employment uses but did not make any reference to reservation for a flagship office development. Whilst the supporting text to Policy E3<sup>429</sup> made reference to the reservation of land which included the CPG site for flagship development (not 'offices'), the policy did not contain such provision. In this regard, the policy itself was permissive of employment uses and did not prevent other uses from coming forward. Proposals for 'non-flagship' development on the CPG site would have complied with both Policy E1 and Policy E3.
- 5.43 Whilst the attractiveness of the CPG site to employment uses is dealt with in more detail by Peel, it is clear that the site could not be better located for access to the primary road network, lying adjacent to and having proximate access to the A34, a strategic road which is a principal approach to and exit from Manchester from the south. It is a short journey north to the M60 motorway. CPG itself highlights that the site is well-located for retail custom and for employees of the proposed retail uses, as is repeatedly evident in the marketing material referred to above. If that is true for retail use, there is no reason why the site would not be similarly well-located so far as employment uses are concerned. CPG also accepts that the A6MARR scheme will improve the accessibility of the CPG site to the wider area.

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<sup>428</sup> PEEL/3/2 Appendix 9

<sup>429</sup> CD J1.7 paragraph 7.11

- 5.44 CPG draws a distinction between the location of the CPG site and the location of Aurora, close to the M60, but whilst that may establish that Aurora is better located than CPG, it does not follow that the CPG site is so poorly located that it would not attract an employment use. Had CPG undertaken a proper marketing exercise, the real-world opinions of those in the market would have been apparent.
- 5.45 In summary, SMBC sees no reason why the CPG site would be unattractive to the employment market; the site has not properly been marketed; and it has not been shown that employment use would not be viable. The loss of the employment site would harm CEC's employment land supply to a greater extent than would the loss of the Orbit site, to which CEC objects. Consideration of the employment issues points firmly in the direction of the CPG applications being refused.

## **The Retail Issues**

### **Introduction**

- 5.46 SMBC has become heavily involved in efforts to secure the regeneration of Stockport town centre in ways which are beginning to bear fruit, but there is still a long way to go. It has engaged consultants and advisers to appear at the Inquiry in objection to both the CPG and Orbit proposals as indicative of its concerns about both schemes.

### **The National Context**

- 5.47 The national retail sector is going through a period of great change with a forecast for a slower rate of growth in comparison goods expenditure when set against historic rates. In this regard, from 1964 to 2016 average annual growth in convenience goods expenditure was 4.5% and between 1981 and 2016 it was 5.5%. The forecast level of annual growth for the period 2016 to 2030 is only 2.4%.<sup>430</sup> In addition, more of the available expenditure will be spent online rising from 16% market share in 2015 to a forecasted rise of 20.4% in 2020 and 22% in 2035.<sup>431</sup>
- 5.48 The state of the traditional high street was regularly in the national news during the various stages of the Inquiry with increasingly identified store closures or business failures including the loss from Stockport town centre of:- M&S; a New Look outlet; Maplin; and Toys R Us. The first two closures must be taken to have a direct connection with the performance of their Stockport town centre stores in that it is inconceivable that the best performing stores would be selected for closure. Even closures which are as a result of total national business failure create vacancy and lack of activity in the town centre and can only have a negative effect on it.
- 5.49 The evidence of CPG's retail witness, to demonstrate his credentials, included a lot of material about the state of the national retail market which actually served to show the fragility of the retail economy. The relevant points set out in his 2016 publication are:-<sup>432</sup>

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<sup>430</sup> SC/3/3 middle of table 3.2

<sup>431</sup> SC/3/3 figure 5

<sup>432</sup> CPG/2/3 (2016 report) page 3 (2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> bullets); page 4 (7<sup>th</sup> bullet); page 7 (final paragraph); page 14 (penultimate paragraph)

- (a) he considers that the growth in the proportion of expenditure online will continue;
- (b) rising internet sales makes inroads into town centre footfall and increases retail uncertainty;
- (c) there are relatively high void rates in retail stock and although recently improved, it is still high;
- (d) there is a '*worrying trend*' in the decline of footfall in town centres;
- (e) in many areas rental levels are still 20% below peak levels and have never recovered from the 40% fall after the 2008 recession; and
- (f) shopping parks dominate the market and the real question is their effect on town centres, given that some of the formats '*are unashamedly high street offers*'.

5.50 The 2017 report is to much the same effect: - <sup>433</sup>

- (a) the combination of rising internet sales, business rates, wage deflation, increasing costs and tax meant that the next 12 months '*is not encouraging*' for the retail and property sectors;
- (b) even a cursory glance at activity shows '*a very clear pattern of depressing activity in the High Street*' with reduced footfall, fewer retailers, a regular pattern of shop closures and '*vacancy rates remaining high at 11.5%*' compared to a pre-2008 average vacancy rate of about 6%;
- (c) the high vacancy rate is the product of take up being outpaced by closures and the High Street '*continues to struggle*'; and
- (d) '*True shopping parks are nothing more than a conglomeration of large shop units and replicate a cluster of category killers designed to take on all competition and win. As shopping parks have grown, so has their draw and influence. Consequently, many market town centres have been left in their wake. They almost resemble something akin to the stereotype spaghetti western Wild West where tumbleweed blows down the High Street with the expectation that Clint Eastwood will emerge chewing a cheroot, dressed in a poncho and has his hand lazily covering the handle of his gun sheathed in its holster.*'

5.51 This last quote, containing such a powerful image, tells us the powerful negative effect that shopping parks can have on town centres. The CPG proposal would have the effect of expanding an existing shopping park into an even bigger retail destination, containing more '*category killers*'.

5.52 When asked about these matters in relation to Stockport the witness tended to do one or more of 4 things when challenged rendering his evidence unsatisfactory:-

- (a) dismiss the question as "*rubbish*" or in similarly trenchant terms;
- (b) answer specific points by resorting to general, untestable propositions which were said to spring from his experience;
- (c) answer points on general principle by resorting to specific points which were not in his evidence and which were, again, hard to test; or

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<sup>433</sup> CPG/2/3 (2017 report) page 5 (penultimate paragraph); page 7 (top and final paragraph); page 8 (7<sup>th</sup> & 8<sup>th</sup> paragraphs); page 17 (2<sup>nd</sup> paragraph)

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- (d) answer with unsubstantiated assertion, such as his contention that M&S were affected when stores were proximate to Primark and that the Stockport closure was not connected to the health of Stockport itself.

**The Health of Stockport Town Centre**

- 5.53 There is no reason to think that Stockport town centre is isolated from these national phenomena. Indeed, the evidence is that it is a typical victim of them.
- 5.54 Section 4 of the Stockport Retail Study Update 2014 contains a detailed study of the health of Stockport town centre and is far more comprehensive than any assessment produced on behalf of either CPG or Orbit. As is to be expected, it applies<sup>434</sup> the Health Check Indicators drawn from Planning Practice Guidance.
- 5.55 Key points are:- <sup>435</sup>
- (a) between 2004 and 2011 the centre fell nationally from 78<sup>th</sup> to 118<sup>th</sup>, but rose to 103<sup>rd</sup> in 2013; and
  - (b) the decline was reflected in vacancy levels with 24.6% of units vacant compared to a national average of 12.6%; and with 12.7% of floor space vacant, compared to 10.6% nationally, it can be inferred that the vacancy was in smaller units.
- 5.56 SMBC's updated position, following a joint site visit on 5 February 2017,<sup>436</sup> is (ignoring vacant units which are subject to development proposals) a unit vacancy rate of 22.6% (compared to the UK average of 12.1%); and, for floor space, a vacancy rate of 13% (UK equivalent of 10.8%). However, these figures, which relate to the town centre as a whole, pre-date the closure of M&S, Maplin, New Look and Toys R Us.
- 5.57 Comparing vacancy rates over time demands a consistent methodology. Although the November 2016 report to the Central Stockport Area Committee<sup>437</sup> identified a trend for increasing levels of occupancy, the up-to-date figures still show high levels of vacancy compared to the national average, and the loss of 4 significant outlets in Stockport during the Inquiry needs to be borne in mind. In any event, even with that point being made, the report describes the health of Stockport town centre as '*fragile but stable*' and that without Council intervention the health of the town centre would gradually decline.
- 5.58 The decline in the relative health of the town centre had also been seen in a sharp fall in the commercial Zone A rents with a drop of 47% between 2007 and 2013. This compares unfavourably with other sub-regional centres such as Wolverhampton, West Bromwich and Walsall and is higher than other proximate centres such as Wilmslow, Sale and Stretford.

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<sup>434</sup> CD F1.1 paragraph 4.2

<sup>435</sup> CD F1.1 paragraphs 4.38–4.40

<sup>436</sup> SC/INQ/012 Tables 3.1B-3.2B

<sup>437</sup> ORB/INQ/005 paragraphs 3.7; 2.4

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- 5.59 Other factors are at play in Stockport town centre. The Study describes<sup>438</sup> Stockport as having 67% of shops as 'mid-market', 28% as 'down-market' and only 5% as being 'up-market'.
- 5.60 Footfall has also decreased evidenced by a 4% drop (a decline of some 7,300 visitors per week) at Merseyway for the year ending 31 March 2016 when compared to the previous year.<sup>439</sup>
- 5.61 As to retailer representation,<sup>440</sup> for the clothing and fashion sector, the presence of 65 stores in 2013 had reduced to 51 in 2017; and women's and children's fashion stores, in particular, had more than halved from 23 stores to 11. That has been compounded by the loss of one New Look store and the closure of the town centre M&S. CPG's description<sup>441</sup> of Stockport as having a strong clothing and fashion sector offer is unrealistic.
- 5.62 Out of town centres such as Handforth Dean have been expressly recognised as a threat to Stockport Town Centre:-
- (a) the 2013 Concluding Report of the Greater Manchester Combined Authority Town Centres Project notes<sup>442</sup> high quality out of centre retail parks such as Handforth Dean and Cheadle Royal as one of the challenges facing Stockport;
  - (b) the 2014 Second Edition of the Town Centre Prospectus notes<sup>443</sup> out of town centres as one of many challenges faced; and
  - (c) the 2017 report by GVA 'Assessing the Impact of Out of Town Development' concludes,<sup>444</sup> after assessment, that Stockport has suffered from the success of those around it, including Handforth Dean.
- 5.63 The above evidence demonstrates clearly that Stockport town centre has issues with its vitality and viability which have been exacerbated by out of centre shopping destinations. That is precisely why SMBC is participating in a number of regeneration initiatives.

**Stockport's Regeneration Initiatives**

- 5.64 SMBC is seeking to diversify the town centre so as to encourage a broad range of uses. The second edition of the Stockport Town Centre Development Prospectus sets out a prospectus for development. It does not comprise planning policy; it has no status as a planning document and, in particular, it has not replaced the saved policies of the Unitary Development Plan or the Core Strategy; and it does not re-write the definition of the town centre used in the development plan. Moreover, it cannot be used to argue that the Development Plan is inconsistent with national policy and thus that relevant policies are 'out of date' for the purposes of paragraph 14 of the Framework.
- 5.65 The document identifies 7 strategic priorities including improving the retail offer and protecting the town centre's retail function. Other initiatives

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<sup>438</sup> CD F1.1 paragraph 4.10

<sup>439</sup> SC/3/8 paragraph 5.143

<sup>440</sup> SC/3/2A Table 3.4 of Volume 2

<sup>441</sup> CPG/4/2 paragraph 6.16

<sup>442</sup> SC/1/3 Appendix 7 page 54

<sup>443</sup> SC/1/3 Appendix 3 paragraph 1.4

<sup>444</sup> SC/1/3 Appendix 4 paragraph 10.5

which do not have a retail focus are, however, dependent for their success on the existence of a vital retail function in the town centre. As both CPG and Orbit acknowledge, the various uses in the town centre are connected. As a result, success or failure of one element affects the success or failure of another.

- 5.66 There are 4 schemes on which SMBC relies as being adversely affected by the CPG and Orbit proposals. Firstly, the recent completion of the Redrock leisure based development which followed an unsuccessful attempt to develop a major retail-led scheme on the site. As originally permitted, it was to contain 3 retail and 7 restaurant units and a 10-screen cinema, together with a 350 space car park. The scheme opened in November 2017 and as a result of failure to attract retail uses to the site the planning permission was amended to allow uses within Use Class D2 instead. SMBC is financially involved in the project, having secured prudential borrowing of about £45m to finance the development.
- 5.67 The latest information, during the course of the Inquiry, was the letting of units A and B (gym); unit C (bar); units 1 and 2 (restaurants); units 3 and 4 (vacant and not let); units 5 and 6 (subject to discussions); and unit 7 (vacant and without interest).<sup>445</sup>
- 5.68 Secondly, Stockport Exchange is a scheme close to the railway station. The site was acquired by SMBC in 2011 with Muse Developments Limited acting as development partner. Phase 1, a car park, is complete and open; and an investment of £18m has seen the opening of Phase 2 with fully let offices, a small Sainsbury's, café, hotel and public realm. Phase 3 which includes the demolition of an old cinema and the development of offices, has gained planning permission. Later phases would be for office development with uses in Use Classes A1, A2, A3 A4 and A5 at ground floor level. The project, with a total investment of some £145m, aims to attract businesses to a location close to the railway station with good links to attractive town centre facilities, including retail services.<sup>446</sup>
- 5.69 Thirdly, Merseyway is the town's main shopping centre which, as a result of lack of investment, was tired, dated and not as attractive as it should have been. SMBC bought it in April 2016 with the express purpose of making it a more attractive shopping destination with improved links between Merseyway and other key locations, particularly Redrock. A further aim is to improve the attraction of the centre to increase visitor numbers, dwell time and spending. Access to car parks will also be improved. Expenditure on public realm improvements has already been authorised and the Council is formulating more detailed proposals for the centre.<sup>447</sup> The centre was hit by the closure of M&S and New Look during the course of the Inquiry.
- 5.70 Finally, the characterful Market Place and Underbanks area of the town centre is the focus of conservation and residential led regeneration - The Greater Manchester Combined Authorities Town Centres Project final

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<sup>445</sup> SC/1/2 Section 4.2

<sup>446</sup> SC/1/2 Section 4.1

<sup>447</sup> SC/1/2 Section 4.4



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report<sup>448</sup> identifies this part of Stockport as the key to the establishment of a sense of place. The strategy is to increase the provision of small independent retailers and food and drink businesses. SMBC has contributed most of the £50m invested in the area in the last 15 years; but the area is still very fragile and still suffers from low footfall.<sup>449</sup>

- 5.71 Although these regeneration schemes are beginning to bear fruit, they are all incomplete and at varying stages of progression. It is too early to tell whether each of them will succeed as intended as they are all vulnerable from outside competition. They have all required public investment and will require more. Neither CPG nor Orbit has pointed to any substantial retail development in Stockport which is happening without public sector involvement. If the planning system can legitimately assist in protecting them from unwarranted competition, commensurate with Development Plan and national policy, then it should do so.

**The Sequential Test**

- 5.72 SMBC's witness accepted that the CPG scheme had been designed as a single scheme and its 3 component planning applications had been for contractual reasons only; he could point to nothing in national policy or guidance which required disaggregation, nor to any decision of the Secretary of State where the Secretary of State had endorsed the requirement for disaggregation since the issuing of the Framework. Thus, SMBC cannot properly press its case on disaggregation and the sequential test and it is confirmed that if the proposals are regarded as one indivisible scheme, then the sequential test is passed.

**The retail impact of the CPG proposal, alone and in combination with the Orbit scheme<sup>450</sup>**

- 5.73 SMBC's methodology starts by defining the relevant catchment area (Table 1) for the proposals and uses information drawn from the Cheshire Retail Study and the Stockport Retail Study Update. The population for each zone is given for each year from 2012 to 2015 (Table 2).
- 5.74 The next step is to show (Table 3a) the per capita comparison goods expenditure available in each study zone in 2013 prices, for the years between 2012 and 2023. The 2013 price base is agreed, as is the use of a 2022 design year. The expenditure has been derived from the Experian Retail Planner Briefing Note 14, as was agreed between the parties.
- 5.75 The total comparison goods expenditure arising in each zone for 2015 and 2022 is derived by multiplying the populations in Table 2 by the per capita expenditure in Table 3a (Table 3b).
- 5.76 The comparison goods market shares in 2015, drawn from the 2 retail studies is set out in Table 4. Table 5 shows the amounts and patterns of comparison goods expenditure in 2015, with no development of either scheme or any of the commitments. Table 6 updates Table 5 to take expenditure patterns from 2015 to 2022.

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<sup>448</sup> SC/1//3 Appendix 7 page 55 at (ii)

<sup>449</sup> SC1/2 Section 4.3

<sup>450</sup> SC/INQ/012

- 5.77 The effect of commitments is then introduced and their turnover is added to that of the proposals (Table 7a).<sup>451</sup> The CPG scheme is treated as one proposal for the purposes of calculating turnover. The trade draw of the commitments is derived from the expenditure arising in each zone (Table 7b); to which weightings are applied to the centres to reflect the principle that '*like competes with like*' (Table 7c). The product of the weightings is applied to market shares (Table 8)<sup>452</sup> and the outcome is adjusted, maintaining the relationship of centres, to be expressed as percentages (Table 9).
- 5.78 The ensuing stage is to show the comparison goods trade diversions to the commitments from various destinations in 2022 (Table 10); to set out the resulting market shares following the implementation of commitments in that year (Table 11); to express those market shares in money terms (Table 12); followed by weighting those market shares (Table 13); and finally, rebasing to 100% totals (Table 14).
- 5.79 Next, the diversion of expenditure from centres to the application proposals in 2022, for each zone, is derived; and the sums which would be spent at the proposed schemes, which is diverted from existing or committed destinations, is drawn from each of the study zones (Table 15). The resulting market shares in 2022, after expenditure diversion to the proposals, is then applied (Table 16); and money flows are set out according to those market shares (Table 17).
- 5.80 The final stage (Table 18)<sup>453</sup> shows the cumulative impact of all 4 proposals on various shopping destinations. For Stockport town centre, the effect of all of the proposals in 2022 would be as follows:-
- (a) without any development, in 2022 Stockport town centre, including the Peel Centre, would have a turnover of £742.6m;
  - (b) the introduction of the commitments diverts £32.4m of spending from Stockport town centre to the commitments, leaving spending in Stockport of £719.7m;
  - (c) the 4 proposals together would divert £39.6m from the town centre to the proposals, leaving Stockport with a turnover of £680m;
  - (d) the commitments would reduce the centre's turnover in 2022 by 3.1%;
  - (e) the proposals would reduce the turnover by the centre by a further 5.5%; and
  - (f) in total, there would be a reduction in turnover of 8.4% for Stockport town centre.
- 5.81 CPG, without Orbit, would reduce Stockport town centre's turnover in 2022 by 4.4%, or 7.3% with the commitments.<sup>454</sup>
- 5.82 Although SMBC's assessments use an agreed central turnover density,<sup>455</sup> Peel maintains that the success of the stores at Handforth Dean and the

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<sup>451</sup> SC/INQ/012 corrects the error spotted in cross-examination by CPG and removes the double counting of sales area of the comparison good floor space contained in phase 1B of the CPG scheme

<sup>452</sup> The product of Table 7c and Table 4

<sup>453</sup> SC/INQ/012

<sup>454</sup> SC/INQ/012 Table 20

<sup>455</sup> Experts' joint meeting prior to the Inquiry

increased sales density that the proposed stores may actually generate (£6,420 sq m as opposed to £5,500 sq m) would have the effect of increasing the impact of CPG, plus the commitments, on Stockport town centre from 7.3% to 8.1% and for all 4 applications from 8.4% to 9.4%.<sup>456</sup> SMBC's original impact assessment, based on the central sales density, can be said to be conservative.

5.83 In terms of the CPG challenges to SMBC's evidence, the figures referred to above take account of the correction of the identified error in relation to the CPG floor space in Phase 1b; the correction of the turnover for the Barracks Mill commitment; and, taken together, these revisions make less than one percentage point to the assessment of impacts for scenarios which include the CPG scheme. In addition, those matters which rely on judgement (e.g. trade draw and diversion, which centres, or destinations would be affected, to what degree and why) were not undermined by any credible alternatives sufficient to materially change any of the ultimate conclusions reached about the scenarios which include the CPG proposals.

5.84 Critique by CPG of SMBC's retail impact assessment included:-

- (a) criticism for amalgamating 2 retail studies,<sup>457</sup> and 2 sets of study zones, when the evidence collected for each study was gathered between 18 and 24 months apart. However, CPG equally drew on those studies to inform its retail impact assessment without any attempt to adjust the outputs for their differing temporal origins, populations times, survey method, or any other variable; and, moreover, CPG included a third study based on a survey completed in July 2015.<sup>458</sup> Whilst the Cheshire Retail Study surveys were carried out in 2015 and 2016<sup>459</sup> and the Stockport Retail Study was based on a survey from 2014<sup>460</sup> it is wrong to suggest that the CPG study was more up-to-date than the Cheshire study. Overall, CPG's approach is more vulnerable to criticism than is SMBC's.
- (b) SMBC's assessment of trade draw percentages for commitments (Table 7b) was derived from the household survey which enabled a judgement to be made as to where particular centres drew trade; although CPG highlighted that the percentage draw from various zones was not the same for existing shopping patterns when compared to the commitments, the sums of money highlighted were very small in the context of the overall assessment and have no material effect on the ultimate conclusions as to the effect on Stockport town centre.
- (c) The absence of any allowance for competition between each of the commitments reflects the assumption that these would be trading at the floor space density used in the assessment (which had been agreed between the consultants). That is not an unsound approach.
- (d) Whilst it is true (on SMBC's own figures) that Stockport town centre's turnover would increase with the CPG proposals open and trading,<sup>461</sup> the more critical consideration is a centre's share of the relevant expenditure in that turnover can increase over a given time period but at the same time the centre's share of the available expenditure may have fallen. The whole purpose of the town

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<sup>456</sup> SC/INQ/012 page 2 revised Table 6.1

<sup>457</sup> CD H1.7

<sup>458</sup> CD C1.2 Appendix 6 paragraph 1.2

<sup>459</sup> CD H1.7 paragraph 1.05

<sup>460</sup> CD F1.1 page 3 paragraph 1.3

<sup>461</sup> A factor the Secretary of State took into account in both the Tollgate and Rushden Lakes decisions

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centre first policy is the strong emphasis that the Government places on the vitality and viability of centres and it is not acceptable for a centre's health to be affected by a declining share of available expenditure, even if the numerical turnover rises. The point of the policy approach is to allow the centre to maintain or enhance its vitality and viability with the assistance of protection from unjustified out of centre development.

- 5.85 SMBC's retail impact assessment sits alongside the assessments conducted for CEC and the opinion that the CPG scheme together with commitments, but without Orbit, would cause an 11% impact on Stockport town centre.<sup>462</sup> It was considered that this could result in a significant level of impact having regard to the '*current performance of the centre and the levels of vacancies in particular in the peripheral parts of the centre*'.<sup>463</sup> CEC was of the view that the impact would be significant adverse, requiring mitigation. The mitigation proposed for Stockport is limited to a '*no poaching*' covenant.
- 5.86 In terms of CPG's revised and corrected assessment<sup>464</sup> the following comments apply:-
- (a) SMBC's study area is to be preferred, as it uses a geographically larger survey area which captures more of Stockport's hinterland, thus giving a better picture about the shopping patterns in Stockport. By contrast CPG's assessment requires much broader judgments about the origin of expenditure and the places where it is spent. The inflow from those parts of the Stockport Retail Study Area, and those parts of the Cheshire Retail Study which are outside CPG's study area, are treated as additional sums to be added to the Stockport town centre turnover derived from its survey area. The treatment of large areas which contribute to the turnover in Stockport is entirely opaque; SMBC's assessment captures much more of the detail of spending as it arises within the catchment of Stockport town centre.<sup>465</sup>
  - (b) CPG's study area is coarser geographically, with only 5 zones, which treats shoppers who live in very large areas as behaving in the same way (e.g. zone 4<sup>466</sup> stretches from Mobberley in the north almost to Biddulph in the south).
  - (c) CPG surveyed 1,000 people whereas the Stockport survey questioned 2,000 people<sup>467</sup> and the Cheshire component of SMBC's study area captured some 2,100<sup>468</sup> participants (albeit it is not known how many of the respondents lived in the Cheshire zones).
  - (d) SMBC's survey questions were more helpfully phrased, in that respondents were asked where they last shopped and where they shopped the time before that. In contrast, CPG asked people where they usually shop which had the effect of overstating the expenditure in larger centres (e.g. CPG total spend in Manchester of £278m and £273.8m at the Trafford Centre compared to SMBC's assessment of £144.5m and £140m respectively).
- 5.87 In addition, it is to be noted that CPG's original assessment included an overestimation of expenditure, in the sum of £580m, as a result of overstating per capita expenditure, which did not feed through into the

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<sup>462</sup> CEC/2/3 Appendix 8 Table 1.3

<sup>463</sup> CEC/2/3: Appendix 8 paragraph 1.8.4

<sup>464</sup> CPG/INQ/008

<sup>465</sup> CPG/4/3 Appendix Table 29

<sup>466</sup> CPG/4/3 Appendix 18

<sup>467</sup> CD F1.1 paragraph 1.3

<sup>468</sup> CD H1.7 paragraph 1.05

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- ultimate conclusions. The consequence was to affect CPG's assessment of existing shopping patterns.
- 5.88 Further, CPG's assessment amalgamated all comparison goods sector shopping patterns<sup>469</sup> to produce a trading pattern for all comparison goods.<sup>470</sup> The assumption that 70% of the shopping is done at the primary destination and 30% to the secondary has no evidential basis.
- 5.89 The original trade draw patterns for commitments was based<sup>471</sup> on trade draw patterns for the nearest centre whereas the amended table<sup>472</sup> made reference to existing trade draw patterns for the nearest comparable centre or destination. Whilst the latter is comparable with the methodology,<sup>473</sup> it does nothing for the clarity or confidence that can be placed in the trade draw assumptions.
- 5.90 The trade draw assumptions for the commitments involve some strange aspects:-
- (a) the diversion to Next in 2022 is shown as £1.7m from Manchester city centre and £1.2m from the Trafford Centre with its sum of £2.9m equal to the diversion from Stockport town centre which is much closer to the CPG site than either of those centres;<sup>474</sup>
  - (b) diversion in 2022 to Castle Street in Macclesfield (the Grosvenor Centre) has £0.4m diversion from Stockport but £0.8m from Manchester and £0.9m from the Trafford Centre;<sup>475</sup> and
  - (c) diversion in 2022 to the Silk Retail Park is put at £1.3m from Macclesfield town centre and a total of £1.1m from Manchester and the Trafford Centre combined.<sup>476</sup>
- 5.91 These trade draw assumptions are inconsistent with each other and there has been no adequate explanation for their difference.
- 5.92 The trade draw assumptions for the CPG development<sup>477</sup> underwent revision in the various iterations of the table; none has been explained in any detail other than that they are 'based on' the existing trade draw patterns of Handforth Dean. There is no explanation whether the draw has been altered to allow for any increased attraction of the CPG scheme in combination with the Handforth Dean stores which already exist.
- 5.93 Comparison of the impacts predicted by CPG and SMBC can be highlighted in the major difference in impact on Stockport town centre as compared to the Trafford Centre and Manchester city centre and CPG's forecast of a greater impact on the Trafford Centre and Manchester and a lower impact on Stockport town centre.<sup>478</sup>

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<sup>469</sup> CPG/4/3 Appendix 13 (Table 12 from Tables 4-11)

<sup>470</sup> CPG/4/3 Appendix 12 page 2

<sup>471</sup> CPG/4/3 Appendix 13 page Table 14

<sup>472</sup> CPG/INQ/008

<sup>473</sup> CPG/4/3 Appendix 12 paragraph 16

<sup>474</sup> CPG/INQ/008 Table 15

<sup>475</sup> CPG/INQ/008 Table 16

<sup>476</sup> CPG/INQ/008 Table 17

<sup>477</sup> CPG/INQ/008 Table 30

<sup>478</sup> CPG/INQ/008 Table 31 can be compared to SC/INQ/012 Table 20

- 5.94 However, given the weaknesses and lack of clarity in CPG's assessment, the proximity of Stockport town centre to the CPG site and the overlap of retailers likely to be present at the CPG site and Stockport town centre, there is no reason to think that the CPG site will draw trade from Manchester and the Trafford Centre to the degree suggested by CPG. It is far more likely that the impact would be as SMBC predicts in its more robust assessment.
- 5.95 CPG's assessment of the effects of the A6MARR scheme is very useful in illustrating how hidebound the applicant was by unrealistic considerations. In this regard, the model used does not allow for any increase in the turnover of the CPG stores arising from the opening of the road. The consequence of increasing expenditure draw from more distant residents is offset by lesser expenditure drawn from closer residents. There can be no justification for assuming that the road will not increase turnover.
- 5.96 In addition to the issue of how much turnover the CPG project would remove from Stockport town centre and the businesses within it, consideration must also be given to the likely nature of the occupiers in order to determine whether they would be in competition with the existing town centre uses.
- 5.97 The likely tenant line up produced by CPG<sup>479</sup> indicates that of the 14 proposed retail occupiers, 8 have stores in Stockport town centre namely:- J D Sports, Arcadia, New Look (Peel Centre), Gap (outlet and Peel Centre), River Island, H&M (Peel Centre), Primark and T K Maxx (Peel Centre). There are no public statements from any of these occupiers as to their intentions as regards the future of their Stockport stores.
- 5.98 CPG is reliant on 2 things for the argument that the its development would not lead to loss of traders from Stockport:-
- (a) the terms of the planning obligation's '*no poaching*' covenant; and
  - (b) the likelihood of dual trading.
- 5.99 For the reasons set out below, the '*no poaching*' clause is not acceptable and SMBC has no faith in it as a means of protecting Stockport town centre.
- 5.100 In terms of dual trading, there is a dearth of reliable information from any likely trader as to the likelihood of stores at the CPG site being in addition to, and not at the expense of, stores in Stockport town centre. CPG's position was long on assertion and short of hard evidence and in direct conflict with the witness's own firm's memorable characterisation of high street type occupiers of retail parks as '*category killers*' who see off all competition.
- 5.101 The same witness, in maintaining his position about the likelihood of impacts on Stockport and their acceptability, believed that Handforth Dean would be complementary to the shopping function of Macclesfield. No other witness was of that view and it is inconsistent with the recognition that CPG would have to provide mitigation for the impacts on Macclesfield.

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<sup>479</sup> CPG/4/3 Appendix 14



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**The Impact of the CPG proposals on investment, alone and in combination with the Orbit scheme**

- 5.102 All of the town centre initiatives in which SMBC has invested required public money to support them; and SMBC has no choice other than to continue to make those investments work. Each of the projects have existing investment in them, commitments to invest in them or plans to invest in them and mostly a combination of all three.
- 5.103 Both CPG and Orbit have been critical of public statements made by SMBC which advertise positive aspects of the recent performance of Stockport town centre. All of them have the character of promotional material and do not set out to provide a sober assessment of town centre health check indicators carried out in accordance with Planning Practice Guidance.
- 5.104 Similarly, whilst there is no evidence of the potential for investment to be withdrawn, SMBC remains firmly committed to town centre improvement by putting considerable financial and other resources into doing the very best it can to improve the fortunes of the town. In any event, the first bullet of paragraph 26 of the Framework requires assessment of the impact of a proposal on existing, committed and planned public and private investment. It does not limit consideration to the question of whether the investment would be withdrawn in that it must also encompass the prospects of the investment being endangered and include the success of investment which has already been made.
- 5.105 In light of the fragile state of the health of Stockport town centre; the likely quantitative impact on the town centre; the likelihood of similar occupiers being attracted to the CPG scheme; and the lack of an effective mechanism to prevent existing occupiers moving to Handforth Dean, it is clear that the scale of Phases 2 and 3 of the CPG scheme (with commitments and with or without Orbit) would have a significant adverse effect on investment in Stockport town centre:-
- (a) Redrock is not fully let. A competing retail and eating destination at the CPG site would take visitors and their spending from the retail core of Stockport, thus endangering the success of the intended improvement in links between Redrock and the rest of the town centre. Redrock's success is tied with that of the retail function of the town centre. The degree of impact caused by the CPG scheme in the loss of trade, visitors, footfall and potentially retailers who currently have a town centre presence, would combine to have an unacceptable effect on the prospects of success of the Redrock scheme;
  - (b) although Stockport Exchange is not primarily a retail destination, part of its attraction is to be its connections with a vital and viable town centre. Again, the degree of loss of trade, footfall and occupiers that the CPG scheme would create would mean that Stockport Exchange would become a much less attractive place for occupiers. Such an effect would affect the continued success of the investment which has been made and would have an unacceptable effect upon the prospects of the committed and planned future investment which the Council has determined to make;
  - (c) Merseyway has been badly affected by past lack of investment. It lost 2 major occupiers during the Inquiry (M&S and New Look). The letting of the ground floor of the former BHS store, to Poundland, at nil rent, is not a signal of improving fortunes. Overall, a scheme the size of CPG, with its current tenant line up, would be likely to compound vacancies in Merseyway and have

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a significant adverse effect on the existing, committed and planned investment in Merseyway; and

- (d) although the Market Place and Underbanks is not aimed at multiple retailers of the sort attracted to the CPG scheme, it is nonetheless dependent on footfall. The loss of trade in the town centre as a whole, with reduced trips and the loss of some main players, would have serious implications for the success of an initiative which is still in its early days and whose success is far from certain.

#### **Conclusion on Retail Issues relevant to the CPG applications**

- 5.106 The CPG scheme, in combination with commitments (with or without Orbit), would undoubtedly cause significant adverse impact on the vitality and viability of the still fragile Stockport town centre. There would also be a significant adverse effect on investment. There is no means of protecting the town from the loss of operators to the CPG site. In retail terms, the impact of the CPG scheme on Stockport town centre would be wholly unacceptable.

#### **The Transport Issues**

- 5.107 SMBC's highways concerns are:- traffic impact and mitigation at the A34/A555 and A34/ Stanley Road roundabout junction; the Stanley Green roundabout; and access to the CPG site by sustainable modes of transport.
- 5.108 SMBC's modelling scenarios,<sup>480</sup> were based on discussions with CEC and were informed by a desire to understand the workings of the highway network as a whole. CPG's evidence proceeded on the basis that a contribution to highways was appropriate and necessary to make the development acceptable in planning terms.<sup>481</sup> However, the basis for this contribution or its calculation (with reference to the WYG mitigation scheme) was not particularised.
- 5.109 CPG's evidence was deficient in several respects:-
- (a) it relied on a mitigation scheme proposed by WYG (*'the WYG scheme'*) in conjunction with the North Cheshire Growth Village. There is no guarantee that the growth village or that particular mitigation scheme will be delivered. In any event, in several scenarios<sup>482</sup> the WYG scheme is included without the growth village thus removing the rationale for the works and the means of securing the scheme. Without the inclusion of the growth village it is not possible to determine how effective this mitigation would be for CPG once the growth village was in place;
  - (b) CPG's evidence relied on a mitigation scheme which SMBC considers to be dangerous and that the safety concerns could not be addressed by way of detailed design;<sup>483</sup> and
  - (c) the CPG scheme would be high in car trip dependence because the site lacks the appropriate level of accessibility by sustainable modes of transport. However, it is recognised that the development would deliver some improvements to the local highways network.

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<sup>480</sup> Highways SoCG paragraph 2.2.9

<sup>481</sup> CPG/5/2 paragraphs 6.2.9, 8.1.6 (last bullet); CPG/5/4 paragraph 3.1

<sup>482</sup> CPG/5/3 Appendix D - scenarios 3a, 3b, 5a, 5b and 6 (scenario 1 did not include the CPG scheme and was 'do minimum')

<sup>483</sup> SC/INQ/006

**The Planning Obligation**

- 5.110 SMBC does not consider that the planning obligation which would relate to Phase 3 of the CPG scheme protects the position of Stockport town centre for a number of reasons:-
- (a) SMBC cannot be a party to the obligation as no land within Stockport is bound by the obligation itself and, whatever the obligation says, SMBC would be at the mercy of a discretionary decision by CEC to enforce an obligation to protect land outside its administrative area and where it has no particular interest in protecting the interests of Stockport. SMBC could not compel CEC to enforce the obligation; and
  - (b) the obligation is ineffective in that the relevant part (omitting provisions which exempt certain tenants who have been effectively required to leave by their landlords) of the 'no poaching' clause provides:-  
*'For a period of 5 years from practical completion of the Development the Owner shall not permit any retailer (with the exception of a retailer trading as 'Mothercare' in Stockport) who at the time of such practical completion of the Development or within the preceding 6 months trades from a store or other retail unit (a 'Relevant Unit') in either Macclesfield or Stockport Town Centre from being able to occupy or trade from any part of the Development unless such retailer shall first enter into a binding agreement with the Council not to cease trading from such Relevant Unit during the said period of 5 years'.*

5.111 Although 'practical completion' is a familiar term, it applies to the development as a whole; and failure to practically complete just one building would disengage the no poaching clause. Even if the development were to be practically completed, it would be perfectly legitimate for the site owner to manage the chronology of development and letting of units so that all of the occupiers who had stores in Stockport took and occupied units more than 6 months prior to the practical completion of the last. Further still, there would be room for doubt as to when the 6 months period had ended and how far back in time one could consider the legality of the lettings which had been made.

5.112 Still more fundamental is the fact that the obligation is almost incapable of being practically enforced. It prohibits occupation or trade. As a result, the breach would occur when occupation or trade occurred. In turn, that would mean that as long as the town centre store had closed by the time occupation or trading at CPG started, CEC's only remedy would be to ask the Court for a prohibitory injunction to prevent trading or occupation at the CPG site. As far as Stockport would be concerned, the damage would already have been done because the town centre store would have been lost.

**The Conditions to which the CPG permissions would be subject**

5.113 SMBC has no particular observations to make on the proposed conditions.

**Planning Balance and Conclusion**

5.114 The CPG scheme is in breach of CELPS Policies EG 3 and EG 5, both of which are Framework compliant. The applications should be refused in accordance with the Development Plan as there are no material considerations which indicate that a decision otherwise than in accordance with the Development Plan should be taken. There is no particular benefit

in granting the permissions, given the lack of proper marketing for and exploration of alternative employment uses.

- 5.115 Furthermore, the job creation benefits are overstated in that CEC has considered gross employment impacts rather than the net employment impacts. Taking the Homes and Communities Agency's Additionality Guide, a realistic reference case is the likelihood of an employment use if the applications are refused. In order to assess gross full time equivalent (FTE) jobs arising from the proposal, SMBC has taken a mid-point between high street retail and retail warehouses to assess floorspace/employee which amounts to 503 FTE jobs compared to a claim of some 730 FTE jobs.<sup>484</sup>
- 5.116 Leakage, where the proportion of jobs taken by those resident outside of the principal catchment area (20 minute off-peak isochrome) of the site, is a further factor, which justifies a deduction of 20%. It is also necessary to allow for displacement, where expenditure is transferred from one location to another, amounting to a displacement rate of 70% across the primary catchment.<sup>485</sup>
- 5.117 A standard multiplier rate is then applied to reflect the indirect jobs arising from local purchasers of new retailers and those employed on the site. The net employment impact would be 156 FTE jobs from which the reference case jobs are deducted (404 light industrial jobs) amounting to a considerable negative net employment impact arising from the proposals.<sup>486</sup>
- 5.118 Overall, it is submitted an application of section 38(6) of the Planning and Compulsory Purchase Act 2004 produces the result that a decision in accordance with the development plan would be to refuse the applications and that there are no material considerations which indicate that a decision otherwise than in accordance with the development plan should be taken.

## **The Appeal by Orbit**

### **Introduction**

- 5.119 Much of the background information for SMBC's case for the Orbit scheme is common with that of the CPG proposals but some repetition is inevitable.

### **The Employment Matters**

- 5.120 Employment issues have not been at the forefront of SMBC's case against the Orbit scheme given CEC's opposition on this ground.
- 5.121 However, CELPS Policy EG 3 should be interpreted in the same way for the Orbit scheme as for the CPG scheme; and it is noteworthy that Orbit did not support CPG's interpretation of the policy. SMBC takes no point about the quality of the marketing exercise as regards the Orbit site.

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<sup>484</sup> SC/2/2 paragraphs 4.4 – 4.8

<sup>485</sup> SC/2/2 paragraphs 4.9 – 4.11

<sup>486</sup> SC/2/2 paragraphs 4.12 – 4.16

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- 5.122 Saved MBLP Policies E3 and E4<sup>487</sup> are both permissive in that the former permits B1 business use and the latter permits B2 and B8 uses. Both are applicable to the Orbit site and, in light of their aim to encourage employment use, the release of the site to retail use would be in conflict. The agreed lack of viability for office use on the site does not remove the conflict with Policy E3, in that it allows use within Use Class B1(c). For a site with close access to the A34, the airport and in a location with a strong economy, it is right to say that the Orbit site would be attractive in locational terms to a B1(c) user.
- 5.123 CELPS Policy EG 3 was devised, examined and adopted in light of the Framework and found to be sound. Even if the proposal was to meet the terms of paragraph 22 of the Framework, this would amount to no more than a material consideration to be weighed against the primacy of the development plan. It would not therefore be appropriate to use the Framework as a means of taking a decision otherwise than in accordance with Policy EG 3.
- 5.124 SMBC is content that if the CPG scheme were to be refused permission, the loss of employment land that the Orbit scheme alone would cause would be unlikely to increase pressure on the Green Belt in Stockport.

**The Retail Matters: Introduction**

- 5.125 SMBC's efforts to secure the regeneration of Stockport town centre and its rationale for involvement in the Inquiry are set out earlier.

**National Context**

- 5.126 The national context is also set out earlier. Orbit presented no evidence which contradicted these submissions.

**The Health of Stockport Town Centre**

- 5.127 SMBC's position on the health of Stockport town centre is addressed above. Again, Orbit did not seek to provide contrary evidence.
- 5.128 Further, and as Peel established, Orbit did not address the following indicators, set out in Planning Practice Guidance, in its health check of Stockport town centre:- yields; rents; customer views or behaviour; or perception or safety of crime.
- 5.129 Further, its assessment of the diversity of uses was cursory; there was no analysis by sector or type of use; there are no benchmarks for other types of centre or national characteristics against which the findings in Stockport can be compared; and the assessment of footfall was limited to one visit in the period before Christmas, which was hardly typical.
- 5.130 Overall, Orbit has not any sound reason for disagreeing with the thorough assessment set out in section 4 of the Stockport Retail Study Update<sup>488</sup> and related SMBC evidence.

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<sup>487</sup> CD J1.7

<sup>488</sup> CD F1.1

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**The Regeneration Initiatives**

- 5.131 The regeneration initiatives relevant to the Orbit proposal are the same as those for the CPG scheme.

**Sequential Test**

- 5.132 It is accepted that SMBC cannot show that there are sequentially preferable sites available for the Orbit scheme which are '*closely similar*' to the scheme proposed. The site at Water Street would not allow a '*closely similar*' development; no units in Merseyway were available to accommodate the scheme; and the Toys R Us unit was not sequentially preferable. Although the M&S store had closed and vacated, there is no evidence as to its availability or otherwise to the market.

**The Retail Impact of the Orbit scheme on its own, with commitments and with the CPG scheme**

- 5.133 The cumulative impacts of Orbit and CPG are a material consideration in the determination of the Orbit appeal. Although this was accepted by Orbit, the relevant witness had no instruction to consider this scenario with commitments. Whilst that is Orbit's choice, based on the grounds of being unhappy at being caught up in the call-in of the CPG applications, it is not a justification for ignoring a significant material consideration.
- 5.134 Nonetheless, although Orbit was keen to highlight the impact of its scheme alone, it was accepted that commitments ought to be taken into account in addition to the effect of Orbit, if a full understanding of effects is to be gained.
- 5.135 Particular attention focused on a site in Water Street, Stockport which is a sequentially preferable site to the Orbit scheme. It has planning permission for retail use and it is on offer to the market for either retail or warehouse use. At an appeal in 2007, the Inspector decided that that site would operate as an edge of centre site with pedestrian improvements that were to be secured pursuant to a planning obligation.<sup>489</sup> Although considerable time has passed the promoters have not given up on it as a retail opportunity.
- 5.136 Even if the Water Street site were to be excluded from the impact assessment, it makes little difference to SMBC's case.<sup>490</sup> The effect would be to reduce the impact on Stockport town centre of Orbit only (with commitments) to 2.7% on the central sales density case and to 3.0% on the higher density scenario. The combination of Orbit, CPG and commitments (without Water Street) on Stockport town centre would be 7.0% in the central sales density scenario and 7.9% at the higher density.
- 5.137 Key points emerging from SMBC's assessment specific to Orbit are:-<sup>491</sup>
- (a) the turnover of Stockport town centre in 2015 with no development would be £742.6m;<sup>492</sup>

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<sup>489</sup> SC/3/10 DL 25

<sup>490</sup> SC/INQ/012 re-runs the commitments in Table 7a of SMBC's assessment by reducing the sales density of the Water Street site to zero. The results are at Appendix 2 and summarised in the table on page 3 of that document

<sup>491</sup> SC/INQ/012 Appendix 1 Table 19

<sup>492</sup> Using the conservative central sales density figures



- (b) the commitments would divert £32.4m from the town centre (-3.1%), leaving turnover of £719.7m; and
  - (c) the Orbit proposal would then divert £8.2m from the town centre (-1.1%), leaving town centre turnover at £711.4m (-4.2%).
- 5.138 Curiously, Orbit ascribes bigger impacts to Stockport from Orbit alone or with commitments than does SMBC. Even so, Orbit's position has no clear explanation.<sup>493</sup> Further, the assessment which Orbit has undertaken, either in the original proof, using central sales density rates, or in the later rebuttal, using value sector sales densities, does not reflect the combination of uses that the proposed condition would allow to operate from the site. Although Orbit asserts that the sales densities from a mix of uses compliant with the condition would be closer to the value sector sales densities, this was not supported by evidence.
- 5.139 The determinative issue of whether or not the degree of impact would or would not be significantly adverse depends on the view which is taken of the health of Stockport town centre. Orbit, in reaching the view that impacts would not be significant 'on balance'<sup>494</sup> relies on 3 elements:-
- (a) the health of Stockport town centre which, as set out above, has been assessed in an incomplete and brief way;
  - (b) that the centre continues to attract retail and leisure investment, which overlooks the involvement of SMBC in investing, as there was no indication of any substantial investment in retail or leisure interest which did not have public sector involvement; and
  - (c) the likelihood that Water Street would not be implemented.
- 5.140 If, as SMBC contends, Orbit is wrong on any of those matters, its ultimate judgment is undermined.

#### **The Impact of the Orbit Scheme on Investment**

- 5.141 The Orbit scheme would have a smaller, but still significant, impact on investment schemes set out in relation to the CPG proposal. Nonetheless, it would still be open to the Secretary of State to conclude that the effects of Orbit, alone, would be unacceptably adverse, and the objection would be much stronger still if CPG were to be permitted too – a subject on which Orbit had nothing to say.

#### **Conclusions on retail impact**

- 5.142 Although the case is more marginal with Orbit alone compared to any other scenario, SMBC still submits that the adverse retail impact and investment impact effects of the Orbit scheme alone would be unacceptable, given the fragile nature of Stockport town centre and the likely loss of trade that would be involved. If CPG were to be permitted in addition there would be a very significant adverse effect on Stockport.

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<sup>493</sup> CPG/1/2 Appendix 15 Table 8 and footnote 11 simply say it is based on Litchfield's assumptions

<sup>494</sup> ORB/1/1 paragraph 6.75

**Conditions and Planning Obligation**

- 5.143 SMBC has no particular comments to make on the planning obligation. CEC has confirmed that it would pass the highways contribution to SMBC for it to spend on the necessary works.<sup>495</sup>
- 5.144 However, SMBC has no faith in the protection offered by the restrictive goods condition. In offering the condition, irrespective of whether or not CPG is approved, it must be assumed that it would meet the policy tests, including that it is necessary, and that permission should not be granted without it. The condition would still allow the operators on Orbit's target list<sup>496</sup> to be in occupation, some of which are high street uses. The condition offers no sufficient protection for nearby town centres.

**Transport Matters**

- 5.145 There are no transportation issues between SMBC and Orbit on the basis of the financial contribution for highway works within the Council's administrative area set out in the planning obligation.

**Planning Balance and Conclusion**

- 5.146 Either viewed alone or in combination with CPG, the Orbit scheme conflicts with CELPS Policy EG5. CEC and Peel also raise detailed concerns about employment land issues. A decision in accordance with the development plan would be to dismiss the appeal and there are no material considerations in favour of the proposal to indicate a decision otherwise.

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<sup>495</sup> SC/INQ/013

<sup>496</sup> ORB/INQ/017

## **6. The Case for Peel Holdings (Land and Property) Limited**

### **Introduction**

- 6.1 Peel objects to the Orbit application in support of the reason for refusal and also on retail grounds.
- 6.2 CPG's applications for retail and related development are supported by CEC, who is the owner of the application site. Peel submits that CEC has not provided any credible evidence in support of its resolutions to approve the CPG proposals. Further, its position is irreconcilably inconsistent with its decision to refuse the Orbit scheme. Peel objects to the CPG applications on the grounds of loss of employment land and retail impact.
- 6.3 Peel is the owner of the Peel Centre retail park, which, in accordance with SMBC's development plan has been developed as complementary to the Core Shopping Area. The Peel Centre now forms part of the Primary Shopping Frontage and any adverse impact on the centre must be considered to be an impact on the town centre itself. Undoubtedly, Peel has a financial interest in the outcome of the proposals; but the same is undoubtedly true of CPG, Orbit and CEC. Peel's objections solely concern the land use planning merits of the proposal and financial considerations and competition are irrelevant.

### **Main Issues**

- 6.4 In terms of the 4 main considerations identified by the Secretary of State, Peel does not address transportation.

### **The Statutory Test**

- 6.5 There is a strong statutory presumption that the developments should be determined in accordance with the development plan, especially in this case, where the LPS is up to date and consistent with the Framework.

### **The Development Plan**

#### ***(i) The Macclesfield Borough Local Plan (MBLP)***<sup>497</sup>

- 6.6 The MBLP was adopted in 2004; the origins of its policies are at least 15 years old; and the policies only seek to guide development to 2011. Its planned review was overtaken by other events;<sup>498</sup> and the policies of the MBLP are, therefore, significantly out-of-date and time-expired.
- 6.7 Saved Policy E1 provides that '*employment areas*' will be retained for '*employment purposes*'. '*Employment areas*' are defined in the glossary:- '*the primary purpose of an employment area remains employment (Use Class B1, B2 and B8). Retail is excluded from the definition. Wherever possible, the local planning authority will encourage the provision of small industrial units*'. Policy E1 (whilst a reason for refusal for Orbit) has been deleted and superseded by Policy CELPS EG 3.<sup>499</sup> It is to be reasonably expected

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<sup>497</sup> CD J1.7

<sup>498</sup> (i) the P&CPA 2004, which established a new set of development plan documents; (ii) Local Government re-organisation and the formation of CEC who embarked on their own set of DPD's; and (iii) the NPPF (March 2012)

<sup>499</sup> CD J1.8 page 424

that the successor policy would be seeking the same or similar policy objectives (absent a change in employment strategy).

- 6.8 Saved Policy E2 applies because both sites form part of the existing employment land. It is common ground that:-
- (a) it provides for a total prohibition on retail development of employment land, so that the total amount of employment land is not reduced;
  - (b) it is inconsistent with the Framework (paragraph 22);
  - (c) it pre-dates the evidence base gathered for the emerging CELPS;
  - (d) it is inconsistent with policy CELPS EG 3;
  - (e) any such conflict should be resolved in favour of CELPS EG 3; and
  - (f) saved Policy E2 has not been deleted by the CELPS; however, there is (literally) no reason provided for the policy being saved.<sup>500</sup>
- 6.9 Saved Policy E2 is not, therefore, a policy to which any material weight should be attached. Rather, the appeal proposal falls to be determined against CELPS Policy EG 3.
- 6.10 Saved Policy E3 permits proposals for B1 uses in employment areas (B2 and B8 uses are addressed by Policy E4). It is a permissive policy and it does not seek to restrict any other types of employment development (such as non-flagship development). Policy E3(5) permits B1 uses on up to 20 ha of employment land at Stanley Green Industrial Estate. It was considered necessary to restrict the amount of B1(a) Office Use on the CPG/Orbit sites, in order to ensure that a wide range of employment uses were available in the location. It has not been deleted by the CELPS.
- 6.11 The reasoned justification states:- *'Undeveloped land (about 6 ha) fronting the A34 at Stanley Green, Handforth is regarded as suitable for 'flagship' developments and will be reserved for such purposes'*. This applies to the CPG site alone. The reasoned justification is permissive of flagship B1 use, albeit, it is not a policy requirement and does not restrict other B1 uses or B2/B8 uses.<sup>501</sup>
- 6.12 Saved Policy E4(10) is permissive of B1(b), B1(c), B2 and B8 uses on the Stanley Green Industrial Estate (up to 29 ha), whether they are flagship or not. B1 offices will normally be permitted where they are ancillary to the main industrial use.
- 6.13 Accordingly, the proposed redevelopment of either site for employment use (with an ancillary element of office use) is strongly supported by saved Policies E3 and E4. CEC accepts that a proposal for a non-flagship employment use (B1, B2 or B8) would:-
- (a) derive support from Policy E1 (had it not been deleted);
  - (b) comply with Policy E3; and
  - (c) derive support from Policy E4 (10).
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<sup>500</sup> CD J1.8 page 424

<sup>501</sup> CD E1.10 text and Appendix 4

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**(ii) The CELPS<sup>502</sup>**

6.14 The adoption of the CELPS post-dates the determination of the applications by CEC. There has, therefore, been a material change in the status of the development plan since the resolutions of CEC on the CPG and Orbit applications.

**(a) Background to the Adoption of the CELPS**

6.15 The CELPS had a tortuous and contentious process of adoption.

6.16 The Arup Employment Land Review was published in November 2012.<sup>503</sup> It assessed 48 existing employment sites, including CPG and Orbit. It concluded that:- (i) 61MU 6 ha (including CPG) was a good quality employment site; and (ii) Handforth Dean Business Park (including the Orbit site) had potential for general industrial/business use (as well as office) and should be considered for employment allocation (*'attractive for offices/hybrid workspace'*).<sup>504</sup> At no point did either CPG or Orbit make representations to the emerging Local Plan that their sites should not be allocated, or could not be developed, for employment uses and/or their sites should be allocated as retail sites.

6.17 The Examining Inspector's Interim Report considered that the jobs growth estimate was *'rather pessimistic'*; and the Green Belt assessment was contentious.<sup>505</sup> The response (in part) was the Ekosgen Report (June 2015), Green Belt Assessment Update (June 2015), and Spatial Distribution Update Report (July 2015). The Ekosgen Report<sup>506</sup> increased the employment land requirement significantly by setting a new employment land requirement of 195 ha, with 120 ha to reflect losses, with a 20% factor to provide flexibility and a portfolio of sites. The total (378 ha or 19 ha/pa) was a considerable uplift from the previous Employment Land Review (2012). It explains the materially different approach to the release of the Next site for retail use.<sup>507</sup>

6.18 In light of these modifications the Inspector concluded that the Ekosgen Report was robust; the Green Belt Assessment addressed most of the shortcomings; and the balance of employment land between north and south had been resolved. He considered channelling too much development to areas beyond the North Cheshire Green Belt was unsustainable.<sup>508</sup> Neither CPG nor Orbit objected to the emerging plan on the grounds that their sites were not appropriately considered to be employment sites, notwithstanding that Orbit had made an application for retail development and the CPG site had been the subject of numerous reports considering its disposal.

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<sup>502</sup> CD J1.8

<sup>503</sup> CD J1.3

<sup>504</sup> CD J1.3 Appendix E pages E1-71-E1-72

<sup>505</sup> CD J1.16 paragraphs 29-30, 81-85

<sup>506</sup> CEC/1/2 Appendix 2) page 17

<sup>507</sup> CEC/2/3 Appendix 9

<sup>508</sup> CD J1.17 paragraphs 11-19, 41-46, 65-71, 89-96

- 6.19 The Inspector's final report addressed the issues of employment land supply, spatial distribution, Green Belt release and Handforth Dean<sup>509</sup> before concluding that (essentially):- (i) an appropriate employment land supply had been set; (ii) the spatial strategy appropriately recognises the Green Belt constraints around the northern towns; (iii) Green Belt release is appropriate; and (iv) 22 ha of employment land for Handforth is appropriate (12 ha in the Green Belt) but no flexibility factor exists.
- 6.20 Two of CPG's witnesses conceded that they had made no reference to the relevant background documents which explains why they failed to recognise the serious conflict with policy which arises from the loss of 6 ha of allocated employment land at CPG. Such a loss (i) is directly in conflict with the requirement for employment land (generally and in Handforth Dean in particular); (ii) ignores the specific need for employment land in the north; (iii) is contrary to the spatial strategy; and (iv) ignores the exceptional circumstances which were demonstrated for employment land in the northern towns.
- 6.21 Moreover, a consideration of the chronology of the background documents, together with a consideration of CEC's resolutions regarding the disposal of the CPG site, clearly demonstrates an irreconcilable parting of the ways between CEC as local planning authority (promoting the site for employment land to meet the objectively assessed need in the CELPS) and CEC (as landowner) seeking the maximum capital receipt in an accelerated timescale for its own land. There is a total inconsistency between CEC's promotion of CPG as an employment site and its disposal for retail, at precisely the same time. This explains why the Head of Planning's evidence comprehensively demonstrates a clear conflict with the CELPS, when it is applied to CPG (rather than Orbit); and why he supported the refusal of the CPG applications.

**(b) Development Plan Policies**

- 6.22 Policy PG 1 establishes a mandatory policy requirement for a minimum of 380 ha of employment land (2010-2030). The Employment Land Review and the Ekosgen Report (2015) are the primary sources of evidence related to the requirements for employment land.
- 6.23 Policy PG 2 sets out the settlement hierarchy. Handforth is a Key Service Centre; it is in the second tier of sustainable settlements and is a sustainable and accessible location for further development (especially employment development). The CELPS seeks to locate the majority of new development needs in, on the edge or close to the Principal Towns and Key Service Centres, enabling the maximum use of existing infrastructure and resources. This allows houses, jobs and other facilities to be co-located, in order to reduce car-borne traffic. Both sites are expressly suitable for employment redevelopment.
- 6.24 Policy PG 3(5) removes a significant amount of land from the existing Green Belt. For example, Policy PG 3(5)(viii) releases Site LPS 33 North Cheshire Growth Village, Handforth East, which comprises:- (i) 1,500 new

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<sup>509</sup> CD J1.17 paragraphs 46-55, 83-87, 98, 218-224



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homes; (ii) up to 12 ha of employment land, primarily for B1 uses; and (iii) a new mixed use local centre. Six employment sites were removed from the Green Belt by Policy PG 3(5), releasing 50.1 ha of employment land in the north of the borough.<sup>510</sup> Without this, the amount of new development to be planned for in the north would be 'very low'.<sup>511</sup> Such an outcome was considered to have severe consequences, including difficulty in attracting inward investment and economic growth and adverse consequences for sustainable development.

6.25 Policy PG 7 sets out the spatial distribution of employment land.<sup>512</sup> Handforth (including the growth village) is expected to accommodate 22 ha of employment land (an average of 1.10 ha per annum). The spatial distribution strategy is informed by the Spatial Distribution Update Report. The CELPS acknowledges an '*identified need*' in the north of the borough for *inter alia* employment land and allocates a small number of sites concentrated in particular areas to minimise the impact on the Green Belt.<sup>513</sup>

6.26 The employment land distribution for key service centres is:-<sup>514</sup> Handforth (including the growth village) must deliver 22 ha of employment land to meet the minimum 380 ha figure:-

- (a) 12 ha of land is released from the Green belt at North Cheshire Growth Village;
- (b) the employment supply at Handforth (at 31 March 2013) was 9.72 ha;
- (c) employment land supply is defined as the amount of land available for new employment development. It includes sites with permission, sites under construction, existing employment allocations and new allocations in the CELPS. It excludes permissions for redevelopment for employment uses where the site is already being used for employment purposes;
- (d) the 9.72 ha comprises 6 ha (Next and CPG site), 3.2 ha (Lower Meadow Road) and 0.52 ha (Land West of Epsom House);
- (e) the 6 ha Next/CPG site comprises 62% of the existing supply for the Plan;
- (f) Orbit is not part of the 9.72 ha but it does, nonetheless, form part of the existing supply as an existing employment site in active use (warehouse);
- (g) there was a residual need specifically in Handforth for 0.28 ha. This is to be identified in the Sites Allocation DPD (SADPD);<sup>515</sup> and
- (h) the growth village allocation is for '*up to 12 ha*' – if less is delivered, the residual need of 0.28 ha increases.

6.27 Thus the CELPS is quite clear that, even with the retention of existing employment land, there is a residual need for more employment land to be allocated specifically at Handforth to meet a minimum Plan target. However, there have been significant losses to the employment land supply since the base date of the Local Plan Strategy. In this regard, 1.3

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<sup>510</sup> CEC/1/1 paragraph 4.3

<sup>511</sup> CD J1.8 paragraphs 8.47-8.48

<sup>512</sup> Glossary page 391

<sup>513</sup> CD J1.8 paragraphs 8.74 & 8.80

<sup>514</sup> CD J1.8 Table A.7 (pages 404-405)

<sup>515</sup> CEC/1/1 paragraph 3.13

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ha was lost to Next and 3.2 ha at Lower Meadow Road cannot be developed for employment uses amounting to an additional 4.5 ha of land to be found to meet the Handforth requirement of 22 ha. This, when added to the identified 0.28 ha 'shortfall' amounts to some 22% of the total requirement.

- 6.28 Further, such losses are compounded by recent losses of existing employment land in that Unit 1 Epsom Avenue has been lost to leisure; Deanway 2 has been converted to car showroom; and an application seeks conversion of Deanway 1.<sup>516</sup> Such losses increase the requirement to find suitable employment land in the north of the borough.
- 6.29 The minimum employment land requirement of 380 ha must be met across the borough as a whole. On average, 6.01 ha p.a. of employment land was lost between 1997 and 2011;<sup>517</sup> and, despite the resultant allowance of 120 ha for land losses in the Plan period, employment land was lost at the rate of 6.73 ha per annum between 2010/11 and 2015/16 amounting to some 40.38 ha. More significantly in the 3 years ending 2015/16 the annual average loss was 10.36 ha.<sup>518</sup>
- 6.30 At the same time, an additional 20.35 ha is already committed as potential employment losses and is additional to the actual loss amounting to a total of 60.73 ha (at March 2015) at an average rate of 10.1 ha per annum (to 2015/16).
- 6.31 The 2016/17 loss was an unusually low 4.14 ha and, when added to the earlier years, the total loss for 2010/11 to 2016/17 became 44.52 ha at an average of 6.36 ha per annum. Although the year saw no losses from allocations, the previous annual monitoring reports do not allow an analysis of such total losses. It is, in any event, irrelevant as a loss is a loss, regardless of whether it is a previously or newly allocated site.
- 6.32 Such losses are vitally important as:-<sup>519</sup>
- 'The amount of employment land released in the north of the Borough is the minimum amount that enables the full objectively assessed needs for market and affordable housing ..... employment development to be met across of the Borough, whilst still representing sustainable patterns of development. As such, the existing employment land supply and existing employment premises are a vitally important component of the overall employment mix.'*
- 6.33 It is in this context that CEC makes the following points about the Orbit proposal:-<sup>520</sup>
- (a) the north will continue to be attractive to businesses keen to be based in locations with easy access to Manchester city centre;
  - (b) there was a strong case to allocate a substantial proportion of the increased amount of employment land to the north of the borough;

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<sup>516</sup> CEC/1/1 paragraphs 3.13-3.14

<sup>517</sup> CEC/1/2 Appendix 2

<sup>518</sup> CD E1.11-E1.16 (which set out the position to 2015/16); ORB/INQ/022 (Annual Monitoring Report 2016/17)

<sup>519</sup> CEC/1/1 paragraph 4.5

<sup>520</sup> CEC/1/1 paragraphs 2.14, 2.16, 2.23, 2.24 (CEC/2/2 paragraphs 8.20-8.29), 3.8-3.10, 4.5, 4.7, 5.5-5.8

- (c) the CELPS places '*particular emphasis*' on the provision of employment land within the north of Cheshire East, following the direction of the EIP Inspector;
- (d) the north has, on the one hand, the key economic sectors to sustain economic success but, on the other, faces the greatest constraints in terms of restrictive Green Belt boundaries;
- (e) the loss of employment land is '*a serious issue*' in Cheshire East and the protection of suitable sites for employment use is important to enable sustainable economic growth;
- (f) a number of existing businesses are looking to expand or locate within the borough and experiencing difficulty in finding suitable premises;
- (g) the amount of employment land is '*even more limited in the north (21% of the total)*';
- (h) it was accepted that employment land losses in the north were, therefore, '*disproportionately damaging*';
- (i) employment land has more demanding characteristics (than housing sites), meaning sites which display such characteristics are more valuable;
- (j) such sites are '*not widely available*'. Accordingly, retention of suitable employment sites for employment use in the north of the borough will be '*even more important*' in promoting economic prosperity by creating conditions for sustainable business growth;
- (k) the amount of land released in the north is the *minimum* amount to meet the full objectively assessed need for employment use, whilst representing sustainable patterns of development. As such, the existing employment land supply is a '*vitaly important component*' of the overall employment mix;
- (l) increased employment land losses may mean that further employment land allocations are required;
- (m) the existing stock of employment land within the urban areas has already been accounted for in the employment land supply figures. Any additional requirement would need to be found outside the existing settlements;
- (n) given the tightly drawn Green Belt boundary, this would require either further Green Belt releases or locating development in unsustainable locations beyond the Green Belt. This is consistent with CEC's case at the EIP that '*exceptional circumstances*' currently exist to justify employment land allocations in the Green Belt;
- (o) the attractiveness of the Orbit site will increase with the development of the A6MARR. Further, the junction between the A555 and A34 will be significantly upgraded making sites in Handforth Dean '*much better connected*' being in close proximity to the A34 (north/south) and A555 (east/west). '*Crucially*', connectivity to the airport and M56 will be '*significantly improved*'. Travel times could be '*halved*'; and
- (p) the objectives of the A6MARR have a strong business emphasis. In providing £270m funding, there is a '*clear expectation*' from Government that benefits to local businesses will occur from the road.

6.34 Neither CPG nor Orbit has sought to identify where the residual unmet employment land could/should be allocated and/or any replacement employment land provision (to compensate for the loss) should be located. Whilst Orbit suggested that safeguarded land could be made available, the purpose of such land is '*to meet the longer-term needs stretching well beyond the plan period*'. This confirms that the unjustified redevelopment of

existing employment sites will (in reality) lead to further Green Belt release. This would be very clearly contrary to the spatial strategy of the recently adopted development plan.

6.35 This is the case advanced by CEC in response to the Orbit appeal; and it was conceded that each and every one of the above points applied to the CPG proposals. Indeed, such general propositions must inevitably apply with even greater force to the CPG applications, which would result in a significantly greater loss of employment land in a more prominent location.

6.36 It is significant that CEC fails to produce any evidence supporting its resolution to approve the CPG applications. There is nothing to suggest accordance with the development plan, whether in respect of loss of employment land, marketing or retail impact. Consistency in administrative decision-making is a material consideration in the determination of planning applications.<sup>521</sup> As Gilbert J held:-<sup>522</sup>

*'The rationale of the principle is that, if a decision is to be reached which is not ad idem with the approach followed in another, then the importance of achieving consistency and of the maintenance of confidence in the development control system require that reasons are given for departures from conclusions reached in another decision'.*

6.37 Moreover, there is an 'enhanced level of scrutiny' required in this case because CEC is also the land owner of the CPG site. In such circumstances, it is necessary for CEC to have addressed in evidence the consistency of the Orbit refusal with the resolution to approve the CPG applications (Phases 2 and 3). On this point Orbit and Peel agree.

6.38 CEC's position between the 2 schemes at the Inquiry was irreconcilably inconsistent and irrational. CEC failed to provide any rationale for concluding that the Orbit scheme resulted in an unacceptable impact on the supply of employment land, whilst the significantly greater impact on the CPG site was acceptable. Peel believes that the logic of CEC's case against Orbit strongly supports the conclusion that permission should be refused for Orbit and also for CPG. Indeed, CEC's witness did not resile from his firm evidence that the loss of employment land on the Orbit site was unacceptably harmful. That proposition can only apply with even greater force to the CPG proposal.

6.39 It is, however, beyond dispute that the need for employment land in the north of the borough means that a robust application of the policy tests in Policy EG 3 is required, in order to ensure that suitable and viable employment sites are not lost to higher value uses without robust and comprehensive evidence and market testing (through an evidence based marketing exercise):-

*'Robust evidence must be provided to demonstrate that the site is no longer suitable or viable for employment use; there is no potential for modernisation or*

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<sup>521</sup> The Court of Appeal has explained that consistency is important to maintain public confidence in the operation of the development control system (per Mann LJ in *North Wilts DC v SOSE* [1992] 65 P&CR 34).

<sup>522</sup> Gilbert J was applying *North Wilts* and the CA in *Dunster Properties Ltd v First Secretary of State* [2007] 2P&CR 26 in *Fox Land and Properties v SoS CLG* [2012] EWHC 444 (Admin), upheld in the Court of Appeal

*alternate employment uses; and no other occupiers can be found..... The correct approach must be for 'the proper application of the tests set out in LPS Policy EG 3',<sup>523</sup>*

**Policy EG 3**

- 6.40 Both the interpretation and application of EG 3 is contentious; but neither should be controversial. Rather, CPG and Orbit have strained to interpret and apply the policy in an unreasonable manner because they simply cannot comply with it (interpreted objectively and applied reasonably).
- 6.41 Per Lord Reed in *Tesco v Dundee*:<sup>524</sup>
- '..... policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context ..... planning authorities<sup>525</sup> do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean'.*
- 6.42 Policy EG 3 is headed: '*Existing and Allocated Employment Sites*'. It must apply to both equally: - '*For clarification, this policy applies to all sites currently in use for employment purposes (B1, B2 and B8 ..... ) as well as sites allocated for such uses.*<sup>526</sup> The policy therefore is to be applied (as a whole) to both the CPG and the Orbit sites.
- 6.43 Given the clear need for employment land, the policy is intended to provide significant protection to existing and allocated employment sites:-
- 'in order to provide a range of employment sites, particularly for inward investment and [to] limit the need for development on greenfield land, it is vital that existing employment sites, premises and allocations that are viable for continued employment use are safeguarded. This will make sure that job opportunities are maintained and the economic health of the Borough is protected. The release of viable employment sites or premises to other uses may only be made where their loss would not cause harm to business or employment opportunities'.<sup>527</sup>*
- 6.44 Policy EG 3(1) applies to existing employment sites (as distinct from premises). It provides protection subject to meeting the strict exceptions criteria. Neither CPG nor Orbit rely on EG 3(1)(i). Accordingly, as accepted by CEC, in order to comply with the policy, both schemes must comply with all of the following criteria:-
- (a) '*the site is no longer suitable or viable for employment use; and*
  - (b) '*there is no potential for modernisation or alternate employment uses; and*
  - (c) '*no other occupiers can be found*<sup>(43)</sup>'.
- 6.45 Footnote 43 could not be clearer in its explanation of what is required in order to demonstrate that '*no other occupiers can be found*'. The terms of the footnote need to be met in order to comply with the policy:-

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<sup>523</sup> CEC/1/1 paragraphs 2.25, 4.6

<sup>524</sup> paragraphs 18-19

<sup>525</sup> the same must also apply to developers

<sup>526</sup> CD J1.8 paragraph 11.24

<sup>527</sup> CD J1.8 paragraph 11.23

*'To demonstrate that no other occupiers can be found, the site should be marketed at a realistic price reflecting its employment status for a period of not less than 2 years. The council will require evidence that a proper marketing exercise has been carried out including a record of all offers and expressions of interest received'.*

- 6.46 The policy requirement to assess suitability/viability and marketing is therefore cumulative and the failure to comply with one of the exception criteria would not be "technical" or "academic" as claimed by Orbit. Rather it would be a substantial failure of the policy. On the scant evidence provided, neither CPG nor Orbit can demonstrate that the policy conflict is either technical or academic
- 6.47 Further, there is a very good reason why the requirements of the policy are cumulative. In both instances the viability evidence is contested; and the assessment of viability is an issue over which there can be reasonable disagreement between competent experts. This policy specifically requires market testing of the proposition that an alternative employment use is not viable in the interests of transparency. It precludes a landowner (like Orbit) claiming that marketing is not required because it thinks it knows what the answer would be i.e. self-certification.
- 6.48 Policy EG 3(2) is engaged only if there is compliance with policy EG 3(1), as it applies where it can be demonstrated that there is a case for alternative development. To comply with EG 3(2), it must be demonstrated that:-
- (a) Sustainable development objectives (set out in MP 1, SD 1 and SD 2) are met; and
  - (b) all opportunities to incorporate an element of employment development as a part of a mixed use scheme must be explored. This is a clear mandatory policy requirement.
- 6.49 It is not sufficient, therefore, for CPG or Orbit to provide viability appraisals and marketing of simple employment schemes. To comply with the policy, there must be viability and market testing of mixed use schemes, which include an element of employment use. In the absence of such evidence, there is a conflict with the policy.
- 6.50 Policy EG 3(3) does not contain any specific development control policy tests but it does protect sites subject to regular review to ensure that such allocations are:- making a practical contribution to maintaining an adequate and flexible supply to meet the objectively assessed need (etc.); and (ii) not being protected unnecessarily so that they can meet other needs (if appropriate). As the CELPS has only just been adopted, there is no requirement to review the Plan as yet.
- 6.51 It is beyond dispute, therefore, that:-
- (a) the policy is directed towards the site rather than 'premises' on the site;
  - (b) if the site is suitable and viable for employment use – there is conflict with the policy;
  - (c) if there is potential for alternate employment uses on the site – there is conflict with the policy;



- (d) if other occupiers of the site can be found – there is conflict with the policy; and
  - (e) if all opportunities to incorporate an element of employment development as part of a mixed use scheme have not been demonstrated – there is conflict with the policy.
- 6.52 Both CPG and Orbit contend that employment redevelopment of their sites is unviable. That is strongly contested by Peel. Neither CPG nor Orbit contest that their sites are '*suitable*' for employment development given their status. There is, therefore, conflict with EG 3(1)(ii).
- 6.53 Peel, unlike CEC's case, does not argue that there is potential for modernisation of the Orbit warehouse; but it does submit that there is an alternate employment use of both the CPG and the Orbit sites. There is, therefore, conflict with EG 3(1)(ii)(a).
- 6.54 Even taking both CPG's and Orbit's evidence at its unqualified highest, both have failed to demonstrate no other occupiers can be found. Neither CPG nor Orbit has undertaken marketing of the site at a realistic price reflecting its employment status for not less than 2 years. Nor have they provided evidence that a proper marketing exercise has been carried out, including a record of all offers and expressions of interest received. The evidence demonstrates a total failure to comply Policy EG 3(1)(ii)(b)).
- 6.55 Finally, neither CPG nor Orbit can demonstrate that all opportunities have been explored to incorporate an element of employment development as part of a mixed use scheme (contrary to EG 3(2)).
- 6.56 It is in this context that CPG's Planning Policy witness' interpretation of policy must be considered in that it was asserted that EG 3 expressly distinguishes between EG 3(1) and (2), which apply to '*existing*' employment sites, and EG (3) which applies to '*allocated*' employment sites. Such an interpretation of the policy is fundamentally flawed because:-
- (a) the correct interpretation has been set out above;
  - (b) this is not the interpretation applied by CEC in the application of its own policy;
  - (c) this is not an interpretation favoured by Orbit, even though it would favour its case;
  - (d) CPG's witness conceded that the same (or similar) version of Footnote 43 had been in existence in a draft policy since May 2014, predating the Phase 3 application;
  - (e) CPG's witness' proof of evidence made no reference to EG 3(1) and (2) being of no application to the CPG site. Rather, it sets out the criteria which are '*central*' to the determination and refers to points in EG 3(1) and (2). He specifically referred to Footnote 43 as a '*requirement*' of the policy;<sup>528</sup> and his subsequent oral evidence and interpretation of the policy diverged from his original stance;

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<sup>528</sup> CPG/6/2 paragraphs 4.22-4.24, 4.45, 4.51

- (f) CPG's witness' rebuttal did not suggest that either EG 3(1) and (2) do not apply to the CPG site; nor was the point raised in CPG's Opening Submissions as a fundamental change in its longstanding position;
- (g) the same witness conceded that he had this "*epiphany*" during the first 2 weeks of the Inquiry; which could only be explained as a position borne of desperation, after CPG's and CEC's evidence on marketing and viability crumbled under examination;
- (h) distinguishing EG 3(1) and (2) from (3) is inconsistent with the wording of the heading and the reasoned justification at paragraph 11.24, which makes it clear that the policy applies to '*all sites currently in use for employment purposes*'. The witness conceded that it could not be clearer that the policy was applying to both sites in use and allocated sites yet to be in use;
- (i) EG 3(1) applies to '*existing*' employment sites:- CPG's witness conceded that '*existing*' means '*current*'; and that '*employment sites*' and '*employment land*' are the same. The definition of '*Employment land*' in the glossary, B1, B2 or B8 uses<sup>529</sup> does not refer to land in active use. It was further conceded that the CPG site is an allocated site; and it is, therefore, '*identified*' for B1, B2 or B8 uses. On this basis, it is unanswerably existing employment land (or site) to which EG 3(1) applies. Indeed, the CPG site is specifically identified as '*Existing Employment Area*' on the proposals map of the MBLP;
- (j) CPG's witness' central point was that the CPG site is vacant and has never been part of the employment land supply. That is factually inaccurate, so far as the development plan is concerned.<sup>530</sup> The CPG site (for the purposes of the CELPS read as a whole) does form part of the employment land supply;
- (k) ultimately, it was conceded that the CPG site is an employment site so far as EG 3 is concerned;
- (l) similarly, it was accepted that, reading the policy as a whole, allocated employment sites are existing employment sites (for the purposes of EG 3(1));
- (m) if EG 3(3) is read in isolation from the other parts of the policy, it is inconsistent with paragraph 22 of the Framework because it provides a blanket protection;<sup>531</sup>
- (n) it is to be noted that EG 3(3) makes no reference to the viability or marketing exceptions or to any requirement to assess a mix of employment uses. Although CPG's witness argued that it may be reasonable for the decision maker to import '*those bits*' into the application of EG 3(3) in respect of allocated sites, the disaggregation of the policy in this way makes no sense. The approach of seeking to only import the exception for viability, without the requirement for market testing and consideration of mixed use schemes was contrived in that it sought to allow an exception, whilst excising that part of the policy with which there was clear and obvious conflict, given the absence of adequate marketing for 2 years; and
- (o) CPG's witness conceded that his new approach would provide allocated sites with less protection than existing sites. Given that such sites had recently

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<sup>529</sup> CD J1.8 page 391

<sup>530</sup> CD J1.8 Table A.7 (page 405) sets out the employment land supply at 31/3/13. 6 ha (of the 9.72 ha) comprises the CPG site. Paragraph A.5 (page 404) explains that the employment land supply includes *inter alia* 'existing employment allocations'

<sup>531</sup> it is acknowledged that this was not the answer given by PEEL's witness – however, it is submitted, on an objective legal analysis, the answer must be wrong

been found sound and allocated to meet the acute need, he could provide no rationale for such a counter-intuitive approach.

- 6.57 In all the circumstances, CPG's approach to policy EG 3 is properly characterised as unlawful and absurd. It is a contrived approach, conceived at the eleventh hour to seek to avoid the clear evidential failings in its case.
- 6.58 Finally, Orbit suggested that Footnote 43 does not form part of the policy (as it is a footnote). That is not a point which is explained in evidence; no authority has been provided for it; and, Orbit's planning evidence fails to make any reference to Footnote 43 at all. First consideration of the footnote arose in evidence in chief,<sup>532</sup> with a concession that there was a breach of the policy. In turn, it was agreed that there was conflict with EG 3(1)(ii)(b), albeit "*technical*", because compliant marketing would have demonstrated the absence of interest. It is beyond dispute, therefore, that Orbit accepts fully that Footnote 43 applies. Indeed, this was the basis for the concession that there was conflict with the policy.
- 6.59 In all the circumstances, therefore, a failure to comply with any part of policy EG 3 constitutes a substantial failure to comply with the policy in the round and in turn with the development plan as a whole.

**Application of the Tilted Balance**

- 6.60 The planning witnesses for both CPG and Orbit contended that the tilted balance of CELPS Policy MP1 and Framework paragraph 14 apply, on the basis that saved Policy E2 is out of date.<sup>533</sup> This approach is flawed (as was conceded by Orbit's witness).
- 6.61 In contrast to Policy E2, it is common ground that:-
- (a) neither CPG nor Orbit objected to either the detailed wording of Policy EG 3 or Footnote 43;
  - (b) Policy EG 3 was found sound after an independent examination in public;
  - (c) Policy EG 3 is consistent with national policy (especially Framework paragraph 22);
  - (d) it does not provide a total prohibition on retail development on employment sites; and
  - (e) full weight can attach to it.
- 6.62 It is agreed that saved Policy E2 and Policy EG 3 are inconsistent; and that the conflict must be resolved in favour of the latter. CPG's witness conceded that policy E2 "*adds nothing*" to policy EG 3; and Orbit's counterpart conceded that "*E2 is of no material relevance*". Thus, it would be absurd to apply the tilted balance in preference to EG 3 when the CELPS is up-to-date, sound and consistent with national policy, simply because a saved Policy in a time-expired 2004 plan is out of date, when section 38(5) requires the latter development plan document to be applied.

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<sup>532</sup> ORB/INQ/021

<sup>533</sup> CPG/6/2 paragraphs 4.86-4.87; ORB/1/2 paragraph 5.2(ii)

6.63 Further or alternatively, the tilted balance is dis-applied in this case because it is displaced by policies of restriction. CPG's witness expressly conceded that Framework paragraphs 24-27 were policies of restriction for the purposes of paragraph 14 and CELPS Policy MP 1.

6.64 On the agreed evidence, the tilted balance cannot be engaged.

**Retail Policies**

6.65 The retail policies of the CELPS postdate both the Framework and Planning Practice Guidance. The CELPS is fully supportive of the Government's aims to promote the vitality and viability of town and other centres as important places for communities. The towns of Cheshire East are key drivers in the borough's economic prosperity and the focus will be on the continued development of the town centres as commercial, retail, visitor and leisure hubs.<sup>534</sup>

6.66 Policy EG 5 is consistent with Framework paragraphs 23-27. Accordingly, where there is conflict with its sequential test and/or impact tests, there is also a conflict with the development plan. In such circumstances, there is a strong presumption that planning permission should be refused.

6.67 The SMBC UDP and Core Strategy<sup>535</sup> seek to maintain and enhance the vitality and viability of Stockport town centre. Handforth Dean is located closer to Stockport than to Macclesfield and, self-evidently, the development plan of the adjacent authority is a material consideration of very significant weight.

**Viability - CPG**

6.68 CPG's case is that its site is an appropriate site for employment use:-

- (a) it has been a longstanding allocation;
- (b) it was described in the Employment Land Review (2012) as an attractive employment site;
- (c) it has been recently allocated by CEC, in the teeth of the disposal process;
- (d) it has good prominence to the A34;
- (e) it was marketed by CEC for uses, which included employment;
- (f) there have been expressions and interest for employment development in each of the 3 short marketing periods;
- (g) it lies adjacent to existing employment uses;
- (h) there is no conceivable conflict between employment use on the site and any adjacent retail uses;<sup>536</sup>
- (i) the Deloitte report commends its location for employment uses;
- (j) the Council considers it to be a very favourable location;<sup>537</sup>
- (k) the Head of Planning Strategy considers Orbit to be a favourable location, so CPG must be more so; and

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<sup>534</sup> CD J1.8 paragraphs 11.36-11.37

<sup>535</sup> CD J1.13 Policies CS 6 & CS 11

<sup>536</sup> the Next development made a section 106 contribution to facilitate employment development on the CPG site

<sup>537</sup> CD E1.1 paragraph 1.3; CD E1.10 text and Appendix 4

- (l) each and every marketing report on the site has praised the connections to the surrounding catchment and motorway network.

There can be no doubt that this is an attractive employment site.

6.69 Peel's case is that the CPG site is extremely suitable for the development of a small to medium size unit scheme i.e. employment units from 2,500 to 80,000 sq ft. This is a different market to big box development in the south of the borough. It is common ground that there is a market for such a development in this area. In this regard:-

- (a) Peel's commercial property witness has marketed Parkgate in Knutsford with "very strong interest";
- (b) Parkgate is the only such site available in the north of the borough;<sup>538</sup>
- (c) the Aurora development in Stockport has been very successful and was let 75% on practical completion;<sup>539</sup>
- (d) the demand for such units is also confirmed by CEC's evidence of 'clear demand for industrial premises in the north';<sup>540</sup> and
- (e) CPG's commercial property witness did not contest such evidence. Rather, he expressly conceded that: "I don't deny that the market is buoyant; there are lots of enquiries out there". This will only improve on completion of A6MARR.

6.70 Peel has worked with Bate and Taylor architects to prepare a number of realistic development options that could be delivered speculatively. The options are indicative only and are not exhaustive. They robustly demonstrate that a scheme is viable and fundable.<sup>541</sup> By contrast, CPG's appraisals are simply not commercial and appear designed to be unviable:-

- (a) contrary to CELPS Policy EG 3(2) no assessment is made of a mix of uses (beyond a mix with trade uses). This does not assess all reasonable development options for employment;
- (b) CPG assumes a floorspace of 166,000 sq ft whereas Bate and Taylor draw 213,500 sq ft (5% office content across the whole scheme), in line with other speculative schemes in the north-west. The additional 28% floorspace demonstrates that CPG was not trying to construct a viable test scheme;
- (c) Although 40% site coverage is an institutional standard, it is not a cut-off and the real issue of substance is whether scheme would be fundable;
- (d) CPG's restricted floorspace/density/site coverage is based on a requirement for 'flagship employment uses'.<sup>542</sup> However, there is no such policy requirement and CELPS Policy EG 3(1) and (2) require all options to be considered;
- (e) Engine of the North's Planning Appraisal and Strategy Report<sup>543</sup> notes:- 'we were advised that there would be no great sensitivity in terms of the scale of the development'; and '.....scheme design would likely be guided by the functionality of the proposed uses .....'. It is clear that the 'flagship' reference was to office use; and CPG's witness conceded the difference between the schemes was attributable to the 'flagship requirement' and enhanced

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<sup>538</sup> PEEL/3/1 paragraph 9.4

<sup>539</sup> PEEL/3/2 Appendix GE 5

<sup>540</sup> CEC/2/2 paragraph 8.21; Appendix 14-17

<sup>541</sup> PEEL/3/1 paragraph 9.5; PEEL/3/2 Appendix GE 10-13

<sup>542</sup> CPG/INQ/030

<sup>543</sup> CD E1.10 paragraph 5.34; Appendix 4

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landscaping. Accordingly, CPG's assessment fails to demonstrate that a scheme is not viable;

- (f) CPG's flagship scheme leaves significant areas outside the developable areas with very significant landscaping strips and boulevards. However, the approach is contradictory in that in highlighting prominence as the best feature of the site the scheme provides a very significant planting strip along the boundary on the assertion of its sensitivity,<sup>544</sup> contrary to CEC's position and common sense.<sup>545</sup> Further, it is an up-to-date allocation for B2 and B8 uses to meet the northern market, which is agreed to be small-medium units;
- (g) On yield, Peel assumes 6%; CPG has variously assumed 6.5% (in the application appraisal) and 5.75% (in the proof). There is no issue on this point;
- (h) CPG's build costs (£60-70 sq ft) reflect a flagship scheme and are inflated by £830,000; whereas Peel's costs (£50-55 sq ft) are indicative of a standard employment scheme, which the market seeks;
- (i) In terms of abnormals, CPG allows £500,000 for a substation compared to Peel's precautionary £165,000. Further, no account has been taken of money which should be available from the Next planning obligation;
- (j) CPG assumes £1.079m for piling based on the experience of the Next development. However, the relevant reports demonstrate that there is no requirement for piling;<sup>546</sup> and piling would not be necessary to achieve institutional floor loadings;
- (k) Although there is no reported risk of radioactive remnants (Radman Protocol), CPG has unnecessarily assumed £200,000;<sup>547</sup>
- (l) Peel's assessment of rents is corroborated by the recent relevant experience of Aurora;<sup>548</sup> and
- (m) the land value will reflect the planning policy and should be reduced to reflect abnormals.

6.71 It follows that CPG's appraisal is unreliably inflated at every stage of the assessment and has thus failed to meet the exception in EG 3(1) and (2). Further, Peel's case is robust and it shows that a scheme is viable.

6.72 Although CPG sought to criticise Peel's scheme, the points have been answered.<sup>549</sup> Ultimately, the position is, as CPG's witness accepted:-

- (a) Peel's commercial witness is a competent professional;
- (b) he is active in the market;
- (c) he is competent to express a view on build costs based on his regular dealings with appraisals and advice to clients on comparable schemes in the local area;
- (d) Peel has significant development experience and endorse this scheme and his appraisals; and
- (e) bids were made on the CPG site on the assumption such developments were considered by developers to be viable.

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<sup>544</sup> CPG/1/4 paragraph 44

<sup>545</sup> CD E1.10

<sup>546</sup> CD B1.9; PEEL/3/1 page 36; PEEL/3/2 Appendix GE 25

<sup>547</sup> PEEL/3/3 Appendix 1; CD B1.9

<sup>548</sup> PEEL/INQ/009

<sup>549</sup> CPG/INQ/030; PEEL/INQ/004; PEEL/INQ/009



6.73 Peel's evidence robustly demonstrates a clear conflict with Policy EG 3. Putting CPG's case at its highest, there is a disagreement over scheme layout and the inputs into a viability appraisal. However, the policy seeks to avoid such a situation by requiring market testing of viability, so that such matters can be resolved by evidence from the market as opposed to theoretical appraisals. In the absence of such robust evidence, permission must be refused.

**Marketing**

6.74 Neither CEC nor CPG were able to field a witness who had been engaged in the marketing process; and marketing evidence was provided by non-marketing specialists. Accordingly, this issue must be resolved based on an examination of the available documents and reliance is placed on four discrete periods of marketing.

**(i) 1997-1998**

6.75 Marketing of the site, in 1995, in relation to proposals for a large mixed use development was considered at a Public Inquiry in 1997.<sup>550</sup> The Inspector gave the marketing exercise limited weight;<sup>551</sup> no details of the process are known; and, with the passage of time, no conceivable weight can be attached to it now.

**(ii) Short-term Lets (2010)**

6.76 The site was vacated in June 2010 and marketed on a short term let basis. Nobody provides any details of the nature of the marketing, the period of marketing, the terms or the uses. It is known that there was limited interest for a short term lease and regular enquiries had been received for the freehold but no further details are provided.<sup>552</sup>

6.77 CEC's witness accepted that this limited marketing nonetheless demonstrated interest in the site for employment use; and there is no evidence that any expressed interest in the freehold was pursued by the Council. This exercise cannot be relied on as evidence of compliance with Policy EG 3. Rather, it supports the point that there was interest in the freehold (even though it was not marketed in that manner).

**(iii) Soft market testing (2012)**

6.78 Soft market testing was undertaken in a 6 week period from March 2012 to establish likely demand.<sup>553</sup> The advertisement invited expressions of interest for a 125 year ground lease for the whole or serviced plots by 6 April 2012 to the Council's disposals team. CEC received more than 20 expressions of interest of which 10 were fully compliant with the planning designation - CEC considered this to be '*strong interest*'.<sup>554</sup> However, in the subsequent report, 9 months later, there is nothing to suggest that the Council had done anything to progress such strong interest. CEC's witness accepted that the exercise did not satisfy the policy and did not constitute

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<sup>550</sup> CPG/3/4 paragraphs 2.2-2.4; CPG/3/5 Appendix 1

<sup>551</sup> CPG/3/5 Appendix 1 IR 13.12

<sup>552</sup> CEC/2/3 Appendix 4

<sup>553</sup> CEC/2/3 Appendix 5

<sup>554</sup> CEC/2/3 Appendix 5 paragraphs 1.3, 10.4; CEC/2/2 paragraph 11.2

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the absence of interest in the site. Rather, it supports the proposition that there was interest in employment development of the CPG site, which is attractive to the market.

**(iv) Market testing (2014)**

- 6.79 This period of marketing postdates the Deloitte's Options Appraisal Final Report (August 2013).<sup>555</sup> CEC agreed that no weight could attach to the report's conclusions on viability, when: (i) the assessments were not before the Inquiry; (ii) it is not known which options were tested; (iii) the inputs into the assessment are not apparent; and (iv) the evidence cannot be known (much less tested).
- 6.80 Engine of the North's brief was to accelerate the disposal of the site whilst maximising capital receipts.<sup>556</sup> CEC confirmed that maximising receipts was not an approach consistent with CELPS Policy EG 3. The Council's resolution of 4 March 2014 was to:<sup>557</sup>
1. *'..... to dispose of the Council's landholding at Earl Road, Handforth ..... to maximise capital receipts and deliver jobs on an accelerated timescale;*
  2. *disposal be approved for potential land uses including employment, retail, leisure and sui generis use such as car showrooms'.*
- 6.81 As was expressly conceded, CEC resolved to dispose of the site as quickly as possible for as much money as possible and all uses would be marketed. This is the antithesis of the approach required by EG 3 and the policy conflict could not be clearer.
- 6.82 The marketing brochure<sup>558</sup> demonstrates that marketing of this site (which had been vacant, and absent marketing, for 10 years) began on 19 May 2014; and offers were required 6 weeks later on 27 June 2014. CEC again expressly conceded that this did not comply with the requirements of EG 3.
- 6.83 Indeed, the site was marketed for a wide range of uses, including retail, with a heavy bias towards the latter to maximise capital receipt. It was not a marketing exercise which reflected its employment status. Indeed, CEC's witness conceded that the CPG site (excluding Next) had never been marketed at all; and, reading the brochure as a whole, left the impression that retail would have to be included in any offer for the whole of the site. This is a clear conflict with policy.
- 6.84 The marketing report refers to the CBRE Planning Appraisal and Strategy Report for Engine of the North which makes it abundantly plain that retail would be favourably considered by the landowner council.<sup>559</sup> In addition, it appends CEC's Cabinet report which makes that point;<sup>560</sup> and addresses how retail policy tests could be met.<sup>561</sup> The marketing report is clearly directed towards retail redevelopment, consistent with CEC's resolution.

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<sup>555</sup> CEC/2/3 Appendix 7

<sup>556</sup> CEC/Appendix 6 paragraph 1.5

<sup>557</sup> CD E1.8

<sup>558</sup> PEEL/3/2 Appendix 9

<sup>559</sup> CD E1.10 paragraphs 4.68-4.70

<sup>560</sup> CD E1.10 Appendix III

<sup>561</sup> CD E1.10 paragraphs 5.22-5.30

- 6.85 There is no transparent record of offers received, contrary to CELPS Policy EG 3. It is known that 53 offers were received:- one for entirely employment use; and 6 had part employment use. This is testimony of interest from employment occupiers. However, the identity of the parties making offers is not known; and it is not known what offers would have been made, if the required 2 year marketing period for employment uses alone had been undertaken.
- 6.86 The whole purpose of the policy is to test the market and that was not fulfilled and it cannot be said that no further interest would have been generated for employment use or a mix of employment use if the marketing had been undertaken for longer than 6 weeks. On the contrary, it is beyond doubt that there would have been strong developer interest for small-medium unit schemes, had the site been marketed in accordance with the policy.
- 6.87 Thereafter, CPG's evidence focuses on the bidding process rather than marketing and it is obvious that retail bids would have been higher than employment bids. Although it was claimed that no party was dissuaded from bidding, on the basis of use or price, speculative employment developers would have known that they could not compete with higher value retail uses (and would not waste their time by engaging in a retail bidding process).
- 6.88 Overall, this amounts to a clear failure to comply with Policy EG 3. Indeed, CEC's witness conceded that if Orbit had undertaken such a marketing process, there would have been a conflict with policy – CEC's position is inherently contradictory.

**Viability - Orbit**

- 6.89 There can be no doubt that the Orbit site is an appropriate site for employment redevelopment and Orbit does not seek to argue the contrary. Further, for the reasons given above, it is agreed that there is a '*buoyant market*' for small-medium units.
- 6.90 Again, there is a professional disagreement over the viability of the redevelopment of the Orbit site.<sup>562</sup> Peel's appraisal shows a profit on cost of 15.65%, based on a footprint of 63,000 sq ft (site coverage 40% and 10% first floor office content); and a very robust 12 month void period is assumed. Taking Orbit's rent of £7.50 sq ft and reducing the letting period to 9 months, the profit on costs would be 21.32%. This could be further increased by higher end uses, such as retail or trade counters, which need to be considered to comply with EG 3 (and are not addressed by Orbit).
- 6.91 In short, Peel has demonstrated there is a viable redevelopment of the Orbit site. Orbit has not provided policy compliant market testing to demonstrate absence of such a prospect.

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<sup>562</sup> PEEL/INQ/005; ORB/INQ/010

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**Marketing - Orbit**

- 6.92 Orbit forms part of the Emerson Group which owns some 13.4 ha of land and over 0.5 million sq ft of buildings within the Earl Road/Epsom Avenue/Stanley Green area;<sup>563</sup> and Peel is also a significant local landowner. Orbit's views of the market should not be afforded any greater weight than Peel's. In any event, Orbit '*..... is a developer investor and not a developer trader and therefore retains its developments .....*'.<sup>564</sup>
- 6.93 The first Orbit application was submitted in December 2014.<sup>565</sup> At that point in time, the examination of the CELPS had been deferred. Orbit afforded draft Policy EG 3 '*little weight*';<sup>566</sup> and regard was had to Framework paragraph 22 and the planning permission for Next in which there had been no requirement for marketing; and the Committee Report referred to a significant oversupply of employment land based on the 2012 Employment Land Review.<sup>567</sup> Orbit did not, therefore, undertake the required marketing prior to submission because the planning policy and employment land supply position were significantly different.
- 6.94 Peel makes no case that an office occupier could be found for the Orbit site. Although Policy EG 3 requires marketing of the site at a realistic price reflecting its employment status for a period of not less than 2 years, it is significant that Orbit concedes:-
- (a) there has never been any marketing of the freehold interest of the site for any use (and certainly no employment use);
  - (b) there has never been any marketing of the leasehold interest of the site for employment use (save B1 offices);
  - (c) the site has never been marketed as an opportunity for employment redevelopment (save B1 offices); and
  - (d) the site has never been marketed as an opportunity for an employment redevelopment as part of a mixed use development.
- 6.95 In such circumstances it must be concluded that:-
- (a) Orbit has failed to market the site reflecting its employment status;
  - (b) Orbit has failed to market the site for a realistic price reflecting its employment status;
  - (c) a '*proper marketing exercise*' has not been carried out;
  - (d) the speculative developer market has not been tested at all;
  - (e) Orbit cannot demonstrate that no other occupiers can be found;
  - (f) Orbit has failed to comply with the individual requirements of Footnote 43;
  - (g) there is a clear conflict with EG 3(1)(ii)(b);
  - (h) Orbit has not explored all opportunities to incorporate an element of employment use as part of a mixed use scheme, contrary to EG 3(2); and

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<sup>563</sup> ORB/1/3 Appendix 1

<sup>564</sup> ORB/3/3

<sup>565</sup> CD A1.1

<sup>566</sup> CD A1.7 paragraphs 4.5-4.6

<sup>567</sup> CD A1.7 paragraph 5.6

(i) there is a conflict with CELPS Policy EG 3.<sup>568</sup>

6.96 In light of such an obvious conflict with the up-to-date development plan, Orbit sought to argue that:-

- (a) CEC had not asked for a marketing exercise to be undertaken (but that is not the same as being told that no marketing was required). In any event, the adoption of CELPS post-dates the refusal of the application amounting to a material change in circumstance; Footnote 43 explains how to meet the requirements of EG 3(1); and, as the Committee Report refers to the absence of marketing,<sup>569</sup> Orbit has known since at least May 2017 that CEC considered its marketing to be inadequate (and nothing thereafter has been done);
- (b) if there was a market for an employment redevelopment, Orbit would have undertaken it. However, a letter from Emerson suggests that a retail redevelopment was progressed because marketing of the site for office had failed and the character of the area was changing to retail.<sup>570</sup> This suggests that after the failure of the office scheme, Orbit resolved to seek a more valuable retail permission, rather than actively considering, pursuing and dismissing an employment redevelopment;
- (c) from its own marketing for office development and its experience in the market, Orbit would have been aware of any interest for employment redevelopment. However, self-certification, rather than proper marketing, would not accord with the policy; and, in any event, since 2014, the site had been actively promoted for retail redevelopment with the warehouse beneficially occupied pending the determination of the retail application. Further, the market knows Orbit as an investor which retains the freehold/long leasehold of sites, thereby inhibiting speculative interest; and
- (d) the site is not attractive to the market given its location. However Orbit's own marketing evidence specifically highlights the accessibility of the location, in common other marketing brochures.<sup>571</sup> Whilst it was claimed that a location closer to the M60 was preferable, in order to avoid peak hours congestion on the A34, proximity to the motorway is not a determining factor in the location decisions of small-medium occupiers. In any event, congestion on the A34 is a consequence of traffic backing up from the M60.

6.97 Further, Orbit's reliance on the absence of lettings in the local area rests solely on the leasehold offer of Unit 4 Brooke Park.<sup>572</sup> There is no comparable evidence of any freehold offer within the last 2 years which would have enabled a speculative developer to develop a scheme of small-medium units. Moreover, Orbit acknowledges the market to be 'buoyant', with considerable occupier demand in the small-medium market, resulting in professionals asking for new stock.<sup>573</sup>

6.98 There is, therefore, a clear conflict with CELPS Policy EG 3; and retail development would be contrary to the spatial strategy of the plan, which places a high priority on the need for employment land in the north of the borough. This amounts to conflict with the development plan as a whole.

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<sup>568</sup> ORB/INQ/021

<sup>569</sup> CD E1.1 page 116

<sup>570</sup> ORB/1/3 Appendix 1

<sup>571</sup> ORB/1/3 Appendix 8 (especially page 215)

<sup>572</sup> ORB/3/2 Appendix 7

<sup>573</sup> ORB/3/2 Appendix 9 (especially the Industrial and Distribution extract)

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**Retail****Status of the Peel Centre**

- 6.99 The Stockport UDP was adopted in May 2006;<sup>574</sup> and significantly pre-dates the Framework. The Peel Centre lies in area TCG 2.2, immediately adjacent to area TCG 2.1 (the Central Shopping Area) which should be given priority for new retail development. It is said that the key anchors for this area should continue to be its department stores and key multiples and the Central Shopping Area should be regarded as the '*town centre*' for the purposes of the now superseded PPS6.<sup>575</sup>
- 6.100 Policy TCG 2.2 covers the Great Portwood Street Area, where particular support is given for large-unit non-food retail uses that cannot be accommodated in the Central Shopping Area. Links between the two areas are recognised to be critical to any development in TCG 2.2. It has a complementary function to the Central Shopping Area by meeting the demand for larger retail formats, maintaining and enhancing the vitality and viability of the town centre and neutralising the threat of out of centre shopping. TCG 2.2 is the most preferred retail area after the Central Shopping Area.<sup>576</sup>
- 6.101 The SMBC Core Strategy DPD was adopted in March 2011. Although the town centre is not precisely defined,<sup>577</sup> it is evident that the Peel Centre lies within a secondary retail area within the town centre as described. Although it was intended that an Allocations DPD would provide greater policy detail and would define the Core Retail Area, no such document has been produced. The matter of identifying the Core Retail Area falls to be considered as it is contested by CPG (but not by Orbit).
- 6.102 The Framework defines a '*town centre*' by reference to the primary shopping area which is defined with reference to the primary and secondary shopping frontages. CPG's planning and retail witness conceded that where there was a high proportion of retail uses, which may include food, drinks, clothing and household goods, a site would fall within the primary shopping frontage of the primary shopping area.
- 6.103 In the light of the relevant definitions in the Framework, it is important to consider CPG's expert retail and leisure evidence that:-
- (a) the profile and tenant line-up of the Peel Centre has extended the '*prime pitch*';<sup>578</sup>
  - (b) the Peel Centre is part of the '*prime shopping frontage*' of the town centre;<sup>579</sup> and
  - (c) there is a continuous frontage of '*prime retail property*' of 1.2km including the Peel Centre.<sup>580</sup>

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<sup>574</sup> CD J1.13

<sup>575</sup> CD J1.13 paragraphs 19.31, 19.36

<sup>576</sup> CD J1.13 paragraph 19.37; 19.42-19.44

<sup>577</sup> CD J1.12 paragraph 3.514

<sup>578</sup> CPG/2/2 paragraph 5.28

<sup>579</sup> CPG/2/4 page 38 point (v)

<sup>580</sup> CPG/2/4 paragraph 5.16



- 6.104 Thus, the Peel Centre forms part of the Primary Shopping Frontage in the Primary Shopping Area, applying CPG's evidence to the Framework's definitions. CPG's planning and retail witness, albeit maintaining that the Peel Centre was not part of the town centre (applying greater weight to the UDP 2006) conceded that if the primary shopping frontage was drawn today, it would include the Peel Centre.
- 6.105 Both the CPG proposals and the Orbit scheme must therefore be determined on the basis that the Peel Centre forms part of the Primary Shopping Frontage of the Primary Shopping Area, applying the Framework.

**Sequential Test**

- 6.106 The application of the sequential test requires that the out of centre Orbit scheme should only be allowed if sequentially preferable sites are not available. The evidential burden rests with the appellant. The following aspects of the sequential test are agreed with Orbit:-
- (a) there is an expectation that a retail developer has given consideration to the scope for accommodating the development in a different form;<sup>581</sup>
  - (b) consideration must be given to whether, given a reasonable degree of flexibility, a potential alternative site can accommodate the development proposed and not some alternative scheme that is materially different in 'purpose' or in disaggregated form;
  - (c) the degree of flexibility must be material;
  - (d) the Inspector in the Rushden Lakes appeal considered that there should be flexibility of business model, car parking requirements, servicing solutions and a willingness to depart from standard formats;<sup>582</sup>
  - (e) in the Tollgate decision both the Inspector and Secretary of State used the expression '*closely similar*'. This is not a policy test and is not prescriptive;<sup>583</sup>
  - (f) the bounds to be set on preference and intentions as to format and scale will always and necessarily depend on the facts and circumstances of the case; and
  - (g) there is no basis for concluding that '*closely similar*' should be read restrictively - rather, it must be applied with flexibility.
- 6.107 There is no material issue between Peel and Orbit on the interpretation of the sequential test. The issue is on the application of the test to Peel centre Unit 6. At the close of the Inquiry Unit 6 was unoccupied and available. As Orbit provides no evidence regarding viability, the issue is narrowed to that of suitability.
- 6.108 It is common ground that the application of the sequential test requires the exercise of a subjective judgment. However, it is a subjective judgment which can be expressed against objective criteria. Peel and Orbit identify broadly similar criteria.<sup>584</sup>

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<sup>581</sup> ORB/1/3 Appendix 2 paragraph 29 (per Lord Reed in *Tesco v Dundee*)

<sup>582</sup> ORB/1/3 Appendix 3 IR 8.49 (endorsed by the SoS in light of NPPG - DL 15)

<sup>583</sup> CD K1.4

<sup>584</sup> ORB/1/2 paragraph 6.20; PEEL/1/1 paragraph 4.21

- 6.109 The issue for the Secretary of State is whether, as a matter of judgment, Unit 6 is suitable applying flexibility to the criteria. Peel submits Unit 6 is clearly suitable:-
- (a) it is closely similar in scale - 89% floorspace;
  - (b) Orbit's 5 principal retail units could be accommodated in Unit 6; the omission of the 2 small flexible use units shows flexibility but additional units could be added into Unit 6, if required, to form a small A3/A5 use);
  - (c) the use is the same (or could be applying permitted development );
  - (d) the format is comparable (retail warehousing);<sup>585</sup>
  - (e) both are accessible;
  - (f) both have designated servicing;
  - (g) both have adjacent level car-parking;
  - (h) both benefit from adjacent retailers; and
  - (i) the evidence shows both are competing for the same occupiers.
- 6.110 In short, Unit 6 is a sequentially preferable site, applying flexibility to the format and scale of a proposal for which there is no fixed purpose for the proposed retail scheme. There is no identified need or retail deficiency which this proposal addresses. Rather, Orbit is seeking to optimise the amount of retail development which can be accommodated. It is an entirely speculative scheme.
- 6.111 Although Orbit was critical of the approved scheme to extend and reconfigure Unit 6 into smaller units,<sup>586</sup> concerns about unit sizes could be addressed by the flexibility inherent in condition 2 of the planning permission which provided for up to 5 units with limitations on minimum floor area.<sup>587</sup>
- 6.112 It was also agreed that the alleged conflict with fire and health and safety requirements was not explained; additional emergency exits could be provided if required; the scheme had been designed by an architect and it could be reasonably assumed that the architect was familiar with relevant legislation and regulations; and Peel is an experienced retail developer and landlord.
- 6.113 On this basis, there can be no material criticism of the approved scheme which was devised as a practical scheme to provide a contingency, in the event that Toys R Us down-sized and/or vacated. It was intended to be workable and attractive to the market – it was not a mere valuation exercise.<sup>588</sup>
- 6.114 Orbit, nonetheless asserts that Unit 6 would not be attractive to the market. However, the unit has been marketed; no prospective occupant has identified any deficiency with the planning permission; and none has explained why initial interest has evaporated. However, it is clear that, in

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<sup>585</sup> it is the format which is relevant and flexibility must be shown

<sup>586</sup> ORB/1/5 Appendix 6

<sup>587</sup> PEEL/1/2 Appendix 23

<sup>588</sup> PEEL/INQ/010

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light of the CPG and Orbit proposals, retailers do not want to commit until these schemes have been determined or to put such matters in writing to avoid prejudice to future discussions.<sup>589</sup>

- 6.115 Lastly, it is claimed that Unit 6 lacks prominence. However, 3 units would face Great Portwood Street, the main access and the M60, as part of the established prime shopping frontage of Stockport. One further unit would have a projecting entrance facing the same way. The remaining unit would face an open area, through which cars and pedestrians pass from the south-east entrance (St Mary's Way) and from SCS, Dunelm etc. The units are on a major thoroughfare and surrounded on all sides by the Peel Centre.
- 6.116 The proposition that the units are not commercially attractive is risible in that there has been market interest and the unit compares far more favourably than the location of the Orbit site which is located at the end of a long cul-de-sac through Stanley Park; visibility from Earl Road is heavily restricted by Stanley Court Offices and existing vegetation; the front of the proposed units would not be visible from Epsom Avenue; and the Next store heavily obscures the site from the Handforth Dean retail park. Moreover, there is very little passing trade from Epsom Avenue. The prominence is very poor and, by comparison, Unit 6 is considerably better and eminently suitable.
- 6.117 Overall, Unit 6 (as reconfigured) would be sequentially preferable. Conflict with paragraphs 24 and 27 of the Framework indicate that permission should be refused on this aspect alone.

### **Retail Impact**

#### **Policy Background**

- 6.118 The Framework, in common with the development plans of SMBC and CEC, seeks to recognise town centres as the heart of their communities and to pursue policies which support their vitality and viability. It promotes competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres.<sup>590</sup>
- 6.119 When assessing applications for retail development outside of town centres, decision-makers should require an impact assessment, which should include an assessment of:-<sup>591</sup>
- (a) *'the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
  - (b) *the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.*

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<sup>589</sup> PEEL/2/1 paragraphs 6.30-6.33; PEEL/1/1 paragraphs 6.4-6.7

<sup>590</sup> Framework paragraph 23

<sup>591</sup> Framework paragraphs 26-27

(c) *Where an application is likely to have significant adverse impact on one or more of the above factors, it should be refused'.*

6.120 Planning Practice Guidance makes it clear that it is for the applicant developer to demonstrate compliance with the impact test:<sup>592</sup>

*'A judgment as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact'.*

6.121 Peel and Orbit agree that retail impact was a function of the health of the town centre; the extent of retailer demand; and the extent of trade diversion. However, neither Orbit nor CPG has assessed the extent of retailer demand and neither party's evidence forms a reliable basis on which it can be concluded that there is an acceptable retail impact.

**The Retail Market**

6.122 At the start of the Inquiry in January 2018, the evidence of CPG and Peel demonstrated that the retail market was (at best) bleak; and, at that point it had not been considered at all by Orbit.

6.123 The most vivid portrayal of the abject state of the retail market was provided by Chase and Partners' 2016 and 2017 Retail Reports:<sup>593</sup>

(a) *'The internet continues to make significant inroads into UK retail sales with customer footfall in town centres and shopping centres falling steadily. Internet sales are currently estimated at 16.8% but the true level may be closer to 25%'.<sup>594</sup>*

(b) *'In some cases, internet sales have destroyed sectors of the market such as videos, books and music but where retailers have adopted "omni shopping" techniques such as "click and collect", sales and profitability have improved. The important point is that the growth of internet sales which are predicted to reach up to 25% between 2020 and 2025 have created considerable uncertainty in the physical retailing sector'.<sup>595</sup>*

(c) The retail development pipeline of 8 million sq m (2006) had by 2009 been virtually extinguished and is no more (today) than 0.5 million sq m).<sup>596</sup>

(d) *'..... there remain relatively high void rates in shop/retail property stock ..... 12.4% in April 2016 .....this is still a high vacancy rate .....'.<sup>597</sup>*

(e) *'Occupational demand is key to the growth of a centre. Over the last 30 years multiple retailers have been changing their requirements, reducing the number of centres at which they will consider representation to about 75 .....'.<sup>598</sup>*

(f) *'..... shopper footfall shows an annual decline in April 2016 of -3.4% ..... with the greatest fall experienced in the high street and the lowest in shopping*

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<sup>592</sup> CD J1.10 paragraphs 15 & 17

<sup>593</sup> CPG/2/4 Appendix 4

<sup>594</sup> CPG/2/4 Appendix 4 (2016 Report) page 3 bullet 3

<sup>595</sup> CPG/2/4 Appendix 4 (2016 Report) page 3 bullet 4

<sup>596</sup> CPG/2/4 Appendix 4 (2016 Report) page 3 bullet 5

<sup>597</sup> CPG/2/4 Appendix 4 (2016 Report) page 4 bullet 5

<sup>598</sup> CPG/2/4 Appendix 4 (2016 Report) page 4 bullet 6

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*centres. This is a worrying trend for both owners and occupiers of physical retail accommodation .....'.<sup>599</sup>*

- (g) *'Internet trading is having an impact on the volume of shoppers in the High Street ..... [which is concerning as] sales are directly proportional to the number of potential shoppers passing by the shop front.'<sup>600</sup>*
- (h) *'In many parts of the country, rental levels are still 20% below peak levels and (in some cases) never recovered from the 40% fall which they encountered in 2008'.<sup>601</sup>*
- (i) *'Forecasting Economy Trickier than Ever'.<sup>602</sup>*
- (j) *'..... a very clear pattern of depressing activity in the High Street with pedestrian footfall continuing to fall quite dramatically, fewer retailers in the market for new shops, a regular pattern of shop closures and vacancy rates remaining high at 11.5%.<sup>603</sup>*
- (k) *'In many town centres including those that were traditionally strong have seen an increasing number of vacant units with ..... The amount of shops being taken up continues to be outpaced by the number of shops coming onto the market.....'.<sup>604</sup>*

6.124 Peel agrees with a number of points raised in CPG's Leisure and Property Market Update 2017:-<sup>605</sup>

- (a) *'Investors in retail property have narrowed their focus to prime property within a narrower band ..... and a location which ..... can dominate a catchment';<sup>606</sup> the phenomenon can be described as the 'flight to prime'. Handforth Dean is clearly such a prime location to which High Street occupiers would fly, given its locational advantages.*
- (b) This 'flight to prime' is totally inconsistent with the proposition that occupiers will dual trade between Stockport/Macclesfield town centres and Handforth Dean.
- (c) *'Tenants by contrast are seeking more flexible lease terms, advantageous rental agreements and are targeting the strongest locations and diverting their portfolios of secondary and poor performing stores'.<sup>607</sup>*
- (d) *'Market Uncertainty for both retail occupiers and investors in shop property does exist and is quite significant'.<sup>608</sup>*
- (e) *'..... the conditions affecting the occupation of commercial retail accommodation remain fragile, exaggerated in part by ..... the impact of internet shopping which has adversely affected footfalls in many centres and encouraged retailers to focus on fewer larger centres than in the past'.<sup>609</sup>*
- (f) *'Rental growth is now being reported in the principal UK shopping centres and the larger prime shopping malls ..... growth remains negative for secondary*

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<sup>599</sup> CPG/2/4 Appendix 4 (2016 Report) page 4 bullet 7

<sup>600</sup> CPG/2/4 Appendix 4 (2017 Report) page 7

<sup>601</sup> CPG/2/4 Appendix 4 (2016 Report) page 6

<sup>602</sup> CPG/2/4 Appendix 4 (2017 Report) Contents

<sup>603</sup> CPG/2/4 Appendix 4 (2017 Report) page 7

<sup>604</sup> CPG/2/4 Appendix 4 (2017 Report) page 8 paragraphs 6 & 7

<sup>605</sup> CPG/2/4 Appendix 5

<sup>606</sup> CPG/2/4 Appendix 5 paragraph 8

<sup>607</sup> CPG/2/4 Appendix 5 paragraph 8

<sup>608</sup> CPG/2/4 Appendix 5 paragraph 10

<sup>609</sup> CPG/2/4 Appendix 5 paragraph 11

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*shopping investments*'.<sup>610</sup> This is confirmed by the requirement for public sector funding into the Merseyway Shopping Centre and the absence of private sector investment in Stockport town centre.

(g) *'The result has been a cautious return to development of town centre shopping centres but at a relatively low level and where viability is usually a prohibiting factor*'.<sup>611</sup> However, Merseyway relies on public funding not requiring a commercial rate of return.

6.125 In general terms, the retail market may be cyclical. However, the identified issues are structural in nature and there is no evidence which supports any cause for optimism in the short to medium term. Rather, the evidence points to worsening problems, as the internet continues to take market share and shoppers away from the High Street.

6.126 The evidence, at January 2018, shows that the retail market for town centres was bleak and clearly material to any consideration of the existing and future health of Stockport and Macclesfield town centres.

#### **The Health of the Town Centres**

6.127 The Framework sets out a list of indicators which are relevant in assessing the health of town centres.<sup>612</sup> A complete and balanced consideration of the health of the town centre requires the consideration of all of the relevant indicators. However, the health checks undertaken by CPG and Orbit fail to consider commercial yields; retailers' intentions to change representation; and commercial rents.<sup>613</sup> Orbit also omits customers' views and behaviour; and the perception of safety and occurrence of crime. It follows that very little if any weight can attach to their assessments.

#### **(i) Stockport**

6.128 The health of Stockport town centre has been assessed in the Stockport Retail Study in 2014 and updated by Peel in accordance with the checklist set out in the Framework.<sup>614</sup> The conclusion reached is:-<sup>615</sup> *'The combination of a weak retail offer, with a high vacancy rate, is a clear sign that Stockport Town Centre is showing signs of poor health. Trade diversion from such a centre to an out of centre retail destination will self-evidently have a disproportionately adverse impact .....*'. Peel's health check was not the subject of challenge and full weight should attach to its conclusions (subject to the latest evidence addressed below).

6.129 The key indicator of the outward health of a town centre is the vacancy rate. In 2013, Stockport town centre had a vacancy rate of 24.6%, 12% higher than the national average; and in 2016, the vacancy rate remained 10.74% higher than the national average. The LDC assessment recorded the centre's vacancy rate as 24.1%, more than double the national average of 11.2% (based on October 2017 survey), when the national average itself is agreed to be 'high'. It also found that the Merseyway had

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<sup>610</sup> CPG/2/4 Appendix 5 paragraph 14

<sup>611</sup> CPG/2/4 Appendix 5 paragraph 15

<sup>612</sup> Framework paragraph 5

<sup>613</sup> CPG/4/3 Appendix 10; ORB/1/3 Appendix 12

<sup>614</sup> PEEL/1/2 Appendix 11-12

<sup>615</sup> PEEL/1/1 paragraphs 5.14-5.32



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a vacancy rate of 13.3%.<sup>616</sup> A further survey was undertaken on 5 February 2018.<sup>617</sup> All of the surveys clearly demonstrate that Stockport town centre has a high and persistent vacancy rate. It is a clear objective indicator of poor health.

- 6.130 More vacancies, as might be expected, appear outside of the Primary Shopping Frontage. It is not appropriate to exclude such vacancies from consideration or for development control decisions to supplant the development plan's support for a diverse and retail led town centre, in accordance with the Framework. Rather, the Framework requires an assessment of the vacancies across the whole of the town centre. It is also important to consider the latest position on vacancies and the direction of travel as described below.
- 6.131 Such weakness is further exhibited by prime retail zone A rents of £85 sq ft (approximately 55% below the pre-recession period). Whilst most centres suffered a fall of 40%, it is clear that Stockport town centre has fallen harder and for longer than other town centres.<sup>618</sup>
- 6.132 Further, yields are around 8%, which is higher than comparable centres, indicating Stockport is relatively weak.<sup>619</sup> A yield of 8% is significantly higher than what would be expected even for bulky goods retail parks (6.5%) or shop property yields for the secondary high street (7%).<sup>620</sup> This clearly evidences weak investor confidence, consistent with limited retailer demand; and it is further confirmed by SMBC having to invest public money in an attempt to rejuvenate the town centre. Indeed, this is a key point in that SMBC has invested considerable sums of public money into Stockport and it should be allowed to succeed, before any recovery is cut off by further speculative out of centre development.
- 6.133 There is limited (if any) positive evidence of retailer demand, save the ground floor letting of the former BHS store to Poundland for nil rent. This further confirms the weakness of the town centre which will clearly place pressure on rents and yields.
- 6.134 Both CPG and Orbit fail to explain how Stockport and Macclesfield can be considered to be healthy in light of such severe indicators of poor health. Furthermore, such evidence needs to be re-considered having regard to the latest evidence (post the January sessions).
- 6.135 This analysis is consistent with the analysis of WYG (for CEC) who consistently considered that Stockport town centre was a '*vulnerable centre*'.<sup>621</sup>

**(ii) Macclesfield**

- 6.136 Peel's health check of Macclesfield town centre<sup>622</sup> shows that the proportion of comparison goods retailers has fallen by 10% over an 11 year period; in

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<sup>616</sup> PEEL/1/2 Appendix 11

<sup>617</sup> SC/INQ/012 Appendix 4

<sup>618</sup> CPG/2/2 paragraph 5.35

<sup>619</sup> CPG/2/2 paragraph 5.37

<sup>620</sup> CPG/2/3 Appendix 4 (2017 Report) pages 30-31

<sup>621</sup> PEEL/1/1 paragraph 5.30; CD E2.1 page 14

<sup>622</sup> PEEL/1/2 Appendix 13-14

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- December 2017 the proportion of vacant units stood at 15.7% (an increase from 13.6% in 2015) some 4.5% above the national average. This suggests continuing decline in the town centre.
- 6.137 Crime rates are also higher in Macclesfield compared to Wilmslow and Wythenshawe; committed investment has largely not commenced (with the exception of works to the Grosvenor Centre); and out of centre developments including the allowed appeal decision at Barracks Mill provide confirmation that Macclesfield's viability and vitality is fragile. The assessment concludes:- *'Should other out of centre development be approved, this could be to the detriment of Macclesfield's health'*.
- 6.138 In addition, the health of Macclesfield town centre has been considered in the Cheshire Retail Study 2016<sup>623</sup> which concludes:- *'..... rent levels remain low in the town centre and yields increasing suggesting a lack of confidence in the town. Notwithstanding this, a review of recent and current planning applications indicates that there are a few new schemes of note planned within the town centre. If these schemes are delivered they will assist in improving the range and choice of retail provision in the centre and may act to encourage further investment in the town centre. Overall, whilst there are some positive signs of health, the centre does need intervention to address its existing deficiencies if it is to be considered to be a vital and viable centre'*.
- 6.139 Further, the Cheshire Retail Study specifically highlights that the influence of Macclesfield town centre as a comparison goods retail destination has declined since 2006, as residents of Cheshire East and the wider area are increasingly choosing to shop at destinations such as the out of centre Handforth Dean Retail Park.<sup>624</sup> There is no doubt that Handforth Dean is specifically considered to be responsible for the decline of the town centre and refutes CPG's proposition that Handforth Dean is complementary to Macclesfield.<sup>625</sup>
- 6.140 The Cheshire Retail Study therefore concluded, in a far better retail climate, that Macclesfield was not a vital and viable town centre; and as Orbit accepted, to be considered healthy it needed intervention and for such intervention to be successful.
- 6.141 In terms of investment in the town centre, whilst the Grosvenor Centre is progressing, it has only managed to secure one occupier, despite active marketing for 2 years. Neither CPG nor Orbit assesses the impacts on the Grosvenor Centre; and it is evident that Eskmuir<sup>626</sup> (like Peel) are quite clear that the proposals at Handforth Dean are having a significant adverse impact on their ability to attract occupiers.<sup>627</sup>
- 6.142 Indeed, H&M has expressed a clear preference to Handforth Dean over the Grosvenor Centre; and there has been no material progress made on the cinema and leisure development scheme at Churchill Way in that no planning application has been submitted and there is no confirmed

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<sup>623</sup> CD H.1.8

<sup>624</sup> CD H1.7 paragraph 7.73

<sup>625</sup> CPG/2/2 paragraph 9.16

<sup>626</sup> The owners of the Grosvenor Centre

<sup>627</sup> PEEL/1/2 Appendix 15 and later objection letter

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timetable. Thus, despite the optimism shown in the town centre in the Cheshire Retail Study, such schemes have not been delivered.

6.143 Further, since the conclusions of the study, planning permission has been granted at Barracks Mill for a significant out of centre retail development (12,800 sq m) with the Inspector concluding that the impact on Macclesfield town centre would be 9.6%.<sup>628</sup> There is nothing to indicate that the scheme will not be delivered in that interest has been shown in 3 of the 4 units and the site is being actively remediated. It follows that Macclesfield town centre will sustain a substantial (if not technically 'significant') adverse impact, which will further adversely impact on its health.

6.144 On this basis, Macclesfield town centre cannot be considered to be a vital and viable town centre.

**(iii) Evidence submitted since the Health Checks**

6.145 Since the opening of the Inquiry, there has been a significant deterioration in the health of the retail market, with a number of high profile and well-publicised closures or Company Voluntary Arrangements:-<sup>629</sup>

- (a) M&S has closed 14 stores, including Stockport. Macclesfield is also rumoured to be closing. Contrary to CPG's view, this is not due to the impact of Primark, as there are a number of town centres in which the 2 stores are successfully co-located. The real issue is that M&S at Handforth Dean (to be extended) dominates the catchment to such an extent that the Stockport store is not needed and represents a practical example of the 'flight to prime';
- (b) Toys R Us has gone into administration with 100 stores on the market and handed back to landlords, who now have vacant units;
- (c) New Look has entered a Company Voluntary Agreement and is offering terms to landlords requiring a 60% rent reduction and break clauses after years 2 and 3, otherwise the units will be handed back. The Merseyway, Stockport store has shut; and the Mill Street store in Macclesfield is on the market;
- (d) Maplin has gone into administration; there is no realistic buyer for its 217 stores; and the Stockport store will become vacant;
- (e) Select Fashion has entered a Company Voluntary Arrangement for 183 stores (as New Look);
- (f) Carpetright will close 92 stores; a Company Voluntary Arrangement is expected; and the Stockport store may become vacant;
- (g) Mothercare has issued a profits warning because its format is not working; internet sales have speeded its decline across the Group; and the Chief Finance Officer has been sacked. The lease on the Stockport store expires in 2018 and the store will close;
- (h) Debenhams has issued profit warnings, in part because its larger stores are not fit for purpose. The future of the Stockport store must be in doubt;
- (i) House of Fraser has appointed KPMG to examine 59 stores in the light of huge debt; and a Company Voluntary Arrangement has been confirmed;
- (j) Fabb sofas – a target for Peel Centre Unit 6 has entered administration.<sup>630</sup>

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<sup>628</sup> CD K1.6 DL 61 DL 46

<sup>629</sup> ORB/INQ/017

- 6.146 An update on *'the macro retail market'*, for Orbit,<sup>631</sup> identifies the following (additional) issues:-
- (a) the retail market as a whole is being influenced by real inflation which has squeezed household income;
  - (b) currency shifts have impacted on retailers' margins;
  - (c) business rates have risen in certain areas;
  - (d) the increased national minimum wage has been a huge factor in bottom line impact, especially for low margin operators (a number of whom operate in Stockport and Macclesfield);
  - (e) footfall is down 1% year on year;
  - (f) the relevance of shops in everyday lives is being threatened, especially in the UK where the internet can provide next day delivery; and
  - (g) several established retailers have been reduced to the point of collapse with notable failures (additional to those above).
- 6.147 This is not part of the day-to-day churn in the retail market. The practical effect of such wholesale voids will be that a very significant amount of vacant floorspace will come to the market in the immediate or short term future, in town centre, edge of centre and out of centre locations. No party to the Inquiry has been able to identify any new entrants to the market for retail space.
- 6.148 Inevitably, town centre landlords will have to fight with other town centre landlords and out of centre shopping parks for the same pool of retailers, regardless of whether a significant amount of new prime retail floorspace is consented at Handforth Dean. This is specifically confirmed by current limited interest in the re-occupation of Unit 6 of the Peel Centre.<sup>632</sup>
- 6.149 There is no substance in the allegation that Peel is resisting re-letting Unit 6 in order to maintain a sequential test point against Orbit. That would be commercially irrational in that a fully let Unit 6 would be clearly preferable to an extant objection in commercial terms.
- 6.150 In short, the latest evidence demonstrates that there has been a *'proliferation of CVA's over the last 2 quarters focused on the retail and restaurant sector. The impact of this has been very sudden (in the last 3 months)'*. Further, *'..... the above shows the market to be exceptionally challenged .....*'.<sup>633</sup>
- 6.151 Orbit accepted that neither Stockport nor Macclesfield was immune from these market issues; and the generic issues identified have a clear and obvious resonance in both towns. Accordingly, the only reasonable conclusion to draw is that the health of the town centres has fallen suddenly and significantly from a position of weakness since the start of the year. Yet, neither CPG nor Orbit has taken such factors into account in their consideration of the significance of the impact.
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<sup>630</sup> PEEL/2/1 paragraph 6.7

<sup>631</sup> ORB/INQ/017

<sup>632</sup> PEEL/INQ/010; PEEL/1/1 paragraph 6.7

<sup>633</sup> ORB/INQ/017 paragraphs 4-6 (un-numbered)

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- 6.152 The impact on the amount of vacant floorspace which will become available in Stockport is significant (9,060 sq m from just 4 units) with M&S accounting for 4,040 sq m and Toys R Us 4,280 sq m.<sup>634</sup>
- 6.153 Further, there will be a significant downward pressure on zone A rents (New Look 60% rent, Poundland nil rent etc.). Given the uncontested pressure on rents and contraction of lease terms, yields will be hit significantly and will inevitably rise. This all points to the weakness of the town centres being exacerbated further.
- 6.154 In light of the latest evidence, it is obvious that the health of Stockport and Macclesfield town centres is poor and that the future looks "*exceptionally challenging*". The nascent public sector investment may exhibit "*the greenshoots of recovery*" but it is not arresting the dramatic rise in vacancies, much less reversing it. Indeed, there is no evidence of any viable or sustainable occupation of any unit which has recently become available. Peel's objection is based on the health indicators set out in Planning Practice Guidance and is not "*purely commercial*" as asserted.

**The A6MARR**

- 6.155 Peel has consistently argued that the impact of the A6MARR<sup>635</sup> has not been robustly considered. In essence:-<sup>636</sup>
- (a) the route will increase the drivetime catchment areas of both the Orbit and CPG schemes, drawing in very affluent areas with high spending power;
  - (b) the new 10 minute drivetime will include Hazel Grove and Poynton (east) and Manchester Airport and Wythenshawe (west);
  - (c) the enlarged drivetime will have an additional 16,154 people with a comparison goods spending power of £67.36m. The figures exclude the very significant number of people who are employed at Manchester Airport;
  - (d) the 20 minute drivetime will include Disley and Marple (east) and Hale and Timperley (west). This brings an additional £794m;<sup>637</sup> and
  - (e) the area of overlap with Stockport town centre will increase very substantially.<sup>638</sup> Further, the overlap exists in those areas where there is the highest expenditure per head which will have a disproportionate impact on Stockport town centre.
- 6.156 The road will be open by the time the proposed stores begin to trade; and it must form part of the baseline assessment. Its completion will make it easier and quicker to reach Handforth Dean in favour of Stockport town centre resulting in a further adverse impact on the town centre; and the improved access to the existing catchment and expanded catchment will inevitably result in Handforth trading better than the existing surveys currently demonstrate.

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<sup>634</sup> sourced from GOAD

<sup>635</sup> PEEL/1/3 Plan 9

<sup>636</sup> PEEL/1/1 paragraph 2.15 *et seq*

<sup>637</sup> PEEL/1/3 Plan 6

<sup>638</sup> PEEL/1/3 Plan 8

- 6.157 Whilst CPG's and Orbit's respective witnesses disagree, the retail market plainly takes a different view. Savills considers:-<sup>639</sup>
- (a) *'connectivity to the regional motorway network will also significantly improve with the A6MARR .....; and*
  - (b) *the extended road will significantly improve road communications to the property [Next at Handforth Dean] and further expand the already affluent catchment to the east and west, whilst also improving access to Manchester Airport.*
- 6.158 It is beyond doubt that the A6MARR will significantly strengthen the trading position of Handforth Dean to the detriment of those town centres with overlapping catchments, specifically Stockport and, to a lesser degree, Macclesfield.

**Retail Impact**

- 6.159 It is in this unforgiving retail climate that the CPG and Orbit proposals need to be considered. It is agreed that the CPG scheme is a *'shopping park'*. Orbit could be a shopping park, depending on whether CPG is approved and the ultimate occupiers. CPG's expert witness describes shopping parks in the following terms:-<sup>640</sup>
- 'Shopping parks continue to dominate the market in terms of rental growth but the real question is now being raised about their impact on town centres and some of the formats are unashamedly high street offers even though there is an attempt to suggest that the type of retailing in the warehouse unit is not the same as in the high street shop. We have challenged that position for many years although there are genuine differences such as TK Maxx's Homesense and Next at Home, both of which focus on bulky goods, furniture and homeware and leave the fashion behind in the high street'.*
- 6.160 The comment is of direct application to the CPG site. The adjacent Next store was approved specifically on the basis that it was a *'new shopping experience'*, distinguishable from existing Next store formats.<sup>641</sup> It is (today) essentially a clothes store with a high street format, with a limited ancillary home section, which will reduce to allow Phase 1b. There is, therefore, a clear acknowledgment on behalf of CPG that shopping parks will compete like-for-like against High Street stores.
- 6.161 Chase and Partners' Out-of-Town Agency Report 2017 reads:-<sup>642</sup>
- 'In a marketplace which has always been troubled by a relatively few number of potential tenants, there remains much confusion as to the different retailing models this sector offers. True shopping parks are nothing more than a conglomeration of large shop units and replicate a cluster of category killers designed to take on all competition and win. As shopping parks have grown, so has their draw and influence. Consequently, many market town centres have been left in their wake .....'*
- 6.162 It is not contested that CPG will provide high quality retail floorspace which is easy to fit out and highly efficient, leading to a significant impact on the

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<sup>639</sup> PEEL/2/2 Appendix 3

<sup>640</sup> CPG/2/3 Appendix 4 page 14 (2016 Report)

<sup>641</sup> CEC/2/2 Appendix 9

<sup>642</sup> CPG/2/3 Appendix 4 page 17 (2017 Report)



town centre. It will provide a cluster of large, well-known, branded retailers which will compete like-for-like with the High Street and the Peel Centre.<sup>643</sup> The CPG units will be flagship stores (larger, better staffed, better shop fit out and larger ranges) because of their location and because higher rents will require higher turnovers. The concerns about shopping parks highlighted above therefore apply specifically to the CPG proposals. The position of Orbit is more nuanced in that, if CPG is refused, Orbit becomes attractive to the flagship stores.<sup>644</sup> If CPG is approved, Orbit will be more complementary and aim to be a discount park.

- 6.163 There is no doubt that Handforth Dean meets the description of a prime location which is designed to dominate a catchment at the expense of the adjacent town centres.<sup>645</sup> Indeed, Savills (in marketing Next on behalf of CPG) made the following points, which support Peel's concerns about this development in this location:-<sup>646</sup>
- (a) *'The Handforth Dean shopping area is considered to be one of the 'best retail locations in the UK;*
  - (b) *'A highly prominent and accessible location on the A34 by-pass;*
  - (c) *..... the location already has a strong retail critical mass;*
  - (d) *[Next is] ..... the first phase of the proposed 160,000 sq ft Handforth Dean Shopping Park which will comprise a regionally dominant shopping park that's attracting strong demand from major national multiple retail and F&B [Food and Beverage] occupiers; and*
  - (e) *..... the scheme will be widely regarded as being the best shopping park development in the UK .....'*

**Retail Impact - CPG**

- 6.164 The Phase 3 application is of greatest concern; there seems to be no free-standing justification for Phase 2; and Phase 1b concerns Sofology.

**The Likely Tenant Line-up**

- 6.165 Although CPG made clear at the Pre-Inquiry Meeting that the proposed tenant line-up was '*commercially sensitive*' it was nonetheless included in evidence as '*the likely tenant line up*' and formed the basis of the retail planning witness' first sensitivity test on impact.<sup>647</sup> It was confirmed that this line-up continued to represent a reasonable basis for assessment.
- 6.166 It is claimed that the CPG scheme is supported by a number of retailers.<sup>648</sup> However, ignoring the fast food operators, interest appears to be restricted to Primark, River Island, New Look and Mothercare with the latter two experiencing known difficulties. It was confirmed that Primark had agreed terms but the signing of Mothercare was later contradicted. The picture was (at best) confusing because the witness dealing with retail and leisure

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<sup>643</sup> PEEL/2/1 paragraphs 6.7-6.13

<sup>644</sup> PEEL/2/1 paragraphs 4.20-4.21

<sup>645</sup> PEEL/2/1 paragraph 6.17

<sup>646</sup> PEEL/2/2 Appendix 3

<sup>647</sup> CPG/4/2 paragraph 7.8; CPG/4/3 Appendix 14

<sup>648</sup> CPG/2/2 paragraph 9.8

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property issues had not spoken to any retailers directly. Nonetheless, he agreed the following evidence on the "likely" tenant line-up:-

- (a) Decathlon – owns its store in Stockport consistent with its model of ownership which CPG could not provide. Peel's evidence is that Decathlon has no further interest in the CPG scheme;<sup>649</sup>
- (b) Nike – has a High Street offer but it is not currently represented in Macclesfield or Stockport town centres. It is no longer acquiring units; and there is no known interest in CPG;<sup>650</sup>
- (c) Fat Face – occupies a key site on Mill Street in Macclesfield town centre at the entrance to the Grosvenor Centre. CPG provides no evidence from Fat Face about interest and whether the existing store in Macclesfield would close;
- (d) Homesense – currently sells a range of soft furnishings from Stanley Green Retail Park; its lease expires in 2030; and relocation or dual trading is unlikely. If it moved to CPG, it would leave an open A1 unit;
- (e) TK Maxx – has existing units in The Peel Centre and Stanley Green Retail Park and it has agreed terms at the Grosvenor Centre. It does not need representation at CPG and it would only relocate if it considered it to be a superior location which could dominate a catchment. The lease at Stanley Green expires in 2030;
- (f) Primark – has a high street offer with presence in the Merseyway (a key anchor). Peel accepts Primark is a likely tenant;
- (g) Mothercare – is located in the Merseyway Centre (but the store will close) and also trades from Mill Street, Macclesfield;
- (h) H&M – provides a high street fashion offer. The lease on its Peel Centre store expires at September 2020; and it has been courted by the Grosvenor Centre but has made no commitment whilst these proposals are extant;
- (i) River Island – has a high street fashion offer with stores in Merseyway, Stockport and Mill Street, Macclesfield; it is a key anchor of Macclesfield town centre;
- (j) Gap – provides a high street fashion offer. It trades from the Peel Centre with a lease expiry in 2021. There is no evidence that it would be interested in dual trading;
- (k) New Look – is subject to a Company Voluntary Agreement; its store in Stockport town centre has closed; but those in the Peel Centre and Mill Street, Macclesfield continue to trade. Although its lease at the Peel Centre expires at January 2024 it is seeking early breaks. New Look has confirmed that the only location it would consider is Handforth Dean, which confirms the strength of the location;
- (l) Arcadia – includes Outfit, Top Shop, Top Man etc., which are present at Merseyway, Mill Street and Outfit at Handforth Dean. Relocation from the latter would leave a vacant open A1 unit; and
- (m) JD Sports – has a high street fashion and sports offer with stores in Merseyway and Warren Street (Stockport town centre) and Mill Street Macclesfield.

6.167 In cross-examination, CPG's witness dealing with retail and leisure property issues conceded that, out of the 13 likely tenants:

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<sup>649</sup> PEEL/2/3 page 7

<sup>650</sup> PEEL/2/3 page 7

- (a) there was no current interest from Decathlon, Nike, Homesense, TK Maxx and Gap;
  - (b) River Island did not have a view;
  - (c) Arcadia would only relocate by closing its existing store at Handforth Dean, leading to an immediate vacancy;
  - (d) 10 of the 13 identified have existing town centre stores in either Stockport or Macclesfield;
  - (e) none are bulky goods operators, save Homesense; and
  - (f) all likely tenants, other than Decathlon, have high street shops.
- 6.168 Such concessions demonstrate that CPG does not have any credible understanding of retailer demand in the local area. It means that the retail planning witness' sensitivity analysis is fundamentally flawed and no weight can attach to it. Further, CPG's conclusions in respect of the impact on retailer demand cannot, therefore, be afforded any weight.
- 6.169 Moreover, the likely tenant line-up demonstrates precisely Peel's concerns in that it is clear that CPG will deliberately target a very limited list of high street occupiers in order to fill the development. CPG has not provided any evidence of any longer list of proposed tenants and its case rests on attracting existing High Street stores. Given the retail market, especially the flight to prime, there must be a real risk that the occupiers of the CPG scheme will close existing stores, having particular regard to the imminent lease expiries identified above. The effect of yet further store closures on the high street would not just be significant, it could be disastrous:-
- (a) Stockport town centre could lose TK Maxx, Primark, H&M, River Island, Gap, New Look, JD Sports and an Arcadia brand, as well as Mothercare;
  - (b) Macclesfield town centre could lose Fat Face, River Island, Mothercare, New Look, Dorothy Perkins and JD Sports. That is practically the whole high street; and
  - (c) all of these stores can reasonably be characterised as anchors for the high street.
- 6.170 CPG's claim that stores will dual trade requires an unwarranted evidential leap as:-
- (a) neither of the witnesses dealing with retail matters had spoken to a single proposed tenant;
  - (b) there is no evidence from any of the proposed occupiers suggesting that they will dual trade;
  - (c) evidence, subsequently conceded to be not the position and absent sight of any planning obligation, was given on the basis that Primark, River Island, New Look and Mothercare had signed non-closure agreements;<sup>651</sup>
  - (d) CPG's correspondence with retailers (Sofology, Matalan, Currys and Dunelm)<sup>652</sup> is of no evidential value as to whether fashion retailers will dual trade and there is no evidence from the "likely" occupiers;

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<sup>651</sup> GPG/2/2 paragraph 9.10

<sup>652</sup> CPG/INQ/004

- (e) there are significant overlaps in the catchment of Handforth Dean and Stockport town centre or Macclesfield town centre. They are not separate catchments serving separate markets;<sup>653</sup>
  - (f) the evidence of the retail market strongly suggests that retailers will not dual trade but will seek a prime location from which they can dominate the catchment;
  - (g) M&S closing in Stockport town centre, whilst expanding its Handforth Dean store, strongly suggests a store at Handforth Dean can dominate the catchment; and
  - (h) Mothercare closing its Stockport store but occupying CPG shows it sees them as part of the same catchment.
- 6.171 Vacancies in Stockport town centre have been persistently high and have recently significantly increased; and retailers are consolidating their offers in prime locations rather than dual trading. The evidence robustly demonstrates that if the CPG scheme is approved, there will be a significant adverse impact on the fragile vitality and viability of Macclesfield and Stockport town centres because further stores will close, reducing local consumer choice and trade in the town centre.
- 6.172 Given a choice between these town centres and CPG, retailers will clearly prefer Handforth Dean with a consequential impact on the investment made in the town centres, as units will remain void and/or become void as leases expire and/or become void as retailers choose to relocate. There is a clear conflict with Framework paragraphs 26 and 27, as well as CELPS Policy EG 5 and SMBC's Core Strategy.

**Impact on Vitality and Viability**

- 6.173 The methodology of Peel's retail impact analysis is robustly and transparently set out; it accords with national guidance; and the analysis demonstrates that (even assuming a low sales density):-<sup>654</sup>
- (a) the impact of CPG (+ commitments) on Macclesfield town centre is 17.4% (rising to 23% depending on the sales density); and
  - (b) the impact of CPG (+ commitments) on Stockport town centre is 13.3% (rising to 18.1% depending on the sales density).
- Either way, there will be a very significant adverse impact on the town centres.
- 6.174 CPG's retail impact analysis tables went through 4 versions during the Inquiry. In version 3, expenditure was overestimated by £580m.<sup>655</sup> In itself, this demonstrates that significant caution should be adopted before weight is attached to their conclusions. Further, a number of flaws in CPG's approach are apparent such that no weight should attach.<sup>656</sup> In this regard CPG's Sensitivity Scenario 2 purports to assess the impact of the A6MARR. However, comparing Table 30 with Central Case Table 30, it can be seen:-<sup>657</sup>

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<sup>653</sup> PEEL/1/3

<sup>654</sup> PEEL/1/2 Appendix 24-25; PEEL/1/5 Tables (as amended); ORB/1/5 Appendix 10

<sup>655</sup> CPG/4/5 Appendix 1 Table 2

<sup>656</sup> PEEL/1/4 paragraphs 2.53-2.60

<sup>657</sup> CPG4/3 Appendix 19 (as amended in CPG/INQ/006) & Appendix 13

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- (a) the trade draw of CPG has changed with the opening of the road;
  - (b) trade draw in Zone 1 and Zone 3 has fallen;
  - (c) trade draw in Zone 2 and Zone 5 has increased, to reflect the view that it is now quicker to get to CPG;
  - (d) however, despite an enlarged catchment, the turnover inexplicably remains the same; and
  - (e) Zone 1 trade draw falls from £59.1m to £52.5m, which means that people are spending less money at CPG as a result of the road, when it is quicker and easier to get there (whereas shoppers from Zones 2 and 3 are spending more).
- 6.175 Based on matters of professional judgment, this simply has to be wrong in that expenditure patterns in Zone 1 are not influenced by shopping patterns in Zone 3.
- 6.176 CPG's Central Case is equally flawed as it substantially underestimates the impact to Stockport town centre and Macclesfield town centre.
- 6.177 Firstly, sales density is assumed at £6,420/sq m.<sup>658</sup> The justification is that it is more than the existing Handforth Dean retail park (£5,600/sq m) which is an average sales density for M&S, Tesco and Outfit. It was claimed to be robust on the basis that it was considered that Handforth Dean currently trades at this level (at benchmark) and that the scheme would also do so. However, there is no analysis to support this. Peel's position strongly diverges on this central point of disagreement with CPG.
- 6.178 CPG sets out the gross floor space, rather than the net comparison goods floor space, for each unit at Handforth Dean;<sup>659</sup> but this does not provide evidence for the Central Case.
- 6.179 Peel's uncontested analysis demonstrates that the net floorspace is around 13,719 sq m based on WYG's Cheshire Retail Study 2016.<sup>660</sup> Applying different sources of turnover,<sup>661</sup> it can be seen that Handforth Dean has a sales density of between £8,463/sq m and £11,459/sq m. Peel's analysis of an enhanced sales density is clearly consistent with what is currently occurring at Handforth Dean. This is further corroborated by evidence from Speke Retail Park and Monks Cross (which are, despite differences, clearly comparable).
- 6.180 Indeed, it should not come as a surprise that Handforth Dean is significantly overtrading<sup>662</sup> with its 24/7 Tesco flagship store adjacent to the most profitable M&S outside London. The Tesco store has the top 10 sales, whilst the M&S has top 5 sales. The assumption that the CPG site will trade at average levels is totally contrary to the evidence when CPG will have the same catchment, expenditure per head, access, car parking and will benefit from co-location. Further, this is prior to the impact of the

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<sup>658</sup> CPG/4/3 Appendix 12 paragraphs 9-10

<sup>659</sup> CPG/INQ/022

<sup>660</sup> PEEL/INQ/006; CD B2.17

<sup>661</sup> PEEL/INQ/006 Tables 2-4

<sup>662</sup> PEEL/1/2 Appendix 25

- A6MARR, which will only improve trading. CPG's analysis is irreparably flawed.
- 6.181 Secondly, CPG's analysis of trade diversion is fundamentally unsound as the patterns of trade diversion are based on existing shopping patterns weighted to take account of "*the fact*" that CPG will compete more directly with larger shopping destinations such as the Trafford Centre and Manchester City Centre than the town centres.<sup>663</sup> There is no analysis to support such a proposition or any explanation of the assumptions underpinning the conclusions.<sup>664</sup> On this central assumption, there is simply no justification, the consequences of which could be very significant on adjacent town centres.
- 6.182 The starting point for the assumption is to take existing shopping patterns.<sup>665</sup> However, that tells nothing about how CPG will divert trade. The apparent logic was to assume that if Stockport town centre draws 17% of Zone 1 expenditure to Stockport town centre, then 17% of CPG's turnover from Zone 1 would be diverted from Stockport town centre. However, there is no relationship between the two.
- 6.183 To that unsound starting point, "*weighting*" (a manipulation based on an unexplained judgment) is applied. The irresistible conclusion is that has "*weighted*" (changed) trade diversion to favour shopping parks which are not protected by planning policy. There is no other plausible explanation.
- 6.184 In general, the shoppers of the Trafford Centre and Manchester City Centre are choosing not to shop in either Stockport or Macclesfield; and, if the same offer is provided at CPG, there would be no reason to change shopping habits. However, by contrast, there is a very good chance that those who currently use Merseyway and the Peel Centre would divert to a comparable but higher quality offer at CPG.
- 6.185 The Framework specifically recognises that like affects like. However, CPG's analysis is the antithesis of this approach and wrongly assumes disproportionate diversion from higher order and qualitatively different offers, allowing an assumption of a lower impact on the town centres. It may be reasonable to assume some diversion from the Trafford Centre and Manchester city centre, but the degree of the assumption made is wholly implausible.
- 6.186 It was conceded that it had been assumed that the trade diversion of the CPG development would be twice as much from out of centre shopping parks than town centres.<sup>666</sup> Indeed, WYG<sup>667</sup> had repeatedly criticised such assumptions. In any event, CPG's analysis contains a central illogicality in that if CPG cannot draw trade from Stockport town centre with its strength of offer, it has much less chance of drawing trade from the Trafford Centre and Manchester city centre.

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<sup>663</sup> CPG/4/3 Appendix 12 paragraph 22

<sup>664</sup> CPG/4/3 Appendix 13 Table 31

<sup>665</sup> CPG/4/3 Appendix 13 Table 12

<sup>666</sup> CPG/4/3 Table 31

<sup>667</sup> CD B2.15 (instructed by CEC to review and appraise CPG proposals) especially page 9



- 6.187 Thirdly, there is no explanation of how account is taken of increased spending on the internet between 2015 and 2022.<sup>668</sup> In this regard, the future growth of turnover of the key centres is attributed a growth factor based on Experian's Retail Planner Briefing Note 14.<sup>669</sup> This forecasts that density growth will slow from 2015 (5.3%) to 2018 (1.0%).<sup>670</sup>
- 6.188 However, it is assumed that a trend towards more modern, higher density stores and the demolition of older inefficient floorspace means that the growth rate should recover to around 2% (2019 to 2023). However, these are national trends (Experian acknowledge that there will be '*marked differences*' between local areas); but nowhere is there any evidence to suggest that Stockport and Macclesfield are consistent with this trend.
- 6.189 CPG also assumes (a totally unknown amount of) older floor space will be replaced by higher density occupied floor space when:-
- (a) there is a lack of investor confidence from developers in Stockport town centre and Macclesfield town centre;
  - (b) there is a lack of retailer demand; and
  - (c) there is a brand new shopping park at CPG which will compete directly with it, in the context of low rents, higher yields, falling footfall and significant vacancies.
- 6.190 The application of a growth rate requires the exercise of a judgement. CPG assumes, without evidence to support analysis, that Macclesfield town centre and Stockport town centre grow by 15% in 7 years from £192.37m (2015) to £221.82m (2022) and from £523.15m (2015) to £603.24m (2022) respectively.<sup>671</sup>
- 6.191 Fourthly, there are a number of other errors which were examined:-
- (a) Table 12a was added as an addition to CPG's case;
  - (b) the turnover of the CPG site is less in the final assessment than it was in the proof of evidence without any explanation;<sup>672</sup>
  - (c) Table 12 changed materially over time without explanation, without change in the underlying survey data;
  - (d) the impact of Barracks Mill continues to be underplayed;<sup>673</sup>
  - (e) the trade draw of the Central Case changed (over a weekend) without explanation.<sup>674</sup> Despite the note saying '*no change*', the witness produced a brand new set of tables with the trade draw from the A6MARR scenario (which makes no sense); and
  - (f) Table 31 provides yet another new assessment produced for the first time.
- 6.192 Finally, the allowance for the growth in expenditure for town centres over time, up to the appropriate test date, is standard practice and was used by all parties in submitted retail impact tables. This, assumes that centres

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<sup>668</sup> CPG/4/3 Appendix 12; CPG/INQ/006; CPG/INQ/008

<sup>669</sup> CPG/INQ/007 and related Appendix 1

<sup>670</sup> CPG/INQ/007 Appendix 1 Table 3b and page 14

<sup>671</sup> CPG/INQ/008 Table 29

<sup>672</sup> CPG/4/3 Appendix 13 Table 3

<sup>673</sup> CPG/4/3 Appendix 13 Table 18 – compare with CD K1.6 DL 37 & 45

<sup>674</sup> CPG/4/3 Appendix 13 Table 30

maintain their existing market share over that time period and rely upon increasing consumer spend per head and/or population growth.

- 6.193 However, each case should be considered having regard to the circumstances that surround them. In this particular case, significant caution should be given to the realism of Stockport or Macclesfield maintaining their market shares. This is based upon several factors: -
- (a) both Stockport and Macclesfield have already seen declining market shares;
  - (b) the vitality and viability indicators do not suggest any improvement to the overall health of either centre - the latest evidence shows a further decline in the health of both centres;
  - (c) retail commitments do not all happen at the appropriate test date. Some have already occurred (e.g. Next relocation) and hence market shares would again already be changing; and
  - (d) the opening of the A6MARR will also significantly change retail patterns and market shares, negatively in particular for Stockport town centre.
- 6.194 It is therefore appropriate to consider the numeric retail impact over time with considerable caution in this case, in terms of assuming a formulaic growth for each centre. The evidence actually suggests a likely further deterioration in market share and a declining turnover of both centres (especially due to imminent significant voids).
- 6.195 Further, or alternatively, CPG's analysis cannot be reconciled with that undertaken by Orbit:<sup>675</sup>
- (a) for Macclesfield town centre, Orbit assesses the solus (including commitments) impact of its scheme at 7.4% compared to CPG's assessment of 3.9%;
  - (b) in relation to Macclesfield CPG finds the solus impact of its project to be 5.8% (well below Orbit's assessment of its project); and
  - (c) for Stockport town centre, CPG says that Orbit will have a 1.9% impact, whereas Orbit considers it will be 6.1%.
- 6.196 CEC has not called any (live) retail evidence to support its resolution to grant permission for the CPG development. It relies on the WYG review of the CPG planning applications.<sup>676</sup> In the absence of being able to test such evidence, it is submitted that only very limited weight can attach to the Council's support for the CPG scheme.
- 6.197 Moreover, WYG has undertaken an updated retail assessment (post-dating the resolutions) in light of the Barracks Mill decision.<sup>677</sup> Consistent with its analysis in the Committee Reports, WYG concludes in respect of CPG + commitments:<sup>678</sup>
- (a) the impact on Stockport town centre (excluding the Peel Centre) would be 10.2% at 2022;
  - (b) the impact on the Peel Centre would be 15.6% at 2022;

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<sup>675</sup> ORB/INQ/004a

<sup>676</sup> CD B2.15

<sup>677</sup> CEC/2/3 Appendix 8

<sup>678</sup> CEC/2/3 Appendix 6 paragraph 1.6

(c) the impact on both Stockport town centre and the Peel Centre would be 11%; and

(d) the impact on Macclesfield town centre would be 11%.

6.198 Based on those figures WYG considered that *'there is the potential for the impact on Macclesfield and Stockport town centres to be considered significant adverse. However, based on our previous conclusions that appropriate mitigation and conditions controlling the floorspace (particularly the 'no poaching' condition) we are of the view that the potential trade diversion impact on the centres would be reduced to a level which could be considered acceptable'*.<sup>679</sup>

6.199 It is clear therefore that it is only the conditions and the planning obligation which would make a clearly unacceptable retail scheme compliant with policy. However, there is no analysis on which that judgment is based. WYG provides no analysis of how the significant adverse impact would be mitigated (and by what degree) by the public realm improvements; floorspace conditions; and/or the no poaching condition. Therefore, no weight can attach to the conclusion that a clear-cut significant adverse impact would be rendered acceptable by effective mitigation. Moreover:-

(a) it was always the case that the floorspace would be controlled (comparison goods, maximum floorspace and units). The scope of the permission formed an intrinsic part of the assessment of impact and it cannot (then) constitute mitigation of that impact;

(b) WYG did not have sight of the draft conditions at the time of its report;

(c) there is not and nor has there ever been a *'no poaching condition'*;

(d) WYG could not have had sight of the draft planning obligation because the draft was not produced until after the first 3 sitting weeks of the Inquiry;

(e) WYG has not commented on the latest draft of the undertaking;

(f) WYG has not taken account of Peel's submissions on the undertaking;

(g) the section 106 provides public realm improvements to Macclesfield town centre only; and such improvements could not mitigate the impact on Stockport town centre. Further, the Cheshire Retail Study (2016) health check is quite clear that the public realm of Macclesfield town centre is positive.<sup>680</sup> Providing money to improve a public realm which is already attractive will not provide any mitigation at all;

(h) further, WYG has not provided any analysis on the quantitative impact (if any) that the no poaching clause and/or public realm improvements will have;

(i) WYG fail, therefore, to ultimately tell anyone what the residual retail impact may be (or the basis for the assessment);

(j) CEC's witness conceded that this was not an issue which he had considered at all;

(k) a planning obligation providing mitigation without any *'proper assessment of how such improvements would overcome the retail harm to the town centre'* is unlawful.<sup>681</sup>

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<sup>679</sup> CEC/2/3 Appendix 8 paragraph 1.6.3

<sup>680</sup> CD H1.8 Appendix 3

<sup>681</sup> ORB/1/2 paragraph 9.8 - per *R v Forest of Dean* [2013] EWHC 1908 and *Trilogy Developments* [2014]

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- 6.200 In the context of a retail application that could become a regional or sub-regional shopping park, which could harm Stockport town centre and Macclesfield town centre for a generation, this reveals a gaping hole in CEC's evidence. It is also a far cry from its own admission that an *"enhanced level of scrutiny"* is required where an authority is determining an application for a valuable permission on its own land.
- 6.201 Further, this is not an issue addressed by CPG either in that there is no analysis of how (if at all) conditions or the planning obligations might mitigate adverse impacts.
- 6.202 Moreover, Peel has repeatedly made the point that the proposed no poaching clause would not work in practice.<sup>682</sup> Given the timescales involved in the development of the CPG site (which will not commence until 60%/70% let), potential occupiers have time to let leases expire in advance of occupation at CPG. The obligation does not encourage dual-trading; rather, in this retail climate, it encourages retailers to close town centre stores and relocate to a prime out of centre site.
- 6.203 It follows that WYG's conclusion that there will be a significant adverse impact still holds good. There cannot, therefore, be any reasonable disagreement that the CPG scheme (solus + commitments) will have a significant adverse impact on the vitality and viability of not one but both of the sub-regional centres. There is a clear conflict with the Framework and the development plans of SMBC and CEC. Planning permission should therefore be refused.
- 6.204 Finally, it follows that if the solus analysis is flawed, the cumulative assessment must also be flawed. The cumulative effect of both schemes would be catastrophic for the town centres.
- 6.205 In short there is a *"perfect storm"* in retail terms of the following happening:<sup>683</sup>
- (a) *'Centres with lower retail demand (Stockport/Macclesfield);*
  - (b) *changes already happening with some retailers which are most likely to result in vacancies .....;*
  - (c) *changes already occurring from recent planning consents .....;*
  - (d) *at risk investments that are in danger of not occurring;*
  - (e) *major retail proposed in a premium location with significant overlapping catchments; and*
  - (f) *retailer uncertainty ..... exacerbated by the proposals at Handforth Dean'.*

**Retail Impact - Orbit**

- 6.206 The Orbit scheme has been promoted since December 2014. At no stage prior to determination (on 2 occasions) was it advanced on the basis of a class of goods restriction. That position changed halfway through the Inquiry with the invitation that (draft) condition 22 should be imposed.

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<sup>682</sup> PEEL/2/1 paragraphs 6.24-6.27; PEEL/INQ/009

<sup>683</sup> PEEL/2/1 page 48

- 6.207 This would allow a significant element of food sales despite Orbit being clear at the Pre-Inquiry Meeting that its scheme, consistent with the description of development, was for non-food. Although it is claimed that its case always included ancillary food sales, neither Orbit, nor WYG, nor Peel have assessed the scheme on this basis. Peel does not take any procedural point on any change to the application.
- 6.208 Late in the Inquiry, after Peel had given evidence,<sup>684</sup> Orbit produced a letter concerning inter alia potential occupants<sup>685</sup> which confirmed interest, reported to the writer, from Home Bargains, Tim Hortons (café), Subway (sandwich), Gradus and Pets at Home. However, none had signed Heads of Terms and the tenant line-up is not fixed and could be changed (consistent with the conditions). Peel submits that the full scope of the permission should form the basis of the assessment of impact.
- 6.209 Peel objects to the proposal on the grounds of retail impact on a quantitative basis. It is, however, fair to conclude that the quantitative impact would be materially less than the CPG scheme. Peel's central concern is not with the quantitative impacts as such. Rather, Peel objects on the grounds that there are very substantial voids in Stockport town centre, including Peel Centre Unit 6.
- 6.210 Further, there are a large number of lease expiries coming up at the Peel Centre in the short term; and there is a relatively small pool of potential occupiers, given current market conditions. It is likely that Orbit will attract such occupiers, in preference to the town centre stores, thereby creating a lack of consumer choice, adverse impact on investment and a significant adverse impact on the vitality and viability of the town centres.
- 6.211 It is therefore central to consider the issues of retailer demand, the health of the centres, together with impact on a holistic basis, in accordance with the Framework. It is wrong, as Orbit's evidence has, to focus on the numbers, to the exclusion of the real world impacts on occupation in the town centre and key indicators of town centre vitality and viability.
- 6.212 Orbit's advised list of "*realistic targets for newly built space*" is based on either a gap in representation or an improvement on their existing position in the area (additional stores or space).<sup>686</sup> It is not said which retailers fall into which category and there is no evidence from the retailers themselves. It is known that JD Sports cannot arguably have a gap in representation and so it must be looking to improve. '*Looking to improve*' can (as Orbit accepts) involve closing a town centre store and relocating to Orbit (flight to prime). This is of critical importance, as Orbit's advisor provides no evidence on the issue of dual trading.
- 6.213 Looking at the suggested retailers it is agreed:<sup>687</sup>
- (a) B&M – stores at the Peel Centre and Exchange Street, Macclesfield;

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<sup>684</sup> which must reduce the weight to be given to it

<sup>685</sup> ORB/INQ/017

<sup>686</sup> ORB/INQ/017

<sup>687</sup> compare PEEL/2/1 paragraph 6.7

- (b) JD Sports – 2 stores in Stockport town centre, Wythenshawe and Mill Street, Macclesfield;
- (c) Blacks – store at Mill Street, Macclesfield; Peel is not aware of any interest for a store at Handforth;
- (d) Sports Direct – stores in Stockport and Macclesfield town centres with conditions drafted to allow occupation at Barracks Mill;
- (e) Home Bargains – 2 stores in Stockport town centre;
- (f) Hobbycraft – store in the Peel Centre; Peel is not aware of any interest for a store at Handforth;
- (g) Sofology - linked with CPG Phase 1b;
- (h) Range – linked with Barracks Mill; also being sought as an occupier for Unit 6 Peel Centre;<sup>688</sup> Peel is not aware of any interest for a store at Handforth;
- (i) Dunelm – store at the Peel Centre; linked with Barracks Mill; Peel is not aware of any interest for a store at Handforth;
- (j) DFS – stores at Peel Centre and Stockport town centre; Peel is not aware of any interest for a store at Handforth;
- (k) Dreams – store in Stockport town centre; Peel is not aware of any interest for a store at Handforth;
- (l) Harveys/Bensons – both form Unit 8 of the Peel Centre; Peel is not aware of any interest for a store at Handforth;
- (m) SCS – store in the Peel Centre;
- (n) Oak Furnitureland – Silk Retail Park, Macclesfield;
- (o) Tapi – actively sought by Peel for Unit 6 Peel Centre; and
- (p) Wren Kitchens – actively sought by Peel for Unit 6; Peel is not aware of any interest for a store at Handforth.

6.214 The above list demonstrates that there is in reality a very small pool of retailers who are willing to take on new space. Further, given the vast amount of retail floorspace which is available, or likely to become available, such retailers will have their pick of sites. The tenant list shows that Orbit will be seeking to attract existing town centre occupiers, who will have lease expiries:-

- (a) 14 of 17 targeted occupiers already have at least one store in the catchment in Macclesfield town centre or Stockport town centre;
- (b) of the remaining 3:- The Range is targeted to go to Barracks Mill and Unit 6. Part of the rationale of the Inspector's decision to allow Barracks Mill was that such occupiers may serve to attract some trade back to Macclesfield town centre from other out of centre stores. That leaves Tapi and Wren Kitchens – both of which (with the Range) have been specifically identified by Peel as potential occupiers of Unit 6.<sup>689</sup> They will not dual trade – otherwise they would have signed Heads of Terms with the Peel Centre already;
- (c) 9 of the 17 have not been identified as having any interest in Handforth Dean;<sup>690</sup> and

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<sup>688</sup> PEEL/INQ/009

<sup>689</sup> PEEL/INQ/006

<sup>690</sup> PEEL/2/1 paragraph 6.7 (not contested)



(d) in reality, therefore, the targets reduce to 8.

- 6.215 This analysis shows that there is a very short list of potential occupiers. If Orbit were to attract 5 from the above list, there is a very high likelihood that stores in the town centre would close, given overlapping catchments. Rather, they would prefer a store adjacent to Handforth Dean and Stanley Green Retail Park, from which they could seek to dominate the catchment. Again, Orbit's answer is that there could be dual-trading; but there is no evidence to support that contention. Yet, it is on that contention that the appeal hangs. Given the state of the retail market and the mass closures, it is far more plausible that retailers will only occupy one store in the catchment.
- 6.216 If planning permission is granted, therefore, it is unanswerable that Orbit could seek to entice 5 existing town centre operators. If successful, the overwhelming likelihood (in the absence of any controls and/or evidence) is that further stores would close. Further, there is no evidence that such voids would then be re-occupied, given the very limited tenant pool. Orbit's advisor, like other expert witnesses, has failed to identify any new entrants to the market. Such an impact would have a significant adverse impact on Macclesfield town centre and/or Stockport town centre, which are already exhibiting poor health and significant voids.
- 6.217 Moreover, as Orbit's advised list of realistic targets does not, however, identify any toy stores, there is no reason why draft condition 22 cannot restrict toys, as such an occupier is sought for Unit 6. Peel offers an alternative draft condition. Further, or alternatively, the trade diversion is also significant and contrary to policy.
- 6.218 Peel's analysis and methodology is robustly and transparently set out; and it accords with national policy and guidance.<sup>691</sup> The Retail Impact Analysis demonstrates that (even assuming a low sales density):-<sup>692</sup>
- (a) the impact of Orbit (+ commitments) on Macclesfield town centre is 9.9% (rising to 10.8% depending on the sales density); and
  - (b) The impact of Orbit (+ commitments) on Stockport town centre is 6.6% (rising to 7.4% depending on the sales density).
- 6.219 Although the figures are contested, there is not a serious disagreement about the outcome in that Orbit's conclusion is 7.4% and 6.1% respectively. If anything, the two analyses serve to corroborate each other; and the Secretary of State can draw comfort that Orbit and Peel are consistent. However, it serves to demonstrate that CPG's analysis is an implausible outlier.
- 6.220 The differences are addressed by Peel and it is clear that the central difference concerns the assumption over sales density as addressed above.<sup>693</sup>

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<sup>691</sup> PEEL/1/2 Appendix 24-25

<sup>692</sup> PEEL/1/5 Tables (as amended); ORB/1/5 Appendix 10

<sup>693</sup> PEEL/1/4

- 6.221 Rather, the issue is a matter of judgment on whether such impacts should be considered to be significant, in the terms of the Framework, considering retailer demand and the health of the centres. In this appeal, retailer demand is '*exceptionally challenged*'. The health of the town centres is poor and deteriorating with each new Company Voluntary Arrangement and closure. In such circumstances, Peel submits that such trade impacts (which are not modest) constitute a significant adverse impact on the vitality and viability of the town centres.
- 6.222 Although Orbit seeks to argue that an impact of 7.4% is less than the acceptable impact of 9.6% at Barracks Mill, it should be remembered that the Inspector reached his conclusion having rejected the appellant's argument that it would be considerably less. Orbit's calculation also rests on a fully let Grosvenor Centre and recalculates Next (as a relocation from Stanley Green). Peel takes no point about Next, but it is, however, wrong to assume the Grosvenor Centre is drawing trade back to Macclesfield town centre, when it is not yet complete and (despite years of marketing) only has one occupier.
- 6.223 Further, Orbit seeks to excise Water Street, Stockport from its assessment; but the omission of a commitment (which is actively being marketed and considered to be deliverable by the developer and its agent) amounts to a methodological flaw. Alternatively, it would be wrong to partially update the assessment, particularly given recent major closures in the town centre.
- 6.224 Peel therefore submits that there would be a very clear significant adverse impact on the identified town centres, contrary to Framework and development plan policies.

**Other material considerations**

- 6.225 It is accepted that both schemes have the potential to deliver some economic benefits, albeit generic of any retail development. In such circumstances:-
- (a) it would be perverse to attach greater weight to such benefits than to the conflict with CELPS Policy EG 3 which seeks to retain employment uses on the site. If greater weight is attached to the employment benefits of retail uses, which tend to have a higher employment density than B2 or B8 uses, the policy ceases to be a meaningful constraint;
  - (b) paragraph 27 of the Framework and CELPS Policy EG 5 require planning permission to be refused where there is a significant adverse impact. In so doing it must recognise that each and every retail development will create jobs. The policy, nonetheless, requires permission to be refused because it does not consider such job creation to outweigh the harm to the town centre, to which greater weight is attached. The developments are not sustainable developments therefore and should be refused;
  - (c) further, jobs will be created by a retail development at the sequentially preferable Unit 6 (a point against Orbit alone); and
  - (d) any such benefits need to be netted against jobs created through employment redevelopment and jobs lost in town centre retail.

6.226 Accordingly, any such benefits do not outweigh the identified conflicts with the development plan and the Framework. The substantial capital receipt which the Council would receive from CPG, if the proposals were approved, is not a material consideration.

**Conclusion**

6.227 In all the circumstances, therefore, Peel submits that CPG Phases 2 and 3 should be refused and the Orbit Appeal should be dismissed.

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## **7. The Case for St Modwen Properties**

### **Introduction**

7.1 The focus of St Modwen's case is its particular concerns about potential impacts on the existing, committed and planned investment in Wythenshawe town centre.

#### **Policy and Guidance**

7.2 CELPS Policy EG 5, in dealing with out of centre proposals, requires that '*current government guidance can be satisfied*'.<sup>694</sup> In turn, the Framework sets out the application of a sequential test for main town centre uses and the requirement for an impact assessment.<sup>695</sup> The latter should include assessment of:- '*the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal*'.

7.3 Whilst neither proposal, at application stage, considered Wythenshawe town centre, the Framework confirms:- '*It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas*'<sup>696</sup> in that '*Retail uses tend to compete with their most comparable competitive facilities*'.<sup>697</sup> Specifically:-

*'Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:*

- (a) '*the policy status of the investment (i.e. whether it is outlined in the Development Plan)*;
- (b) '*the progress made towards securing the investment (for example if contracts are established)*; and
- (c) '*the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence*'.

7.4 The direction from the Framework is clear, where the sequential test is failed or the impact on investment is significantly adverse, paragraph 27 directs that such an application should be refused.

#### **Wythenshawe Town Centre**

7.5 Wythenshawe town centre lies some 5 kilometres (3 miles) from the application site and within the administrative district of Manchester City Council. It is of a 1960's design with a retail core comprising an inward facing precinct well served by transport links including the new transport interchange and Metrolink Airport Line.

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<sup>694</sup> CD J1.8 Policy EG 5(7)(ii)

<sup>695</sup> Framework paragraphs 24-27

<sup>696</sup> NPPG ID: 2b-013-20140306 paragraph 13

<sup>697</sup> NPPG ID: 2b-013-20140306 paragraph 16

- 7.6 St Modwen is a leading regeneration specialist operating nationwide. Many of its projects are long-term and local examples include Great Homer Street, Liverpool and Kirkby town centre. It became involved with Wythenshawe town centre in 1997 and acquired the long-leasehold of the centre in 2007 with the City Council continuing to own the freehold along with other land holdings around the core retail area (for example, the cleared site at Rowlandsway).
- 7.7 The retail offer comprises a strong 'value' line up of nationwide retailers and, through the active asset management of St Modwen, vacancy rates are relatively low. The Manchester Retail Study (November 2010) considered that whilst Wythenshawe town centre retained some 50.8% of convenience expenditure in its 'home' zone (Zone 16) the retention of comparison goods expenditure was much lower at 17.7%.<sup>698</sup> At that time the original retail park of Handforth Dean (comprising M&S, Tesco and BHS) accounted for 4.6% of the market share from Zone 16. Subsequent to the study, additional retail development has occurred at Handforth Dean and Stanley Green.
- 7.8 St Modwen's expert assessment is that '*..... Wythenshawe's primary retail catchment does not have a wide reach, and relies heavily on its immediate population for frequent shopping trips. The studies suggest a significant leakage of expenditure from this primary catchment area ..... given the proximity and connection to Wythenshawe, the proposals at Handforth Dean would represent a form of development that would further add to the leakage currently experienced and in this respect, would be detrimental to the town centre and its future regeneration*'.<sup>699</sup>
- A6MARR**
- 7.9 The completion of the A6MARR link from Manchester Airport/M56 through to the A6 will provide increased connectivity across the immediate geographical area of both the appeal and application sites and Wythenshawe town centre. The drive time between the two will be reduced by a few minutes as illustrated in the expanded 10 minute drive time isochrones.<sup>700</sup> More importantly, it will significantly change the quality of the route (currently heavily trafficked roads through built up areas with various junctions) between Wythenshawe town centre and Handforth Dean.
- 7.10 Although Orbit contended that a few minutes would not alter shopping patterns, the perception of the ease with which Handforth Dean can be accessed from the core catchment of Wythenshawe will be favourably, and substantially, altered. Convenience is a significant factor in determining shopping habits and the ease of access which the new link will bring would make shopping at Handforth Dean significantly more convenient.
- 7.11 CPG's<sup>701</sup> view of the impact of the new road seeks to redistribute the trade draw for the CPG proposals on the basis of the same anticipated turnover of the proposals. This has the effect of redistributing the impact rather

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<sup>698</sup> CD H1.9 Table 9

<sup>699</sup> STM/1/2 paragraphs 6.22-6.23

<sup>700</sup> CPG/4/3 Appendix 17

<sup>701</sup> CPG/1/4

than actually assessing what the additional impact would be. With enhanced accessibility and an increased offer and more powerful draw, it is illogical to suggest that the overall turnover would remain unchanged (and that those close to Handforth Dean would spend less there if more customers were drawn from further away).

#### **The Framework assessment**

7.12 Consideration of the first bullet of paragraph 26 is to be found in the Secretary of State's Scotch Corner call-in decision with particular reference to the latter part of paragraph 11.16 of the Inspector's Report:<sup>-702</sup>

*'..... it is only existing public and/or private investment that has been made, committed or is planned that requires to be tested. Existing and committed investment are straightforward terms. Whilst what constitutes planned investment is not specifically defined by either the Framework or PPG, paragraph 16 of PPG identifies that the key considerations will include, (i) the policy status of the investment i.e. whether it is outlined in the development plan: (ii) the progress made towards securing the investment, e.g. if contracts are established and (iii) operator demand/investor confidence. These indicate to me that to be considered as planned investment a project has to be at a very advanced stage.'*

7.13 The simple point is that consideration must be given to existing, committed and planned investment. In terms of private sector investment, St Modwen first invested in Wythenshawe town centre in 1997 and has, on various occasions, increased that investment both in terms of land acquisition and investment in the centre itself. That investment still 'exists' as St Modwen is not a 'trader' developer but takes on very long term regeneration projects. Likewise, the City Council has invested in the town centre as part of a long term vision.

7.14 Those investments and projects have included:-

- the first phase of regeneration commencing in 1999 with the provision of 60,000 sq ft of new retail space, a new market and public realm works;
- a further phase of retail development, 15,000 sq ft, and 8,000 sq ft of office space, in 2009;
- the acquisition by St Modwen of a further 2 acres of land which became the Etrop Court Development, in the northern part of the town centre, comprising some 100,000 sq ft of office and retail space;
- the addition, in 2011, of further market kiosks, another 1,500 sq ft of retail space and securing Wilkinson's as the anchor tenant for the town centre in a 26,000 sq ft store; and
- new transport infrastructure (led by others) within and adjacent to the town centre including the opening of the Metrolink station and relocation of the bus station to create a new transport interchange to serve Wythenshawe.

7.15 In terms of committed investment, the City Council has acquired the Rowlandsway site with the aspiration of regenerating Wythenshawe town centre. Both St Modwen and the Council have committed funds to

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<sup>702</sup> ORB/1/3 Appendix 4



developing the next element of that overall project with, for example, the commissioning of masterplan work.

- 7.16 Both CPG and Orbit rely on the words of the Scotch Corner Inspector that *'..... to be considered as planned investment a project has to be at a very advanced stage'*. However, in that case there were no planned investments, other than a proposal in Northallerton which had significant physical and planning constraints. In terms of Wythenshawe the situation is entirely different in that St Modwen's existing investment in Wythenshawe town centre has started, and continues, that regeneration journey.
- 7.17 Likewise, in the Tollgate decision, the planned investment was not an on-going regeneration project and it is notable that the development agreement had been terminated and the project potentially required a Compulsory Purchase Order. Moreover, there was no overall land ownership, no developer confirmed scheme or planning permission. Further, the commercial evidence demonstrated that the target tenants for the planned investment would in any event remain in the town centre.
- 7.18 Both of the above can be distinguished from Wythenshawe town centre in that there was no long term on-going regeneration project with a track record of success which might have fallen to be assessed or been affected by the proposals. Wythenshawe has been the focus of successful and on-going regeneration for some 20 years; and, in terms of land ownership, the City Council and St Modwen have forged a successful partnership with a demonstrable track record.
- 7.19 Indeed, the Council considers that *'..... the delivery of transformational change within the Centre is entirely feasible ..... it is therefore of significant concern that these plans could be stalled or shelved as a result of the out-of-centre retail led applications being promoted at Cheshire East. They would potentially have a long term impact on the vitality and viability of Wythenshawe Town centre because its ability to attract new occupiers and investment would be severely weakened'*.<sup>703</sup>

**The Policy status of the investment**

- 7.20 The on-going regeneration in Wythenshawe town centre, and the investment in it, has clear support in policy. In this regard, The Wythenshawe Strategic Framework 2004-2020 sets out the vision for regeneration across Wythenshawe.
- 7.21 One of 12 key objectives is to *'Improve shopping facilities for Wythenshawe residents to ensure that expenditure is captured locally'*. It identifies Wythenshawe town centre as *'a major district centre for Manchester, and a central component of the Wythenshawe economy and community'*.<sup>704</sup>
- 7.22 Policy SL1 seeks to ensure that *'the Town Centre remains a key Manchester shopping location through significantly improving the retail offer and town centre environment'*.
- 7.23 Wythenshawe Town Centre Masterplan (2006) notes:-

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<sup>703</sup> STM/1/3 Appendix 11 page 2

<sup>704</sup> CD H1.4 Section 12 paragraph 12.2

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*'Investment in the Town Centre, particularly in convenience retail, comparison retail, leisure and other discretionary spend areas will ensure that Wythenshawe is able to compete favourably with other locations .....The retailing element related to any future investment into Wythenshawe Town Centre is clearly critical to a successful regeneration strategy ..... Wythenshawe grossly underperforms in retaining catchment area population'.<sup>705</sup>*

- 7.24 The Masterplan was updated in 2009 in the *'Revised Delivery and Implementation Framework'*. The introduction notes:- *'The transformation of Wythenshawe Town Centre is one of the key strategic opportunities set out in the Wythenshawe Strategic Regeneration Framework .....'.<sup>706</sup>*
- 7.25 Policy C7 of the Manchester Core Strategy 2012-2027 provides:- *'There is capacity for a substantial quantity of additional retail development within Wythenshawe, mainly at Baguley and Wythenshawe Town Centre. Across Wythenshawe centres there will be approximately 5,000 sq m of convenience and 3,000 sq m of comparison retail development up to 2027, beyond current commitments in Wythenshawe Town Centre'.<sup>707</sup>*
- 7.26 Investment into the regeneration of Wythenshawe has a long pedigree, there has been success along the way and change has been delivered but there remains more work to be done.

**The progress made towards securing investment**

- 7.27 This is a relatively unusual case as the overall *'project'* has been on-going for a long period and continues to progress. St Modwen is clear that:-  
*'..... the further significant regeneration of Wythenshawe presents a real opportunity to create lasting and meaningful social, physical and cultural change to the town centre ..... We have commissioned significant research into the viability of the further regeneration of the centre and are at a stage to commission further master planning work and more detailed assessment, with an aim of starting on site in 2020. We currently envisage that the further regeneration will initially take place to the south of the town centre, with new development on the former shell site allowing an area within the town centre to be demolished for redevelopment. A programme for these works has been jointly agreed with MCC'.<sup>708</sup>*
- 7.28 In relation to *'whether contracts have been established'*, contracts are not required between St Modwen and the City Council as would be the case in the sense of securing a development partner for an *'ordinary'* project. Both parties hold significant interests in the town centre and share a vision to continue the already successful regeneration of the town centre. That shared commitment is manifested in the latest work to utilise the Rowlandsway site for retail and/or mixed use development.
- 7.29 As to *'securing investment'*, St Modwen have invested some £50 million thus far); that investment will continue; and further investment is forthcoming in order to deliver the next stages of regeneration.

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<sup>705</sup> CD H1.5 pages 6 & 20

<sup>706</sup> CD H1.6 page 1

<sup>707</sup> CD H1.2 Page 147

<sup>708</sup> STM/1/3 Appendix 2A

**Operator demand and investor confidence**

- 7.30 As Wythenshawe does not perform strongly in terms of retaining expenditure from its core catchment, the availability of additional retail units at Handforth Dean, and improved connectivity, would inevitably impact on operator demand for new floorspace in Wythenshawe and the ability of St Modwen and the City Council to invest in the on-going regeneration with confidence.
- 7.31 There are 2 critical issues which arise in terms of operator demand. Firstly, as made clear by the Chase and Partners Retail Report (Spring 2017),<sup>709</sup> *'True shopping parks are nothing more than a conglomeration of large shop units and replicate a cluster of category killers designed to take on all competition and win'*.
- 7.32 Secondly, as noted by WYG in its consideration of the Orbit proposal, *'it is noteworthy that the proposed development will act as an extension to an established out of centre retail destination ..... and will extend the catchment area of the proposed development beyond that which one would typically expect had the development been a new, free-standing retail park'*. Whilst that response was specific to the Orbit proposal it applies equally to the CPG scheme.

**The CPG applications**

- 7.33 The CPG proposals are significant in scale and seek to provide a dominant shopping destination pulling on a wide catchment. The *'Likely Tenant Line Up'*<sup>710</sup> provides a clear indication of the target tenants. Whilst it would appear that only Sofology is committed, it is clear that the broad offer is intended to be a range of high street fascias, principally focused on high street fashion and home goods, in the form of a *'conglomeration of category killers'* as described by CPG's expert witness.
- 7.34 Further, there is nothing to suggest that the line-up is intended to be *'out of the ordinary'* in that there is no indication that it would be a luxury brand shopping park occupied by retailers with limited representation elsewhere. It would be mainstream with clear overlap with the offer of Stockport and Macclesfield town centres.
- 7.35 Moreover, the type of retail offer envisaged would impinge on that which St Modwen and the City Council seek to deliver at Wythenshawe in order to widen retail choice; build on the present *'value'* offer; and capture spend from the more affluent areas of its catchment. Whilst Wythenshawe would not be a suitable location for some of CPG's likely tenant line-up, the likes of TK Maxx/Homesense, the Arcadia Brands, River Island and New Look do have representation in locations similar to Wythenshawe. What is clear is that if the opportunity is provided for such retailers to concentrate at a single out of centre shopping park they will likely do so. In addition, such a *'conglomeration'* would act to dissuade retailers taking new space in Wythenshawe. Overall, the level of competition at an easily accessible nearby location would significantly and adversely impact on occupier demand for new space at Wythenshawe.

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<sup>709</sup> CPG/2/3 Appendix 4 page 17

<sup>710</sup> CPG/4/3 Appendix 14

7.36 Furthermore, the CPG proposal would significantly widen the breadth of retail offer available at Handforth Dean which is already a very successful and strong out of centre retail destination based on a relatively limited number of retailers. The addition of a high street offer next to that existing destination would create an even more dominant retail focus which would absorb the requirements of occupiers and draw trade from other centres.

**The Orbit proposal**

- 7.37 Whilst the Orbit proposal does not have an '*indicative*' line up it is, in its design and function, a more '*traditional*' retail park. Even though it is significantly smaller than the CPG scheme, it would, however, in its own right, represent the development of a significant quantum of floorspace.
- 7.38 Importantly, so far as Wythenshawe is concerned, the type of offer which now appears to be proposed<sup>711</sup> is very much focused on the type of offer which exists at Wythenshawe including JD Sports, Sports Direct, B&M and Home Bargains. Such operators are presently the heart of the Wythenshawe offer and, in order to expand this further, it is essential that those operators remain.
- 7.39 In terms of Orbit's claim that the two locations would have different catchments, and that such operators would co-locate, rests on down playing the potential impact of A6MARR in delivering substantially more attractive connectivity between Wythenshawe and Handforth Dean. It also ignores the point made by WYG that Handforth Dean, given the existing offer and status, projects the catchment and '*attractiveness*' of that location further than would be the case if Orbit stood alone. That is on the basis of M&S, Tesco, Outfit and Next as they currently exist; and the impact would be magnified if the CPG scheme were to proceed. The important point that arises is that the broadening of the Handforth Dean offer would impact substantially on Wythenshawe.
- 7.40 Orbit's failure to undertake any cumulative assessment, including the CPG proposals, does not assist the decision maker in assessing what the likely cumulative impact of the two proposals would be. However, it is obvious that should CPG go ahead, the addition of the value type offer of Orbit would serve to widen the spectrum of the retail offer and so increase the '*gravity*' of the scheme.
- 7.41 What Orbit does do is provide a sensitivity assessment based on a '*value*' type offer. The effect of this is, inevitably, to reduce the overall level of impact on other town centres as a simple matter of mathematics. What it does not do is recognise that such an offer would be competing with exactly those occupiers which make up almost the entirety of Wythenshawe's tenant line up – Wythenshawe is a '*value*' offer and providing a '*value*' offer in competition would have a disproportionate effect and be harmful to occupier demand.

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<sup>711</sup> ORB/INQ/017

**Conclusions**

- 7.42 Both proposals are significant in their scale with anticipated turnovers of £150.8m at year 2022<sup>712</sup> for CPG and £31.4m at year 2022<sup>713</sup> for Orbit. Each, with different tenants and markets in mind, would significantly broaden the already successful offer of Handforth Dean; and the A6MARR would add to the attractiveness of this location thus increasing the overall adverse impacts.
- 7.43 Although CPG and Orbit seek to point to an absence of '*planned investment*', St Modwen and the City Council have engaged as partners driving forward the regeneration of Wythenshawe for more than 20 years with a strong and demonstrable track record of success. The ambition to widen the retail offer in Wythenshawe and strengthen its attractiveness to its natural catchment is also encapsulated in policy. Overall, there no identifiable barriers to delivery of that transformative change to the town centre, acting in partnership, given that the partners between them control the land, have the desire to bring forward development and have the funding to do so.
- 7.44 Individually and cumulatively, the proposals would have a significant adverse impact on the existing private and public investment already made in Wythenshawe town centre and on committed investment; and would derail the next stage of Wythenshawe's development. In consequence Framework paragraph 27 directs that the proposals should be refused.

**Post Inquiry representations**

**National Planning Policy Framework 2018**<sup>714</sup>

- 7.45 St Modwen makes no further points in that paragraph 89 of the Revised Framework has retained the tests regarding the assessment of impact of retail and leisure development outside of town centres, as previously stated in paragraph 26 of the Framework 2012.

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<sup>712</sup> CPG/4/3 Appendix 13 Table 13

<sup>713</sup> ORB/1/3 Appendix 5 Table 6

<sup>714</sup> Misc/18

## **8. The Cases for Other Parties - Written Representations**

### **Written representations at application stage<sup>715</sup>**

#### **The Orbit application**

8.1 SMBC opposed the application as the proposal did not fulfil the sequential test or the impact test. Handforth Parish Council supported the development albeit there was significant concern from councillors about the increase in traffic volume along Coppice Way and Earl Road. Five other representations, in summation, questioned the apparent lack of policy for Handforth Dean Retail Park and Stanley Road Business Park/Retail Park; raised concerns over traffic volumes, access and parking; supported the retention of employment use; and criticised the assessment of sequential and impact tests with particular reference to the availability of sites in Stockport town centre.

#### **The CPG applications**

- 8.2 Representations from SMBC included criticisms of the overall retail impact assessment; the lack of flexibility in the scheme's format; impacts on investment in Stockport and on the vitality and viability of its town centre; the need to strengthen the role of town centres in general; and the need for both SMBC and CEC to intervene directly in town centre regeneration to counter the effects of earlier out-of-town retailing in the A34 corridor. Highway objections to applications (a) and (b) related to modelling; remoteness of the site from significant residential catchment areas; sustainability considerations; and severe adverse impacts on Stockport's roads.
- 8.3 Handforth Parish Council raised no objections to application (a); strongly supported (b) for its employment opportunities; and raised no objections to (c). Wilmslow Town Council expressed concern about the likely increase in traffic congestion arising from (b).
- 8.4 Application (a) attracted 3 letters of objection to the scheme as originally submitted, and a further 3 in response to the revisions; the corresponding figures for (b) were 9 and 3; and 6 for application (c). These referred to a number of matters including:- the primacy of town centres; retail impacts on established centres; the assessment methodology; lack of sustainability; absence of marketing information to demonstrate that the site was no longer required for employment purposes; the need to upgrade local footpaths; inadequate car parking and servicing; loss of wildlife habitat; and the need for additional landscaping.
- 8.5 Forty-four letters supported application (b) by reference to:- investment, job creation and employment partnership arrangements with local colleges; additional revenue for CEC; improved management of traffic and accessibility to public transport; increased retail choice locally; use of brownfield land; and ecological improvements.

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<sup>715</sup> The full text of the representations are available in the blue folder 3179609 'LPA Initial Docs'- a summary is provided in the report of the Head of Planning and Regulation to the Strategic Planning Board



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**Written representations at appeal stage****Orbit and CPG proposals – Letters from Eskmuir Securities and Colliers International<sup>716</sup>**

- 8.6 Eskmuir Securities is a significant stakeholder in Macclesfield town centre through its ownership of the Grosvenor Shopping Centre. The company has serious concerns that out of centre retail developments would significantly compromise the benefits of public and private sector investment in the town centre and result in significant irreversible harm from the solus and cumulative impacts.
- 8.7 Eskmuir has invested £11m in the provision of retail floorspace, not as a response to experiencing past growth or optimism over the health of Macclesfield town centre but rather as a substantial risk in an attempt to kick-start the regeneration and revitalisation of the town centre and clawback trade draw and footfall which has been lost over the years to out of centre retail destinations.
- 8.8 The company has found that the combination of the earlier proposed £90m Silk Street Shopping Centre, the recently allowed Barracks Mill development and the proposals at Handforth Dean have frustrated commercial negotiations with existing and potential tenants; and added uncertainty has been created by CEC's apparent disregard for its own '*town centre first*' policies.
- 8.9 Colliers International (Eskmuir's retail agents) indicate that with the shelving of the major Silk Street project in 2015, and with no indication of out of town projects, prospective retail occupiers were prepared to engage in the Grosvenor Shopping Centre.
- 8.10 In 2016 agreement was reached with TK Maxx for a store of approximately 20,000 sq ft. Whilst other retailers were targeted, including River Island, JD Sports, New Look, Top Shop/Top Man and H&M, none of these would commit until further occupiers were signed to trade alongside TK Maxx.
- 8.11 These are now the very companies targeted by CPG as part of its indicative tenant line-up. Moreover, having agreed provisional terms with a major fashion retailer, new to Macclesfield, there is every indication that the spectre of the Inquiry proposals is delaying commitment to Macclesfield. Other fashion retailers targeted for Macclesfield see the town centre and Handforth Dean as '*either-or*' locations and negotiations are being deferred contingent on the outcome of competing projects.
- 8.12 The redeveloped Grosvenor Shopping Centre has the opportunity to provide critical mass for fashion orientated outlets with shopper friendly town centre parking. However, if Handforth Dean materialises, it is likely to affect the marketing of the Grosvenor Shopping Centre and the re-appraisal of the viability of any future redevelopment with the prospect of abandoning planned investment which would have a significant and negative impact on the wider potential property regeneration investment in Macclesfield town centre.

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<sup>716</sup> Letters dated 8 February

- 8.13 Overall, Handforth Dean is an unsustainable transport location with no scope for linked trips; the proposals would harm the economy of Macclesfield town centre and be at odds with '*town centre first*' policies in the development plan and national guidance. There are no material considerations sufficient to outweigh that conflict.
- 8.14 Further letters, dated 31 May (postdating the hearing of evidence and awaiting written closing submissions), make the following points:<sup>-717</sup>
- (a) a challenging retail market has experienced continuing deterioration across the UK and in Macclesfield with particular reference to company voluntary arrangements and closures;
  - (b) the single biggest casualty out of recent national changes is the traditional town centre with M&S announcing further closures. The closure of its Northampton and Kettering stores coincides with the opening of the Rushden Lakes Shopping Park;
  - (c) property professionals have urged Cheshire West and Chester Council to cease any future work on their Northgate Retail Quarter in light of concerns about impact on the existing retail footprint;
  - (d) where similar schemes have gone ahead, conjecture about limited impacts on existing centres has almost always proved greater than forecast;
  - (e) the proposals at Handforth Dean make it difficult to secure interest and generate lettings and if approved it would be exponentially harder still;
  - (f) no amount of mitigation measures could realistically counter the negative and irreversible harm that would arise from approving CPG and/or Orbit;
  - (g) there are 10 voids on Chestergate, Macclesfield alone with more on Mill Street and other town centre streets;
  - (h) Macclesfield has the ability to become a sustainable town centre but it requires continuing investment – investors and retailers need confidence that they will not be undermined; and
  - (i) the proposals run counter to the '*town centre first*' policies in the development plan and national guidance.
- 8.15 A further letter adds concerns about Barracks Mill and the application to vary 2 conditions imposed on the outline planning permission as indicative of its suspicions that post decision changes could be sought to improve its prospects of attracting occupiers – the potential of scheme changes is a risk to town centre investment.<sup>718</sup>

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<sup>717</sup> MISC/1; MISC/2

<sup>718</sup> MISC1.1

## **9. Inspector's Conclusions**

### **Introduction**

- 9.1 The references in brackets [x] are to the principal paragraphs in my report of the cases from where my conclusions are drawn.

### **Main considerations**

- 9.2 The 3 call-in letters refer to the Secretary of State's policy on calling in planning applications and, in light of the policy, the decision to call-in the applications. The initial matters on which the Secretary of State particularly wished to be informed about for the purposes of his consideration of the applications are:- [1.6 - 1.7]
- the extent to which the proposed development is consistent with Government policies for building a strong, competitive economy (Framework Chapter 1);*
- the extent to which the proposed development is consistent with Government policies for ensuring the vitality of town centres (Framework Chapter 2);*
- the extent to which the proposed development is consistent with Government policies for promoting sustainable transport (Framework Chapter 4);*
- the extent to which the proposed development is consistent with the development plan for the area and;*
- any other matters the Inspector considers relevant.*
- 9.3 I indicated at the opening of the Inquiry, in light of the cases to be advanced, that the Secretary of State would need to consider the effect of the proposals (with the exception of the Phase 1b application) individually, and in combination, on the loss of employment land; retail considerations including the sequential approach, the effect of the proposals on the vitality and viability of relevant centres and their impact on existing and planned investment in those centres; the effects on highway safety; and accessibility. [1.8]
- 9.4 Further matters would include the consideration of planning obligations and conditions; and thereafter the overall planning balance having regard to the economic, environmental and social benefits advanced in support of the proposals. [1.9]

### **The Employment Land Consideration**

#### **The Development Plan**

- 9.5 Saved Policy E3 of the Macclesfield Borough Local Plan (MBLP) is permissive of business use Class B1 and saved policy E4 is permissive of general industry (B2), warehousing (B8), high technology (B1b), and light industry (B1c) at Stanley Green/Handforth. The CPG site is identified in supporting text to the former as 'suitable for 'flagship' developments and will be reserved for such schemes'. [1.21 -1.22, 6.6, 6.10 - 6.13]
- 9.6 The Cheshire East Local Plan Strategy 2010-2030 (CELPs) was adopted in July 2017. [6.14 - 6.21]

- 9.7 Policy EG 3, relating to existing and allocated employment sites, affirms:-
- '1. Existing employment sites will be protected for employment use unless:*
- i. Premises are causing significant nuisance or environmental problems that could not be mitigated; or*
  - ii. The site is no longer suitable or viable for employment use; and*
    - a. There is no potential for modernisation or alternate employment uses; and*
    - b. No other occupiers can be found.<sup>(43)</sup>*
- 2. Where it can be demonstrated that there is a case for alternative development on existing employment sites, these will be expected to meet sustainable development objectives as set out in Policies MP 1, SD 1 and SD 2 of the Local Plan Strategy. All opportunities must be explored to incorporate an element of employment development as part of a mixed use scheme.*
- 3. Subject to regular review, allocated employment sites will be protected for employment use in order to maintain an adequate and flexible supply of employment land to attract new and innovative businesses, to enable existing businesses to grow and to create new and retain existing jobs'. [1.23, 4.5]*
- 9.8 Footnote 43 sets out:-
- 'To demonstrate that no other occupiers can be found, the site should be marketed at a realistic price reflecting its employment status for a period of not less than 2 years. The council will require evidence that a proper marketing exercise has been carried out including a record of all offers and expressions of interest received'. [1.24, 6.45]*
- 9.9 Paragraph 11.24 provides clarification that the policy applies to all sites currently in use for employment purposes (B1, B2 and B8 uses in the Use Classes Order) as well as sites allocated for such uses. **[4.6, 4.8, 5.18, 6.56(h)]**
- 9.10 The Orbit site has 3 components, notably the existing Stanley Court Offices and related car parking; the Gradus warehouse building and servicing area; and a vacant site to the south. The proposal would, in simple terms, retain the office building, see the demolition of the warehouse building which, with the vacant land, provides the basis for the proposed retail development of 7 non-food A1 retail uses. The 2 smallest units include use as a sandwich shop and/or A3 use and/or A5 use. **[1.17]**
- 9.11 For the purposes of Policy EG 3, the office building is to be retained and needs no further consideration. The warehouse building is currently in use for employment purposes and subject to EG 3; but the vacant land does not have an employment use. However, it is an 'Existing Employment Area' by reference to the Macclesfield Borough Local Plan (MBLP), thereby engaging Policy EG 3. **[1.20]**
- 9.12 The relevant policy in the MBLP is E2 which indicates:- *'on existing and proposed employment land, proposals for retail development will not be permitted'*. Paragraph 7.10 explains:- *'retailing is not permitted because it would reduce the amount of employment land available .....'*. **[1.20, 6.8]**
- 9.13 The MBLP was adopted in 2004 and was intended to cover the period to 2011 with a review at least every 5 years. Although Policy E2 is a 'saved' policy it is, nonetheless out of step with CELPS Policy EG 3 (which was

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- found to be compliant with the Framework at the time of examination) in as far as it admits alternative development in defined circumstances. **[1.32, 2.5, 2.9 - 2.11, 2.297 - 2.299, 4.45.4, 6.9, 6.60 - 6.64]**
- 9.14 The bulk of the CPG site is vacant (save for that element of the Next store comprising Phase 1b), and it is again identified as an Existing Employment Area by reference to the MBLP and subject to CELPS Policy EG 3. **[1.18]**
- 9.15 Policy EG 3 contains 3 principal elements. Before grappling with whether there is, or is not, a distinction between existing and allocated employment sites, it follows that as the Orbit/Gradus warehouse is in employment use it must, for the purposes of the policy, be on an existing employment site. This engages paragraph 1 of the policy. Sub-clause 'i.' is not relevant but 'ii.' is, with particular reference to whether the site is no longer viable for employment use; and there is no potential for modernisation or alternative employment use; and no other occupiers can be found. **[1.23, 2.20, 5.13]**
- 9.16 For a recently adopted policy, its construction and meaning is challenging and potentially ambiguous; 2 witnesses changed their stance; and detailed opposing submissions are set out in the cases for the parties. **[2.19 - 2.27, 4.7, 5.13 - 5.16, 5.18 - 5.19, 6.40 - 6.51, 6.56, 6.57]**
- 9.17 Although it is headed '*Existing and Allocated Employment Sites*', it does not necessarily follow that each part of the policy would apply equally, or at all, to the 2 constituent elements of employment sites. **[2.21]**
- 9.18 It is beyond doubt that paragraph 1 applies to existing employment sites, (not least because it says so) as it talks of nuisance and environmental problems and ongoing suitability. Paragraph 2 is similarly unambiguous in relation to its application to existing sites. **[2.22, 2.23, 6.44]**
- 9.19 Paragraph 3 protects allocated employment sites subject to regular review. On the face of it, paragraphs 1 and 2 relate to existing sites only; and paragraph 3 is restricted to allocated sites.
- 9.20 However, an allocated site (whether or not it had been subject to regular review) with no active use, would, in the event of a proposal for an alternative use, be protected from other uses by paragraph 3, whether intended or otherwise.
- 9.21 It would not involve consideration as to whether the site was '*no longer suitable or viable for employment use*' as set out in paragraph 1.ii.; and, it would be tantamount to a blanket restriction, albeit one might expect robust protection for recently allocated sites and those carried forward from the MDLP through the Cheshire East Employment Land Review 2012. **[2.25, 2.26]**
- 9.22 Whilst the policy has to be construed in the terms of the language used, paragraph 11.22 draws on the Framework (2012) by reference to policies avoiding '*the long term protection of sites allocated for employment use .....*'. **[2.23]**

- 9.23 Paragraph 120 of the Framework (2018) indicates:-
- 'Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated in development plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:*
- a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and*
- b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area'.*
- 9.24 In this regard, the development plan is recently adopted and up-to-date; and there is nothing to suggest an unmet need for further retail development as proposed.
- 9.25 CELPS paragraph 11.23 combines *'existing employment sites, premises and allocations that are viable .....*' for safeguarding, albeit in referring to possible alternative development it relates to *'the release of viable employment sites or premises .....*' but makes no mention of allocated sites and is, in essence, the explanation to paragraph 1 of the policy. **[3.113, 6.43, 6.44]**
- 9.26 Paragraph 11.24, with the intention of providing clarification, says *'this policy applies to all sites currently in use for employment purposes (.....) as well as sites allocated for such uses'*. Nonetheless, it does not assist in the conundrum as to whether paragraphs 1 and 2 should be distinguished from paragraph 3 or whether the 3 paragraphs are all embracing as far as they might logically be.
- 9.27 Overall, reading the policy as a whole, in context, and notwithstanding that CEC should have a clear grasp of its own recently adopted policy, it is my view that the 2 parts of the policy, despite the coupled heading, are mutually exclusive and, as far as allocated employment sites are concerned the policy offers protection from other uses but provides no development management criteria for the consideration of such applications as and when they might arise. **[4.7, 6.50]**
- 9.28 However, that is not to say that the words of the policy effectively pre-determine any application insofar as the primacy of the development plan admits counter material considerations. In this case, *'suitability'* and/or *'viability'* are such considerations and indeed coincide with the evidence proffered by CPG. Moreover, in order to demonstrate lack of suitability or viability, or otherwise, one would expect this to be corroborated by a marketing exercise.
- 9.29 In this regard, I consider that the Orbit/Gradus warehouse building falls within the ambit of policy EG 3 1.ii.a. and b. and also EG 3 2.; whereas EG 3 3. is relevant to the Orbit vacant land and the CPG site. **[2.86, 3.32, 3.34]**



- 9.30 Overall, it amounts to a subtle distinction in that in the case of the former the considerations are:- **'whether the site (building and yard) is no longer suitable or viable for employment use; and there is no potential for modernisation or alternate employment use; and no other occupiers can be found'**.
- 9.31 And, in the case of the latter:- **whether the loss of the land would undermine the capacity 'to maintain an adequate and flexible supply of employment land' having regard to other material considerations, notably, the suitability and viability of the site for employment use and the marketing that has been undertaken for the site. [2.27 -2.30]**
- 9.32 Footnote 43 to EG 3 1. ii. b. 'no other occupiers can be found' also warrants preliminary consideration. The footnote sets out the process of providing evidence to meet the policy criterion. As a footnote to the policy, it might be assumed that the intention of the authors was to give the 'test' greater force than by mere inclusion in the justification. [2.89]
- 9.33 Whilst such opacity could have been avoided, either by inclusion of criteria within the policy or 'relegation' to justification, Footnote 43 is, to my mind, a well-defined explanation of the steps required to secure policy compliance. When read in the round, the policy, footnote and justification provide the means to assess whether or not the loss of an employment site would cause harm to business or employment opportunities. [2.87, 2.88, 3.111, 3.112, 6.58, 6.59]
- 9.34 Whilst it was suggested that a distinction should be drawn between the series of new allocations and the saved allocations, with the protection of the former meriting greater weight, neither the policy nor its justification imply such a nuanced interpretation, albeit it might reasonably be expected that old, dormant, sites might be more vulnerable to proposals for alternative uses and, thus, make up the bulk of the allowance of 120 ha for loss to other uses. [4.9]
- 9.35 Similarly, a point raised by CPG, although paragraph 11.25 refers to several key employment areas in the borough and lists additional key sites that form part of the borough's employment land portfolio, mere silence on land at Handforth does not, to my mind, suggest any less commitment to protecting this site and the array of 'other' employment land.
- 9.36 The next step is to turn to CELPS Policy PG 1 which makes provision 'for a minimum of 380 hectares of land for business, general industrial and storage and distribution uses over the plan period 2010 to 2030, to support growth of the local economy'. This is based on a net employment land requirement of 195 ha between 2010 and 2030; 120 ha allowance for land losses; and a 20% (63 ha) flexibility factor. The sum of 378 ha is rounded to 380 ha). [2.12, 3.33, 3.95, 3.96, 4.11, 4.12, 5.6, 6.22]
- 9.37 CELPS Policy PG 7 expects Handforth to accommodate 'in the order of 22 hectares of employment land .....'. Paragraph 8.73 confirms that this figure, like others in the policy, is 'intended as a guide and [is] neither a ceiling nor a target'. The 22 ha comprises up to 12 ha at the North Cheshire Growth Village; an existing supply of 9.72 ha consisting of the Next/CPG site;

- Lower Meadow Road; and land west of Epsom House; and a residual requirement of 0.28 ha. **[2.18, 3.31, 4.15, 6.24, 6.25 – 6.27]**
- 9.38 Some 1.3 ha has already been lost to the Next development; the 3.2 ha at Lower Meadow Road was (in the course of the Inquiry) the subject of an application for non-employment development; and other losses have occurred in the vicinity. In theory, the loss of these sites would increase the residual requirement. **[4.15, 4.16, 6.27, 6.28]**
- 9.39 However, the CELPS employment land supply allows for an annual average loss of 6.0 ha of employment land, across the borough, to other uses. The figure has inevitably fluctuated, with a take up low of 0.91 ha in 2010/11 and a take up high of 15.0 ha in 2013/14. **[2.13, 2.14, 3.36, 4.11, 5.6, 6.29]**
- 9.40 The average from 2010-2016 was 6.73 ha, which reduced to 6.36 ha following the loss of 4.14 ha in 2016/17. Whilst this sits above the CELPS allowance, it does not take any account of the 20% flexibility element in the overall quantum in the CELPS. **[2.15, 4.13, 6.30, 6.31]**
- 9.41 Whilst Peel, drew out greater land losses arising from planning permissions on employment land for non-employment uses, the correct measure is the actual take-up when employment land is physically replaced by another use. Similarly, notwithstanding Orbit's contention that not all of the losses were from employment land allocations, it is the totality of the provision as opposed to particular components which are important to the overall employment land requirement. **[4.14, 6.32]**
- 9.42 Irrespective of whether or not the actual employment land take-up has been below the historic level, or whether the allocation at Handforth represents an over-provision, the overall spatial distribution has been derived to meet the fully objectively assessed need for employment land. **[4.18, 4.21]**
- 9.43 It is notable that a significant amount of land (50.1 ha) was removed from the Green Belt in the north of the borough as part of the employment land allocations, in line with the CELPS vision and objectives to meet future employment needs in an area where such land was in short supply. There is, therefore, force in the argument that this makes it the more important to retain suitable and viable employment sites in order to minimise future pressure for the release of additional land from the Green Belt. **[4.9, 4.10, 4.22 – 4.24, 5.7, 6.19, 6.33 – 6.35, 6.38, 6.39]**
- 9.44 However, the development plan does not offer special protection for existing and allocated employment sites in the north of the borough, or elsewhere, other than through Policy EN 3. The consequences of loss beyond the parameters of the plan could lead to the need to consider further land allocations through CELPS Part 2 allocations or a review of the plan and the use of either safeguarded land or Green Belt. Neither would be a comfortable choice and it is unnecessary to debate their comparative merits. **[2.16, 4.10, 4.12, 5.8 – 5.10]**
- 9.45 Given that CEC put its proposition of having to face this scenario as no higher than an increased probability, and that there is some scope for smaller scale Green Belt release within Part 2 of the plan, or in a future

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local plan review, this does not by itself amount to a clear indication of demonstrable harm. Similarly, SMBC currently has sufficient employment land and, presumably, any notion of Green Belt release to meet future needs would be through the development plan process. [2.14, 2.17, 3.31, 4.17, 5.10, 5.11]

9.46 Again, there is no clear-cut evidence. Nonetheless, it is fair to say that it must be a material consideration, of no more than very limited weight in view of the vagueness, as the cumulative effect of a number of permissions could result in the outcome which CEC and SMBC seek to avoid. [4.14]

9.47 In the case of Orbit, the appeal site is not included within the overall tally of employment land supply and its loss would have no impact on the 380 ha allocation. Whilst it is clearly an employment land resource, and part of the site lies vacant, the CELPS did not identify the site as a means of meeting the residual requirement of 0.28 ha at Handforth. [3.32, 3.35]

**Employment – Orbit (whether the appeal site is a suitable location for employment)**

9.48 Orbit does not claim that the appeal site is no longer suitable for employment use in that it has actively promoted the site for employment use for a number of years, albeit it has not found any demand for office development sufficient to implement extant planning permissions. [4.26]

**Employment – Orbit (whether the redevelopment of the site would be viable)**

9.49 CEC agrees with Orbit that the warehouse and yard occupied by Gradus, and the vacant land to the south, is suitable for employment uses. CEC accepts that office use on the site is unlikely to come forward in the foreseeable future. Further, the Council does not take issue with Orbit's appraisal which demonstrates that the redevelopment of the site with new industrial buildings would not be viable. However, Peel does. [1.32, 3.30, 3.38 – 3.45, 3.107, 4.26 – 4.27, 6.52, 6.53, 6.89 – 6.91]

9.50 The starting point in any viability appraisal is a target profit on costs of a minimum of 15%. Peel's initial position demonstrated that the redevelopment of the Orbit site, with either a single unit or a multi-unit scheme, would significantly exceed this benchmark. However, its position was challenged by Orbit's own appraisal which set out to test the assumptions made by Peel. [3.118, 6.89 – 6.91]

9.51 As a result of discussions between the respective witnesses for Peel and Orbit a much clearer position emerged and the difference in their respective standpoints was considerably narrowed to 2 principal issues namely site coverage and build costs. [3.44, 3.45]

9.52 In terms of site coverage for speculative development, the institutional standard is 40%. Whilst any figure above this is likely to have the potential to increase profit, the recognised starting point is 40% and any viability appraisal which assumes a greater floor area from the outset is likely to be challenged. Indeed, in this case, the introduction of an element of first floor accommodation has an inevitable ground floor

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penalty. In my view, Peel has not provided compelling evidence to show that floorspace over and above the benchmark is a realistic proposition.

**[2.66, 3.40, 3.45, 6.90]**

- 9.53 On build costs, the totality of the evidence points to Peel's assessment as being low and lacking a clear demonstration of being realistically achievable. For a small unit scheme, I regard Orbit's position to be the more robust. **[3.38 - 3.48]**
- 9.54 Moreover, Orbit set out, in accordance with good practice, to provide sensitivity testing. In this regard, a viability assessment contains a number of variables and attributing value to those variables rests largely on professional judgement. Even small inaccuracies here and there can skew the output. Nonetheless, Orbit has demonstrated comprehensively, taking Peel's inputs on maximum coverage and minimum build costs, that the redevelopment would not be viable. **[6.91]**
- 9.55 Although Peel suggested that the profitability might be increased by including higher end users such as retail or trade counters, which Orbit had not addressed, Stanley Green already contains a group of trade counters, side-by-side. There is nothing to suggest that the Orbit site, without its own critical mass, would be attractive to such users who tend to co-locate for related and spin-off trade. **[6.90]**

**Employment – Orbit (whether the reuse of the existing warehouse building would be viable)**

- 9.56 The difference here, between Orbit and CEC, is whether, if and when Gradus vacates the site, it would be necessary to renovate the existing building to institutional standard in order to achieve re-occupation.
- 9.57 The evidence clearly shows that the relocation of Gradus to Lyme Green, Macclesfield has a high degree of probability and that the existing warehouse will be vacated by mid-2019. **[3.49, 4.29 - 4.34]**
- 9.58 The existing building is some 30 years old and it is agreed that it requires some work but the extent of that work is not agreed. Although property consultants undertook an inspection in December 2016 to provide a statement into the viability of the building for its continued use for employment, this was restricted to an external inspection and a brief report. **[3.50]**
- 9.59 Moreover, whilst CPG's witness, who undertook that appraisal, believed the building to have a future if it was refurbished and priced accordingly, the only full building condition survey and schedule of repairs has been undertaken on behalf of Orbit. This sets out necessary works to return the building to good and substantial repair and condition in order to secure long term institutional letting. It is the only robust evidence before the Inquiry. **[4.38, 4.39]**
- 9.60 Although some of the costs of repair would fall to the existing tenant, there was no evidential basis to show that this would be either substantial or material to Orbit's position. In addition, whilst it was suggested that limited repairs at lower cost might attract re-occupation by a 'lower order'

tenant looking for cheap premises, this amounted to nothing more than supposition. Significantly, it is clear that it is a position that Orbit would not entertain with the clear intention to do nothing other than to demolish the building to avoid costly future liabilities. **[3.49, 4.35 – 4.37, 4.40]**

**Employment - Orbit (whether any other occupiers can be found – marketing)**

- 9.61 Orbit's long-standing intentions for the appeal site have been aimed at the office market, with planning permission granted in 2008 for 2 office buildings on the site of the warehouse and the vacant land. The permission was later renewed in 2016. However, despite extensive marketing, no occupiers have been attracted and the permission has not been implemented.
- 9.62 It is to be noted that the existing office use adjoining the site, Epsom House, was constructed to shell in 2007 and, despite the flexibility to accommodate more than one user, the building was not let until December 2017 when Pets at Home decided to consolidate its local operations.<sup>719</sup>
- 9.63 CEC accepts, and no other party contends, that the redevelopment of the site for offices would not be viable. The matter at issue, pursued in particular by CEC and Peel against Orbit, is whether appropriate marketing has been undertaken in accordance with CELPS Policy EG 3. **[4.41 – 4.45, 6.94]**
- 9.64 In this regard, Orbit's marketing, although regular and extensive, has been wholly directed at the office market and it has failed to expressly include other forms of employment development. Whilst Orbit claims, in light of its extensive portfolio and operations, that it would have been aware of any potential interest, irrespective of marketing, this is insufficient to respond to the requirements of the policy. **[3.51 – 3.53, 6.54, 6.55, 6.94 – 6.96]**
- 9.65 Moreover, Orbit appears to have been content to sit on its asset with the warehouse building occupied; it had no intention of seeking to dispose of the freehold of the appeal site as that would have been at odds with its business model; the likely buoyancy for new stock in the small-medium range was not tested; and the claim that the location is not attractive to the market is doubtful particularly in light of local road improvements. **[3.54]**
- 9.66 Irrespective of all of these factors, it has already been shown that neither the repair and reoccupation of the existing building, nor the redevelopment of the site, would be viable based on an exercise of a vacant site, unit size reflecting market preference and with the imminent completion of the A6 MAAR. **[3.55, 3.56]**
- 9.67 Policy EG 3 has to be read as a whole. Whilst there is no argument as to the suitability of the site for employment use, that is displaced by the alternative criterion of lack of viability in that it has been shown that the site is no longer viable (EG 3 1. ii.), and that there is no potential for modernisation of the existing building and alternate employment uses

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<sup>719</sup> ORB/2/2 paragraph 3.4-3.6

within it (EG 3 1. ii. a.). However, the third limb (EG 3 1. ii. b.) has not been fulfilled in that it has not been demonstrated that '*no other occupiers can be found*' following the wording of Footnote 43. **[6.54, 6.55, 6.97, 6.98]**

- 9.68 Nonetheless, on the basis of the evidence before the Inquiry, the prospect of finding other occupiers appears, at best, to be bleak. Although this could only be verified by the stipulated marketing exercise, there is force in the argument that seeking to market an unviable scheme would be futile.
- 9.69 Overall, it can be concluded that the site (building and yard) is no longer suitable or viable for employment use; and there is no potential for modernisation or alternate employment use. However, there is a breach of CELPS Policy EG 3, in as far as a judgement has to be made from the viability evidence that no other occupiers can be found as opposed to marketing evidence leading to that conclusion. In the particular circumstances of this case, limited weight attaches to the conflict with Policy EG 3. **[3.57, 4.52]**

**Employment – CPG (whether the application site is a suitable location for employment)**

- 9.70 One of CPG's principal arguments is that the application site is in the wrong location for employment use as it is not aligned to market requirements for employment land. In addition, there is no market demand for B1 office use in this part of the borough, as all parties to the Inquiry agree. **[2.31 – 2.51]**
- 9.71 On the face of it, the CPG site has the advantage of adjacency to the A34; enhanced linkage to the motorway network via A6MAAR; prominence; and proximity to both employment and retail uses. It is also in the north of the borough where the CELPS strategy seeks to provide employment opportunities, in order to attract inward investment and economic growth, and has thought it necessary to remove land from the Green Belt. **[1.12, 1.13]**
- 9.72 Set against this is the fact that the site has laid vacant, save for temporary airport car parking, since its first allocation in the late 1990s when it was identified and allocated for flagship B1 developments. **[1.18]**
- 9.73 Looking more recently, the Employment Land Review (2012) continued to recognise the potential of the site with its market attractiveness being summarised as '*excellent prominent site for quality office development*'. Given that Class B1 admits uses other than offices and, as the review had identified a range of uses within that class, including a high quality business park, the market attractiveness should not be read too literally. On this basis, I am not convinced that CPG's claim that the basis for continuing the allocation has gone. **[2.34]**
- 9.74 However, it is important to note that employment land take-up in the north of the borough has been very limited. This can be attributed to competition from more favourably located sites on the edge of Manchester and Stockport, restrictive policies and the greater attraction to centres in the south of the borough and accessibility to M6 motorway. **[2.38]**



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- 9.75 The move to allocate more employment land in the north of the borough was a response to securing a better balance of homes and jobs as part of the CELPS process. In this regard, the Eskogen Study (2015) acknowledged the shift in the balance of employment to the south; and, whilst it pointed to growth at Handforth, this was transient in that it related to construction. *[2.39, 2.40]*
- 9.76 Although CPG claims that there is nothing to suggest that Handforth is a favourable location for employment, sufficient to justify the allocation of 22 ha of land, the allocation runs for the plan period to 2030 and it is, in part, dependent on the development of the North Cheshire Growth Village. *[2.36, 2.41, 2.44, 2.51]*
- 9.77 Looking more closely at different employment sectors, there has been a significant growth in demand for B8 logistics sites, with emphasis in the south of the borough; and growth on transactions on larger sized buildings, again in the south of the borough. Take up has been correspondingly better in the south.
- 9.78 The local market has struggled and former vacant industrial buildings (Unit 4 Brook Park, Epsom Road and Unit K2 Earl Road) have been converted to sports and leisure uses. Whilst Peel and SMBC sought to demonstrate demand by reference to other schemes, Parkgate (Knutsford), Aurora (Stockport) and North Point (Trafford Park) are overtly different in terms of location and context; and Alpha (Airport City) is a very different concept. *[2.37, 2.44 - 2.47, 2.50]*
- 9.79 Further, although Peel alleged that the existing trade counters at Stanley Green were looking to move to new units, an extant permission for this form of development close to the existing outlets has not shown any reported interest. *[2.44 -2.49]*
- 9.80 In terms of employment land within the vicinity of Handforth, a search within a radius of 5km is not a particularly decisive measure, especially when other sites are located marginally beyond this range.
- 9.81 A further matter to consider is the perception of the CPG site. In this regard, it is located adjacent to the Handforth Dean Retail Park, close to Stanley Green Retail Park and it is part of the established retail corridor linked by the A34. *[2.44]*
- 9.82 In this regard, I acknowledge that the compatibility of an established major retail draw with employment use, based on a common access from the A34 and the interaction of cars and commercial vehicles, may well be a factor in the minds of employment developers and end users. However, depending on the nature of the employment user(s), I would not regard it as an inevitable conclusion and an absolute constraint.
- 9.83 Overall, whilst a period of 20 years has elapsed since the original identification of the site for employment uses, I am not convinced that the market's perception of the site, competition from other locations and its partial retail context makes the land inherently unsuitable for employment uses.

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**Employment – CPG (whether the redevelopment of the site would be viable)**

- 9.84 In assessing the viability of developing the site for employment purposes, CPG provided a masterplan with a mix of small and medium-sized units. In my view, this reflects the likely market insofar as the site is unlikely to be attractive to 'big-box' distribution users given its separation from the motorway network. In addition, 2 scenarios were tested:- one wholly employment uses and the other a scheme including trade counters. Whilst some consideration was given to a mixed use scheme, including offices, it was not pursued to detailed viability assessment as Handforth is not a favoured location for office use. This latter point is not in serious dispute.<sup>720</sup>
- 9.85 The viability appraisal contains a number of elements and assumptions based on professional judgement. The key differences between CPG and Peel were the quality of the design; floorspace/density; build costs; and rents. [2.52, 2.53, 6.52]

**Design**

- 9.86 In terms of the quality of the design, the MBLP, in allocating the site for B1 (Business) Use, indicated that the *site 'is regarded as suitable for 'flagship' developments and will be reserved for such schemes'*. Whilst 'flagship' is not defined, adopting its plain meaning, it is apparent that the plan envisaged high quality development. That is not surprising given the location of the site adjacent to, and elevated above, a principal traffic route and adjacency to a (then) new retail park. [5.42]
- 9.87 Whilst the design ambitions for this site, in general terms, can be traced through a number of documents, forensic analysis would serve no real purpose in that the prominence of the site and the quality of adjacent development, and the growing aspirations in government policy to secure good design, provide a clear indication that the site should be developed in a manner befitting its surroundings. Irrespective of the absence of any express requirement in CELPS Policy EG 3 for a particular standard of development, the overall context invites quality of design in terms of layout, materials, movement and landscaping. [2.58 – 2.61]
- 9.88 CPG and Peel were active in their detailed criticism of each other's schemes and their arguments are well rehearsed. In terms of the key points, immediate distinction can be drawn between CPG's layout plans and those of Peel. [2.54 – 2.67, 6.69 – 6.73]
- 9.89 Whilst both propose buildings close to the northern boundary of the site (the more so in the case of CPG), with Stanley Green Business Park beyond, more critically, Peel presents a succession of buildings uncomfortably close to the A34. Although CPG's wholly employment scheme turns its back on Next and its car park, this serves to distinguish between the different uses. Impacts on Earl Road, a business park frontage, would not be tangibly different. [2.55]

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<sup>720</sup> CPG/1/2 paragraphs 73 - 78 CPG1/2 Appendix 11

9.90 In terms of space around buildings and landscaping, the notional schemes can be set apart in that the CPG schemes provide indicative landscaping as an integral component of the design, whereas the sparse landscaping in the Peel schemes appears no more than tokenism and, importantly, given the indicative site coverage of buildings, yards and car parking, there would be no real scope for effective landscaping. [2.63]

9.91 Although CPG's schemes, notably the one including trade counters, might be criticised for its central boulevard, seemingly without design rationale, that represents the extent to which the scheme might be considered to be over generous in its landscape provision. Overall, the CPGs schemes provide a better indication of an appropriate form of development and Peel's counter drawings can be considered to be over-development.

#### **Floorspace/density**

9.92 Looking first at development densities, the initial disagreement between CPG and Peel was whether or not the measure of viability should flow from gross site density or net site density. One would have expected professional experts to be at accord on this preliminary point.

9.93 The examples produced by CPG support its case that the institutional standard yardstick is 40% net site density. Whilst some of the illustrated schemes achieve above that figure, that owes more to site characteristics and type of development as opposed to the preliminary percentage floorspace target. It is telling that the examples, including Peel's illustrative over-intensive scheme, all show a gross site density below 40%. [2.66 - 2.68 6.70(c)]

9.94 On this basis, and having regard to the critique on design quality, Peel's net density of 46.7% would be unrealistic and unachievable. CPG's employment use scheme with a net site density, albeit marginally below the standard, at 38.8% would be the more realistic, albeit potentially conservative, basis for assessment. However, even on that premise, given that Peel has criticised the absence of an articulated vehicle turning hammer head for units 1 to 5 (which CPG accepts and notes that similar provision should be made for units 6 to 8) which, if incorporated, would reduce the developable area, CPG's floorspace is sufficiently robust. [2.66, 2.69 - 2.71]

#### **Build costs**

9.95 The difference here between CPG and Peel is said to arise from the contrasting assumptions of whether or not the site should be developed as a 'flagship' scheme or a standard employment scheme. The allowance for the respective build costs is £60-£70 sq ft and £50-£55 sq ft respectively. CPG's estimated figure is corroborated by construction consultants based on costs incurred for developments of a similar nature and, whilst Peel's estimate is not supported, Peel is an experienced builder developer. It is evident that the difference can largely be attributed to build quality and, on the basis of my analysis above, CPG's stance is more realistic for the type of development likely to be required in planning terms. [2.72, 6.70(h)]

9.96 There are also disputed elements relating to the cost of a sub-station; foundation type and cost; site investigation for ordnance; and investigation and remediation for potential radioactive aircraft instrument dials. Even if these differences are factored in, taking Peel's costs for the substation (saving £250,000); omitting piling (saving 1.079m); investigation and remediation costs (saving £350,000), the overall difference would be in the order of £1.68m. Whilst that would turn CPG's estimated loss of £1.34m into a marginal profit, it would not bring the scheme anywhere close to viability. [2.73, 6.70(i)-(k)]

**Rents**

9.97 CPG's assessment includes rents for standard industrial units at £7.25 sq ft and £7.50 sq ft for the smaller units; which it believes to be at least 0.25p higher than could be achieved. Peel uses a range of £6.50 - £7.50 sq ft depending on unit size. It relies on the recent letting of Aurora, Stockport, as the best comparator achieving rents of £6.95 - £7.50 sq ft. CPG's assumed rental can therefore be seen to be robust for the purposes of the assessment which feeds into its appraisal of a scheme loss of £6.58m. [2.74 - 2.78, 6.70(l)]

**Land Value**

9.98 It is SMBC who departs from the other experts on land value for its appraisal and postulates a nil land value on the basis of SMBC's involvement in the Aurora scheme. Whilst it chose to discount the value of its own land, the assessment here for a privately funded development requires consideration of land value as a development cost. There is no suggestion that this might otherwise be offset by public funding. On this basis, SMBC's optimism of a meaningful profit dissolves into a material loss. [2.44(e), 2.81 - 2.83, 5.38 - 5.45, 6.70(m)]

**Conclusion**

9.99 CPG has also undertaken appraisals using different assumptions to counter Peel and to illustrate the robustness of its own case. Although Peel criticises CPG for not assessing all reasonable development options for employment, the schemes presented are a reasonable anticipation of the likely market for employment use, planning policy and guidance from consultants to CEC before it sought to dispose of the site. Moreover, no other party presented a materially different potential mix of uses which would achieve viability.

9.100 Overall, in my view, the various appraisals serve to demonstrate, that Peel's stance, in general terms, is overly and excessively optimistic on costs and revenue and it does not provide sufficient plausibility in its attempt to demonstrate a viable form of development. SMBC's experience of Aurora is not comparable with the situation before the Inquiry and on the information available it is not known whether it was viable.

9.101 Both CPG and Peel have approached viability with a number of illustrative scenarios with vastly different outcomes which range between alleged significant loss to alleged significant profit. Whilst relative positions must be treated with a degree of scepticism, and in the knowledge that such exercises are imprecise and rely on judgement, it is my overall conclusion

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that CPG has cleared the hurdle, on the evidence before the Inquiry, of meeting CELPs Policy EG 3 1. ii. in showing that the site is no longer viable for employment use. [2.79, 2.80, 2.84, 2.116, 2.295]

**Employment – CPG (whether any other occupiers can be found – marketing)**

**Marketing 1997 - 2014**

- 9.102 The CPG applications (other than Phase 1b which was recommended for approval) were the subject of an officer recommendation of refusal on the basis of the loss of employment land. However, CEC's Strategic Planning Board resolved to grant planning permission. [1.30, 1.31, 4.55]
- 9.103 The assessment as to whether or not a proper marketing exercise has been undertaken rests heavily on the interpretation of a number of background documents. Although reference was made to 4 periods of marketing, the first, in 1997-1998, can be discounted on the grounds of lack of detail and its unrelated and historic nature. The invitation for short term lets, in 2010, is of passing interest in its limited offer, albeit it is clear that enquiries were made for the freehold interest of the site. A Cabinet report, 28 November 2011, recommended investigation of the options '*for development of the site to maximise employment opportunities and financial returns to the Council*'. [2.85, 2.90, 4.60, 6.75 - 6.77]
- 9.104 Three main options for further appraisal were outlined, notably:- marketing the site for development, on the basis of serviced plots with infrastructure provided by the Council; or Council development of the site for an end user; or development in conjunction with a development partner. [2.93]
- 9.105 Shortly afterwards, commencing in March 2012 and extending for a period of 6 weeks, expressions of interest in the site, on the basis of long lease or serviced plots, were invited. Twenty six responses were received of which 10 were fully policy compliant employment uses. [2.94, 2.95, 6.78]
- 9.106 In a report to Cabinet (7 January 2013) '*strong interest in the site*' was recorded. It was also noted that '*this asset would have a substantially higher value if it were developable for retail or residential uses than employment ..... from a Cheshire East as landowner perspective, the preferred use for the site is for B1 type development (offices, research and development, and light industry) ..... in policy terms, B2 (General Industrial) and B8 (Storage & Distribution) uses would also be considered suitable.*' [2.96, 6.79]
- 9.107 A further report (4 January 2014) advised Cabinet that '*Engine of the North (EotN), the Council's new development company, is ideally positioned to support the Council in maximising the capital receipt ..... as well as delivering investment and employment opportunities*'. It continued '*..... EotN's brief from the Council is to accelerate the disposal of this site in line with the Council's corporate objectives and existing and emerging planning policy whilst maximising capital receipts. In order to deliver these objectives in a reasonable timeframe a wider range of land uses should now be considered*'. [4.74, 6.80]
- 9.108 The recommendations were '*..... to take all necessary action to dispose of the Council's landholding ..... to maximise capital receipts and deliver jobs to an accelerated timescale ..... to approve disposal for all potential land uses including employment, retail, leisure and sui generis use such as car showrooms*'.



- 9.109 The reasons for the recommendations acknowledged that *'the site has been held for a number of years as a future strategic employment opportunity .....*'. The Next permission was cited as *'this permission has now established the principle of mixed use development in this location .....* *The Deloitte report concludes that delivering an exclusively employment led scheme will be a significant challenge and potentially unviable .....* *The suggested delivery strategy is to promote the site as a high quality mixed use development with retail and other uses in order to facilitate significant new employment opportunities and to generate substantial receipts .....*'. [4.65]
- 9.110 The Deloitte report took the form of an options appraisal of the site to allow CEC to make an informed decision about how the site should be taken forward for development. Its conclusion on the viability of various uses was for *'internal'* comparison purposes only. The preferred approach was for a 3 plot model with the first phase delivering Next and the remaining phases allocated to a mix of leisure and either retail or car showroom use with room to accommodate an element of office space. [6.79]
- 9.111 Pausing here, it is clear that CEC's primary objective in 2011 was to secure the development of the site for employment purposes and, as a linked but secondary aim, to maximise its financial return. On the basis of the soft marketing exercise, and the expressions of interest received, CEC in 2013 continued to offer primacy to an employment led scheme.
- 9.112 With the benefit of an options appraisal, which had a clear inclination to uses other than employment, CEC in beginning to shift its position, in 2014, was nonetheless seeking policy compliant uses, albeit qualified by a willingness to consider other land uses. Whilst the Cabinet report talks of an accelerated programme, there appears nothing untoward in that objective given the length of time that the site had stood empty and the express intention to deliver jobs. Moreover, the phrase *'to maximise capital receipts and deliver jobs'* should not be interpreted literally as an intention to give greater importance to receipts over employment. [4.63, 4.64]
- 9.113 The decision to offer the land for a variety of uses, including retail, can be seen as a means of maximising interest from developers as part of the overall aim of being able to *'facilitate significant new employment opportunities and to generate substantial receipts'*. It was also an acknowledgement of advice received and the changing face of Handforth Dean with the approval of Next. In my view, it was not an admission of precluding employment development, albeit it made a *'full'* employment scheme less likely in light of enhanced land value arising from, in particular, retail use. [2.98 – 2.101, 4.58, 4.59, 4.61 - 4.64]
- 9.114 Overall, the process to this point can be characterised as a landowner acting reasonably, having sought advice on the best means of delivering jobs, consistent with policy, and realising capital as a consequence of that exercise.
- 9.115 In terms of the criticisms about the limited period of marketing, it is clear that the site was known to the market, there was interest and, crucially, even if a party had not expressed interest at that time it would not have been prejudiced in responding to subsequent formal marketing. The



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- suggestion that expressions of interest were not pursued was firmly rebutted and, again, even if that had been the case there would have been no impediment when the site was offered to the market. **[2.97]**
- 9.116 The offer of the site to the market came in May 2014 and ran for a period of 6 weeks. The marketing brochure has to be read as a whole and whilst it draws on the location of the site adjacent to Handforth Dean Retail Park, it, nonetheless, refers to the A34 corridor as '*home to major businesses and retailers*' and to Stanley Green commercial/retail area. **[2.102, 6.82]**
- 9.117 Even with the reference to the grant of planning permission to Next, the brochure is clear that the site is being offered for a '*wide range of potential uses including employment, retail, leisure, and car showrooms, subject to planning consent*'. Moreover, it advertised the land as a whole or in part; for sale or long leasehold; serviced plots; and also on a design and build basis. This degree of flexibility indicated a willingness to consider a wide range of bids and was, at least in part, clearly directed to employment uses. **[2.102, 6.83, 6.84]**
- 9.118 The Planning Appraisal and Strategy Report, published to coincide with the marketing, in rather sturdier terms opines that '*a departure from Local Planning Policy and the promotion of non-employment uses at the site could well be acceptable*', albeit subject to the qualification that '*..... justification will be required in line with Framework Policy to support a departure from Local Plan Policy as well as any traditional 'in-centre' uses*'.
- 9.119 Although the document continues to explain the sequential and impact tests, I read it as nothing more than fair warning of the policy requirements as opposed to being directly oriented towards retail development. Moreover, it must be remembered that the Planning Appraisal and Strategy Report was in response to the earlier Cabinet resolution based on professional marketing advice.
- 9.120 The 6 week period of marketing might, on its face, be perceived to be relatively short but, in light of the interest shown, some 53 offers, it was open to the agents, as a matter of judgement, to close the process. **[2.103, 2.104, 4.75]**
- 9.121 The subsequent summary report of marketing confirms the level of immediate interest from a range of developers and end users. The outcome of the process reflected advice previously available to CEC with stronger interest for retail/leisure development as opposed to employment use which appears to have been constrained by better placed employment land/accommodation around south Manchester. **[4.79, 4.80, 6.85]**
- 9.122 Whilst there were offers where the employment use was the dominant element, it cannot be said to be unreasonable for CEC's advisors to vet those proposals as to likely viability, deliverability, occupier demand and legitimacy of intent and to advise accordingly. **[2.105 - 2.111, 2.113, 2.114, 4.69, 4.70, 4.78]**
- 9.123 Taking stock of the position reached, there is nothing to suggest that CEC acted improperly, either in the process of marketing or its eventual outcome. CEC was facing in 2 directions in seeking to maximise

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- employment, consistent with its own policy, and also in realising its capital asset. There is no evidence that the latter became the driver. Rather, CEC had the benefit of professional marketing advice which led it to the conclusion that a wholly or predominant employment use was unlikely to be attractive and viable. [2.91, 2.92, 4.66 - 4.80, 5.12, 6.36, 6.37]
- 9.124 This raises the question as to whether or not the marketing exercise was in accordance with CELPS Policy EG 3 Footnote 43. In this regard, in offering the site to the market the expectation of using the land for employment purposes had clearly been diluted by CEC's admission of being open to other uses. [2.112, 5.12]
- 9.125 The consequence of that was to raise expectations of land value and, in turn, the level of offers likely to be received. Whilst there was no impediment to employment use bids, there is every prospect that some such interest would have been deterred and others would have been outbid by higher value proposals. [6.87]
- 9.126 Marketing was in the form of offers by way of informal tender and there was no actual asking price. However, given the likely development potential, there would have been clear anticipation of bids above the level likely to be achieved for land with employment status only. On this basis, it cannot be said that the site was marketed '*at a realistic price reflecting its employment status*' given the preceding tacit acceptance of other, higher value, land uses.
- 9.127 In terms of the length of marketing, whilst there were a number of identifiable steps, these formed a necessary basis of assessment, evaluation and decision taking in order to achieve a defined end result. In this regard, the Cabinet meeting on 28 November 2011 can be seen as the true starting point of the quest '*for development of the site to maximise employment opportunities and financial returns to the Council*'. That, in turn, led to formal marketing in May 2014 and the later consideration of offers received. In my view, that was compliant with Footnote 43. [4.60]
- 9.128 Looking next for '*evidence that a proper marketing exercise has been carried out*', the outline of the process as set out above is self-evidently true testament to the marketing process. However, it is not supported by a transparent record of all offers and expressions of interest received. That is hardly surprising on the grounds of commercial confidentiality and, in any event, it is the Council, in conjunction with Engine of the North and professional agents, which needed to be satisfied as to the validity of the process. [6.74, 6.85]
- 9.129 Overall, there is nothing to dislodge the proposition that CEC acted properly in the process as both landowner and local planning authority and that there was no failure of '*evidence that a proper marketing exercise has been carried out including a record of all offers and expressions of interest received*'. [2.91, 2.92, 4.66 - 4.80, 6.36, 6.37]
- 9.130 In terms of Footnote 43, there is thus one element which was not fully met. Whilst, the exercise of marketing a site for employment use would provide evidence of whether or not other occupiers could be found, and by inference based on a viable scheme, in this instance, having been advised

that a wholly employment use was unlikely to be viable, the marketing was pitched on a wider basis. The land was never marketed solely for employment use. [6.54, 6.55, 6.86]

- 9.131 Reading CELPS Policy EG 3 as a whole, I have reached the conclusion that it cannot be said with conviction that the site is no longer suitable for employment use. The evidence before the Inquiry demonstrates that the site is no longer viable for employment use and it also shows that the mixed-use schemes appraised were also unlikely to be viable.
- 9.132 As to whether other occupiers can be found, the marketing exercise, whilst including employment potential, had the clear expectation, based on advice and earlier viability appraisals, of attracting mixed use and/or retail projects.
- 9.133 However, the obligation within the policy is that, even if it can be shown on paper that the site is no longer viable for employment use, it is nonetheless incumbent on the owner to secure transparent validation by marketing the site. Without that, a judgement has to be made from the viability evidence as to the likelihood of no other occupiers being found as opposed to marketing evidence leading to that conclusion.
- 9.134 In this instance, the viability evidence is not marginal in that it demonstrably points to lack of viability for an employment scheme. Notwithstanding the skewed marketing, I am nonetheless content, as a matter of judgement on the evidence before me, that no other occupiers could have been found for a wholly employment use.
- 9.135 As stated above, Policy EG 3 has to be read as a whole. Although I have reached the conclusion that the site remains suitable for employment use, this is displaced by the alternative criterion of lack of viability in that I have accepted that the site is no longer viable for employment use (EG 3 1. ii.). However, the third limb (EG 3 1. ii. b.) has not been fulfilled in that it has not been demonstrated that '*no other occupiers can be found*' following the wording of Footnote 43. [2.300]
- 9.136 On this basis, it can be said that the loss of the land, although suitable for employment use, would not undermine the capacity to maintain an adequate and flexible supply of employment land having regard to the lack of viability of the site for employment use. However, there is a breach of CELPS Policy EG 3 in as far as a judgement has to be made from the viability evidence that no other occupiers can be found, as opposed to marketing evidence leading to that conclusion. In the particular circumstances of this case, limited weight attaches to the conflict with Policy EG 3. [2.115, 2.116, 4.56, 4.80 - 4.84, 4.86, 6.88]

## **Retail (matters common to Orbit and CPG)**

### **The development plan and related context**

- 9.137 CELPS Policy EG 5 sets out the hierarchy of retail centres in the borough. EG 5(7.) provides:-
- 'Proposals for main town centre uses should be located within the designated town centres or on other sites allocated for that particular type of development. Where*

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*there are no suitable sites available, edge-of-centre locations must be considered prior to out-of-centre locations. Edge-of-centre proposals will be considered where:*

- i. there is no significant adverse impact on the vitality and viability of the surrounding town centres; and*
- ii. it is demonstrated that the tests outlined in current government guidance can be satisfied.*
- iii. The sequential approach will not be applied to applications for small scale rural offices or other small scale rural development in line with the government guidance'. [1.25, 1.34, 2.117, 4.125, 6.66]*

- 9.138 The SMBC Unitary Development Plan Review (May 2006) (UDP) and the Core Strategy DPD (2011) (CS), relating to a neighbouring planning authority, are material considerations. CS policy TCG2.1 gives priority to retail use in the central shopping area but also admits other uses such as restaurants and leisure. TCG2.2 allows new retail uses in the Great Portwood Street Area (The Peel Centre generally) as the most sequentially preferred site after the central shopping area. TCG3 defines the town centre as incorporating the central shopping area, the Great Portwood Street area, and a number of adjoining mixed use areas. **[2.118, 6.67, 6.99 - 6.101, 6.104]**
- 9.139 CS Core Policy CS5 indicates that:-  
*'An improved range, quality and level of comparison goods retail units and other main town centre uses, including quality restaurants, cafes and bars will be provided at the Town Centre .....'*
- 9.140 CS Core Policy CS6 seeks to safeguard and strengthen the service centre hierarchy with emphasis on Stockport's Core Retail Area of the town centre and its Secondary Retail Area (i.e. Great Portwood Street area). Overall, I would regard the Peel Centre to be a continuation of prime pitch and an integral part of the town centre retail offer. **[6.102 - 6.105]**
- 9.141 These policies have to read in context in that they predate the Framework 2012 and 2018; the Greater Manchester Combined Authority Town Centres Project (2013) (GMCATCP); and the Stockport Town Centre Development Prospectus (2014) (STCDP). Although the latter 2 documents are not planning policy, they are an up-to-date indication of the direction of travel. **[2.118, 2.137, 2.193, 2.194, 5.62]**
- 9.142 The GMCATCP sets out Stockport's vision for a stronger identity with particular emphasis on a more vibrant focus, including independent businesses in the historic core of the Market Place and Underbanks; commercial and office growth; and accessibility and linkages across the town centre and across the A6 to the office quarter. **[2.138, 5.70]**
- 9.143 The STCDP confirms:-  
*'..... the restructuring and shrinkage of traditional town centre retail means that centres must look to consolidate existing functions within a smaller footprint and attract new uses and activities. For Stockport this means developing a stronger identity and making better use of underperforming assets, while at the same time*

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*improving the office, commercial and leisure offer. Accessibility to the town centre is also key .....'. [2.139]*

**Retail trends**

- 9.144 One of the most significant factors in recent years has been the growth of on-line shopping with further growth forecast to rise from 16.8% market share (possibly higher) in 2015 to 20.4% in 2020 and 22% in 2035. This has placed considerable pressure on the traditional high street and it is likely to do so for the foreseeable future. In this regard, there is recognition at both the local and national level that town centres will need to diversify in order to respond to ongoing changes in the retail and leisure industries. [5.49, 5.50, 6.123, 6.125, 6.145, 6.146]
- 9.145 The loss of retail sales to the internet has had a number of effects, in general terms, of reducing visits to town centres; loss of footfall and spin-off trade; reduced confidence amongst retailers; increased closures and empty stock; and depressing effects on rentals. [6.123 – 6.126, 6.146]
- 9.146 At the same time, there has been competition from retail parks most notably where they replicate predominantly high street merchandise. These stores often have the advantage of:- co-location with other major national retailers; an attractive retail offer in modern purpose-built stores; a larger footprint and wider stock than town centre counterparts; easy road access; free adjacent surface parking; and some have an integral leisure offer. Whilst some of the retailers represented might also have town centre stores, the retail park is usually regarded to be the prime location as evidenced by 'flagship' stores. [5.62, 5.100, 6.162, 6.180]
- 9.147 Other relevant factors in the retail market include:- inflation; currency shift; disposable income; business rates; and an increase in the minimum wage. [6.146]
- 9.148 During the course of the Inquiry, a number of well-known retailers made announcements or instigated closures, nationally and locally, as indicative of the difficult retail climate. [2.195, 6.145, 8.14]
- 9.149 BHS had already closed in Stockport as a result of corporate failure; but it has been re-occupied by Poundland, albeit reportedly at nil rent. Toys R Us, Peel Centre, closed during the Inquiry with the demise of the company. Other prominent stores in the news included:- New Look; Maplin; Select Fashion; Carpetright; Mothercare; Debenhams; House of Fraser; Feather and Black; Homebase; Multiyork; and Fabb. This has been accompanied by closures within certain restaurant chains. [2.196, 5.48, 6.145]
- 9.150 The closure of the M&S store in Stockport during the Inquiry, coincidental with other announced closures as part of the retailer's 'turnaround' plans, drew considerable debate. Whilst much was attributed by CPG to the competition of Primark in Stockport town centre, and others highlighted the fragility of the town, it is not possible to second guess the reasons and it is likely that a number of factors were in play. [2.197, 2.198, 2.213, 5.52]
- 9.151 Indeed, there are instances where both M&S and Primark trade 'side-by-side'; and there are examples of other M&S closures in the vicinity of



Primark. Even if competition from Primark was a principal factor at Stockport, representation at locations nearby may well have been a consideration; and one would immediately point to M&S's flagship store at Handforth Dean. However, although M&S Macclesfield appeared to be a candidate for closure, this was not confirmed in a later announcement.

**[2.164, 2.198]**

- 9.152 Overall, it is apparent that there are generic weaknesses in the health of town centre shopping.

#### **The Health of Stockport Town Centre**

- 9.153 Looking first at vacancy rates, the vacancy rate in the town centre in 2013 was 24.6%, some 12% above the national average; and in 2016 its relative position had reduced marginally to 10.74% above benchmark. The Local Data Company Report, based on a survey in October 2017, records the centre's vacancy as more the double the national average at 24.1% compared to 11.2%. **[5.50, 5.55, 6.128, 6.129]**

- 9.154 An updated survey was undertaken by the parties on 5 February 2018. Whilst it resulted in some marginal differences between the experts, its findings can be recorded broadly as 110-112 vacant units (approximately 21.0%); and approximately 13.0% vacancy by floorspace compared to a UK average in 2017 of 10.8% and a fall from 18.9% in the October 2017 Goad survey for Stockport. **[2.181 - 2.185, 3.76 - 3.78, 5.56]**

- 9.155 Whilst caution must be applied to one-off snapshots, notably before other store closures occurred, it is apparent that the vacancies were primarily affecting smaller units; and the majority of those units were peripheral to the prime retail frontage of Merseyway, stretching to the Peel Centre, with a notable accumulation in the Market and Underbanks area. Indeed, SMBC's own assessment of town centre occupancy, in November 2016, records:- *'the health of the town centre is fragile but stable; Merseyway is the strongest area of the centre in terms of occupancy and footfall'*. **[2.145, 2.186 - 2.190, 3.79, 5.57, 6.130]**

- 9.156 Other indicators in assessing the health of a centre include zone A commercial rents with a fall in Stockport of 47% between 2007 and 2013, albeit a number of other sub-regional centres have suffered a similar fate. In national terms, the standing of Stockport town centre fell from 78<sup>th</sup> to 118<sup>th</sup> between 2004 and 2011 with a rise to 103<sup>rd</sup> in 2013. Footfall in Merseyway also decreased for the year ending 31 March 2016 by some 4% (a loss of 7,300 visitors per week). Yields are also higher than comparable centres, suggesting Stockport's relative weakness. **[2.152, 5.54, 5.55, 5.58, 5.60, 6.131 - 6.133, 6.153]**

- 9.157 The nature of Stockport's shops may also be a factor, perhaps more in terms of draw rather than health, in that only 5% have been categorised as *'up-market'* and 28% as *'down-market'* with the latter appearing from my site visits to be more attributable to the edges of the town centre. The fashion draw of Stockport has also faltered in the 4 years up to 2017 with 65 stores in the clothing and fashion sector slipping to 51; and women's and children's fashion slumping from 23 to 11. **[5.59, 5.61, 5.63]**



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- 9.158 Overall, health check indicators are '*an indication*' and nothing more – they are not a cumulative formula or calculation and they should not be taken in isolation. Rather, a rounded assessment and a measure of judgement is required which I set out further below. [6.128, 6.134, 6.135]
- 9.159 Finally, although Stockport town centre and Handforth Dean Retail Park have been competing locations for some years, and there is also the wider draw of Manchester city centre and the Trafford Centre, it is not known whether, and to what extent, any of the issues faced in Stockport are attributable to the success of Handforth Dean. Nonetheless, the GMCATCP; the STCDP; and the GVA Assessing the Impact of Out of Town Development, specific to Stockport, identify a causal link with out of town shopping including Handforth Dean. [5.62(c)]

**Investment in Stockport Town Centre**

- 9.160 For some years SMBC has been aware of a number of key issues within Stockport. In this regard, the Merseyway Shopping Centre, with shops on 2 levels, its 1960s origins with a later revamp, and a long period of lack of investment led SMBC to purchase the centre in 2016 with the express intention of making it a more attractive shopping destination. It is, nonetheless, acknowledged that the centre is generally healthy with few vacancies. Proposals for further investment are in their infancy, and a matter of intent rather than specific commitment. Moreover, it would appear that the aim would be to secure refurbishment without any meaningful additional retail content. [3.81, 5.64, 5.65, 5.69]
- 9.161 SMBC has also invested heavily in a conservation and residential-led regeneration scheme in the historic core of the town where a significant proportion of small shops are located. In light of the levels of vacancies, and small sized units, the focus has been to deliver new uses with an emphasis on residential, specialist retail, creative industries and restaurant outlets. This is consistent with the recognition that declining fringe areas need to adapt and diversify. [5.70]
- 9.162 Further, following the withdrawal, in the mid 2000's, of an intended retail scheme at Bridgefield Street car parks (Redrock), SMBC secured funds to finance the development of the site with a mix of retail (subsequently permitted as assembly and leisure in light of lack of retail demand) and leisure units and a 10 screen cinema. This too is indicative of drawing a mix of uses into the town centre reflecting current trends. [5.66, 5.67, 5.68]
- 9.163 As well as seeking to improve linkages across the town centre, SMBC acquired Stockport Exchange, adjacent to the railway station, in 2011 and, with its development partner, the first 2 phases of car parking, offices, an hotel, other minor uses and public realm have been completed as part of a much larger project to attract businesses to this part of the town. [5.68]
- 9.164 SMBC sees each of these as complementary to each other and to the town centre as a whole with the new uses providing a wider offer, increased footfall and dwell time and additional spending. It acknowledges that these schemes are beginning to bear fruit; and that is evident from walking around the town. [5.71]

- 9.165 Specific impacts were also raised in relation to the Peel Centre. However, there is nothing to suggest that the tendency of tenants seeking to take the upper hand in negotiations is unique to Stockport or a sign of inherent weakness in the Peel Centre given that Unit 6 is the only empty unit. **[6.148, 6.149]**
- 9.166 The Gas Holder Site, to the south of the Peel Centre, is undergoing remediation; Peel does not control the site or have any commitment to purchase it; and there are no formal plans of its intended use and future development prospects. Given these factors, and the likely timeline before any development is undertaken and opened, this site has no real materiality to either the appeal site or the application site. **[2.159, 3.124, 3.93(c)]**

**The Health of Macclesfield Town Centre**

- 9.167 Macclesfield is classified as a sub-regional centre in Cheshire East with the second highest retail ranking after Crewe. The focus of Macclesfield's retail offer is around Market Place, Chestergate, Grosvenor Centre and Mill Street. The centre includes M&S, New Look, Boots, Dorothy Perkins and Burton.
- 9.168 The Cheshire Retail Study (May 2016), undertaken by WYG, reports:-  
*'In its primary catchment area (Zone 1) Macclesfield's overall comparison goods market share has declined from 41.1% in 2006 to 39.9% in 2010 and to 36.2% in 2015. Macclesfield has therefore lost 4.9 percentage points, or 11.9%, of its market share within its primary catchment zone over the 9 year period from 2006 to 2015, as well as its wider influence beyond Zone 1 diminishing since 2006. It is clear from this evidence that the influence of Macclesfield as comparison goods destination has steadily declined since 2006 as residents of CE and the wider Study Area are increasingly choosing to shop at destinations such as the out-of-centre Handforth Dean Retail Park and destinations outside of the Study Area'.*  
**[6.139]**
- 9.169 It continued:-  
*'..... the influence of Macclesfield town centre as a comparison goods destination may continue to decline without intervention ..... interventions relating to positive town centre management and other fiscal and physical improvements should also be considered to help improve the performance of the town centre .....*  
*..... we consider that the regeneration and redevelopment of town centre sites ..... should be a priority for the delivery of any additional floorspace. The delivery of additional comparison goods floorspace in Macclesfield town centre would assist in strengthening the overall offer of the centre, which could assist further in drawing back expenditure which is leaking to out-of-centre destinations. We consider that any proposals for further growth of out-of-centre retail areas need to be considered very carefully in order to ensure that opportunities for the delivery of additional retail development within Macclesfield town centre are not prejudiced .....*  
*If the Council is to successfully promote and implement any development opportunity in Macclesfield town centre, it will be imperative that the Council consider planning applications carefully in the future to control the level of out-of-centre floorspace which comes forward. This will ensure that out-of-centre retail development does not inadvertently absorb any future capacity which could reduce*

*the viability of a Town Centre scheme and reflects the need to direct retail development towards the in-centre locations'. [6.140]*

- 9.170 The retail study also identified, at August 2015, vacant floorspace significantly higher than the national average (15.4% compared to 9.2%) qualified by:-

*'It is considered that the existing and emerging town centre redevelopment proposals likely to be delivered over the next few years have the potential to substantially reduce the level of vacant floorspace in Macclesfield over the coming 12 – 24 months'.*

- 9.171 By 2017, the GOAD survey shows that Macclesfield's vacancy rate had crept up to 15.7% albeit against a higher national average of 11.2%.

- 9.172 The retail study's key findings in relation to Macclesfield noted:-

*'Overall, there are some positive indicators with regard to the health of Macclesfield town centre. However, since 2010 there has been a slight decline in the town centre's performance and accordingly it is considered that interventions are needed to improve the performance of the centre and ensure it has a healthy future ..... Despite this decline, Macclesfield still benefits from a strong comparison goods and retail service offer, and provides an attractive public realm'.*

**Investment in Macclesfield Town Centre**

- 9.173 There are 2 major projects for Macclesfield town centre. The first is an £11m investment in the reconfiguration, modernisation and extension of the Grosvenor Centre. The extension includes up to 12 units (in flexible format and configuration) with TKMaxx committed to the largest unit. **[6.141 8.6 – 8.15]**

- 9.174 The second, at Churchill Way, is a £19m project for a multi-screen cinema and cafes, restaurants and bars with an anticipated opening date of 2020. It is indicative of diversifying a fringe town centre site for leisure uses to add to the night time economy and to provide increased footfall for the town centre. However, no application for planning permission has been made. **[6.142]**

- 9.175 It is also relevant to record the planning permission, on appeal, for 12,800 sq m of retail floorspace at Barracks Mill, an out-of-centre site adjacent to Tesco, Macclesfield. Remediation work has commenced on site and it is reported that there is interest in 3 of the 4 units. **[6.143]**

- 9.176 In that case, the Inspector concluded that the impact on Macclesfield town centre would be 9.6%. A condition restricts the sale of clothing and footwear to a maximum 10% floorspace and the scheme is principally for bulky goods. The Inspector concluded:-

*'..... the proposal would bring different types of retailers to Macclesfield who would otherwise struggle to find suitable premises in the town. In doing so, it would enhance consumer choice, improve Macclesfield as a retail destination and help claw back residents who are already travelling further afield to other retail parks for comparison goods. This would represent a significant benefit, as would the regeneration and redevelopment of a vacant brownfield site in a prominent location close to the town centre'. [3.17, 3.84, 3.85, 3.125, 4.46, 6.143]*

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**The Health of Wythenshawe Town Centre**

- 9.177 Wythenshawe town centre, some 5 kilometres from Handforth, is a major district centre in south Manchester. It is of a 1960's design with a retail core comprising an inward facing precinct well served by transport links including the new transport interchange and Metrolink Airport Line. St Modwen holds a long leasehold under the freehold of Manchester City Council. [1.11, 7.1, 7.5]
- 9.178 The centre, which serves a not particularly affluent catchment, functions as a district centre with a line-up of value nationwide retailers. Although it retains a significant proportion of its local convenience goods expenditure, the retention of comparison goods expenditure is very low. Overall leakage is of concern. Nonetheless, the centre has every impression, with few vacancies, of being healthy and vibrant. [3.68, 3.106, 7.7, 7.8]

**Investment in Wythenshawe District Centre**

- 9.179 St Modwen first invested in the town centre in 1997 and has continued to be active with land acquisition, new retail and office floorspace and the provision of new transport infrastructure led by others. [7.6]
- 9.180 In conjunction with Manchester City Council it holds ambitions for further development and investment associated with ongoing regeneration of the town centre. Support, in The Wythenshawe Strategic Framework 2004-2020 and the Wythenshawe Town Centre Masterplan (2006/2009), is set out to improve shopping facilities for Wythenshawe residents to ensure that expenditure is captured locally and that the retention of the retailing element is critical to a successful regeneration strategy. [7.12 - 7.14]
- 9.181 Policy SL1 of the Strategic Regeneration Framework for Wythenshawe sets out to:- '*Ensure that the Town Centre remains a key Manchester shopping location through significantly improving the retail offer and town centre environment*'. Policy C7 of the Manchester Core Strategy 2012-2027 provides:- '*There is capacity for a substantial quantity of additional retail development within Wythenshawe .....'*. [7.20 - 7.26]

**Retail - Orbit****Introduction**

- 9.182 CEC raises no objection to the Orbit scheme on retail grounds. However, SMBC, Peel and St Modwen oppose the proposal on the grounds of adverse impacts on Stockport town centre; the Peel Centre, Stockport; and Wythenshawe town centre. [1.27(i), 3.14, 3.20 - 3.23, 3.25, 3.58, 4.2]

**Nature of the scheme**

- 9.183 The Orbit application is described as '*..... five units to be used for Use Class A1 (non-food retail) purposes and two units to be used for Use Class A1 (non-food retail or sandwich shop) and/or Use Class A3 and or Use Class A5 .....'*. During the Inquiry a restricted goods condition limiting the use of the retail units was offered with provision for each of the units to be able to sell food on an ancillary basis and up to a maximum 15% floor area. I return to this in due course. [3.122]

9.184 As to potential occupiers of the scheme, interest was reported to have been expressed by Home Bargains, Tim Hortons, Subway, Gradus and Pets at Home, although none had made any formal commitment. Moreover, if the CPG scheme were to be refused planning permission, and if Orbit were to be allowed, the Orbit proposal might be more attractive to some of the names in the CPG's likely tenant line-up. **[6.208]**

**The sequential test**

9.185 Consideration of the sequential test is a point taken solely by Peel in that it argues that the former Toys R Us premises in Unit 6 of the Peel Centre is a sequentially preferable site. At the end of the Inquiry, Unit 6 was empty and available and it is clearly suitable for retail use. **[3.15, 3.60 - 3.62, 3.93(b), 3.102, 3.107, 5.132, 6.106, 6.107]**

9.186 Attention was drawn to a decision of the Secretary of State in relation to an appeal made by Tollgate Partnership (Tollgate) wherein the Inspector set out his understanding of the sequential test as meaning '*whilst a sequentially preferable site need not be capable of accommodating exactly the same as what is proposed, it must be capable of accommodating development which is closely similar to what is proposed*'. However, this is not a policy test and it has no formal standing in the Framework or related guidance. **[3.16, 3.60, 3.101, 5.132, 6.106 -6.108]**

9.187 At the outset it is to be acknowledged that the Orbit scheme is speculative with no identified end users and it can be asserted that the scheme is the developer's preference and, doubtlessly, designed with market considerations in mind. Indeed, as one would expect, in commercial terms, the scheme appears to maximise the potential of the site area available whilst providing appropriate access, servicing and landscaping. It follows that reasonable flexibility to format and scale needs to be shown. **[6.110]**

9.188 Looking first at floorspace, the Orbit proposal is for 6,000 sq m gross internal area compared to 5,393 sq m in Unit 6. The Orbit scheme has 7 proposed units made up of 5 different sizes ranging from 114 sq m to 2,240 sq m whereas the approved reconfiguration of Unit 6 would have 5 units of 3 different sizes ranging from 557 sq m to 2,322 sq m. **[3.63, 6.109]**

9.189 The Orbit scheme, arranged as a terrace of 6 units (and a freestanding small unit) would have equal prominence with front entrances facing the main part of the car park. By contrast, the approved plans for Unit 6 show the 3 smallest units facing the main car park, with the 2 larger units to the rear fronting on to the secondary area of parking between Unit 6 and Unit 5A. Whilst it was suggested that a projecting entrance to the largest unit would make the store readily visible, it would not be immediately apparent in conjunction with the essentially linear arrangement of units across the retail park. **[6.115]**

9.190 In terms of the configuration of the units, the Orbit units would each be rectangular in form with the 6 main units having direct rear servicing from a common rear yard with sufficient space for several units to be conveniently serviced concurrently. However, the subdivision of Unit 6, as approved, shows the largest unit with a staggered layout; 4 of the units



would be serviced internally along long corridors; and 3 units would share a single loading door.

- 9.191 The subdivision of Unit 6 was devised as a fall-back to the possible down-sizing of Toys R Us, before closure became inevitable, and with the intention that the units would be commercially attractive. However, in common with the general consensus in opposing evidence, the scheme devised has a number of very significant drawbacks. Although there has been market interest in taking space, I am more inclined to the view that the failure to secure a tenant or tenants arises from the intended arrangement of the building rather than the suppressing effect of the Orbit proposals. [3.65, 6.111 - 6.113]
- 9.192 Moreover, whilst the Peel Centre as a whole is a primary retail location, and the appeal site is, in effect, a 'secondary' stand-alone site betwixt Handforth Dean Retail Park and the Stanley Green Business Park, this does not by itself disguise the drawbacks of Unit 6 and comparison as to whether its offer is reasonably or closely similar to that of the appeal proposal. [6.114, 6.116]
- 9.193 Overall, even if I were to accept that a return to the drawing board would produce a better arrangement for Unit 6, and to anticipate that approval could be granted for a revised scheme within a reasonable timeframe, I consider that when the differences in overall floorspace, unit size and configuration, prominence and servicing, and taking account of the need for reasonable flexibility, Unit 6 does not provide a reasonably or closely similar alternative to that which is proposed by Orbit. [3.66, 3.124(e), 6.117]

#### **Retail Impact - introduction**

- 9.194 By way of reminder, CEC takes no issue on the retail impact of the Orbit scheme in relation to any of the relevant centres. Its case, based on WYG's assessment, taking account of commitments including Barracks Mill, is that the impact, at 2022, on Macclesfield town centre would be 10.4%; 5.3% on Stockport town centre; 11.1% on the Peel Centre; and 6.1% when considering Stockport town centre and the Peel Centre together. The conclusion reached was that none of these would amount to a significant adverse effect. [3.69 - 3.74]
- 9.195 As is inevitable, the assumptions and judgements of expert witnesses produced materially different forecasts of impacts. In the case of Stockport, the highest impacts are alleged by Peel and on this basis it is relevant to consider its position and that of Orbit. Orbit relies on 6.1% against Peel's Scenario 3 assessment of 7.4%. Purely in percentage terms there is little between these parties. Any attempt to reconcile differing assumptions would serve little purpose as much depends on the specific circumstances of Stockport town centre. [3.71 - 3.74, 6.195, 6.219]
- 9.196 In general terms, the type and range of retailers seeking a retail park location can be drawn from a limited pool of traders. Orbit's commercial advisors recognise this in its list of occupiers who would be realistic targets for newly built space. Most of these already have stores in Stockport and/or Macclesfield. Peel indicates that a number of these would have no interest in the Orbit site, whereas others might be tempted to relocate



from their existing pitches. It is also possible that others might wish to increase representation by trading in an additional location. [6.212 - 6.217]

9.197 With such a restricted range of retailers, and the relative proximity of Handforth to both Stockport and Macclesfield town centres, the likelihood of one or more store closures in Stockport and/or Macclesfield must be considered to be highly probable; subsequent re-letting in the current climate may well be difficult; and voids could be prolonged.

**Retail Impact – Orbit on Stockport**

9.198 Looking first at Stockport, unit closures as a result of moves to the Orbit site, should they occur, could affect the traditional part of the town centre and/or the Peel Centre. Whilst other stores have recently disappeared from both locations, the underlying reasons appear to have involved significant company-wide issues rather than performance levels in Stockport alone.

9.199 Nonetheless, Stockport town centre as a whole has a history of poor performance, lack of investment, high levels of vacancies and overall fragility. It also faces competition from the more buoyant Manchester city centre, the Trafford Centre and the A34 corridor including Handforth Dean.

9.200 In my view, the main, predominantly linear, retail core, extending from the Merseyway Centre to the Peel Centre, retains a broad retail focus; it has a good range of stores and services; it appears moderately vibrant and vital in overall terms; and it gives an impression of a reasonably favourable trading location.

9.201 I consider, even with proximity to the Handforth Dean Retail Park, it is highly unlikely that the Orbit site would offer a particularly strong comparative advantage sufficient to cause a mass exodus from prime trading locations in Stockport town centre. Moreover, with a condition to preclude the sale of fashion, clothing and footwear there would be no threat to the previous decline in this sector and its continuing importance to the overall offer of the town centre.

9.202 Although a number of leases at the Peel Centre are due to expire in the near future, the centre, even with the vacancy of Unit 6, does not give any impression of poor performance; it is a well-established central retail park with a strong tenant line-up; and it has maintained its offer in the face of competition from other retail destinations. [6.166, 6.172]

9.203 The Peel Centre is undoubtedly of critical importance to the overall vitality and viability of Stockport town centre having regard to the scale and range of its complementary stores and the manner in which it extends the offer of the primary shopping area. In my view, the Orbit site, even with the strong foundation of adjacency to Handforth Dean as it currently exists, would be unlikely to draw current tenants away from the Peel Centre given the latter's critical mass in its own right and its relationship with the wider town centre and its increasing diversification. [6.3, 6.99 - 6.105]

9.204 The move to diversification is seen as part of the salvation from decline and the failure to deliver intended retail growth within the town centre. Redrock, a site once intended for retail use, has been redeveloped for

leisure uses and even its intended part retail offer had to be abandoned. Nonetheless, the cinema and a number of the allied uses were already trading during the course of the Inquiry. Whilst some vacancies remained, I do not regard that to be an unusual situation for a wholly new major leisure facility and there is nothing to suggest that this will be a continuing trait. **[5.105(a)]**

- 9.205 Stockport Exchange has already transformed the area around Stockport railway station and, with a further phase of development, it is set to become a major office location. It has an important role to play in providing very substantial footfall and trade within the town and also affording benefit to the evening economy. **[5.105(b)]**
- 9.206 Considerable investment has also been made, and major improvements have been secured, in the Market Place and Underbanks area to stem the tide of decline and decay in the historic core of the town centre, albeit it is acknowledged that much more remains to be done. **[5.105(d)]**
- 9.207 It is notable that much of the recent investment in the town centre has only been secured by the sustained and ambitious endeavours of SMBC, including the acquisition of the Merseyway Shopping Centre with a view to further enhancement. **[5.105(c)]**
- 9.208 Inevitably, the health of the primary retail pitch in Stockport is crucial to the prospects of the remainder of the town centre, the investment made and future planned or potential investment. In turn, the town centre will derive reciprocal benefits. **[5.102 - 5.104]**
- 9.209 I recognise that any deflation of the improvements already made, or the ability to maintain ambition, would have a serious impact on the future prospects of the town centre. The investments are indicative of strong ambition and intuitive of otherwise on-going decline. These should provide good momentum but the evidence thus far is that Stockport town centre is, at best, only just turning the corner.
- 9.210 Nonetheless, even if I were to accept the predicted worst case impact on Stockport town centre, including the Peel Centre, the Orbit proposal would not undermine its vitality and viability to a material degree. Moreover, there is nothing to suggest that the scale or potential offer of the Orbit scheme would realistically undermine existing and planned investment to a material degree having regard to the scale, nature and impetus of that investment. Thus, it would not amount to a significant adverse impact on Stockport town centre. **[3.82]**

**Retail Impact – Orbit on Macclesfield**

- 9.211 By way of reminder CEC assesses the impact of the Orbit scheme, with commitments, on Macclesfield town centre at 10.4% and concludes that this does not amount to a significant adverse impact. This aligns closely numerically with Peel's position but differs from Orbit's forecast of 7.4%. The central difference arises from assumptions about sales densities but even then, using Peel's low test sales density (Scenario 1), the impact would only reduce to 9.9%. Again, rather than seeking to distinguish the

nuances within this range it is more appropriate to consider the particular circumstances of Macclesfield town centre.

- 9.212 Over the last 10 years or so Macclesfield has lost ground in comparison goods sales. Measures to stem that decline have included improvements to the public realm to make the town a more alluring destination. Recent vacancies have increased, marginally, in line with the national upward trend despite a prediction in 2015 that the level of vacant floorspace was likely to decline with the fruition of redevelopment proposals. **[6.136, 6.137, 6.199(g)]**
- 9.213 The Cheshire Retail Study's health check assessment of Macclesfield indicates, overall, that whilst there are some positive signs of health, the centre does need intervention to address its existing deficiencies if it is to be considered a vital and viable centre. **[4.95]**
- 9.214 In my opinion, the town's intimate historic character, pedestrianised shopping streets, and the new look Grosvenor Centre are key components of an attractive centre. Vacancies, other than those in the Grosvenor Centre extension which wait to be let as the scheme nears completion, tend to be scattered but they are nonetheless a noticeable feature. The range of major national retailers within the town centre is somewhat restricted, although TKMaxx has been enlisted to anchor the Grosvenor Centre extension.
- 9.215 My overall assessment is that Macclesfield town centre has a range of positive attributes and, at the same time, it has a number of weaknesses. It is not a town which is down at heel or weak; and neither is it a centre which is vibrant and strong. Without seeking to be disparaging it has a functional quality with insufficient attributes to raise it to being described as a vital and viable centre.
- 9.216 Investment in the Grosvenor Centre has been ongoing in the knowledge of both the Orbit and CPG proposals. Whilst it has failed to attract complementary fashion and clothing tenants to date, this sector of the market would not be catered for in the Orbit scheme subject to the imposition of a restrictive goods condition.
- 9.217 In this regard, Orbit's proposal would not be of any direct threat to courted tenants, in the sense of an alternative offer of floorspace, or of any indirect threat arising from increased competition. On this basis, I see no conflict between Orbit and the successful letting of the Grosvenor Centre and in turn the role which this project will play in strengthening the retail offer in Macclesfield town centre.
- 9.218 Moving on to the proposed leisure investment at Churchill Way, this has the potential to provide a valued asset to the town centre, to diversify its offer, to increase spin-off footfall and to strengthen the evening economy. Investment is anticipated but as yet there are no tangible measures of commitment and implementation. **[6.142]**
- 9.219 It is evident that the Orbit proposal, even with the proposed food and drink uses, would not provide any form of competition with the leisure project and thus of no impediment to its successful realisation.

- 9.220 What concerns me more is the apparent absence of any assurance that this project is destined to go ahead. If the aim to regenerate and diversify this part of the town is either severely delayed or lost, it could affect investor confidence, depress the attractiveness of the town centre as a whole, and, ultimately undermine the retail offer. This could have the effect of weakening the ability of the town centre to deflect the impacts arising from retail development proposals.
- 9.221 Finally, there is every indication that the Barracks Mill development is likely to proceed and there is no suggestion that the Orbit proposal is likely to have any unsettling effect. The Inspector, in allowing the appeal, was satisfied that a 9.6% cumulative impact would not be significantly adverse on the basis that the sale of clothing and footwear could be restricted; it would improve Macclesfield as a whole as a destination; and it would secure the redevelopment of a derelict site in a prominent location. **[3.17, 3.84, 3.125, 4.46, 6.137, 6.143, 6.222]**
- 9.222 The cumulative impact of the Orbit scheme would be little more than that assessed by the Inspector above. Again, importantly, the range of goods to be sold could be restricted. However, the Orbit development would not bring any benefits to Macclesfield in the terms set out above. **[6.206, 6.207]**
- 9.223 Overall, I consider that the Orbit proposal would have a very limited effect on the current level of vitality and viability in the town centre and it would not undermine existing or planned investment. In my view, the overall effect would not amount to a significant adverse impact on Macclesfield town centre as a whole.

**Retail Impact – Orbit on Wythenshawe**

- 9.224 To recap, St Modwen's case is that the Orbit scheme would have a significant adverse effect on the existing, committed and planned investment in Wythenshawe town centre. **[7.1]**
- 9.225 Wythenshawe town centre has its origins in a 1960's precinct form of development; it has a strong value line-up; limited vacancies; a good environment; and, despite a limited comparison offer and resultant leakage to other locations, it appears to be thriving. It can be categorised as a vital and viable centre.
- 9.226 There is no doubt that the A6MARR will make Handforth a more easily accessible location, albeit it is evident that it already draws both comparison shopping, and convenience shopping to a lesser degree, from Wythenshawe. The new road will inevitably cause some local residents to alter their shopping habits but to my mind, based on the existing offer of Stanley Green and Handforth Dean, that is unlikely to be a significant and material change. **[3.106, 7.9 – 7.11]**
- 9.227 Orbit<sup>721</sup> anticipates that the appeal proposal with commitments would divert £0.6m of trade from Wythenshawe town centre, leading to an

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<sup>721</sup> ORB/1/2 paragraph 6.82

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impact of 2.3%. This is not otherwise contradicted and in numerical terms the impact would be imperceptible.

- 9.228 St Modwen's case rests largely on value retailers, who are currently the heart of Wythenshawe, relocating to Earl Road. Such a proposition would rely on retailers who are directly aligned to the limited affluence of the Wythenshawe catchment area, co-located with Asda and Wilko by way of example, situated in a compact centre and well-served by public transport abandoning their established trading positions. In my opinion, this appears to be an unlikely prospect. [7.30 – 7.32, 7.37 – 7.41]
- 9.229 Overall, I consider that the level of impact on Wythenshawe town centre, even if some of the established value retailers chose to open an additional store at Handforth, would not amount to a significant adverse effect. It follows that there would be no conflict with Policy SL1 of the Strategic Regeneration Framework for Wythenshawe. [7.22, 7.42]

#### **Impact on Investment – Orbit on Wythenshawe**

- 9.230 The regeneration of Wythenshawe town centre has been an ongoing process for some 20 years and the public and private sectors have invested heavily. Further investment is planned, and monies have already been spent, in the acquisition of the Rowlandsway site. Whilst this can be legitimately seen to be part and parcel of the lengthy and ongoing regeneration of the town centre, guided by policies and masterplans, there are no specific proposals in terms of scheme design and implementation. Although the circumstances differ from those in the Tollgate decision, the next element of St Modwen's investment is unclear and, to my mind, it does not represent demonstrable and quantifiable planned investment. [3.68, 3.105, 7.6, 7.13 – 7.19, 7.27 – 7.30, 7.43]
- 9.231 I therefore conclude that the Orbit scheme would not have a significant impact on any form of investment in Wythenshawe town centre and it would not frustrate the aims of Policy C7 of the Manchester Core Strategy 2012-2027 to increase retail floorspace in Wythenshawe.

### **Retail CPG**

#### **Nature of the scheme**

- 9.232 The CPG planning applications were made as a single composite proposal, albeit subdivided into 3 separate applications to meet a contractual obligation. It is said to be a fully worked up scheme based on operator input; the proposals are full applications for planning permission; and there is a defined 3 year timescale for delivery. On this basis, I am satisfied that the scheme to be determined is the culmination of the phased components. There are no sequentially preferable sites. [2.123, 5.72]
- 9.233 In this regard, if the Secretary of State takes a different view, and decides to determine Phase 1b and Phase 2 in isolation, leading to disaggregation of the scheme as a whole, SMBC accepts that there are no sites within Stockport which would be capable of accommodating either of the phases. Moreover, Unit 6 of the Peel Centre and the Water Street site would, individually, be too big for Phase 1b and too small for Phase 2. [5.72]

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- 9.234 St Modwen presents no case on sequentially preferable sites in Wythenshawe or on disaggregation. **[7.1]**
- Retail Impact – CPG on Stockport**
- 9.235 CPG's central case is that the assumed impact on Stockport town centre, taking account of commitments, would be 6.7%; 5.8% taking account of the likely tenant line-up; and 6.7% based on its A6MARR sensitivity scenario. CEC's independent assessment was 11.0%; SMBC's consultant calculated 8.0% and 8.9%; and Peel relied on 15.0% based on CPG's planning application sales density; 13.3% on a low sales density; and 18.1% on a strong performance sales density. **[2.208, 2.236, 2.237, 2.248, 4.97, 5.73 – 5.85]**
- 9.236 Although CPG produced a likely tenant line-up as a reasonable basis for assessment, the level of commitment from likely future tenants is minimal and, whilst the make-up of candidate tenants may well be directed towards high street clothing and fashion outlets, less weight attaches to this scenario given the uncertainty of the likely tenant listing and the fact that it was presented as a sensitivity test to the central case. **[5.97, 6.165, 7.33]**
- 9.237 However, that still leaves a vast range in terms of likely impact and, predictably, it became the subject of forensic analysis with various alleged inaccuracies, inconsistencies and suppositions in methodology, data and assumptions. **[2.206 – 2.244, 5.73 – 5.96, 6.173 – 6.198]**
- 9.238 In this regard, SMBC's approach of combining retail studies undertaken at different times for 2 different geographical areas, and with disparities in methodology, might be questionable but it does, nonetheless, require guarded consideration. **[5.84]**
- 9.239 Peel's assessment starts from a similar basis and has the same underlying weaknesses; and its strong performance sales density scenario is derived from 50% uplift in likely sales density based on the experience of 2 retail parks. It also seeks to extrapolate a seemingly high sales density for the existing retail park. Whilst Handforth Dean may well trade above company benchmarks, in view of its strong trading location, I am not convinced that the examples cited by Peel provide robust justification for such a substantial adjustment. Moreover, in light of other apparent weaknesses, its assessment of trade diversion appears overly high. **[6.173, 6.177 – 6.179]**
- 9.240 In terms of CPG's approach, whilst criticism has been made of SMBC and Peel merging 2 studies, CPG's comparatively smaller study area necessitates more judgements about the origins of expenditure in existing centres. Larger zones and a smaller numerical survey also provide less detailed information. **[2.219]**
- 9.241 CPG's sales density, although challenged by Peel, was nonetheless agreed with CEC's consultants as a reasonable and robust starting point in that it was higher than the existing retail park.<sup>722</sup>

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<sup>722</sup> CPG/4/3 paragraph 9



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- 9.242 However, whilst I have not endorsed Peel's potentially high assumptions about stores trading above benchmark, the precise basis of CPG's approach remained unclear. In this regard, doubt remained about the existing net floorspace at Handforth Dean, which is critical to the calculation of sales density. *[2.223, 2.232, 2.236, 3.19, 3.93, 5.82, 6.173, 6.177, 6.179, 6.218 – 6.220]*
- 9.243 In addition, it was not known whether the existing sales density for M&S and Tesco was a company benchmark or whether it applied specifically to the stores at Handforth Dean. If it were the former, it is likely that it would be a gross under-estimation, in that both are recognised to be high performing stores, albeit the CPG stores would not necessarily trade at the same level.
- 9.244 I am also concerned about CPG's approach to the effect, or otherwise, of the A6MARR in that, with increased east-west accessibility, and the focus that CPG would bring to an already popular destination, Handforth Dean is likely to prove a greater draw over an extended catchment. *[2.203, 5.95, 6.155 – 6.158, 6.174, 6.175]*
- 9.245 In this regard, whilst some trade diversion is likely to be clawback from the Trafford Centre, and some will arise from the immediate locality, there is every possibility, in my judgement, of an effect on other centres, most notably Stockport. *[2.168, 2.203, 2.243, 2.290, 5.86, 5.90, 5.93, 5.94, 6.181 – 6.186]*
- 9.246 There are a number of other relevant considerations. Firstly, the forecast in turnover growth. Again, whilst figures differ, taking the least optimistic in the round, presented by CPG, the anticipated growth between 2015 and 2022 would be 5.4% for Stockport town centre; 12.9% for the Peel Centre; and 6.7% for the 2 combined. *[2.208]*
- 9.247 In relation to Tollgate, the Secretary of State concluded that given the current health of the town centre and the project growth, the proposal would not cause a significant adverse impact on the vitality and viability of the town centre. In this regard, the forecast is for the continued growth of turnover in Stockport town centre. However, whilst that has been recognised as a means of offsetting impacts, it nonetheless requires a balanced assessment, not least the consideration of the health of the town centre as a whole. *[2.209, 2.211, 2.214, 2.240, 2.248]*
- 9.248 Secondly, the likelihood of existing commitments being implemented, notably at Water Street, Stockport. The site has stood vacant for a number of years and it is cut off from the town centre by the M60, with access by underpass. There is good reason to consider implementation to be unlikely which would, by itself, reduce the impact of CPG and commitments on SMBC's figures to 5.9% - 6.6%. *[3.19, 3.25, 3.75, 3.108, 3.124, 5.136, 5.139, 6.223]*
- 9.249 Thirdly, multiple representation of stores and whether stores trading in Stockport and/or Macclesfield would be likely to see Handforth Dean as an additional or a replacement trading location. CPG refutes it has an evidential burden and invites consideration of the matter on the evidence before the Inquiry. *[2.245, 6.106, 6.170]*

- 9.250 In reality, there was no evidence before the Inquiry. Whilst some retailers trade in multiple locations within the same town or within the same catchment, there is nothing of substance to validate the proposition that Stockport, Handforth Dean and Macclesfield operate as distinct and separate catchments to the extent claimed. On the contrary, there appears to be considerable overlap of catchment areas. **[2.244, 2.246, 5.100, 5.101, 6.158, 6.170, 6.205, 6.215]**
- 9.251 Moreover, even if they did, an increased retail mass and attraction at Handforth Dean, new modern floorspace and co-location would tell against that position being sustained in light of current shopping trends and the relocation to prime locations on retail parks where a combined and wider catchment can be dominated. **[6.124, 6.145, 6.148, 6.163, 6.169, 6.171, 6.172, 6.202]**
- 9.252 Given the scale of the CPG proposal and the number of units proposed, the limited pool of retailers likely to be attracted to Handforth Dean and their representation in nearby centres, the balance of probability points to a real prospect of some stores seeking to relocate by abandoning their town centre locations even if it does not reach the level feared by Peel.
- 9.253 Bringing all these matters together, assessing retail impact is not an exact science as evidenced by the wide-ranging assessments before the Inquiry; and it is not possible to resolve the differences through a numeric or formulaic approach. I have only touched on some of the more significant differences between the parties without reference to a pendulum of factors including, by way of example:- whether internet trading will grow to a greater or lesser extent than forecast; the uplift arising from regeneration projects; the shrinkage of the traditional high street and core shopping areas; and the use of averages and whether a particular centre is likely to under-perform or out-perform.
- 9.254 However, CEC's independent appraisal as updated, forecasts impacts of 10.2% on Stockport town centre; 15.6% on the Peel Centre; and 11.0% on the 2 combined. Whilst that was not tested during the course of the Inquiry, it sits comfortably between the positions adopted by CPG and Peel which I have found to be optimistic and pessimistic respectively. **[6.197]**
- 9.255 With this in mind, and having regard to SMBC's position, my overall view, given the make-up of Stockport town centre as a whole, the real prospect of losses from the centre, including its vulnerable fashion offer, and likely difficulties in re-letting stores, would undermine the vitality and viability of Stockport town centre as a whole. **[6.203]**
- 9.256 In terms of investment in Stockport town centre, I accept that the proposed food and drink outlets at Handforth Dean would be likely, in the main, to serve the development itself, attract passing trade and be a local facility. It would not, to my mind, provide competition or undermine the offer at Redrock and the ability to let remaining units as part of a composite leisure destination. **[2.132(b)]**
- 9.257 Similarly, whilst there is a clear intended synergy between Stockport Exchange and the town centre, there is no evidence to support a claim that

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- the next phase of development might be prejudiced by CPG's proposal. The same can be said for letting of the remaining units at Redrock and the delivery of Covent Garden Village. [2.136, 2.141 - 2.144, 2.189, 2.200, 2.201]
- 9.258 However, I see a stronger interdependence between Stockport's core shopping areas and its more peripheral parts in the Market Place and Underbanks. In this regard, any loss of strength in the centre caused by store closures and vacancies would inevitably have a debilitating effect on the recovery of the historic heart of the town, its move to diversification and, again, its overall vitality and viability. It would also be likely to stifle associated future investment. [2.190 - 2.192, 5.97, 5.98]
- 9.259 As to Merseyway, CPG's indicative tenant line-up would in combination provide a strong nucleus of outlets which would be likely to undermine the current offer and trading position of this part of the town centre with a distinct prospect of increased vacancies and longer voids prior to re-letting.
- 9.260 Drawing these threads together, I conclude that the CPG proposal would have a significant adverse impact on Stockport town centre as a whole. This raises the matter as to whether or not a 'no poaching clause' would reduce the level of harm which could be considered to be acceptable. [4.96, 4.120, 5.99, 5.106, 5.111, 6.199, 6.202]
- 9.261 The planning obligation provides:- *'For a period of 5 years from practical completion of the Development the Owner shall not permit any retailer (with the exception of a retailer trading as 'Mothercare' in Stockport) who at the time of such practical completion of the Development or within the preceding 6 months trades from a store or other retail unit (a 'Relevant Unit') in either Macclesfield or Stockport Town Centre from being able to occupy or trade from any part of the Development unless such retailer shall first enter into a binding agreement with the Council not to cease trading from such Relevant Unit during the said period of 5 years unless such retailer is a tenant whose lease is terminated by its landlord .....'*
- 9.262 Looking first at the concerns and criticisms raised by SMBC, whilst the Council would not be a party to the obligation, it can be assumed that CEC would act reasonably in enforcing the obligation. [2.291, 5.110]
- 9.263 With regard to 'practical completion of the development', the 'development' has the meaning 'the Development of the Site by the formation 23,076 square meters [sic] of A1 retail floor space along with associated car parking, servicing and landscaping as set out in the Application'. SMBC is therefore correct that should some part of the scheme be omitted, the no poaching clause would be disengaged. [5.111]
- 9.264 However, it is common practice for a developer undertaking a scheme of this nature to secure pre-lets for a significant part of the project before construction commences on the scheme as a whole and, as a worst case scenario, to anticipate occupation of the remaining units shortly after the units become available. It can reasonably be assumed that the developer would be contractually obliged to complete the development before committed parties take up occupation. On this basis, there appears to be little risk of the development remaining incomplete and thus circumventing the no poaching clause.

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- 9.265 In terms of managing the chronology of the development, to circumvent the no poaching clause, units would have to be available for trading at least 6 months before the practical completion of the development as a whole. Whilst this would not be an impossibility, the reality of a retailer who was trading from an established location relocating to a partially completed development appears unlikely. *[2.292]*
- 9.266 As to the possible uncertainty about the date of practical completion and the 6 month period preceding that, clause 1.1 of the Second Schedule provides for the Council to afford written confirmation of the discharge of obligations contained in the Deed when satisfied that such obligations have been performed. In this regard, whilst the developer is not required to notify the Council of practical completion, it would clearly be in its interests to do so, given the potential relevance in relation to the discharge of the obligation. It would also protect the developer from possible litigation in the event of doubt. *[5.111, 5.112]*
- 9.267 Whilst the only remedy arising from store relocation to Handforth Dean, contrary to the terms of the obligation, would be by means of an injunction, the risk to a retailer undertaking such a course of action would be immense. In this regard, the prospect of foregoing an existing store, jeopardizing investment in a new lease and the potential to be prohibited from trading strikes a most improbable gamble.
- 9.268 Overall, I am satisfied that the planning obligation would be effective in preventing stores relocating from Stockport, and Macclesfield, to Handforth Dean for a period of 5 years. The obligation would, however, allow concurrent trading from an established centre and also at the retail park, which reflects the substance of CPG's case. *[2.293]*
- 9.269 Inevitably, some retailers will be looking to expand their sphere of influence by complementing their town centre presence with an out of centre location with the intention of the stores trading successfully in tandem. However, dual representation also poses the risk of the newer outlet out-trading, and weakening, its sister store, leading ultimately to the demise of the latter and closure at some point after the 5-year obligation.
- 9.270 The degree to which this might occur, and the effect it might have on a centre several years hence, would be pure speculation. However, the mere presence of an enlarged out of town retail park, particularly one with a predominantly town centre offer, could weaken retailer and investor confidence in an established centre. The threat is greater in circumstances where the centre is already weak or vulnerable and where there is a risk of a new or significantly extended retail destination disturbing and reversing the trends of equilibrium and/or improvement. That cannot be discounted in the case of Stockport.

**Retail Impact – CPG on Macclesfield**

- 9.271 Starting with likely impacts on Macclesfield town centre, CEC estimates 11.0%; CPG's central case and the A6MARR sensitivity scenario are both 5.8% and the likely tenant line-up scenario is 5.5%; SMBC's are 12.6% and 13.8%; and Peel's are 17.4%, 19.4% and 23.0%. *[4.97, 6.173, 6.195]*

- 9.272 At this point I can draw on a number of my earlier deliberations and conclusions as set out above. In short, I am not attracted to either CPG's or Peel's starkly different positions and I prefer the mid-ground.
- 9.273 I regard Macclesfield as a significantly more vulnerable centre than Stockport and even if CPG does not result in moves from Macclesfield to Handforth Dean (taking into account the '*no poaching*' obligation), a concentration of clothing and fashion outlets as clearly targeted, would threaten the limited but improving offer of Macclesfield.
- 9.274 In addition, should units in the Grosvenor Centre remain unlet in the interim pending the outcome of the CPG applications, the grant of permission would inevitably make the task of securing occupancy more difficult.
- 9.275 Overall, the CPG development would further weaken the vitality and viability of Macclesfield town centre; it would impact on recent investment; and, should the Churchill Way leisure development continue to stall, the grant of permission for CPG would make the prospects of that investment in considerable doubt. This leads me to conclude that there would be a significant adverse impact on Macclesfield town centre. **[2.204]**
- 9.276 However, a sum of £2m is offered towards public realm improvements in Macclesfield town centre as a means of mitigating the impacts likely to be suffered by the town centre as a result of trade diversion. **[2.205, 2.290, 4.92, 4.95, 4.96, 4.117]**
- 9.277 In terms of the legitimacy of the contribution, it is acknowledged that the environmental quality of the public realm in Macclesfield town centre is very good. However, CEC has identified further works which would be of benefit to the centre including the areas of Castlegate, Castle Street and Exchange Street. **[4.88(d), 6.199(g)]**
- 9.278 There is no doubt that further improvements could, in general, make the centre more attractive to shoppers, traders and visitors and also help to sustain existing shops and to stimulate re-occupation of vacant units. The point at issue is to what degree would that mitigate adverse impacts and would that be sufficient to make the development acceptable in planning terms. **[4.90 - 4.96]**
- 9.279 The health and vitality of a town centre is likely to be related to a combination of factors including:- its size and proximity to other centres; ease of accessibility; public transport provision; car parking; environmental quality; the overall mix of facilities and services; and the range and quality of the retail offer.
- 9.280 In my opinion, the CPG proposal would significantly enhance the attractiveness of Handforth Dean Retail Park and the related A34 retail corridor as a retail destination. Its offer of retail choice would far surpass that of Macclesfield town centre; it would be easily accessible by car, with the advantage of free car parking; and it would be of good environmental quality.

9.281 Given the vulnerability of the town centre that I have identified, and the prospect of the proposal frustrating the endeavours that Macclesfield is making towards improvement, I consider that the funding of environmental works would offer very limited, if any, amelioration of the harm arising from the approval of the CPG proposal. Consequently, I believe that this benefit should not be attributed material weight in the overall planning balance.

#### **Retail Impact – CPG on Wythenshawe**

9.282 My analysis of Orbit's proposal on Wythenshawe provides my starting point. Even if the effects of the A6MARR, in making Handforth Dean a more powerful draw, to the degree envisaged by St Modwen, the impact on Wythenshawe's turnover would remain low and, in any event, there is no assessment to contradict CPG's position. In my view, the proposal would not result in material harm to the vitality and viability of Wythenshawe town centre. [7.33 – 7.36, 7.42 – 7.44]

9.283 With only so much available retail spending, and the high street fashion and home goods tenant line-up sought by CPG, it is inevitable that some retailers would take space at Handforth Dean rather than in Wythenshawe. However, the 2 locations are significantly different and it cannot be surmised that a gain for CPG would be a lost opportunity for Wythenshawe and demand for space within its centre. Whilst increased competition would make matters harder for Wythenshawe, there is no evidence to suggest that occupier demand for new space in Wythenshawe would be seriously compromised.

9.284 In terms of the likely effects on investment, I need neither repeat nor supplement my earlier conclusions other than to confirm that, in my view, in the absence of any quantifiable future project or funding commitment, the proposal would not have a significant adverse impact on investment in Wythenshawe.

9.285 I therefore conclude that the CPG scheme would not have a significant impact on any form of investment in Wythenshawe town centre and it would not frustrate the aims of Policy C7 of the Manchester Core Strategy 2012-2027 to increase retail floorspace in Wythenshawe. [9.230, 9.231]

#### **The Highways Matter - CPG**

9.286 By way of introduction, CEC has no objections to the CPG proposal on highway and transportation grounds. SMBC raises opposition both in terms of impacts on the safety of the A34/B5094 Stanley Green roundabout junction, within SMBC's jurisdiction, and on accessibility by sustainable modes of transport. [1.37, 1.38, 5.107]

9.287 At the beginning of the session on highway matters Counsel for SMBC confirmed that the Council's primary concern was the operation of A34/Stanley Road roundabout junction. However, the totality of the highway objection could be met if the alleged adverse impacts were mitigated by means of a financial contribution of £901,000 towards the improvement of the identified junction. [1.38(a), 2.254 - 2.256, 2.264, 2.268]



- 9.288 First of all, in concessions made, it emerged that SMBC's traffic modelling had been over-robust in that it included some mistaken assumptions in relation to mezzanine floors and some minor commitments. Examination also revealed that in terms of consequential impacts the effects on journey times and queue lengths on the approach to Stanley Green roundabout would be very limited. **[2.252, 2.253, 2.256, 2.259 – 2.265]**
- 9.289 Therefore, turning to the roundabout itself, SMBC's case was based on the cumulative effects of CPG in conjunction with traffic arising from the proposed North Cheshire Growth Village. However, that development has not progressed beyond a CELPS allocation; and, there is nothing to suggest a reasonable degree of certainty that development will proceed within the next 3 years. On this basis, consistent with advice in Planning Practice Guidance, it should not be included as a commitment for the purposes of a Transport Assessment. **[2.262]**
- 9.290 It is of note that SMBC's closing submissions indicate that *'there is no guarantee that the growth village or that particular mitigation scheme will be delivered'*. Indeed, if the growth village does not materialise, the need for that degree of mitigation would evaporate.
- 9.291 The purpose of the preliminary mitigation scheme was to show that the CPG project could be accommodated without undermining CEC's strategic North Cheshire Growth Village land allocation as part of the CELPS examination process. That position has subsequently been reinforced by an independent Road Safety Audit recommending some further work, all of which appears to be entirely feasible and achievable within highway limits. **[2.267, 2.268, 5.109]**
- 9.292 SMBC's counter view is, in effect, based on whether or not the roundabout should be fully signalised in that WYG's scheme relies on partial signalisation to achieve the necessary capacity and traffic flows. However, on the basis that the growth village should not be included as a commitment, and no associated accumulation of impacts is required, SMBC's case falls away. **[2.266, 5.109]**
- 9.293 In the event that planning permission is granted for the CPG proposal, and an application for the growth village is, in time, submitted, CPG will form part of the baseline and the growth village will have to assess the impacts of its own additional traffic implications and to provide mitigation accordingly. **[2.267]**
- 9.294 However, that would be against an earlier background, through the CELPS process, where reassurance was provided that each of these developments could co-exist and traffic impacts could be mitigated in one form or another. It will be that application process which determines the precise form of mitigation required. **[2.267]**
- 9.295 On the basis that SMBC proceeded on an entirely false premise, and as it could not offer any evidence to show any need for mitigation arising from the CPG proposal, or how the sum of £901,000 had been calculated, there is no basis to require all or part of this amount by planning obligation. The sum sought does not meet either the policy or legal tests for a planning obligation. **[2.269 – 2.273, 5.108]**

- 9.296 Looking next at SMBC's 58 page objection on transport sustainability grounds, the detailed comparative analysis of Handforth Dean against a site in Stockport is misplaced in that the Framework (2012) sought to ensure that *'appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location'*. (This has been carried forward word for word into paragraph 108a of the revised Framework). In this regard, it does not invite consideration of the relative pros and cons of another site which is not in any event, by nature of its limited size, a sequentially preferable site. [2.274 – 2.279, 5.109]
- 9.297 In terms of the various modes of travel, the retail park is served by a single, hourly, bus service, to and from Stockport via Cheadle, with stops some 300m and 350m to the south and north of the application site. The route has its origins in funding provided in accordance with a planning obligation relating to the adjacent Next store development. Whilst this is by no means a particularly accessible, convenient or frequent service, and its viability is claimed to be of concern, the proposed development would offer some potential benefits through the likelihood of increased patronage. [2.279]
- 9.298 Walking and cycling routes to and from the development were assessed by CPG with CEC and SMBC. The site already enjoys good access to surrounding areas, with some improvements secured from the Next planning obligation. The proposed development would also provide funds to improve Footpath 80 from Earl Road to Kitts Moss. [2.279]
- 9.299 Much was made by SMBC of the quality of some of the existing routes, in terms of one or more deficiencies including width, surface, lighting, surveillance, guardrails, and restricted headroom underneath over-bridges. Nonetheless, adopting the criterion of usability, as opposed to seeking to apply design standards for new routes, it cannot be claimed that the site is not accessible either on foot or by bicycle. [2.279]
- 9.300 In my view, having regard to the location of the site and the type of development proposed, and accepting that the bulk of journeys will be by car, appropriate opportunities have been taken to promote sustainable transport modes. This is reinforced by an agreed condition requiring the submission and implementation of a travel plan to encourage the use of alternative forms of transport to the site, other than the private car.
- 9.301 On this basis the proposal would accord with CELPS Policies CO 1 (Sustainable Travel and Transport); CO 2 (Enabling Business Growth Through Transport Infrastructure); and CO 4 (Travel Plans and Transport Assessments). [2.281, 2.296]

### **The Planning Balance – Orbit**

#### **Benefits**

- 9.302 In terms of employment, the existing 7 Gradus jobs lost from the site would be transferred to new local premises. The employment arising from construction work, spin off to the local economy and opportunities for local employment are important considerations; and the net employment creation and Gross Value Added are factors of weight. [1.27, 3.87 – 3.89]

- 9.303 Although the development would benefit the residents of Handforth, with an increased retail offer closer to their homes, the advantage would be limited and localised. **[3.87]**
- 9.304 As to the retention of office employment at Stanley Court, the building is excluded from the application site and there is no suggestion that without the proposed development the office employment would cease. As such, there would be no material benefit. **[3.87]**
- 9.305 The gross business rates are neutral as these are not a factor which would make the development acceptable in planning terms and it would not be appropriate to ascribe positive weight to revenue generation for the local authority. Similarly, good design and environmental quality are legitimate policy expectations and no additional weight applies. **[1.27, 3.90]**

**Obligations and conditions**

- 9.306 The Unilateral Undertaking provides a sum of £282,000 as compensation for the loss of the 7 Gradus jobs to be applied towards employment generation in the locality. CEC has indicated that it is not clear how such a contribution could be used with good effect and questions whether it would be compliant with Regulation 122. **[3.87, 3.122]**
- 9.307 In terms of necessity, I have found that the loss of an employment use would be contrary to CELPS Policy EG 3. The sum could, in principle, provide mitigation, for example by investment in promoting skills, and, in that regard, it would be directly related to the development. As the amount is supported by a Cost per Job Review, the contribution would be fairly and reasonably related in scale and kind to the development. In my opinion, the obligation would meet the relevant statutory and policy tests.
- 9.308 Separate sums for the improvement and upgrading of provision for pedestrians and cyclists in the vicinity of the development; the provision or improvement of public transport in the locality; and junction improvements at Earl Road/Stanley Road to cater for increased traffic are all related to the development, proportionate and necessary. **[3.122]**
- 9.309 All of the planning conditions are agreed with CEC if permission for Orbit alone is granted. **[3.122]**
- 9.310 These provide the normal time limit for the commencement of development (Condition 1); a requirement for the development to be carried out in accordance with the approved plans for certainty (Condition 2); and subject to the use of specified materials to ensure an appropriate form of development (Condition 3).
- 9.311 The approved units are subject to restrictions precluding sub-division and maximum unit floorspace, to reflect the manner in which the proposal has been assessed and to prevent unacceptable changes to the development (Conditions 4 and 5).
- 9.312 Schemes for the management of waste, minimisation of dust emissions and ground investigation and actions to avoid ground contamination are necessary for environmental reasons; and measures for sustainable travel,

- including cycle parking, a travel plan, and electric vehicle infrastructure are justified (Conditions 6 – 13).
- 9.313 The protection of wildlife and vegetation and appropriate drainage are essential environmental measures (Conditions 14 – 19); the completion of car parking facilities prior to occupation of the development is required in the interests of highway safety; and making good the south elevation of the Stanley Court offices is vital following the demolition of the existing warehouse (Conditions 20 and 21).
- 9.314 Condition 22, a restrictive goods condition, is disputed by SMBC and Peel. **[3.122(d), 4.50, 6.206, 6.217]**
- 9.315 Looking first at the principle of the condition, the exclusion of food and drink uses, other than on an ancillary basis and/or from the sandwich and coffee shops, would provide justifiable protection for existing town centre stores. Similarly, the embargo on fashion clothing, fashion footwear, fashion accessories and jewellery would remove the threat to particularly important town centre offers in Stockport and Macclesfield. The preclusion of pharmaceutical goods would also protect town centre outlets.
- 9.316 Peel also seeks to exclude toys and games; furniture including kitchens; and carpets/floor coverings. These have particular direct relevance to the Peel Centre either in terms of existing retailers or potential users of Unit 6; and similarly to possible tenants at Barracks Mill. **[6.217]**
- 9.317 Having regard to the limited trade diversion that would arise from Orbit, the restriction could not be justified on this ground. However, Peel's prime concern was the limited pool of such retailers allied to accommodation already available or under construction. Even though Orbit accepted that a restriction on the sale of toys and goods was not controversial, that alone is an insufficient basis to impose the limitation.
- 9.318 In my view, notwithstanding the importance of the Peel Centre to Stockport and the benefits that Barracks Mill will bring to Macclesfield, I consider that an extended condition has not been shown to be necessary. It is also of note that Unit 6 has received enquiries and that optimism surrounds the letting of Barracks Mill. Given the vacancy of Unit 6 and the commencement of works at Barracks Mill, each of these has a time and availability advantage over the Orbit scheme.
- 9.319 Returning to the drafting of the condition, although the effects of Orbit's proffered condition and Peel's suggested amended wording are intended to be the same, Peel's wording, in general, is to be preferred for clarity. This is reflected in the list of recommended conditions in Annex C(i).
- 9.320 I am satisfied that all of the conditions meet the relevant tests should the Secretary of State decide to allow the appeal.
- 9.321 Conditions 10, 11, 17, 18 and 19, relating to minimising dust emissions, assessment of ground conditions, protection of trees, construction method statement and site drainage are pre-commencement conditions to which

the applicant has assented in writing following the close of the Inquiry.<sup>723</sup> Conditions 14 and 21 also require agreements in the event of site clearance works during the bird nesting season and prior to the demolition of the warehouse.

**The overall balance**

- 9.322 In summary, on the employment land issue, the appeal proposal would be in conflict with CELPS Policy EG 3 1.ii.b. However, for the reasons explained above, I consider that limited weight attaches to that conflict as, in particular, there would be no point in seeking to market an employment scheme in the face of the evidence pointing to lack of viability. [9.68]
- 9.323 Given this limited conflict, and the manner in which the CELPS makes provision for the loss of employment land, I regard the materiality of this proposal to potential compensatory losses of land from the Green Belt at a future date to be of minimal consequence. [9.45]
- 9.324 In terms of the retail issue, I am satisfied that there are no sequentially preferable sites available; and the proposal would not amount to a significant adverse impact on Stockport town centre; Macclesfield town centre; or Wythenshawe town centre. It would therefore be in accordance with the development plan, in terms of CELPS Policy EG 5 7., and also with paragraphs 89 and 90 of the Framework. There would also be no conflict with the respective development plans for Stockport and Manchester as relevant material considerations. [9.191, 9.208, 9.221, 9.227]
- 9.325 Overall, I consider that the proposal, despite limited conflict with specific development plan policies, would not be in conflict with the development plan as a whole; and, even if it were, the identified benefits would outweigh the harm sufficient to allow the appeal and grant planning permission.
- 9.326 In reaching this conclusion, I have had in mind that, if the Secretary of State refuses to grant planning permission for Phase 3 of the CPG development, some of CPG's 'likely' tenants might regard the Orbit site to be a potential alternative. However, unlike the overtly clothing/footwear aspirations of CPG, any permission to Orbit would be subject to a restrictive goods condition.
- 9.327 I have also taken full account of the likelihood of a very short list of potential occupiers being attracted to the site and the potential loss of stores from existing centres. Whilst this cannot be discounted, the evidence before me has demonstrated that the predicted retail impact on existing centres would not amount to a significant adverse impact.

**The Planning Balance - CPG****Benefits**

- 9.328 Looking first at employment, a retail development of the nature proposed would have an employment density more akin to a high street retail outlet

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<sup>723</sup> Misc/20

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(15-20 sq m per job) than a retail warehousing scheme (90 sq m per job). On this basis, SMBC's mid-point assumption appears unduly low and CPG's employment density of 30 sq m per job is the more likely. This would generate some 880 full time equivalent (FTE) jobs (as opposed to 538 FTE jobs in SMBC's scenario). [2.283 - 2.286]

- 9.329 Moreover, SMBC's attempt to belittle the total by applying downward adjustments for leakage, displacement and deadweight had no material foundation in that it derives from the Additionality Guide. This document is intended to be used in appraisals to measure the effects arising from a particular action that would not otherwise have arisen without intervention. Although it is widely used in public sector economic appraisals, it has no recognition in Planning Practice Guidance or otherwise in relation to the level of employment resulting from a new development project. [2.287 - 2.289]
- 9.330 Job creation at the level anticipated would also have a secondary effect in generating additional jobs in the wider economy arising from employee expenditure; construction employment would be considerable; and an employment plan would provide for recruitment from the local area to the further benefit of the local economy. [2.290, 4.103, 4.104]
- 9.331 A larger retail offer, alongside established stores, would also add to the local economy by drawing back some trade from the wider area including Manchester city centre and the Trafford Centre. This is a further positive material consideration. [2.290]
- 9.332 With regard to the environmental mitigation package, secured by obligation as a 'habitat planting contribution', the replacement of a woodland habitat lost from the site, and a commuted sum for management would be neutral in the balance insofar as Policies SE 4 and SE 5 seek to conserve and enhance the landscape character and where possible enhance existing landscape features. [2.290]
- 9.333 Although the proposal would generate substantial annual business rate contributions, this is not a matter that would make the development acceptable in planning terms and it would not be appropriate to ascribe positive weight to revenue generation for the local authority. Additionally, there is nothing to suggest that the funds towards the monitoring of the travel plan are anything more than recompense for work incurred. [2.290]
- 9.334 In terms of the sum of £2m towards public realm improvements in Macclesfield town centre, I have already concluded that as this is offered by way of mitigation for acknowledged adverse effects, and its mitigation effects would be minimal, it does not merit material weight. [2.290, 4.105 - 4.109, 9.281]

#### **Obligations and Conditions**

- 9.335 In addition to those matters referred to above, Phases 2 and 3 of the CPG proposal provide by obligation for the funding of highway improvements on the approach to Stanley Green roundabout to reflect the additional traffic generated by the development. [4.88(b)]



- 9.336 The Planning Obligations under section 106 of the Town and Country Planning Act 1990 are accompanied by Agreements under section 111 of the Local Government Act 1972 and section 3 of the Localism Act 2011 (as CEC is the freeholder of the site and CPG has entered into a contract with the Council) to provide the means of binding CPG to the section 106 agreements.<sup>724</sup>
- 9.337 I am satisfied that all of the obligations, other than the £2m town centre improvement contribution, are necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonable related in scale and kind to the development and thus meet the policy and legal tests. I have previously explained that the town centre improvement contribution would not offset the identified harm to any meaningful degree and it would not make an inherently unacceptable development acceptable in planning terms.

### **Conclusion – CPG**

- 9.338 By way of completeness, in terms of the development plan, the proposal would be of high quality design consistent with CELPS Policy SE 1; it would reuse previously developed land and ensure remediation of any contamination (SE 2 and SE 12); it would incorporate energy efficiency measures (SE 9); and it would be on land of the lowest risk of flooding (SE 13).
- 9.339 There would also be no conflict with MBLP saved Policies NE 9, NE 11, DC3, DC6, DC8, DC9 and DC63.
- 9.340 On the first principal consideration, the employment issue, I have found that the CPG land is not inherently unsuitable for employment use, albeit it is no longer viable for employment use, but, it has not been demonstrated that no other occupiers can be found. I have assessed the conflict with CELPS Policy EG 3 as having limited weight based on my judgement of the viability evidence that no other occupiers can be found as opposed to marketing evidence leading to that conclusion. **[9.136]**
- 9.341 In terms of loss of employment land and potential impacts on the Green Belt at a future date, I consider that given the amount of employment land lost compared to that arising from the Orbit scheme, the potential impact would be greater but nonetheless of limited weight given the overall uncertainty of effects. **[9.45]**
- 9.342 In terms of CPG's alternative submissions, saved Policy E2 of the MDLP is out-of-date and effectively supplanted by CELPS Policy EG 3. Saved Policy E3 is permissive of business use in defined locations, including the appeal site, but it does not provide any criteria on which to gauge the application proposals. Irrespective of these saved policies being out-of-date, the later specific CELPS Policy EG 3 is a relevant policy and there is no basis to apply a tilted balance. **[2.297 – 2.299, 6.10, 6.60 – 6.64]**

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<sup>724</sup> Inspector's note:- although the Agreements are headed '..... and Section 3 Localism Act 2011' paragraph 2.1 of the agreements state:- 'This Deed is made pursuant to ..... and Section 1 of the Localism Act 2011'; paragraphs 3.1 of the section 106 agreements also refer to '..... section 1 of the Localism Act 2011 .....' – the disparity has not been raised or explored

- 9.343 On the second principal consideration, the retail issue, there are no sequentially preferable sites for consideration. **[9.232]**
- 9.344 In terms of retail impact, my consideration of the evidence indicates that the CPG proposal would undermine the vitality and viability of Stockport town centre as a whole; and it would have a debilitating effect on the recovery of the historic heart of the town and stifle associated future investment. **[9.260, 9.270]**
- 9.345 I also consider that the CPG proposal would further weaken the vitality and viability of Macclesfield town centre; it would impact on recent investment; and, should the Churchill Way leisure development continue to stall, the grant of permission for CPG would make the prospects of that investment in considerable doubt. Overall, there would be a significant adverse impact on Macclesfield town centre. **[9.271 - 9.273, 9.279]**
- 9.346 CPG has offered 2 elements of mitigation by way of formal obligation. Firstly, the '*no poaching*' obligation would prevent existing stores relocating to Handforth Dean for a period of 5 years. Whilst that would offer a measure of reassurance, it would not preclude retailers from keeping their town centre stores and dual trading at Handforth Dean. This could have the effect of weakening retailer and investor confidence in an established centre, given the possible threat of the town centre store being materially out performed by its out-of-centre sister, leading ultimately, after a period of 5 years, to the demise of the in-town store. That is a real risk as far as both Stockport and Macclesfield are concerned. **[9.258, 9.271]**
- 9.347 Secondly, in my view, the offer of £2m for public realm improvements in Macclesfield would provide very limited, if any, amelioration of the harm arising from the approval of the CPG proposal. **[9.279]**
- 9.348 For completeness, there would be no significant effect on Wythenshawe town centre and its aspirations for expansion and improvement. **[9.283]**
- 9.349 On the third principal consideration, highways and modes of sustainable transport, highway impacts would not be severe and appropriate opportunities have been taken to promote sustainable transport modes. **[9.301]**
- 9.350 In the final analysis, the overriding determining issue is the significant adverse impact that the CPG proposal would have on the vitality and viability of Stockport and Macclesfield town centres and on both public and private investment in those centres. As such the proposal would conflict with CELPS Policy EG 5 7. and paragraphs 89 and 90 of the Framework. Additional conflict arises in regard to CELPS Policy EG 3 and the proposal would be in conflict with the development plan when read as a whole.
- 9.351 Having considered the overall significant benefits advanced in support of the scheme, I find these, individually and in combination, to be insufficient to outweigh the overwhelming harm which I have identified.
- 9.352 The CPG applications, in combination, have been presented as a single scheme. However, the Phase 1b development for the replacement of the existing Next garden centre and conservatory could take place in isolation

of Phases 2 and 3. This was acknowledged in CEC's officer report by way of recommendation of approval for Phase 1b alone. There are no claimed overriding unacceptable effects arising from this proposal and this element of the proposals was not a principal consideration in the cases against CPG.

**[1.35]**

- 9.353 Any grant of planning permission for Phase 1b should be subject to conditions, set out Annex C(ii) of this report, requiring the submission of reserved matters and the commencement of development within defined time periods and in accordance with approved plans and specified materials, including the provision of adequate car parking (Conditions 1 – 5 and 11).
- 9.354 Limitations on the size of units and goods sold are intended to ensure that the vitality and viability of existing centres is maintained (Conditions 6, 7 and 10). The requirement for an improved footway link is to improve sustainable access; and drainage works are required on environmental grounds (Conditions 8 and 9).
- 9.355 Condition 9, relating to drainage, is a pre-commencement condition offered, and assented, by the applicant at the Inquiry.
- 9.356 In terms of Phase 2 and Phase 3, which are not mutually severable, should the Secretary of State disagree with my recommendations and decide to grant planning permission, recommended conditions are given in Annex C(iii) and Annex C(iv).
- 9.357 In respect of the former, the approval of reserved matters, period of implementation, compliance with approved plans (including the provision of car parking), specified materials and waste management are necessary (Conditions 1 – 5, 7 and 19). Restricting the change of use of the units to retail, and defining approved floorspace, are to avoid additional retail floorspace and added impacts on vitality and viability of town centres (Conditions 6 and 20).
- 9.358 Improvements to a footpath link, cycle parking, travel plan and electric vehicle infrastructure are important elements of sustainable travel (Conditions 8 – 11). Processes to minimise possible adverse effects from potential contamination are to ensure that the development does not create undue risks (Conditions 12 - 15). Measures for environmental enhancement and protection are warranted, including appropriate drainage (Conditions 16 – 18).
- 9.359 Conditions 12, 17 and 18, relating to site remediation, updated badger survey and a drainage scheme are pre-commencement conditions to which the applicant assented at the Inquiry.
- 9.360 Turning to Phase 3, the approval of reserved matters, period of implementation, compliance with approved plans (including the provision of car parking), specified materials and waste management are necessary (Conditions 1 – 5, 9 and 25). Restricting the subdivision of the retail units, limiting sales to comparison goods only, defining approved floorspace and restricting the change of use of the non-retail units to retail use are to

avoid additional retail floorspace and added impacts on vitality and viability of town centres (Conditions 6 – 8 and 24).

- 9.361 Highway improvements are necessary to ensure safe and adequate access and safe and sustainable travel measures are warranted (Conditions 10 - 16). Processes to minimise possible adverse effects from potential contamination are to ensure that the development does not create undue risks (Conditions 17 - 20). Measures for environmental enhancement and protection are warranted, including appropriate drainage (Conditions 21 - 23).
- 9.362 Conditions 17, 22 and 23, relating to site remediation, updated badger survey and a drainage scheme are pre-commencement conditions to which the applicant assented at the Inquiry.

### **Matters identified by the Secretary of State**

- 9.363 Returning to the matters identified by the Secretary of State, the Orbit proposal would be consistent with Government policies for building a strong competitive economy, ensuring the vitality of town centres, promoting sustainable transport and it would be consistent with the development plan when read as a whole. [1.7]
- 9.364 The CPG applications, in combination, would be consistent with Government policies for building a strong competitive economy and promoting sustainable transport. However, the project would be in serious conflict with Government policies for ensuring the vitality of town centres and with the development plan when read as a whole. The same would be true of CPG Phases 2 and 3; but CPG Phase 1b can be distinguished as being consistent with the above Government policies and also with the development plan.
- 9.365 In terms of any other matters, if the Secretary of State is minded to grant planning permission for the Orbit proposal and the CPG development, the conflict with Government policies for ensuring the vitality of town centres would be heightened. My conclusions relating to economy and transport would be unaffected.
- 9.366 Any grant of planning permission for both Orbit and CPG would raise one further matter in that CEC considers that Orbit should be subject to a parallel 'no poaching' obligation consistent with the one entered by CPG. Whilst the individual impacts of Orbit on Macclesfield and Stockport town centres can be minimised by a restrictive goods condition, I consider that the combined impact of both projects would reach a level of severity which required both developers to enter into an obligation to ensure that existing stores did not transfer to Handforth Dean. In this event, Orbit should be invited to enter a suitably worded obligation. [4.50, 4.118 – 4.120]
- 9.367 My formal recommendations follow in section 10.

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## **10. Inspector's Recommendations**

### **Appeal by Orbit Investment (Properties) Limited:**

#### **Land off Earl Road/Epsom Avenue, Handforth Dean, Cheshire, SK9 3RL**

10.1 I recommend that the appeal be allowed subject to conditions set out in Annex C(i) of this report.

### **Application by CPG Development Projects Limited (Phase 1b):**

#### **Land at Earl Road, Handforth, Cheshire, SK9 3RW**

10.2 I recommend that the application be granted planning permission subject to conditions set out in Annex C(ii) of this report.

### **Application by CPG Development Projects Limited (Phase 2):**

#### **Land at Earl Road, Handforth, Cheshire, SK9 3RW**

10.3 I recommend that the application be refused planning permission.

### **Application by CPG Development Projects Limited (Phase 3):**

#### **Land at Earl Road, Handforth, Cheshire, SK9 3RW**

10.4 I recommend that the application be refused planning permission.

*David MH Rose*

Inspector

## **ANNEX A: APPEARANCES**

### **FOR CHESHIRE EAST COUNCIL**

Graeme Keen of Counsel<sup>725</sup>

Instructed by Head of Legal Services  
Cheshire East Council

#### **He called**

Adrian Fisher  
BSc (Hons), M.Tpl, MRTPI

Head of Planning Strategy  
Cheshire East Council

Paul Wakefield  
BSc (Hons), MA, MRTPI

Principal Planning Officer  
(Development Management)  
Cheshire East Council

### **FOR CPG DEVELOPMENT PROJECTS LIMITED**

David Elvin QC  
Assisted by Matthew Fraser of Counsel

Instructed by Bill Marshall-Smith  
Company Solicitor  
CPG Legal Department

#### **They called**

Andrew Aherne  
BSc (Hons), MRICS

Director  
Aherne Property Consultants Limited

Geoffrey Dyson  
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Director  
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Professor Graham Chase  
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BA (Hons), MSc, MRTPI

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HOW Planning LLP

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HOW Planning LLP

Iain Miller  
BSc (Hons), PGDip, CMILT, MIHT

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<sup>725</sup> Appointed Queen's Counsel during the course of the Inquiry



**FOR ORBIT INVESTMENTS (PROPERTIES) LIMITED**

Paul Tucker QC  
Assisted by Gary Grant of Counsel

Instructed by Neil Goldsmith  
Lichfields

**They called**

Christopher Cheap

Regional Senior Director  
GVA

Christopher Stubbs  
BSc (Hons), MRICS

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Greenham Commercial Limited

Neil Goldsmith  
BA (Hons), BPL, MRTPI

Senior Director  
Lichfields

**FOR STOCKPORT METROPOLITAN BOROUGH COUNCIL (RULE 6)**

Martin Carter of Counsel  
Assisted by Ms Stanzie Bell of Counsel

Instructed by Karen Hillen  
Corporate and Support Services

**They called**

Michael Holliss  
BA, MPhil, MRTPI

Partner  
hollissvincent

Nick Whelan  
MSc, MCIT

Traffic Manager  
Stockport Council

Paul Richards  
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Special Projects Director  
Stockport Council

**FOR PEEL HOLDINGS (LAND AND PROPERTY) LIMITED (RULE 6)**

Giles Cannock of Counsel

Instructed by Nicholas Lee  
NJL Consulting Limited

**He called**

Jason Print  
MRICS

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Mike Pudney  
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Nicholas Lee  
BA (Hons), DipTP, MTP, MRTPI

Managing Director  
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**FOR ST MODWEN PROPERTIES (RULE 6)**

Christian Hawley of Counsel

Instructed by Nigel Cussen  
Pegasus Planning Group

**He called**

Nigel Cussen  
BSc, DipTRP, MRTPI

Director  
Pegasus Planning Group

**ANNEX B: INQUIRY DOCUMENTS**

| Documents Reference                              | Name of Document   | Date submitted after start of Inquiry | COMMENTS |
|--|--|---------------------------------------|----------|
| <b>Orbit Investments (ORB)</b>                   |  |                                       |          |
| ORB-1-1  | <a href="#">Summary Proof of Evidence of Neil Goldsmith - Planning / Employment / Retail</a>   |                                       |          |
| ORB-1-2  | <a href="#">Proof of Evidence of Neil Goldsmith - Planning / Employment / Retail</a>   |                                       |          |
| ORB-1-3  | <a href="#">Appendices to Proof of Evidence Neil Goldsmith - Planning / Employment / Retail</a>  |                                       |          |
| ORB-1-4  | <a href="#">Rebuttal Proof of Evidence of Neil Goldsmith in response to Peel – Nick Lee &amp; Mr Print / SC – Mike Hollis / CEC – Paul Wakefield / STM - Mr Cussen /</a>                 |                                       |          |
| ORB-1-5  | <a href="#">Appendices to the Rebuttal Proof of Evidence of Neil Goldsmith in response to Peel – Nick Lee &amp; Mr Print / SC – Mike Hollis / CEC – Paul Wakefield / STM - Mr Cussen</a> |                                       |          |
| ORB2-1   | <a href="#">Summary Proof of Evidence of Christopher Cheap - Office demand / market</a>  |                                       |          |
| ORB-2-2  | <a href="#">Proof of Evidence of Christopher Cheap - Office demand / market</a>  |                                       |          |
| ORB-2-3  | <a href="#">Appendices to Proof of Evidence of Christopher Cheap - Office demand / market</a>  |                                       |          |
| ORB-3-1  | <a href="#">Proof of Evidence of Christopher Stubbs - B8 storage and distribution demand / market</a>  |                                       |          |
| ORB-3-2  | <a href="#">Appendices to Proof of Evidence of Christopher Stubbs - B8 storage and distribution demand / market</a>  |                                       |          |
| ORB-3-3  | <a href="#">Rebuttal Proof of Evidence by Christopher Stubbs responding to Peel - Jason Print &amp; Nick Lee / CEC - Adrian Fisher &amp; Paul Wakefield</a>                              |                                       |          |
| ORB-3-4  | <a href="#">Appendices to the Rebuttal Proof of Evidence by Christopher Stubbs responding to Peel - Jason Print &amp; Nick Lee / CEC - Adrian Fisher &amp; Paul Wakefield</a>            |                                       |          |
| <b>Orbit Investments (ORB) INQUIRY DOCUMENTS</b> |  |                                       |          |
| ORB-INQ-001                                      | <a href="#">Opening Statement from Orbit.</a>  | 23/1/2018                             |          |
| ORB-INQ-002                                      | <a href="#">Extract from Orbit Investment Properties – Multi unit scheme (dated 26/1/18)</a>   | 26/1/2018                             |          |
| ORB-INQ-003                                      | <a href="#">Further Extract from Orbit Investment Properties – single unit scheme (dated 26/1/18)</a>  | 30/1/2018                             |          |
| ORB-INQ-004                                      | <a href="#">Revision to Appendix 10 for Mr Goldsmith's evidence</a>  | 8/2/2018                              |          |
| ORB-INQ-004A                                     | <a href="#">FURTHER Revision to Appendix 10 for Mr Goldsmith's evidence</a>  | 16/03/2018                            |          |
| ORB-INQ-005                                      | <a href="#">Note regarding Stockport Town Centre Occupancy dated 10 November 2016</a>  | 9/2/2018                              |          |

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| Documents Reference | Name of Document   | Date submitted after start of Inquiry | COMMENTS |
|---------------------|--|---------------------------------------|----------|
| ORB-INQ-006         | <a href="#">Wythenshawe Strategic Framework – December 2016</a>  | 6/3/2018                              |          |
| ORB-INQ-007         | <a href="#">Gradus – letter of support dated 7March 2018</a>   | 7/3/2017                              |          |
| ORB-INQ-008         | <a href="#">Planning Application on behalf of Orbit Investments &amp; Gradus Limited –dated 22 February 2018</a>   | 8/3/2018                              |          |
| ORB-INQ-009         | <a href="#">Email from Tom Smith Lichfield to Graham Bee Orbit dated 6 March 2018 regarding M &amp; S floor space</a>                                      | 8/3/2018                              |          |
| ORB-INQ-010         | <a href="#">The response of Christopher Stubbs [ ORB/INQ/010 ] to the document of Mr Print [ PEEL/INQ/005]</a>   | 22/3/2018                             |          |
| ORB-INQ-011         | <a href="#">Amion Report cost per job report</a>   | 21/4/2018                             |          |
| ORB-INQ-012         | <a href="#">Extract from Nick Lee's Proof May 2017</a>   | 25/4/2018                             |          |
| ORB-INQ-013         | <a href="#">Composite table – impacts on Stockport Town Centre</a>   | 25/4/2018                             |          |
| ORB-INQ-014         | <a href="#">Extract from Planning Practice Guidance (Impact Test)</a>  | 25/4/2018                             |          |
| ORB-INQ-015         | <a href="#">A3 Plan – Layout of Unit 6 subdivision</a>   | 25/4/2018                             |          |
| ORB-INQ-016         | <a href="#">Summary of changes to planning obligation and draft UU.</a>  | 9/5/2018                              |          |
| ORB-INQ-016.1       | <a href="#">Updated UU</a>   | 22/5/2018                             |          |
| ORB-INQ-016.2       | <a href="#">Updated UU</a>   | 29/5/2018                             |          |
| ORB-INQ-016.3.1     | <a href="#">Letter from The Emerson Group Legal Dept and track changes s106</a>  | 25/6/2018                             |          |
| ORB-INQ-016.3.2     | <a href="#">Final signed s106</a>  | 25/6/2018                             |          |
| ORB-INQ-017         | <a href="#">Letter from Dan Gazzard (Morgan Williams dated 16 May 2018)</a>  | 19/5/2018                             |          |
| ORB-INQ-018         | <a href="#">Email from Lichfields regarding an additional condition proposed by the Appellant which has been discussed with Cheshire East Council</a>      | 3/5/2018                              |          |
| ORB-INQ-018         | <a href="#">Email from Lichfields regarding an additional condition proposed by the Appellant which has been discussed with Cheshire East Council</a>      | 3/5/2018                              |          |
| ORB-INQ-018.1       | <a href="#">Orbit planning conditions no. 21 &amp; 22</a>  | 29/5/2018                             |          |
| ORB-INQ-018.2       | <a href="#">Orbit planning conditions no. 21 &amp; 22</a>  | 29/5/2018                             |          |
| ORB-INQ-019         | <a href="#">Stockport Council business investment news article</a>   | 29/5/2018                             |          |
| ORB-INQ-020         | <a href="#">Plan - Orbit/Emerson commercial ownership note including ownership</a>   | 29/5/2018                             |          |
| ORB-INQ-021         | <a href="#">Lichfields evidence in chief summary speaking note</a>   | 29/5/2018                             |          |
| ORB-INQ-022         | <a href="#">Extract from Cheshire East Annual Monitoring Report 2016/17</a>  | 29/5/2018                             |          |
| ORB-INQ-023         | <a href="#">Officer's Report for the planning application for the erection of a storage and distribution warehouse at land off Brunel Road, Lyme Green</a> | 28/6/2018                             |          |
| ORB-INQ-024         | <a href="#">Closings submissions on behalf of Orbit</a>  | 29/6/2018                             |          |

| <b>CPG Development Projects (CPG)</b> |   |  |  |
|---------------------------------------|---|--|--|
| CPG-1-1                               | <a href="#">Summary Proof of Evidence of Andrew Aherne Employment and viability matters</a>   |  |  |
| CPG-1-2                               | <a href="#">Proof of Evidence of Andrew Aherne Employment and viability matters</a>   |  |  |
| CPG-1-3                               | <a href="#">Appendices of Proof of Evidence of Andrew Aherne Employment and viability matters</a>   |  |  |
| CPG-1-4                               | <a href="#">Rebuttal Proof of Evidence of Andrew Aherne in response to proof of evidence by SC - Paul Richards / Peel - Jason Print and Nicholas Lee / Orbit - Christopher Cheap and Chris Stubbs</a>                   |  |  |
| CPG-1-5                               | <a href="#">Appendices to the Rebuttal Proof of Evidence of Andrew Aherne in response to proof of evidence by SC - Paul Richards / Peel - Jason Print and Nicholas Lee / Orbit - Christopher Cheap and Chris Stubbs</a> |  |  |
| CPG 1-6                               | <a href="#">Response of Mr Andrew Aherne on behalf of CPG to the letter from Bate &amp; Taylor, submitted by Peel on 7 March 2018</a>   |  |  |
| CPG-2-1                               | <a href="#">Summary Proof of Evidence of Graham Chase- Retail agency matters</a>  |  |  |
| CPG-2-2                               | <a href="#">Proof of Evidence of Graham Chase - Retail agency matters</a>   |  |  |
| CPG-2-3                               | <a href="#">Appendices to Proof of Evidence of Graham Chase - Retail agency matters</a>   |  |  |
| CPG-2-4                               | <a href="#">Rebuttal Proof of Evidence of Graham Chase in response to proof of evidence by SC - Mr Hollis / Peel - Mr Pudney &amp; Mr Lee / STM - Mr N Cussen</a>   |  |  |
| CPG-2-5                               | <a href="#">Appendices to Rebuttal Proof of Evidence of Graham Chase in response to proof of evidence by SC - Mr Hollis / Peel - Mr Pudney &amp; Mr Lee / STM - Mr N Cussen</a>   |  |  |
| CPG-3-1                               | <a href="#">Summary Proof of Evidence of Geoffrey Dyson-- Marketing evidence matters</a>  |  |  |
| CPG-3-2                               | <a href="#">Proof of Evidence of Geoffrey Dyson-- Marketing evidence matters</a>  |  |  |
| CPG-3-3                               | <a href="#">Appendices to Proof of Evidence of Geoffrey Dyson-- Marketing evidence matters</a>  |  |  |
| CPG-3-4                               | <a href="#">Rebuttal Proof of Evidence of Geoffrey Dyson in response to Peel – Mr Print and Mr Lee / SC – Mr Hollis</a>   |  |  |
| CPG-3-5                               | <a href="#">Appendices to the Rebuttal Proof of Evidence of Geoffrey Dyson in response to Peel – Mr Print and Mr Lee / SC – Mr Hollis</a>   |  |  |
| CPG-4-1                               | <a href="#">Summary Proof of Evidence of Keith Jones – Retail policy matters</a>  |  |  |
| CPG-4-2                               | <a href="#">Proof of Evidence of Keith Jones – Retail policy matters</a>  |  |  |

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|                                |   |            |  |
|--------------------------------|---|------------|--|
| CPG-4-2-A                      | <a href="#">Updated Proof of Evidence of Keith Jones – Retail policy Matters</a>  | 1/2/2018   |  |
| CPG-4-2-B                      | <a href="#">Further update to Proof of Evidence of Keith Jones</a>  | 5/2/2018   |  |
| CPG-4-3                        | <a href="#">Appendices Proof of Evidence of Keith Jones – Retail policy matter</a>  | 22/02/2018 |  |
| CPG-4-4                        | <a href="#">Rebuttal Proof of Evidence of Keith Jones in response to SC – Mike Hollis &amp; Mr Richards / Peel – Mr Lee / STM - Mr Cussen</a>                   |            |  |
| CPG-4-4-A                      | <a href="#">Updated Rebuttal Proof of Evidence of Keith Jones in response to SC – Mike Hollis &amp; Mr Richards / Peel – Mr Lee / STM - Mr Cussen</a>           | 2/2/2018   |  |
| CPG-4-4-B                      | <a href="#">Further updated Rebuttal Proof of Evidence of Keith Jones</a>   | 5/2/2018   |  |
| CPG-4-5                        | <a href="#">Appendices to the Rebuttal Proof of Evidence of Keith Jones in response to SC – Mike Hollis &amp; Mr Richards / Peel – Mr Lee / STM - Mr Cussen</a> |            |  |
| CPG-5-1                        | <a href="#">Summary Proof of Evidence of Iain Miller– Transport planning matters</a>  |            |  |
| CPG-5-2                        | <a href="#">Proof of Evidence of Iain Miller– Transport planning matters</a>  |            |  |
| CPG-5-3                        | <a href="#">Appendices to Proof of Evidence of Iain Miller– Transport planning matters</a>  |            |  |
| CPG-5-4                        | <a href="#">Rebuttal Proof of Evidence of Iain Miller in response to SC - Mr Whelan</a>   |            |  |
| CPG-5-5                        | <a href="#">Mr Iain Miller's written response behalf of CPG to SMBC's Road Safety Audit dated 10 January 2018 and disclosed on Monday 5 March 2018.</a>         | 20/3/2018  |  |
| CPG-6-1                        | <a href="#">Summary Proof of Evidence of Richard Woodford- Planning policy and planning balance.</a>  |            |  |
| CPG-6-2                        | <a href="#">Proof of Evidence of Richard Woodford - Planning policy and planning balance.</a>   |            |  |
| CPG6-3                         | <a href="#">Appendices Proof of Evidence of Richard Woodford – Planning policy and planning balance.</a>  |            |  |
| CPG6-4                         | <a href="#">Rebuttal Proof of Evidence of Richard Woodford in response to Peel – Mr Lee / Sc – Mr Hollis</a>  |            |  |
| CPG6-5                         | <a href="#">Appendices to the Rebuttal Proof of Evidence of Richard Woodford in response to Peel – Mr Lee / Sc – Mr Hollis</a>                                  |            |  |
| <b>CPG - INQUIRY DOCUMENTS</b> |   |            |  |
| CPG/INQ/001                    | <a href="#">Opening Statement from CPG.</a>   | 23/1/2018  |  |
| CPG/INQ/002                    | <a href="#">3 LRW Overlay plans of GE10, GE11, GE12</a>   | 30/1/2018  |  |
| CPG/INQ/003                    | <a href="#">Amended Redaction of Appendix 1 to Deloitte Report</a>  | 30/1/2018  |  |
| CPG/INQ/004                    | <a href="#">Correspondence with Stockport retailers/restaurants</a>   | 30/1/2018  |  |
| CPG/INQ/005                    | <a href="#">Note on Stockport vacancies as at 30 January 2018, inc. GOAD Plans</a>  | 30/1/2018  |  |



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|                                    |   |            |                                 |
|------------------------------------|---|------------|---------------------------------|
| CPG/INQ/OO6                        | Updated tables but this has been superceded by updated proof and rebuttal proof (CPG/2/2/A and CPG/2/4A)                    | 1/2/2018   | No electronic version available |
| CPG/INQ/OO7                        | <a href="#">Briefing Note dated 4 February – Retail Impact Assessment Update Note</a>                                       | 2/2/2018   |                                 |
| CPG/INQ/OO8                        | <a href="#">Revised Appendices 1- 3 Keith Jones</a>   | 7/2/2018   |                                 |
| CPG/INQ/OO9                        | <a href="#">Extract from SMBC Employment Land Review 2015 – Conclusions</a>   | 7/2/2018   |                                 |
| CPG/INQ/O10                        | <a href="#">Methodology to calculate the net additional employment benefits</a>   | 02/03/2018 |                                 |
| CPG/INQ/O11                        | <a href="#">Overview of Consultation</a>  | 8/2/2018   |                                 |
| CPG/INQ/O12                        | <a href="#">Sample questionnaire</a>  | 2/03/2018  |                                 |
| CPG/INQ/O13                        | <a href="#">Press Release – complete version – 31 January 2018</a>  | 2/03/2018  |                                 |
| CPG/INQ/O14                        | <a href="#">Wythenshawe Letting Particulars</a>   |            |                                 |
| CPG/INQ/O15                        | <a href="#">Poundland article</a>   |            |                                 |
| CPG/INQ/O16                        | <a href="#">Redrock Brochure</a>  |            |                                 |
| CPG/INQ/O17                        | <a href="#">Stockport Exchange Phase 3 press release</a>  | 10/03/2018 |                                 |
| CPG/INQ/O18                        | <a href="#">Stockport Exchange Phase 3 Officer Report</a>   | 10/03/2018 |                                 |
| CPG/INQ/O19                        | <a href="#">Stockport highways email 900k</a>   | 10/03/2018 |                                 |
| CPG/INQ/O20                        | <a href="#">VISSIM User Manual extract</a>  | 10/03/2018 |                                 |
| CPG/INQ/O21                        | <a href="#">NPPG on Transport Assessments</a>   | 10/03/2018 |                                 |
| CPG/INQ/O22                        | <a href="#">Existing floorspace at Handforth Dean</a>   | 13/04/2018 |                                 |
| CPG/INQ/O23                        | <a href="#">Latest Brochure for the Grosvenor Centre, Macclesfield</a>  | 23/04/2018 |                                 |
| CPG/INQ/O24                        | <a href="#">Article by David Rutley MP</a>  | 23/04/2018 |                                 |
| CPG/INQ/O25                        | <a href="#">Article in Macclesfield Express on Churchill Way</a>  | 25/04/2018 |                                 |
| CPG/INQ/O26                        | <a href="#">Monks Cross Map</a>   | 25/04/2018 |                                 |
| CPG/INQ/O27                        | <a href="#">New Mersey Map</a>  | 25/04/2018 |                                 |
| CPG/INQ/O28                        | <a href="#">Emails from GFC to MH on 9 February 2018 regarding Stockport vacancies</a>                                      | 26/04/2018 |                                 |
| CPG/INQ/O29                        | <a href="#">Stockport Goad Plans as at 5 February 2018</a>  | 26/04/2018 |                                 |
| CPG/INQ/O30                        | <a href="#">Andrew Aherne's response to PEEL/INQ/009</a>  | 8/6/2018   |                                 |
| CPG/INQ/O31                        | <a href="#">Cost Application against SMBC</a>   | 15/6/2018  |                                 |
| CPG/INQ/O31.1                      | <a href="#">Response to SMBC's Cost Application</a>   | 27/6/2018  |                                 |
| CPG/INQ/O32                        | <a href="#">22.06.18 Phase 2 Section 111 Agreement - Cheshire East Borough Council (1) and CPG Development Projects (2)</a> | 25/6/2018  |                                 |
| CPG/INQ/O33                        | <a href="#">22.06.18 Phase 3 Section 111 Agreement – Cheshire East Borough Council (1) and CPG Development Projects (2)</a> | 25/6/2018  |                                 |
| CPG/INQ/O34                        | <a href="#">Closing submissions on behalf of CPG</a>  | 29/6/2018  |                                 |
| CPG/INQ/O35                        | Email from CPG regarding the Costs Application  | 29/6/2018  |                                 |
| <b>Cheshire East Council (CEC)</b> |   |            |                                 |
| CEC-1-1                            | <a href="#">Proof of Evidence of Adrian Fisher - Employment</a>   |            |                                 |
| CEC-1-2                            | <a href="#">Appendices To Proof of Evidence of Adrian Fisher</a>  |            |                                 |
| CEC-2-1                            | <a href="#">Summary Proof of Evidence of Paul Wakefield</a>   |            |                                 |
| CEC-2-2                            | <a href="#">Proof of Evidence of Paul Wakefield</a>   |            |                                 |
| CEC-2-3                            | <a href="#">Appendices to Proof of Evidence of Paul Wakefield</a>   |            |                                 |

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| <b>CEC - INQUIRY DOCUMENTS</b> |  |           |  |
|--------------------------------|--|-----------|--|
| CEC/INQ/001                    | <a href="#">Opening Statement from CEC</a>   | 23/1/2018 |  |
| CEC/INQ/002                    | <a href="#">Existing Handforth Employment Supply</a>   | 25/1/2018 |  |
| CEC/INQ/003                    | <a href="#">Strategic Planning Board – 24 May 2018 (part of Application document)</a>  | 9/2/2018  |  |
| CEC/INQ/004A                   | <a href="#">Orbit CIL Compliance statement</a>   | 23/4/2018 |  |
| CEC/INQ/004A.1                 | Updated CIL compliance statement to reflect the fact that the 'no poaching' clause is not included in Orbit's Unilateral Undertaking | 29/5/2018 |  |
| CEC/INQ/004B                   | <a href="#">CPG CIL Compliance statement</a>   | 23/4/2018 |  |
| CEC/INQ/004C                   | <a href="#">Appendices to the CIL Compliance statements</a>  | 23/4/2018 |  |
| CEC/INQ/005                    | <a href="#">Orbit Draft Conditions</a>   | 24/5/2018 |  |
| CEC/INQ/005.1                  | <a href="#">Orbit Draft Conditions</a>   | 30/5/2018 |  |
| CEC/INQ/006                    | <a href="#">CPG Draft Conditions</a>   | 24/5/2018 |  |
| CEC/INQ/006.1                  | <a href="#">CPG Draft Conditions</a>   | 30/5/2018 |  |
| CEC/INQ/007                    | <a href="#">Closing submissions on behalf of CEC</a>   | 18/6/2018 |  |
| CEC/INQ/008                    | Email from CEC (Graeme Keen) regarding the Costs Application   | 28/6/2018 |  |
| CEC/INQ/009                    | Email from CEC (Paul Wakefield) regarding the Costs Application  | 29/6/2018 |  |

| <b>Stockport Council (SC)</b> |  |           |  |
|-------------------------------|--|-----------|--|
| SC-1-1                        | <a href="#">Summary Proof of Evidence of Paul A Richards</a>                                   |           |  |
| SC-1-2                        | <a href="#">Proof of Evidence of Paul A Richards</a>   |           |  |
| SC-1-3                        | <a href="#">Appendices to Proof of Evidence of Paul A Richards</a>                             |           |  |
| SC-2-1                        | <a href="#">Summary Proof of Evidence of Michael Hollis – Planning Balance</a>                 |           |  |
| SC2-2                         | <a href="#">Proof of Evidence of Michael Hollis – Planning Balance</a>                         |           |  |
| SC-2-3                        | <a href="#">Appendices to Proof of Evidence of Michael Hollis – Planning Balance</a>           |           |  |
| SC-3-1                        | <a href="#">Summary Proof of Evidence of Michael Hollis – Retail</a>                           |           |  |
| SC-3-2                        | <a href="#">Proof of Evidence of Michael Hollis – Retail</a>                                   |           |  |
| SC-3-2A                       | <a href="#">Proof of Evidence of Michael Hollis – Retail – VOLUME 2</a>                        |           |  |
| SC-3-3                        | <a href="#">Appendices to Proof of Evidence of Michael Hollis – Retail</a>                     |           |  |
| SC-4-1                        | <a href="#">Summary Proof of Evidence of N D Whelan Traffic and Sustainable Travel</a>         |           |  |
| SC-4-2                        | <a href="#">Proof of Evidence of N D Whelan – Traffic and Sustainable Travel</a>               |           |  |
| SC-4-3                        | <a href="#">Appendices of Proof of Evidence of N D Whelan – Traffic and Sustainable Travel</a> |           |  |
| <b>SC - INQUIRY DOCUMENTS</b> |  |           |  |
| SC/INQ/001                    | <a href="#">Opening Statement from SC</a>  | 23/1/2018 |  |

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|                                  |  |           |  |
|----------------------------------|--|-----------|--|
| SC/INQ/002                       | <a href="#">Plans from Mike Hollis – vacancies in Stockport Town centre (fig 3.1)</a>                                      | 30/1/2018 |  |
| SC/INQ/003                       | <a href="#">Press release from M&amp; S dated 31 January 2018</a>  | 31/1/2018 |  |
| SC/INQ/004                       | <a href="#">CBRE letter dated 31 January to Paul Richards – vacant shop units, Merseyway shopping centre, Stockport</a>    | 31/1/2018 |  |
| SC/INQ/005                       | <a href="#">Experian Retail Planner Briefing Note 14 – November 2016</a>   | 2/2/2018  |  |
| SC/INQ/006                       | <a href="#">Stage 1 Road safety audit (RSA) Reference: ES1/778; Dated: 10/01/2018</a>                                      | 7/3/2018  |  |
| SC/INQ/007                       | <a href="#">Correspondence relating to SMBC RSA of 10 Jan 2018</a>   | 8/3/2018  |  |
| SC/INQ/008                       | <a href="#">New Look Press release 7 March 2018</a>  | 8/3/2018  |  |
| <b>SC/INQ/009-011 - NOT USED</b> |  |           |  |
| SC/INQ/O12                       | <a href="#">Addendum to Retail Proof of Evidence of Mr Hollis</a>  | 9/3/2018  |  |
| SC/INQ/O13                       | Highway Mitigation Measures as agreed with Orbit for inclusion within the UU   | 24/5/2018 |  |
| SC/INQ/O14                       | <a href="#">Alternative to plan 3 for the CPG s106, showing Stockport town centre as identified by SMBC</a>                | 29/5/2018 |  |
| SC/INQ/O15                       | <a href="#">Closing submissions on behalf of SMBC</a>  | 11/6/2018 |  |
| SC/INQ/O16                       | <a href="#">SMBC response to the Cost Application from CPG</a>   | 21/6/2018 |  |
| SC/INQ/O17                       | Email from SC responding to CEC regarding costs application  | 29/6/2018 |  |
| <b>Peel Investments (PEEL)</b>   |  |           |  |
| PEEL-1-1                         | <a href="#">Proof of Evidence (and summary) of Nicholas Lee</a>  |           |  |
| PEEL-1-2                         | <a href="#">Appendices to Proof of Evidence of Nicholas Lee</a>  |           |  |
| PEEL-1-3                         | <a href="#">Nicholas Lee – Plans to PEEL-1-1</a>   |           |  |
| PEEL-1-4                         | <a href="#">Rebuttal Proof of Evidence of Mr Lee responding to CPG – Mr Jones / Orbit – Mr Goldsmith</a>                   |           |  |
| PEEL-1-5                         | <a href="#">Appendices to the Rebuttal Proof of Evidence of Mr Lee responding to CPG – Mr Jones / Orbit – Mr Goldsmith</a> |           |  |
| PEEL-1-6                         | <a href="#">Errata Proof of Evidence from Nicholas Lee</a>   | 21/4/18   |  |
| PEEL-2-1                         | <a href="#">Proof of Evidence (and summary) – Michael Pudney</a>   |           |  |
| PEEL-2-2                         | <a href="#">Appendices to Proof of Evidence (and summary) – Michael Pudney</a>   |           |  |
| PEEL-2-3                         | <a href="#">Rebuttal Proof of Evidence of Mr Pudney in response to CPG – Mr Jones</a>                                      |           |  |
| PEEL-3-1                         | <a href="#">Proof of Evidence (and summary) – Jason Print</a>  |           |  |
| PEEL-3-2                         | <a href="#">Appendices to Proof of Evidence (and summary) – Jason Print</a>  |           |  |

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|   |   |             |  |
|---|---|-------------|--|
| PEEL-3-3  | <a href="#">Rebuttal Proof of Evidence of Jason Print in response to CPG – Mr Dyson &amp; Mr Aherne</a>   |             |  |
| <b>PEEL - INQUIRY DOCUMENTS -</b>   |   |             |  |
| PEEL/INQ/001  | <a href="#">Opening Statement from PEEL</a>   | 23/1/2018   |  |
| PEEL/INQ/002  | <a href="#">Email to Roger Wheeldon 31 January 2018 from Gareth Finch (Director of Development (Peel Holdings))</a>   | 1/2/2018    |  |
| PEEL/INQ/003  | <a href="#">Email from Steve Henderson (Director at Savills) to Mr Pudney</a>   | 1/2/2018    |  |
| PEEL/INQ/004  | <a href="#">Documents and correspondence from Bate and Taylor</a>   | 8/3/2018    |  |
| PEEL/INQ/005  | <a href="#">Documents and correspondence from Mr Print</a>  | 8/3/2018    |  |
| PEEL/INQ/006  | <a href="#">Net comparison goods floorspace Handforth</a>   |             |  |
| PEEL/INQ/007  | <a href="#">Press Reports M &amp; S</a>   | 24/4/2018   |  |
| PEEL/INQ/008  | <a href="#">Extract Macclesfield LP Proposals Map inset</a>   | 24/4/2018   |  |
| PEEL/INQ/009  | <a href="#">Response on the issue of the layout and agency inputs into the alternative scheme on the CPG site.</a>  | 22/5/2018   |  |
| PEEL/INQ/010  | <a href="#">Response to a request made by the Orbit team at the Inquiry as to what steps have been taken by Peel over the future redevelopment and/or re-letting of Unit 6 at the Peel Centre, Stockport. (Updated version)</a> | 30/5/2018   |  |
| PEEL/INQ/011  | <a href="#">Comments on Section 106 Agreement relating to Phase 3 (CDN1.5)</a>  | 29/5/2018   |  |
| PEEL/INQ/012  | <a href="#">Proposed condition suggestion</a>   | 25/5/2018   |  |
| PEEL/INQ/013  | <a href="#">Closing submissions on behalf of Peel</a>   | 11/6/2018   |  |
| <b>St Modwen (STM)</b>  |   |             |  |
| STM-1-1   | <a href="#">Summary Proof of Evidence of Nigel Cussen</a>   |             |  |
| STM-1-2   | <a href="#">Proof of Evidence of Nigel Cussen</a>   |             |  |
| STM-1-3   | <a href="#">Appendices</a>  |             |  |
| <b>STM - INQUIRY DOCUMENTS -</b>  |   |             |  |
| STM/INQ/001   | <a href="#">Opening Statement from St Modwen</a>  | 23/1/2018   |  |
| STM/INQ/002   | <a href="#">Corrected Appendix 3</a>  | 6/3/2018    |  |
| STM/INQ/003   | <a href="#">Closing submissions on behalf of St Modwen</a>  | 11/6/2018   |  |
| STM/INQ/004   | Email – FRAMEWORK 2018  | 16/8/2018   |  |
| <b>LETTERS RECEIVED AFTER THE INQUIRY ADJOURNED FOR CLOSINGS AND RELATED COMMENTS</b> |   |             |  |
| Misc 1  | <a href="#">Letter sent to PINS from Eskmuir Securities</a>   | 31 May 2018 |  |
| Misc 1.1  | <a href="#">Letter sent to PINS from Eskmuir Securities</a>   | 8 June 2018 |  |
| Misc 2  | <a href="#">Letter sent to PINS from Colliers International</a>   | 31 May 2018 |  |
| <b>EMAILS REGARDING SUBMISSIONS ABOVE</b>   |   |             |  |

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|         |  |                   |  |
|---------|--|-------------------|--|
| Misc 3  | <a href="#">Email from CPG</a>                                 | 8 June 2018       |  |
| Misc 4  | <a href="#">Email from PEEL</a>                                | 8 June 2018       |  |
| Misc 5  | <a href="#">Email from STM</a>                                 | 8 June 2018       |  |
| Misc 6  | <a href="#">Email from SC</a>                                  | 8 June 2018       |  |
| Misc 7  | <a href="#">Email from ORB</a>                                 | 11 June 2018      |  |
| Misc 8  | <a href="#">Email from CPG</a>                                 | 11 June 2018      |  |
| Misc 9  | <a href="#">Email from ORB</a>                                 | 11 June 2018      |  |
| Misc 10 | <a href="#">Email from SC</a>                                  | 11 June 2018      |  |
| Misc 11 | <a href="#">Email from CEC</a>                                 | 11 June 2018      |  |
| Misc 12 | <a href="#">Email from ORB</a>                                 | 12 June 2018      |  |
| Misc 13 | <a href="#">Email from CPG</a>                                 | 13 June 2018      |  |
| Misc 14 | <a href="#">Email from CPG</a> – Response from Professor Chase | 27 June 2018      |  |
| Misc 15 | Response from Lichfields obo Orbit re Framework 2018           | 7 September 2018  |  |
| Misc 16 | Response from JLL obo CPG re Framework 2018                    | 10 September 2018 |  |
| Misc 17 | Response from CEC re Framework 2018                            | 7 September 2018  |  |
| Misc 18 | Response from Pegasus obo St Modwen re Framework 2018          | 16 August 2018    |  |
| Misc 19 | Email from PINS to parties re pre-commencement conditions      | 14 January 2019   |  |
| Misc 20 | Email obo of Orbit re pre-commencement conditions              | 22 January 2019   |  |

**ANNEX C(i): ORBIT: APP/R0660/W/16/3155191**

**RECOMMENDED PLANNING CONDITIONS**

1. The development hereby approved shall commence within 3 years of the date of this permission.
2. The development hereby approved shall be carried out in total accordance with the following approved plans:-

Revised Proposed Retail Floor Plans – 787-PLA-2004 A  
Revised Proposed Retail Elevations – 787-PLA-2005 A  
Revised Proposed Site Plan – Stanley Court Overlaid – 787-PLA-2007 A  
Revised Demolition Site Plan – 787-PLA-2008 A  
Revised Proposed Unit 7 Proposed Floor Plan & Elevations – 787-PLA-2009 A  
Revised Proposed Retail Development Existing Site Location Plan – 787-PLA-2010 A  
Revised Proposed Retail Roof Plans – 787-PLA-2011 A  
Soft Landscape Detail Plan – 1023-01B  
Arboricultural Implications Assessment – 1007-2C

3. The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
4. There shall be no subdivision of retail units hereby approved.
5. The total Class A1 (retail) floorspace shall not exceed the following gross internal areas at any time:-

Unit 1 – 2,240 square metres  
Unit 2 – 744 square metres  
Unit 4 – 744 square metres  
Unit 5 – 744 square metres  
Unit 6 – 1,134 square metres

and

The total Class A1 (retail) / Class A3/A5 (restaurants and cafes / hot food takeaways) floorspace shall not exceed the following gross internal areas at any time:-

Unit 3 – 315 square metres  
Unit 7 – 114 square metres

6. Prior to the first occupation of the development hereby approved, a scheme, and a timetable for implementation for the management of waste arising from the A3/A5 uses, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved.
7. Prior to the first occupation of the development hereby approved, parking facilities for at least 15 cycles shall be provided on the site prior to the occupation of the approved development and retained at all times thereafter, in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.



8. Within 6 months of first occupation of any of the units hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include the provision for the appointment of a Travel Plan Co-ordinator, targets, a timetable, an enforcement mechanism and arrangements for monitoring progress. The Travel Plan shall be implemented in accordance with the timetable set out in the plan.
9. Prior to the first occupation of any of the units hereby permitted, Electric Vehicle Infrastructure shall be provided on site in accordance with details first submitted to and approved in writing by the Local Planning Authority.
10. Prior to the commencement of development, a scheme to minimise dust emissions arising from demolition / construction activities on the site shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of all dust suppression measures and the methods to monitor emissions of dust arising from the development. The demolition / construction phase shall be implemented in accordance with the approved scheme, with the approved dust suppression measures being maintained in a fully functional condition for the duration of the demolition / construction phase.
11. Prior to the commencement of development:
  - a) A site walkover investigation and review of historical site investigation data in relation to the current and proposed layout shall be carried out and submitted to and approved in writing by the Local Planning Authority. If such an assessment identifies any data gaps then:

Post demolition but prior to any further development commencing:
  - b) A post demolition Phase II ground investigation and risk assessment has been completed. A Phase II report shall be submitted to, and approved in writing by, the Local Planning Authority and:
  - c) If Phase II ground investigations indicate that remediation is necessary, a Remediation Strategy shall be submitted to, and approved in writing, by the Local Planning Authority.

Prior to the occupation of the development:

  - d) The remedial scheme in the approved Remediation Strategy shall be carried out.
  - e) A Verification Report prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the Local Planning Authority, prior to the occupation of the development.
12. Any soil or soil forming materials to be brought to site for use in soft landscaping shall be tested for contamination and suitability for use prior to importation to site. Prior to the first occupation of the development, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the Local Planning Authority.

13. If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation/use of the development, confirmation shall be provided to the Local Planning Authority that no such contamination was found, and if so what remedial measures were agreed and implemented.
14. Prior to undertaking any site clearance works between 1 March and 31 August in any year, a detailed survey shall be carried out to check for nesting birds. Where nests are found in any building, hedgerow, tree or scrub or other habitat to be removed (or converted or demolished in the case of buildings), a 4 metres exclusion zone shall be left around the nest until breeding is complete. Completion of nesting shall be confirmed by a suitably qualified person and a further report submitted to and approved in writing by the Local Planning Authority before any further works within the exclusion zone take place.
15. Prior to the first occupation of the development, proposals for the incorporation of features into the scheme suitable for use by breeding birds, including house sparrow and starling, shall be submitted to and approved in writing by the Local Planning Authority. The approved features shall be installed prior to the first occupation of the development hereby permitted and retained at all times thereafter.
16. No trees, shrubs or hedges within the site which are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written consent of the Local Planning Authority. Any trees, shrubs or hedges removed without such consent, or which die or become severely damaged or seriously diseased within 5 years from the occupation of any building or the development hereby permitted being brought into use shall be replaced with trees, shrubs or hedge plants of similar size and species unless the Local Planning Authority gives written consent to any variation.
17. (a) Prior to the commencement of development or other operations being undertaken on site, a scheme for the protection of the retained trees produced in accordance with BS5837 (Trees in Relation to Construction 2005: Recommendations), which provides for the retention and protection of trees, shrubs and hedges growing on or adjacent to the site, including trees which are the subject of a Tree Preservation Order currently in force, shall be submitted to and approved in writing by the Local Planning Authority. No development or other operations shall take place except in complete accordance with the approved protection scheme.  
  
(b) No operations shall be undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening or any operations involving the use of motorised vehicles or construction

machinery), until the protection works required by the approved protection scheme are in place.

(c) No excavations for services, storage of materials or machinery, parking of vehicles, deposit or excavation of soil or rubble, lighting of fires or disposal of liquids shall take place within any area designated as being fenced off or otherwise protected in the approved protection scheme.

(d) Protective fencing shall be retained intact for the full duration of the development works hereby approved and shall not be removed or repositioned without the prior written approval of the Local Planning Authority.

18. Prior to the commencement of development or other operations being undertaken on site in connection with the development hereby approved (including any tree felling, tree pruning, demolition works, soil moving, temporary access construction and / or widening, or any operations involving the use of motorised vehicles or construction machinery), a detailed Construction Specification / Method Statement for the car park and hardstanding areas within Root Protection Areas of retained trees shall be submitted to and approved in writing by the Local Planning Authority. This shall provide for the long term retention of the trees. No development or other operations shall take place except in complete accordance with the approved Construction Specification / Method Statement.
19. No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and shall include:
  - a) Information about the design's storm period and intensity (1 in 30 & 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water;
  - b) Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which shall include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant;
  - c) Flood water exceedance routes, both on and off site; and
  - d) A management and maintenance regime for any sustainable drainage systems.

The development shall be carried out in accordance with the approved scheme.

20. The approved development shall not be occupied until space has been laid out within the site for the parking of 244 cars in accordance with drawing 787-PLA-2007 A (Proposed site plan). Parking so provided, including the approved

number of spaces for disabled persons (if applicable), shall be retained at all times thereafter.

21. Prior to demolition of the warehouse building on site, a scheme shall be submitted to and approved in writing by the Local Planning Authority providing full details of works necessary for making good the external wall (south elevation) of Stanley Court. This permission does not authorise the demolition of the Stanley Court office building.
22. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) and the Town and Country Planning (General Permitted Development) (England) Order 2015, or any order amending, revoking or re-enacting either Order, no more than 15% of the total floorspace in any one unit hereby permitted shall be used for the sale of the following goods:-
  - i) A1 Food and drink with the exception of sandwich and coffee shops
  - ii) Fashion clothing, fashion footwear, fashion accessories and jewellery
  - iii) Pharmaceutical goods

There shall be no sale of these goods other than in accordance with the 15% threshold stated.

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**ANNEX C(ii): CPG Phase 1b - APP/R0660/V/17/3179610 (16/3284M)  
RECOMMENDED PLANNING CONDITIONS**

1. Details of the landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby approved shall take place not later than 2 years from the date of the approval of the last of the reserved matters approved.
4. The development hereby approved shall be carried out in total accordance with the following approved plans:  
  
LRW 7161 L(00)170B - PHASE 1B ROOF PLAN 5  
LRW 7161 L(00)174B - PHASE 1B ROOF PLAN COLOURED  
LRW 7161 L(00)177B - PHASE 1B ELEVATIONS COLOUR  
LRW 7161 L(00)179B - PHASE 1B GROUND FLOOR DEMOLITION PLAN  
LRW 7161 L(00)180C - EXISTING SITE PLAN PHASE 1B  
LRW 7161 L(00)181B - PHASE 1B CAR PARK AMENDMENTS PLAN  
LRW 7161 L(00)187B - ILLUSTRATIVE MASTERPLAN 23  
LRW 7161 L(00)292B - PHASE 1B GROUND FLOOR PLAN-LAYOUT  
LRW 7161 L(00)293B - PHASE 1B FIRST FLOOR PLAN-LAYOUT1  
LRW 7161 L(00)294B - PHASE 1B SITE SECTIONS-LAYOUT1 39  
LRW 7161 L(00)295B - PHASE 1B CAR PARK AMENDMENTS PLAN-LAYOUT1  
LRW 7161 L(00)296B - PHASE 1B FIRST FLOOR COLOURED  
LRW 7161 L(00)297B - PHASE 1B GROUND FLOOR COLOURED  
LRW 7161 L(00)298B - PHASE 1B ELEVATIONS COLOUR  
LRW 7161 L(00)299B - PROPOSED PHASE 1B ALTERATIONS TO EXISTING ELEVATION  
LRW 7161 L(00)301A - ILLUSTRATIVE MASTERPLAN WITH PHASE 1B
5. The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
6. There shall be no subdivision of retail units hereby approved.
7. The gross internal floorspace shall not exceed the following at any time:  
  
Unit 15 – ground floor 580 square metres and first floor 464.5 square metres  
Unit 16 – ground floor 580 square metres and first floor 464.5 square metres
8. Prior to the first occupation of the development hereby approved, improvements to the footway link at the southern end of Earl Road leading to the southern retail park shall be carried out in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.

9. No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and shall include:
- a) Information about the design's storm period and intensity (1 in 30 & 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water;
  - b) Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which shall include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
  - c) Flood water exceedance routes, both on and off site; and
  - d) A management and maintenance regime for any sustainable drainage systems.

The development shall be carried out in accordance with the approved scheme.

10. The Class A1 retail floorspace hereby approved shall be restricted to comparison goods only.
11. The approved development shall not be occupied until space has been laid out within the site for the parking of 207 cars in accordance with drawing LRW 7161 L(00)295B (Phase 1B Car Park Amendments Plan). Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter.

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**ANNEX C(iii): CPG Phase 2 - APP/R0660/V/17/3179605 (16/0802M)  
RECOMMENDED PLANNING CONDITIONS**

1. Details of the landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby approved shall take place not later than 2 years from the date of the approval of the last of the reserved matters approved.
4. The development hereby approved shall be carried out in total accordance with the following approved plans:
  - 7161 L(00)134 Site Location Plan (Site Edged Red)
  - 7161 L(00)123E Proposed Masterplan Ground Floor
  - 7161 L(00)124E Proposed Masterplan First Floor
  - 7161 L(00)126E Proposed Masterplan Roof Level
  - 7161 L(00)127F Proposed Colour Masterplan Ground Floor
  - 7161 L(00)128E Proposed Colour Masterplan First Floor
  - 7161 L(00)129D Proposed Colour Masterplan Roof Level
  - 7161 L(00)118C Proposed Site Elevations F K & L
  - 7161 L(00)121D Proposed Colour Site Elevations F K & L
  - 7161 L(00)105F Proposed Masterplan Phasing
  - 7161 L(00)106F Masterplan Analysis
  - 7161 L(00)316 Phase 2\_Restaurant Unit A1-A2 - Ground Floor
  - 7161 L(00)317 Phase 2\_Restaurant Unit A1-A2 - First Floor
  - 7161 L(00)318 Phase 2\_Restaurant Unit A1-A2 - Roof Plan
  - 7161 L(00)319 Phase 2\_Restaurant Unit A1-A2 - Elevations
  - 7161 L(00)320 Phase 2\_Restaurant Unit A1-A2 - Coloured Ground Floor
  - 7161 L(00)321 Phase 2\_Restaurant Unit A1-A2 - Coloured First Floor
  - 7161 L(00)322 Phase 2\_Restaurant Unit A1-A2 - Coloured Roof Plan
  - 7161 L(00)323 Phase 2\_Restaurant Unit A1-A2 - Coloured Elevations
  - 7161 L(00)258A Phase 2\_Restaurant Units - Ground Floor
  - 7161 L(00)259A Phase 2\_Restaurant Units - First Floor
  - 7161 L(00)260A Phase 2\_Restaurant Units - Roof Plan
  - 7161 L(00)261A Phase 2\_Restaurant Units - Elevations
  - 7161 L(00)262A Phase 2\_Restaurant Units - Coloured Ground Floor
  - 7161 L(00)263A Phase 2\_Restaurant Units - Coloured First Floor
  - 7161 L(00)264A Phase 2\_Restaurant Units - Coloured Roof Plan
  - 7161 L(00)265A Phase 2\_Restaurant Units - Coloured Elevations
  - 7161 L(00)266A Phase 2\_Drive Thru A - Ground Floor
  - 7161 L(00)267A Phase 2\_Drive Thru A - First Floor
  - 7161 L(00)268A Phase 2\_Drive Thru A - Roof Plan
  - 7161 L(00)269 Phase 2\_Drive Thru A - Elevations
  - 7161 L(00)270A Phase 2\_Drive Thru A - Coloured Ground Floor
  - 7161 L(00)271A Phase 2\_Drive Thru A - Coloured First Floor
  - 7161 L(00)272A Phase 2\_Drive Thru A - Coloured Roof Plan
  - 7161 L(00)273 Phase 2\_Drive Thru A - Coloured Elevations
  - 7161 L(00)274B Phase 2\_Drive Thru B - Ground Floor
  - 7161 L(00)275A Phase 2\_Drive Thru B - First Floor

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7161 L(00)276A Phase 2\_Drive Thru B - Roof Plan  
7161 L(00)277A Phase 2\_Drive Thru B - Elevations  
7161 L(00)278A Phase 2\_Drive Thru B - Coloured Ground Floor  
7161 L(00)279A Phase 2\_Drive Thru B - Coloured First Floor  
7161 L(00)280A Phase 2\_Drive Thru B - Coloured Roof Plan  
7161 L(00)281A Phase 2\_Drive Thru B - Coloured Elevations  
7161 L(00)282A Phase 2\_Drive Thru C - Ground Floor  
7161 L(00)283A Phase 2\_Drive Thru C - Roof Plan  
7161 L(00)284A Phase 2\_Drive Thru C - Elevations  
7161 L(00)285A Phase 2\_Drive Thru C - Coloured Ground Floor  
7161 L(00)286A Phase 2\_Drive Thru C - Coloured Roof Plan  
7161 L(00)287A Phase 2\_Drive Thru C - Coloured Elevations  
7161 L(00)303A Phase 2\_Restaurant - Sections 1:100@A3

5. The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
6. Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended), or any order revoking or re-enacting that Order, the approved A3 / A5 uses shall not be changed to A1 use at any time.
7. The reserved matters application shall include a scheme, and a timetable for implementation, for the management of waste arising from the A3/A5 uses.
8. Prior to the first occupation of the development hereby approved, improvements to the footway link at the southern end of Earl Road leading to the southern retail park shall be carried out in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
9. Prior to the first occupation of the development hereby approved, parking facilities for at least 6 cycles shall be provided on the site prior to the occupation of the approved development and retained at all times thereafter, in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
10. Within 6 months of first occupation of any of the units hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include the provision for the appointment of a Travel Plan Co-ordinator, targets, a timetable, an enforcement mechanism and arrangements for monitoring progress. The Travel Plan shall be implemented in accordance with the timetable set out in the plan.
11. Prior to the first occupation of any of the units hereby permitted, Electric Vehicle Infrastructure shall be provided on site in accordance with details first submitted to and approved in writing by the Local Planning Authority.
12. Prior to the commencement of development:
  - (a) A Remediation Strategy, informed by further site assessment, shall be submitted to, and approved in writing, by the Local Planning Authority.

Prior to the first occupation/use of the development:

- (b) The remedial scheme in the approved Remediation Strategy shall be carried out.
  - (c) A Validation Report prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the Local Planning Authority, prior to the occupation of the development.
13. Any soil or soil forming materials to be brought to site for use in soft landscaping shall be tested for contamination and suitability for use prior to importation to site. Prior to the first occupation of the development, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the Local Planning Authority
14. The approved Intrusive Radiological Survey Monitoring Protocol/Risk Assessment (Report Reference RVW/ERH/MS1) and supplementary commentary by Radman (July and August 2015) shall be followed throughout the course of the development. In addition:
- (a) Should any requirement for remedial actions be identified during the above survey this should be submitted to and approved in writing by the Local Planning Authority, together with a programme for implementation, prior to implementation, and thereafter carried out as approved.
  - (b) A report detailing the findings of the assessment, and verification of any remediation actions agreed in (a), shall be submitted to, and approved in writing by, the Local Planning Authority prior to first occupation of the development.
15. If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation/use of the development, confirmation shall be provided to the Local Planning Authority that no such contamination was found, and if so what remedial measures were agreed and implemented.
16. Prior to the first occupation of the development hereby approved, the details of the design of the Brown Roof shall be submitted to and approved in writing by the Local Planning Authority. The approved Brown Roof details shall be implemented prior to the occupation of those units covered by the Brown Roof.
17. Prior to the commencement of development, an updated badger survey shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with any required mitigation identified in the updated survey.

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18. No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and shall include:
- a) Information about the designs storm period and intensity (1 in 30 & 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water;
  - b) Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which shall include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant); and
  - c) Flood water exceedance routes, both on and off site.
  - d) A management and maintenance regime for any sustainable drainage systems.

The development shall be carried out in accordance with the approved scheme.

19. The approved development shall not be occupied until space has been laid out within the site for the parking of 137 cars in accordance with drawing L(00)123 Rev E (Ground Floor Site Plan). Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter.
20. The total Class A3/A5 (restaurants and cafes / hot food takeaways) floorspace shall not exceed the following gross internal areas at any time:
- Restaurant unit A1 – 209 square metres
  - Restaurant unit A2 – 199 square metres
  - Restaurant unit B – ground floor 232 square metres; and first floor 150 square metres
  - Restaurant unit C – ground floor 194 square metres and first floor 121 square metres
  - Drive thru A – ground floor 297 square metres and first floor 245 square metres
  - Drive thru B – ground floor 225 square metres and first floor 180 square metres
  - Drive thru C – 200 square metres

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**ANNEX C(iv): CPG Phase 3 - APP/R0660/V/17/3179609 (16/0138M)  
RECOMMENDED PLANNING CONDITIONS**

1. Details of the landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the Local Planning Authority not later than 3 years from the date of this permission.
3. The development hereby approved shall take place not later than 2 years from the date of the approval of the last of the reserved matters approved.
4. The development hereby approved shall be carried out in total accordance with the following approved plans:

2229-04D - Landscape Masterplan;  
2229-05A - Tree Survey Plan;  
7161 L(00)58E - Site Location Plan;  
7161 L(00)77T - Proposed Masterplan Ground Floor;  
7161 L(00)78K - Proposed Masterplan First Floor;  
7161 L(00)79K - Proposed Masterplan Second Floor;  
7161 L(00)86C - Site Elevations A & B;  
7161 L(00)87C - Site Elevations C & D;  
7161 L(00)93H - Colour Masterplan Ground Floor;  
7161 L(00)94C - Colour Masterplan First Floor;  
7161 L(00)95C - Colour Masterplan Second Floor;  
7161 L(00)101C - Site Elevations E, F and G;  
7161 L(00)103C - Colour Site Elevations A & B;  
7161 L(00)104C - Colour Site Elevations C & D;  
7161 L(00)105F - Proposed Masterplan Phasing;  
7161 L(00)106F - Masterplan Analysis; and  
7161 L(00)107C - Colour Site Elevations E, F and G.

5. The materials to be used shall be in strict accordance with those specified in the application unless different materials are first agreed in writing with the Local Planning Authority. Development shall be carried out in accordance with the approved details.
6. There shall be no subdivision of retail units hereby approved.
7. The total Class A1 (retail) floorspace shall not exceed the following gross internal areas at any time:

Units 1 & 2 - ground floor 3,251square metres and first floor 2,392 square metres  
Unit 3 - ground floor 930 square metres and first floor 744 square metres  
Unit 4 - ground floor 930 square metres and first floor 744 square metres  
Unit 5 - ground floor 463 square metres and first floor 377 square metres  
Unit 6 - ground floor 821 square metres and first floor 657 square metres  
Unit 7 - ground floor 930 square metres and first floor 744 square metres  
Unit 8 - ground floor 1,066 square metres and first floor 852 square metres  
Unit 9 - ground floor 1,136 square metres and first floor 909 square metres  
Unit 10 - ground floor 473 square metres and first floor 377 square metres

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Unit 11 - ground floor 473 square metres and first floor 377 square metres  
Unit 12 - ground floor 930 square metres and first floor 744 square metres  
Unit 13 - ground floor 930 square metres and first floor 744 square metres  
Unit 14 - ground floor 601 square metres and first floor 480 square metres

and

The total Class A3/A5 (restaurants and cafes / hot food takeaways) floorspace shall not exceed the following gross internal areas at any time:

Restaurant unit A1 – 209 square metres  
Restaurant unit A2 – 199 square metres  
Restaurant unit B – ground floor 232 square metres and first floor 150 square metres  
Restaurant unit C – ground floor 194 square metres and first floor 121 square metres  
Drive thru A – ground floor 297 square metres and first floor 245 square metres  
Drive thru B – ground floor 225 square metres and first floor 180 square metres  
Drive thru C – 200 square metres

8. The Class A1 retail floorspace hereby approved shall be restricted to comparison goods only.
9. The reserved matters application shall include a scheme, and a timetable for implementation, for the management of waste arising from the A3/A5 uses.
10. Prior to the first occupation of the development hereby approved, improvements to the Coppice Way roundabout shall be completed in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
11. Prior to the first occupation of the development hereby approved, improvements to the site access shall be carried out in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
12. Prior to the first occupation of the development hereby approved, improvements to the footway link at the southern end of Earl Road leading to the southern retail park, and improvements to the public footpath (Wilmslow FP80) to the north of the site, shall be carried out in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
13. Prior to the first occupation of the development hereby approved, a pedestrian crossing over Handforth Brook shall be provided in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
14. Prior to the first occupation of the development hereby approved, parking facilities for at least 63 cycles shall be provided on the site prior to the occupation of the approved development and retained at all times thereafter, in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
15. Within 6 months of first occupation of any of the units hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall include the provision for the appointment of a



Travel Plan Co-ordinator, targets, a timetable, an enforcement mechanism and arrangements for monitoring progress. The Travel Plan shall be implemented in accordance with the timetable set out in the plan.

16. Prior to the first occupation of any of the units hereby permitted, Electric Vehicle Infrastructure shall be provided on site in accordance with details first submitted to and approved in writing by the Local Planning Authority.

17. Prior to the commencement of development:

(a) A Remediation Strategy, informed by further site assessment, shall be submitted to, and approved in writing, by the Local Planning Authority.

Prior to the first occupation/use of the development:

(b) The remedial scheme in the approved Remediation Strategy shall be carried out.

(c) A Validation Report, prepared in accordance with the approved Remediation Strategy, shall be submitted to, and approved in writing by, the Local Planning Authority, prior to the occupation of the development.

18. Any soil or soil forming materials to be brought to site for use in soft landscaping shall be tested for contamination and suitability for use prior to importation to site. Prior to the first occupation of the development, evidence and verification information (for example, laboratory certificates) shall be submitted to, and approved in writing by, the Local Planning Authority.

19. The approved Intrusive Radiological Survey Monitoring Protocol/Risk Assessment (Report Reference RVW/ERH/MS1) and supplementary commentary by Radman (July and August 2015) shall be followed throughout the course of the development. In addition:

(a) Should any requirement for remedial actions be identified during the above survey this shall be submitted to and approved in writing by the Local Planning Authority, together with a programme for implementation, prior to implementation, and thereafter carried out as approved.

(b) A report detailing the findings of the assessment, and verification of any remediation actions agreed in (a), shall be submitted to, and approved in writing by, the Local Planning Authority prior to first occupation of the development.

20. If, during the course of development, contamination not previously identified is found to be present, no further works shall be undertaken in the affected area and the contamination shall be reported to the Local Planning Authority as soon as reasonably practicable (but within a maximum of 5 days from the find). Prior to further works being carried out in the identified area, a further assessment shall be made and appropriate remediation implemented in accordance with a scheme also agreed in writing by the Local Planning Authority. Prior to first occupation/use of the development, confirmation shall be provided to the Local

Planning Authority that no such contamination was found, and if so what remedial measures were agreed and implemented.

21. Prior to the first occupation of the development hereby approved, the details of the design of the Brown Roof shall be submitted to and approved in writing by the Local Planning Authority. The approved Brown Roof details shall be implemented prior to the occupation of those units covered by the Brown Roof.
22. Prior to the commencement of development an updated badger survey shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with any required mitigation identified in the updated survey.
23. No development shall take place until a surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based on the hierarchy of drainage options in the National Planning Practice Guidance and shall include:
  - a) Information about the design's storm period and intensity (1 in 30 & 1 in 100 (+30% allowance for Climate Change)), discharge rates and volumes (both pre and post development), temporary storage facilities, means of access for maintenance, the methods employed to delay and control surface water discharge from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface water;
  - b) Any works required off site to ensure adequate discharge of surface water without causing flooding or pollution (which should include refurbishment of existing culverts and headwalls or removal of unused culverts where relevant);
  - c) Flood water exceedance routes, both on and off site;
  - d) A management and maintenance regime for any sustainable drainage systems; and
  - e) Proposed finished floor levels of unit 1.

The development shall be carried out in accordance with the approved scheme.

24. Notwithstanding the provisions of the Town & Country Planning (Use Classes) Order 1987 (as amended), or any order revoking or re-enacting that Order, the approved A3 / A5 uses shall not be changed to A1 use at any time.
25. The approved development shall not be occupied until space has been laid out within the site for the parking of 627 cars in accordance with drawing L(00)77 Rev T (Ground Floor Site Plan). Parking so provided, including the approved number of spaces for disabled persons (if applicable), shall be retained at all times thereafter.

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# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.