

**GLOUCESTER CITY COUNCIL**

**COMMITTEE** : **PLANNING**

**DATE** : **6<sup>TH</sup> MAY 2014**

**ADDRESS/LOCATION** : **INTERBREW UK LTD, EASTERN AVENUE**

**APPLICATION NO. & WARD** : **13/01261/OUT  
BARNWOOD**

**EXPIRY DATE** : **21<sup>ST</sup> MARCH 2014**

**APPLICANT** : **JAVELIN PROPERTIES LTD**

**PROPOSAL** : **REDEVELOPMENT OF EXISTING  
WAREHOUSING AND DISTRIBUTION SITE  
TO PROVIDE WHOLESALE / RETAIL  
WAREHOUSE CLUB (CIRCA. 13,025  
SQUARE METRES GROSS), CREATION OF  
NEW SIGNALISED ACCESS AND JUNCTION  
ON EASTERN AVENUE, LAYING OUT OF  
ASSOCIATED VEHICLE PARKING (CIRCA  
612 SPACES) AND ASSOCIATED  
SERVICING SPACE, AND ERECTION OF  
FREESTANDING ROADSIDE RESTAURANT  
(CIRCA 420 SQUARE METRES GROSS)  
AND ASSOCIATED PARKING (CIRCA 34  
SPACES) AND SERVICING (OUTLINE  
APPLICATION – MEANS OF ACCESS  
OFFERED FOR CONSIDERATION;  
APPEARANCE, LANDSCAPING, LAYOUT  
AND SCALE RESERVED FOR FUTURE  
CONSIDERATION)**

**REPORT BY** : **ADAM SMITH**

**NO. OF APPENDICES/  
OBJECTIONS** : **SITE PLAN  
REPRESENTATIONS FROM COSTCO AND  
NATHANIEL LICHFIELD AND PARTNERS  
APPRAISAL OF RETAIL STATEMENT BY  
DPDS CONSULTING**

**1.0 SITE DESCRIPTION AND PROPOSAL**

- 1.1 The site is situated immediately to the north of the Eastern Avenue/Metz Way junction. It is a roughly square shaped site, with Metz Way to the south west, Eastern Avenue to the south east, the railway lines to the north west (the

Railway Triangle is beyond), and the Chancel Close access road and other industrial units to the north east.

- 1.2 The existing site has a large open area to the south although it is extensively used for storage and loading of products with some associated maintenance buildings and tanks, and parking. The existing main building is L-shaped in footprint and is situated on the north part of the site. It comprises two warehouse units, an open canopy area and two storey offices and amounts to a gross internal area of circa 13,745 sq metres.
- 1.3 The site has been operated by Whitbread drinks company and its successors as a distribution centre to the trade. It appears that restructuring of the wider business resulted in the relocation of a substantial part of the business away from Gloucester, such that the employee numbers are now around 100 (21 office-based) as opposed to the high of 400.
- 1.4 The proposal is for a wholesale/retail warehouse club, a freestanding restaurant, and the associated car parking provision, and alterations to the highway including the provision of a major new junction at Eastern Avenue/Chancel Close. The wholesale/retail warehouse club is proposed at 13,025 sq metres gross, the restaurant 420 sq metres gross. The operators of both are yet to be finalised.
- 1.5 The application is made in outline form, offering the means of access for consideration. The appearance, landscaping, layout and scale of the development are reserved for future consideration.
- 1.6 The application is presented to the Planning Committee given the scale of development.

## **2.0 RELEVANT PLANNING HISTORY**

P/25/74

- 2.1 Change of use to distribution depot. Erection of office accommodation and layout of car parking. Approved subject to conditions 9<sup>th</sup> October 1974.

P/26/74

- 2.2 Temporary use of buildings as duty paid warehouse. Approved subject to conditions 9<sup>th</sup> October 1974.

03/EDP/361/79

- 2.3 Erection of warehouse and workshop. Alteration to provide office and canteen. Approved subject to conditions 23<sup>rd</sup> May 1979.

P/26/74/80 (Renew P/26/74)

- 2.4 Use of building for duty paid warehouse. Approved subject to conditions 9<sup>th</sup> April 1980.

P/4260/80

2.5 Erection of a prefabricated office, workshop and store. Approved subject to conditions 10<sup>th</sup> September 1980.

P/4371/80

2.6 Conversion of single storey building to repair and storage of equipment. Approved subject to conditions 8<sup>th</sup> October 1980.

P/4643/80

2.7 Conversion of remainder of building for repair and storage of equipment. ATL 17<sup>th</sup> December 1980.

11170/01

2.8 Formation of car park. Approved 26<sup>th</sup> March 1985.

11170/02

2.9 Erection of 3 portable buildings for use as temporary offices. Approved subject to conditions 29<sup>th</sup> October 1985.

11170/03 (Renew P/26/74/80)

2.10 Use of building as duty paid warehouse. Approved 25<sup>th</sup> March 1986.

11170/04 (Renew P/4643/80)

2.11 Conversion of building to house cellar service department. Approved 25<sup>th</sup> March 1986.

11170/05 (Renew P/4371/80)

2.12 Conversion of building to house cellar service department. Approved 25<sup>th</sup> March 1986.

11170/06

2.13 Installation of fleet washer, erection of plant room, operators building. Approved 6<sup>th</sup> January 1987.

11170/07

2.14 Extension to office at first floor. Approved 9<sup>th</sup> January 1987.

11170/08

2.15 Formation of a new reception, canopy, installation of new windows and erection of 4 flag poles. Approved 10<sup>th</sup> January 1989.

11170/09

2.16 Extension to workshop at rear. Approved 7<sup>th</sup> February 1989.

11170/10

2.17 External alterations to existing cash call and storage area. Approved 6<sup>th</sup> February 1990.

93/02714/FUL

2.18 Extension & canopy to warehouse, relocation of steam cleaning ramp & provision of additional lorry & car parking areas. Granted subject to conditions 23<sup>rd</sup> November 1993.

93/02714/FUL

2.19 Extension & canopy to warehouse, relocation of steam cleaning ramp & provision of additional lorry & car parking areas. Granted subject to conditions 23<sup>rd</sup> November 1993.

94/02993/FUL

2.20 Erection of fire escape at side. Granted subject to conditions 7<sup>th</sup> April 1994.

94/05097/FUL

2.21 Erection of external fire escape on north elevation. Granted 24<sup>th</sup> October 1996.

95/00095/FUL

2.22 Formation of additional car parking spaces with associated landscaping. Granted subject to conditions 22<sup>nd</sup> March 1995.

96/00262/FUL

2.23 Extension to warehouse. Formation of lorry park, relocation of derv tanks and use of part of existing lorry park for open storage. Granted subject to conditions 24<sup>th</sup> October 1996.

98/00652/FUL

2.24 Alterations to facade of offices. Granted subject to conditions 30<sup>th</sup> November 1998.

### **3.0 PLANNING POLICIES**

3.1 The following planning guidance and policies are relevant to the consideration of this application:

#### Central Government Guidance - National Planning Policy Framework

3.2 The NPPF is a material consideration in determining this application.

#### *Decision-making*

The NPPF does not alter the requirement for applications to be determined in accordance with the development plan unless material considerations indicate otherwise.

The NPPF is underpinned by a presumption in favour of sustainable development. It advises that authorities should approve development proposals that accord with statutory plans without delay, and also grant permission where the plan is absent, silent, indeterminate or out of date. This should be the case unless the adverse impacts of allowing development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the framework as a whole, or specific policies in the NPPF indicate development should be restricted.

Authorities should seek to approve applications where possible, looking for solutions rather than problems.

#### *Building a strong, competitive economy*

The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth.

The NPPF retains a recognition of town centres as the heart of communities and encourages the pursuit of policies to support their vitality and viability.

The sequential and impact tests are maintained for 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.

Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more the 'impact' factors, it should be refused.

#### *Promoting sustainable transport*

Seeks to ensure developments generating significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. Decisions should take account of whether;

- The opportunities for sustainable transport modes have been taken up;
- Safe and suitable access to the site can be achieved for all people;
- Improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented on transport grounds whether the residual cumulative impacts of development are severe.

#### *Requiring good design*

Emphasis is retained on good design, seeking to ensure that development will function well and add to the overall quality of the area, establish a strong sense of place, optimise the potential of the site to accommodate development, respond to local character and history while not discouraging innovation, ensure safe and accessible environments, and are visually attractive as a result of good architecture and appropriate landscaping. Permission should be refused for development of poor design that fails to take opportunities for improving areas.

#### *Promoting healthy communities*

Encourages the involvement of all sections of the community. Decisions should aim to achieve places which promote;

- Opportunities for meetings between members of the community who might not otherwise come into contact;
- Safe and accessible environments;
- Safe and accessible developments.

#### *Meeting the challenge of climate change, flooding and coastal change*

Seeks to secure reductions in greenhouse gas emissions, supporting the delivery of renewable and low carbon energy and associated infrastructure.

In terms of flooding, authorities should direct development away from high flood risk areas, but where development is necessary, make it safe without increasing flood risk elsewhere.

The sequential and exception test principles are maintained. The aim of sequential test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available site appropriate for the proposed development in areas with a lower probability of flooding. For individual developments on sites allocated in development plans through the Sequential Test, applicants need not apply the Sequential Test.

#### *Conserving and enhancing the natural environment*

The aims of contributing to and enhancing the natural and local environment remain. Impacts on biodiversity should be minimised. Developments should be prevented from contributing to or being put at unacceptable risk from soil, silt, water or noise pollution, and remediate and mitigate land where appropriate.

#### *Conserving and enhancing the historic environment*

Retains the general approach to protect and enhance heritage assets, and to require applicants to assess the significance of assets affected by development proposals.

The more important the asset, the greater weight should be apportioned to its conservation. Where a proposed development will lead to substantial harm or total loss of significance of a designated heritage asset, consent should be refused unless certain exception criteria are met.

#### Central Government - National Planning Practice Guidance

This practice guidance has recently been published and cancels a wide range of previous Circulars and guidance documents including the Practice Guidance on Need, Impact and the Sequential Approach.

#### *Ensuring the vitality of town centres*

This restates the sequential and impact tests of the NPPF. It provides guidance on using these in decision-taking on applications.

It emphasises that it is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission). Its application should be proportionate and appropriate for the proposal. It emphasises the requirement to demonstrate flexibility. It also notes that for edge or out of centre locations preference should be given to accessible sites that are well-connected to the town centre. It should be considered whether there is scope for flexibility in the format and/or scale of the proposal. It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the

scale and form of development being proposed, but rather what contribution more central sites are able to make individually to accommodate the proposal. If there are no suitable sequentially preferable locations, the sequential test is passed. Use of the sequential test should recognise that certain uses have particular market and locational requirements which mean that they may only be accommodated in specific locations – robust justification must be provided where this is the case and land ownership is not a justification.

The applicant should also demonstrate compliance with the impact test and again failure to do so could be a reason for refusal. Again it should be proportionate and locally appropriate. This test is for proposals exceeding 2500 square metres gross unless a different local threshold is set. It sets out the steps in applying the impact test and how to take a decision on it. The judgement for ‘significantly adverse’ impacts should include the extent of the impacts on the study area, and might include examination of the effects of trade diversion on pedestrian flows and investor confidence. If they are significantly adverse the application should be refused. If not, the positive and negative effects should be considered alongside other material considerations.

#### *Air quality*

This notes the importance of air quality and that odour and dust can be a planning concern for the effect on local amenity. It sets out where air quality is relevant including traffic increases, introducing new sources of air pollution, exposing people to pollutants, construction impacts, biodiversity impacts. It sets out the detail for an air quality assessment and mitigation measures, and finally how decisions should be made in terms of requiring an appropriate level of information to inform that decision, with conditions and obligations as may be necessary.

#### *Climate change*

This notes the importance of effective spatial planning in responding to climate change. Authorities should ensure protecting the local environment is properly considered alongside the broader issues of protecting the global environment. It advises on the integration of mitigation measures. Authorities should consider such matters realistically, including identifying low or no-cost responses to climate that deliver other benefits (e.g. green infrastructure); flexibility to allow future adaptation (e.g. setting back development from rivers to allow future defences); and the potential climate change vulnerability of a development over its whole lifetime.

#### *Conserving and enhancing the historic environment*

This notes the importance of this in achieving sustainable development. This provides further guidance on the criteria for decision-taking, commenting on the importance of the significance of a heritage asset, use of statutory consultees, supporting documentation with applications, the setting of heritage assets, taking into account deterioration of a heritage asset, putting heritage assets to a viable use, and how to assess harm and any public benefits. In terms of the latter two points, it notes that in determining whether works to a listed building constitute substantial harm, an important consideration would

be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting. In terms of public benefits, it notes that they should be of a nature or scale to be of benefit to the public at large and not just a private benefit, and may include, heritage benefits such as sustaining or enhancing the significance of a heritage asset and the contribution of its setting, reducing or removing risks to a heritage asset, or securing the optimum viable use of a heritage asset in support of its long term conservation.

### *Design*

This notes that good quality design is an integral part of sustainable development. Authorities are required to take design into consideration and should refuse permission for development of poor design.

### *Flood risk and coastal change*

This provides extensive advice on flood risk and planning for it in local plans and strategic assessments, and provides further guidance on the sequential and exception tests set out in the NPPF and applying them to applications. It sets out the need to consider flood risk associated with individual developments, and the FRA should establish the effect from current or future flooding, any increase on flooding elsewhere, whether the measures to deal with it are appropriate, and evidence for the Sequential and Exception Tests (if necessary).

### *Light pollution*

This notes the potential for lighting to cause pollution or 'obtrusive light', and the ways a proposal might have a planning impact. Authorities should consider where, when and how much the light shines and possible ecological impacts.

### *Noise*

This notes that noise needs to be considered when new development may create additional noise and where new developments would be sensitive to the prevailing acoustic environment. It provides guidance on how to assess it and identify an impact and various potential mitigation measures.

### *Planning obligations*

This notes that obligations mitigate the impact of unacceptable development to make it acceptable in planning terms. Obligations should be;

- Necessary to make the development acceptable in planning terms;
- Directly related to the development;
- Fairly and reasonable related in scale and kind;
- Obligations must be fully justified and evidenced.

### *Renewable and low carbon energy*

This concentrates on delivery of energy schemes but includes considerations for specific renewable technologies.

### *Travel plans, transport assessments and statements in decision-taking*

This provides guidance on the above in relation to planning decisions, including what they are and the principles that should be taken into account. It guides where they should be required and their scope.

### *Use of planning conditions*

This guides the imposition of conditions, including the 'six tests':

Conditions should be

Necessary;

Relevant to planning and;

To the development to be permitted;

Enforceable;

Precise and;

Reasonable in all other respects.

### *Water supply, wastewater and water quality*

This includes guidance on considerations of such matters in planning applications. It notes that water quality is only likely to be a significant concern if a proposal involves modifications to a water body and/or indirectly affects water bodies such as by contamination. Where it is likely that a proposal would have a significant adverse impact on water quality then a more detailed assessment will be required and it guides the content.

### The Development Plan

3.3 Section 38 of the Planning and Compulsory Purchase Act 2004 has established that - "The development plan is

(a) The regional spatial strategy for the region in which the area is situated, and

(b) The development plan documents (taken as a whole) which have been adopted or approved in relation to that area.

If to any extent a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy that is contained in the last document to be adopted, approved or published (as the case may be). If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The Regional Spatial Strategy and Structure Plan have been revoked.

### Local Plan

3.4 The statutory development plan for Gloucester remains the City of Gloucester Local Plan (Adopted 1983 and partially saved until the Local Development Framework is adopted).

Subsequent to the 1983 plan there has also been the City of Gloucester (Pre-1991 Boundary Extension) Interim Adoption Copy October 1996), and City of Gloucester First Stage Deposit Local Plan (June 2001).

Regard must also be had to the 2002 Revised Deposit Draft Local Plan. This has been subjected to two comprehensive periods of public and stakeholder consultation and adopted by the Council for development control purposes. This cannot be saved as it is not a formally adopted plan, however with it being adopted for development control purposes it is still judged to be a material consideration. Appeal reference APP/U1620/A/07/2046996 dated 18<sup>th</sup> March 2008 confirms the degree of weight that may be afforded to the 2002 Revised Deposit Draft Local Plan. It is considered that particular weight may be afforded to those policies that attracted a limited number of, or no objections during the consultation stages. In his decision the Inspector stated the following;

“Although the local plan is not part of the development plan it has been adopted for development control purposes and I give considerable weight to it having regard to the amount of public consultation that it underwent...”

#### 2002 Plan allocations

None

#### 2002 Plan Policies

FRP.1a – Flood risk

FRP.6 – Surface water run-off

FRP.10 – Noise

FRP.11 – Pollution

FRP.15 – Contaminated land

BE.1 – Scale, massing and height

BE.2 – Views and skyline

BE.4 – Criteria for the layout, circulation and landscape of new development

BE.5 – Community safety

BE.6 – Access for all

BE.7 – Architectural design

BE.8 – Energy efficient development

BE.9 – Design criteria for large commercial development

BE.12 – Landscape schemes

BE.21 – Safeguarding of amenity

BE.31 – Preserving sites of archaeological interest

BE.32 – Archaeological assessment

BE.34 – Presumption in favour of preserving archaeology

BE.36 – Preservation in situ

BE.37 – Recording and preserving archaeology

TR.9 – Parking standards

TR.12 – Cycle parking standards

TR.31 – Road safety

TR.33 – Providing for cyclists/pedestrians

S.4a – New retail development outside designated centres

- 3.5 In terms of the emerging local plan, the Council is preparing a Joint Core Strategy with Cheltenham and Tewkesbury Councils and has recently published for consultation a Draft Joint Core Strategy, October 2013. In addition to the Joint Core Strategy, the Council is preparing its local City Plan

which is taking forward the policy framework contained within the City Council's Local Development Framework Documents which reached Preferred Options stage in 2006. While at early stages, these reiterate the focus on protection and promotion of the city centre in terms of retail, the importance of the Kings Quarter scheme, and the maintenance of the impact and sequential tests.

#### Retail documents

##### Revised Draft Central Area Action Plan (2006)

- 3.6 This reached preferred options stage in August 2006. Of note for this application, it sets out the current policy position in relation to Priority Area 3 – Kings Square and the Bus Station. Policy CA20 allocates the wider area for major new comparison goods retail development as part of a mixed use scheme. It also provides general development control policies. The content of the plan will be taken forward through the emerging Gloucester City Plan.

##### Revised Draft Supplementary Planning Document Kings Square and Bus Station Planning Brief (2007)

- 3.7 This sets out the Council's approach to the development of this area. It is not formally adopted by the Council but was prepared in accordance with the relevant planning regulations and subject to extensive public consultation.

##### Kings Quarter Planning Concept Statement

- 3.8 This statement carries forward previous policy objectives for the Kings Square and Bus Station area of the City. It sets out the opportunity and objective to deliver a redevelopment of Kings Quarter, creating a vibrant addition to the City's shopping offer, including a new and improved bus station, improved linkages to the railway station, Northgate Street and the city centre, and public realm improvements. Crucially, the redevelopment is to deliver a significant change in the City's retail performance by achieving a substantial quantum of new retail-led, mixed use development which will act as a catalyst for the continued regeneration of the wider city centre area and city as a whole.

##### The Portas Review

- 3.9 This is not a statutory planning document but considerable political weight has been attributed to the Portas review and is widely held to be an influence on government's approach. It was undertaken at the request of the Prime Minister and considered the health and performance of the high street and retail centres across the country, including the various threats to retail centres such as competition from out of centre developments.

- 3.10 All policies can be viewed at the relevant website address:- Gloucester Local Plan policies – [www.gloucester.gov.uk/planning](http://www.gloucester.gov.uk/planning); Gloucestershire Structure Plan policies – [www.gloucestershire.gov.uk/index.cfm?articleid=2112](http://www.gloucestershire.gov.uk/index.cfm?articleid=2112) and Department of Community and Local Government planning policies - [www.communities.gov.uk/planningandbuilding/planning/](http://www.communities.gov.uk/planningandbuilding/planning/).

#### **4.0 CONSULTATIONS**

- 4.1 The Highway Authority met with the applicant and agents and a subsequent Transport Assessment addendum has resolved their initial concerns. No objection is raised subject to conditions to secure the provision of fire hydrants, and vehicular parking, turning and loading/unloading facilities within the site, to secure the access works implementation prior to the commencement of use, and to secure a Construction Method Statement for highways matters. The developer will be required to fund and provide the infrastructure.
- 4.2 The Environment Agency does not wish to make bespoke comments on this application and refers to its Standing Advice and recommends the Council's Drainage Officer is consulted.
- 4.3 Severn Trent Water raises no objection subject to a condition to secure details of drainage.
- 4.4 The City Archaeologist recommended that the applicant provides the results of a 'trial trenching' archaeological evaluation. This has been done only in part. The Archaeologist is satisfied that the outstanding requirements can be picked up pursuant to conditions.
- 4.5 The City Council's Spatial Planning and Environment Department raises no objection in respect of the employment land issues and agrees with the conclusions of the DPDS report on retail/city centre matters.
- 4.6 The City Council's Drainage Engineer has no concerns about flood risk at the site. However there are outstanding concerns about potential flood risk in the locality - a 20% reduction in runoff rates is sought, and this is considered particularly important due to the existing flooding problems along Wotton Brook. Some form of attenuation will be required. A 30% uplift for climate change should be included. Outline details of SuDS proposals are sought.
- 4.7 The Urban Design Officer raises no in-principle objection. It is however suggested that the indicative site layout could be improved – with the building sited just off the main road to provide some definition and presence, rather than being set back towards the railway line.
- 4.8 The Environmental Health Protection Officer raises no objection subject to conditions to secure controls over the construction phase, and details and maintenance of extraction equipment for the restaurant.
- 4.9 The Contaminated Land Officer notes the previous uses and possible tanks and infilled pond, and raises no objection subject to the standard contaminated land condition.
- 4.10 The Environmental Planning Service Manager seeks further details of the drainage proposals, given it appears to be draining into the Wotton Brook. He also recommends conditions to secure the commitment to renewable energy, details of those features, and 10% of energy from low carbon/renewable means, and the waste management

4.11 The Barnwood Community Partnership has not commented.

## **5.0 PUBLICITY AND REPRESENTATIONS**

5.1 36 neighbouring premises and interested parties were notified of the application, and site and press notices were also published. Ward Councillors were also notified.

Two representations have been received. One directly from Costco Wholesale and one from Nathaniel Lichfield and Partners on behalf of Aviva Investors.

The comments may be summarised as follows:

- Costco are not looking to open in Gloucester at the present time; it is not part of their short to medium term expansion plans;
  - There are a number of errors and gaps in the application that Costco would have included and dealt with;
  - If permission were granted Costco would not feel comfortable trading under this application;
  - Any application purporting to be for a Warehouse Club is indeed just that. Costco wish to ensure a consistent approach is adopted to the use;
  - A s106 agreement should be secured detailing and controlling the use if approved;
  - Since Costco is the only Warehouse Club operator in the UK, Costco fail to see how the applicant can accurately inform Officers and Members on the nature of the operation.
- 
- Impact on the city centre as proposed and in the future should the operation change;
  - Impact on existing retailers and the viability of the future redevelopment of Kings Quarter;
  - Edge and out of centre retail development has overshadowed development in the centre;
  - Incremental effects of out of centre proposals;
  - The lack of interest from Costco and no other operator taking occupation inadvertently creating a 'fall back position' of up to 4,700 sq m of unrestricted A1 floorspace;
  - The restaurant unit is a town centre use and there is no reason it should not be disaggregated and located in a sequentially preferable location. The sequential test does not deal with the restaurant;
  - If approved strict planning conditions are required to ensure only usage for a cash and carry, and a s106 agreement to establish the authorised use of the unit, the use as a shop within Class A1 would amount to development requiring planning permission, the right for the Council to require information on the business, and rights of Officers to investigate.

5.2 The full content of all correspondence on this application can be inspected online or at Herbert Warehouse, The Docks, Gloucester, prior to the Committee meeting.

## 6.0 **OFFICER OPINION**

6.1 It is considered that the main issues with regards to this application are as follows:

- Economic development
- Design
- Traffic and transportation
- Residential amenity
- Archaeology
- Flooding and drainage
- Sustainability

### Environmental Impact Assessment

The proposal has been screened and it has been determined that the application is not EIA development.

### **Economic development**

#### ***'Retail' issues***

6.2 The Council's retail consultant DPDS Consulting has been employed to provide advice on this application given its scale and the specific characteristics of this scheme. DPDS has also provided useful background on the warehouse club format.

#### The warehouse club format

6.3 Warehouse clubs offer a wide variety of merchandise for sale in bulk at discount prices. Customers may need to pay a membership fee. The applicant states that it will provide cash and carry wholesale facilities, offering a limited selection of products within a wide variety of product categories.

#### The likely operator

6.4 There is no named operator at present but there are two main operators in this field; Costco and Booker.

6.5 The only operator that DPDS has been able to identify in the UK offering non-trade membership is Costco. Costco sells a wide range of goods, a list of some is provided in the appended DPDS report. Costco offers trade and individual memberships. Individual membership is restricted to people in qualified professions and employees of certain organisations. About 35% of Costco's sales are derived from individual membership and 65% from trade members.

6.6 There are several cash and carry warehouse chains operating in the UK, the most well known probably being Booker and Makro (taken over last year by Booker). Both are wholesale and do not offer individual membership. They are generally considered Class B8 wholesale distribution uses and not warehouse clubs. Booker has a store at Barnett Way.

- 6.7 Other than Costco, DPDS has identified one retail (as opposed to wholesale) warehouse club chain in the UK - JFT which operates in the north and midlands. Their goods for sale are also set out in the DPDS report. They operate a membership scheme but it is free and without qualifying restrictions.
- 6.8 Although there is no named operator, the retail analysis assumes Costco's operational format, since it has a higher turnover than either Booker or Makro (notwithstanding the differences highlighted above) and this would show a 'worst case' scenario.

Warehouse clubs - the 'use' issue

- 6.9 It has been established by the courts that Costco is not an 'A1' retail use. The judgement appears to have turned on the eligibility for Costco membership – other operator's membership schemes might not take the use outside of Class A1. Booker and Makro do not have individual membership schemes and are generally considered as wholesale distribution not warehouse clubs.

**Retail – policy considerations**

- 6.10 National and local policy include the impact and sequential tests in respect of retail proposals. The applicant has, in fairness, undertaken sequential and impact tests, however the applicant suggests that there is some debate over whether the use can be defined a 'town centre use'. It is worth noting, for clarity, that the NPPF defines main town centre uses as "retail development (including warehouse clubs ...)". It appears clear therefore that the NPPF policy tests are applicable to this proposal.
- 6.11 There has been a development in national planning policy since the supporting documents were drawn up by the applicant – the publication of the National Planning Practice Guidance – but it is not considered that this fundamentally affects the submitted application; the applicant's assessment submitted is still considered to be relevant.

**Impact**

*Impact on town centre vitality and viability*

- 6.12 DPDS has undertaken a detailed appraisal of the applicant's impact analysis which, as noted above, has taken the Costco figures as a worst-case scenario.
- 6.13 The proposal is that the warehouse club would derive 65% of its turnover from convenience goods and 35% from comparison, with sales split 65% from trade customers (wholesale) and 35% from individual members. This reflects Costco's standard operation and the latter trade/individual members split has been accepted at a number of appeals and call-ins.
- 6.14 The applicant states that trade patterns are different from a 'regular' retailer due to not attracting passing trade and less frequent, bulk-buy visits. As such, population density and price savings, rather than proximity to the warehouse, are described as a determining factor in market penetration.

- 6.15 Taking the Costco 'worst-case' scenario, their outlets (outside London) each turnover around £61million per annum. Taking the same characteristics as Costco (as the 35%/65% split above), the applicants propose the turnover derived from individual members would be £13.86million from convenience goods and £7.46million from comparison. The impact assessment addresses only this £21.3million of turnover from individual members, not the remainder from trade members (on the basis that these transactions do not constitute a retail sale and the policy tests on impact do not apply). The majority of turnover is therefore seen to be from trade sales.
- 6.16 The applicant proposes that the warehouse club is expected to derive 48% or £6.7million of its convenience goods turnover (from individual members) from stores in Gloucester. However in terms of where the development's turnover is expected to originate, in terms of the customer, only 30% or £4.2million is expected to come from Gloucester.
- 6.17 In terms of the convenience expenditure impact the applicant highlights a specific trading philosophy associated with the proposal that limits the impact, including; to maximise sales volumes they must operate principally as a wholesaler; the membership range is strictly limited; the product range is comparatively low compared to retail superstores (around 4000); products are sold in large pack sizes; and that the company has no desire to attract casual or small-spending shoppers who might cause congestion.
- 6.18 The applicant's calculations indicate that just under half of the warehouse club's turnover would be diverted from stores in Gloucester. Most of this Gloucester-based diversion (£10.7million of the £13.9million) would be from the larger out of centre stores. Within the city centre the quantifiable trade diversion is £0.1million from the 'other small shops' which results in an impact of -2.3%. The impact on the wider city centre as a whole is proposed as less, at -0.6%. The overall impact on other centres is proposed at -2.4% (Morrison at Abbeydale -1.6%, Tesco at Quedgeley -3.4%) both of which are described as trading well above their benchmark levels. The highest impact in Gloucester is 4.2% on the Gloucester Quays Sainsbury, which is out of centre. In respect of Cheltenham and Tewkesbury, the overall impact on each town centre is below 1%, and impact on other district centres in Cheltenham is -2.1%.
- 6.19 As noted above, the majority of the turnover of the proposed warehouse club from individual members is proposed to be derived from convenience goods, with £7.5million of its turnover from individual members relating to comparison goods. The main impacts forecast are set out in the DPDS letter but include trade loss of £1.56 million (-0.42%) for Gloucester City Centre, £0.65million (-0.12%) for Cheltenham Town Centre and £0.39million (-1.11%) for Tewkesbury town centre.
- 6.20 No defined centre is expected to experience any significant adverse impact on vitality or viability.

- 6.21 The combined trade draw from the city centre for both convenience and comparison goods is proposed by the applicant to be £1.7million which results in an overall impact of -0.4%.

*Impact – DPDS analysis*

- 6.22 As is often the case, there are some disagreements over the precise methodologies used by the applicant's consultants as well as some omissions highlighted by DPDS. The full appraisal by DPDS is appended to this report for Member's perusal.

- 6.23 In conclusion, despite these points of disagreement and omission, DPDS advises that there is little risk of significant adverse impact on the study area's centres. DPDS accepts that only the retail element of the proposal is likely to be diverted from retail outlets – the wholesale element is sold through existing shops and other businesses. Therefore there is no failure against the 'impact' test. This arises because the retail turnover of the proposal is relatively small, the proposal would attract trade from a large catchment area and the impact would therefore be spread widely rather than concentrated on a few locations, most of the stores that would be affected are out of centre and it would not attract much trade from the smaller shops in the city and town centres (e.g. local stores that cater mostly for top-up shopping). The trade diversions from the large foodstores are small compared with their turnover. Most are out of centre and not subject to policy protection anyway. Given the extensive bulky goods offer of Costco, it is accepted that there would be substantial trade diversion from the out of centre retail parks in the area.

- 6.24 Fundamentally, the impact on the main centres is unlikely to be significantly adverse. These conclusions are in line with those made on the matter of impact in Public Inquiries on Costco proposals extending back to the late 1990s. There is a lack of independent evidence to support the wholesale/retail split but this could be controlled through a s106 legal agreement and appears to be a standard approach to ensure this takes effect.

*Cumulative impact*

- 6.25 While no cumulative impact assessment has been undertaken by the applicant DPDS advises that because the trade diversions in this case are so small, it would be unreasonable to refuse planning permission based on cumulative impact – as this would form such a small proportion of the cumulative effect.

*Impact on existing, committed and planned public and private investment in a centre or centres in the catchment area*

- 6.26 The applicant suggests that it is inconceivable that the proposal could compromise the Blackfriars redevelopment. The applicant suggests that it is unclear whether the Kings Quarter development will be completed or even if it will commence on site within the next five years, and that the warehouse club is not the sort of use envisaged in the scheme. No other investment is seen to be compromised by the proposal.

6.27 No objection has been made by Stanhope in respect of Kings Quarter. It is considered unlikely that this proposal would affect investment decisions. Firstly the retail turnover is limited as is the forecast trade diversion. Secondly the proposal would be a members-only business model and the risk of this specific type of development undermining confidence in the centre is limited. The Kings Quarter development is intended to be fashion-led and while this does not rule out other types of retailer it does mean in terms of impact that the main target retailers would not be put off by the prospect of out of centre competition from this development provided suitable controls were in place. There would be little competition between the two – the warehouse club sells a limited range of items in bulk and aimed primarily at businesses. Thirdly as it is for a specific type of operation it would not create a precedent for other retailing, again, provided it is restricted to that form. These reasons would also apply to investment in Cheltenham town centre.

### ***Sequential test***

#### ***The warehouse club***

6.28 The proposed building is some 13,000sq m and it is considered that a minimum size of 10,000sq m would demonstrate flexibility in the site search. It is suggested that the operational characteristics of these businesses means that they require sites of around 5ha, although the search is undertaken down to 2ha, which is also agreed as reasonable.

6.29 The search area is shown to be for a gap in the provision of large scale warehouse clubs between Hereford, Bristol and Birmingham, and the applicant states that Gloucester is approximately the centre. Sites in Gloucester and Cheltenham would be sufficiently central to serve this extensive catchment area. This is also accepted.

6.30 With regard to disaggregation, it is accepted that the retail element of the warehouse club cannot be disaggregated from the wholesale activity – this points to needing a large building because of the accommodation of this large use.

6.31 DPDS has gone somewhat beyond the considerations of the applicant to ensure a robust assessment of potential sequentially-preferable sites in the area of search.

#### ***Kings Quarter***

6.32 It is accepted that the accommodation of a single unit of 10,000sq metres or so for this development is likely to fundamentally alter the character of the development sought for this redevelopment. This site is unsuitable.

#### ***Other Gloucester city centre sites***

6.33 The former M&S unit on Northgate Street is too small to accommodate the use. Blackfriars could not accommodate the large proposed building - it also requires a sensitive and finer-grain approach to design given the historic context.

#### ***Cheltenham***

6.34 DPDS is familiar with retail opportunities in Cheltenham. North Place is not available. The scheme between the Brewery and High Street has permission for about 10,000sq m of retail floorspace but could not accommodate this in a single building or adjacent parking. Land north of the Beechwood Centre is not available in the immediate future, and the Bayliss, Haynes and Strange site within this area is too small. In these circumstances DPDS advises that there is no need to ask the applicant to consider Cheltenham sites.

*Out of centre sites*

6.35 The Peel Centre 'extension' site next to the canal is too small. St Oswalds Park has permission for a redeveloped Tesco store and two bulky goods units of under 2000sq m which are too small. The whole site could accommodate the proposal but would necessitate Tesco's vacation which seems highly unlikely. DPDS is familiar with the availability of sites in Cheltenham and are not aware of any Cheltenham out of centre sites that would be well-connected to the town centre and potentially preferable.

6.36 It is concluded that the proposal satisfies the sequential test in respect of the warehouse club.

**The restaurant**

6.37 No sequential test has been undertaken for the restaurant, and the onus is on the applicant to demonstrate consistency with the policy tests. At 420 sq metres gross it could not be said to be beyond the possibility of finding such a sequentially-preferable site.

6.38 The applicant suggests that the restaurant is an important part of the comprehensive regeneration but this is not an allocated regeneration site and the applicant does not offer convincing evidence to demonstrate this link anyway. A later letter from the applicant in response to an objection considers that 'the roadside restaurant is an integral part of this redevelopment proposal and is acceptable in planning terms' and that 'roadside restaurants are not in direct competition with town centre outlets and the contrived application of the sequential approach in the manner prescribed by NLP (*as the objector in question*) would restrict competition and choice and stifle investment in the city'.

6.39 No convincing evidence has been made that the restaurant could not be disaggregated from the warehouse club. They do not appear to be intrinsically linked in any way. It seems logical therefore to conclude that the restaurant could operate independently of the warehouse club and it is necessary to consider whether there are other sequentially preferable sites.

6.40 In my opinion considering the restaurant in sequential terms is not a contrived application of this test. Restaurants are clearly a main town centre use as set out in the NPPF and the policy applies. As such it is a consideration to which the determination of this application must have regard.

6.41 Fundamentally, it has not been demonstrated that the restaurant could not be located in a sequentially-preferable location.

- 6.42 There are other restaurant units nearby as the applicant draws attention to and these would have been considered on their merits and in the policy context of the time.
- 6.43 The proposal is not at the scale permitted on the railway triangle as being ancillary to the main uses, and is not a priority regeneration scheme that would give weight to bringing site forward in any non policy-compliant manner.
- 6.44 No end occupier is stated and no other information is highlighted to demonstrate that this location is essential for a specific type of restaurant. A drive-through type restaurant is hinted at in some application correspondence and on the illustrative layout, as is provision for 'a loyal customer base for the members warehouse'. Drive-through restaurants have been granted permission recently for specific operators where a justification has been provided against the sequential test requirements. A drive-through McDonalds exists further north off Eastern Avenue.
- 6.45 As the application fails the sequential test set out at Paragraph 24 of the NPPF in respect of the restaurant, in line with Paragraph 27 of the NPPF, the application should be refused.
- 6.46 If the applicant submitted information to demonstrate compliance with the sequential test, or case-specific reasons to show why such a location is necessary and it should be an exception case, a different view might be taken. If that were so, I recommend consideration be given to securing any such 'acceptable' form of development by condition to ensure that only the acceptable form was implemented.

S106 agreement

- 6.47 All of the Costco appeal decisions granted were subject to a s106 legal agreement controlling the use on the site. These relate to;
- The annual turnover of sales to trade/individual members
  - The number of items on sale
  - Targeting items at trade members and packaging mainly in institutional sizes/multi packs
  - An acknowledgement that its use as an A1 shop would require planning permission
  - The operation of a specified membership system
  - The restriction of sales to members only
  - Supplying the Council with information on goods on sale upon request
- The ongoing principle appears to be that these restrictions are considered necessary to allow permission to be granted. The applicant appears to endorse this and offers such restrictions as part of a s106 legal agreement should permission be granted.

The operator issue

- 6.48 The letter from Costco confuses matters slightly given the application (while not for any named operator) comes across as for a Costco, utilising assumptions of that operator's format and impact in a number of respects, and

essentially leading to securing of terms, if granted, that appear to limit the use only to being that operator, or an identical one. Neither DPDS nor Costco identify any other operators that have the same format. Nevertheless it is the use proposed that is relevant. I am not convinced that the Authority could resist the proposal because an operator, even if appearing to be the only viable tenant, has indicated it is unlikely to take occupation. They could change their minds or another equivalent operator could theoretically enter the market.

- 6.49 The applicant's agent responded to the Costco letter and wished to reiterate that the application is not for any particular operator. It has later however been noted that the applicant has started communications with Costco as to what refinements it would suggest to the application.
- 6.50 Any attempt to secure a permission and then, via a 'staged' approach, seek to erode resistance from a warehouse club towards an open A1 consent, would need to be justified against the same policy stages at any such application.
- 6.51 It is another reason why it is important to establish the terms on which any permission is granted through the s106 legal agreement.

Aviva's concerns on fall-back

- 6.52 Concerns have been raised by Aviva in their representation that if Costco does not take occupation the Authority might have created a 'fall back position' of up to 4,700 sq metres of unrestricted A1 floorspace. This references the floorspace that would accommodate the individual members turnover. The legal judgements on such proposals are that it is not A1 floorspace as it is open to the general public but restricted to members. Secondly, this floorspace is inseparable from the wholesale floorspace – the same goods are sold from the same floorspace – to trade and individual members. Finally, this would also, in the event of granting permission, be subject to controls via a s106 legal agreement for reasons already set out.
- 6.53 The applicant has also commented on the Aviva objection, including noting that:  
Objections in respect of possible future changes to the proposal are unhelpful, without foundation and irrelevant;  
The applicant supports the aspirations to strengthen the city centre. The proposal is no threat to that and offers economic benefits;  
The application should not be confused with 'open A1' and 'retail warehouse' proposals. It is for a very specific type of development, essentially a cash and carry warehouse with the sale of goods to individuals being very restricted;  
The applicant has opened communications with Costco about the application;  
The roadside restaurant is an integral part of the development (as already noted above);  
The applicant is willing to accept reasonable planning conditions and s106 obligations;  
The Aviva objection if not founded on any evidential or planning policy basis.

### ***'Retail' conclusions***

- 6.54 The warehouse club element of the proposal is a specific type of operation. However it is a 'main town centre use' and therefore the relevant policies of the NPPF apply. The restaurant is also a 'main town centre use'.
- 6.55 The applicant has demonstrated that there are no suitable sites for the warehouse club, but there has been no sequential test assessment of the restaurant. Therefore the application fails the sequential test and the NPPF indicates that the application should be refused. Members may consider this failure balanced against any benefits of the proposal.
- 6.56 While there are some differences of opinion and missing justification highlighted by DPDS, the proposal is not likely to have a significant adverse impact on investment or town centre vitality and viability. Therefore there is no failure against the impact test.
- 6.57 If the Authority was to accept the warehouse club I recommend it is on those specific terms offered and accepted – and should be secured by legal agreement. This appears to be standard through historic applications around the country for this format and is offered by the applicant. Any further retail proposal on the site would have to be full justified.

### ***Employment issues***

- 6.58 Policy E.4 of the Second Deposit Local Plan seeks to protect employment land. The NPPF approach to employment does not attribute a strict 'B use class' definition to employment, but seeks to secure economic growth in order to create jobs and prosperity. The NPPF notes that significant weight should be placed on the need to support economic growth through the planning system.
- 6.59 The site is currently in an employment use and it is stated that the existing business employs 100 people, although it appears this has declined substantially from a previous high of 400, and office jobs particularly seem to have been relocated away from Gloucester. There is limited information on the proposed closure of the facility, reasons or timescale.
- 6.60 It is also stated that the proposed warehouse club would provide for 150-200 jobs plus 20-30 jobs for the restaurant unit. The applicant suggests that the warehouse club would create a significant number of permanent jobs and they tend to be well remunerated and across a range of skills. The applicant also intends to recruit locally and explore offering apprenticeships.
- 6.61 200 jobs in a warehouse club does appear high but we have no evidence to refute it. While the 20-30 for the restaurant also appears high, they do tend to open longer hours and will be more likely to have multiple shifts during longer hours than common office-type opening hours. The construction phase would also have a limited positive effect on employment opportunities.
- 6.62 The proposal is not entirely dissimilar to a warehousing facility which would fit within a 'B-class' definition of employment use. Coupled to which there would

clearly be some job generation associated with the proposal, and the facility could help support local businesses, being closer to a supply of goods. The applicant states that the proposal is intended to serve the needs of small to medium business owners. The applicant also states that there is a significant identified gap in the market that the proposal will fill and will secure wider economic benefits in the sub-region around Gloucester.

- 6.63 While the existing use would be lost, there would be some job generation and support for the local economy associated with the proposed use. As such, I do not consider there is a case to refuse permission based on any perceived loss of employment land.

### **Design**

- 6.64 The indicative drawings and images indicate a substantial building for the warehouse club with a curved roof form, sited at the north corner of the site backing onto the railway and with a service yard to the north next to Chancel Close and the adjacent existing units. As the application is in outline this is not fixed. However size parameters are committed to and given as 135.9 by 115.3 metres in footprint and 11 metres in height.
- 6.65 The restaurant is indicated as a fairly simple building in form, with a curved roof and sited at the east corner of the site close to Eastern Avenue. Size parameters are given as 26 by 24.2 metres footprint maximum and 6 metres in height.
- 6.66 The applicant proposes that the scheme would completely regenerate a brownfield site of dated, tired and significantly under-occupied buildings. The applicant also notes that they aspire to deliver high quality building designs and commit to close liaison with planning and design officers in producing a detailed scheme, should outline permission be granted.
- 6.67 I consider that the overall scale of these buildings would be acceptable in this location.
- 6.68 I agree with the Urban Design Officer that it would be beneficial to create more attractive building frontage to Eastern Avenue and avoid a large expanse of car parking. As noted the layout and appearance is not on offer formally to be determined. It would be determined at the reserved matters stage (and negotiated before if pre-application advice is sought). It should be noted however, that the agent maintains that siting the building at the front of the site is not practical although does not say why.
- 6.69 The layout and design would clearly need attention at the reserved matters stage, if outline permission were granted. I do not however, consider that, on the basis of the submission, there are any overriding design concerns that would merit refusing the application.

### *Landscaping*

- 6.70 The indicative drawings show a substantial car park. Irrespective of the eventual layout it seems likely that a large expanse of parking would be

created. In the interests of good design it is considered that this needs to be broken up by landscaping including tree planting. It is recommended that this is specified by condition if permission is granted.

### **Traffic and transport**

- 6.71 The site is adjacent to Eastern Avenue which has a parallel service road outside the site. It is just north of the Eastern Avenue crossroads with Metz Way. Chancel Close to the immediate north is a cul de sac. At present access is gained off Eastern Avenue onto the service road, and when exiting the service road meets Eastern Avenue further north. As a result, those wishing to make a right or southbound turn from the site need to go north to the roundabout and turn.
- 6.72 There is a footway/cycleway outside the site. Metz Way has an adjacent pedestrian link on the south side which is improved as part of the Railway Triangle proposals, linking back to Bruton Way at the edge of the city centre and adjacent to the railway station. There is a bus route along Metz Way.

#### *Works to the highway*

- 6.73 A new signalised junction is proposed to access Chancel Close off Eastern Avenue. This would be in the same general position of Chancel Close, with the existing service lane access removed. The central reservation would be opened to give a right-turn into the site when approaching from the north – creating a right-turn lane on the southbound carriageway. A left-turn lane would be created to enter from the south. A new access/egress to the site would be provided off the re-modelled Chancel Close, whereby vehicles travelling to and from the end of Chancel Close would give way to those entering the application site. The service yard entrance would be slightly further up Chancel Close. When leaving the site Chancel Close would be widened to provide one left turn and two right turn lanes. The existing central reservation gap just before the Metz Way/Eastern Avenue crossroads would be closed up.
- 6.74 The new junction would operate as a staggered junction with the existing York Road signals just to the north. A Stage 1 Road Safety Audit has been undertaken of the proposed highway works, indicating no significant highway safety issues. The junction works would be funded by the developer and they would need to gain technical approval and enter into an agreement with the Highway Authority under the Highway Act.

#### *Trip generation and distribution*

- 6.75 A trip generation and distribution analysis has been undertaken and agreed with the Highway Authority. These show that the junction can operate within capacity in both peak periods, with minimal queuing or delay.

#### *Parking*

- 6.76 612 spaces are proposed for the warehouse club and 34 for the restaurant. The warehouse club parking spaces are proposed to be larger than those in a typical car park, to cater for larger commercial vehicles. The warehouse club parking provision is in line with the level provided at other Costco stores. The

restaurant parking is shown to accommodate demand for that use. 20 cycle parking spaces are proposed for the warehouse club, 6 for the restaurant.

### *Conclusions*

- 6.77 The Highway Authority has liaised with the applicant's consultants and concludes that there would be no severe residual impact on the highway, subject to certain conditions.

### **Residential amenity**

- 6.78 The nearest residents are approximately 100 metres away from the site at York Road on the opposite side of Eastern Avenue. The proposed opening hours for the warehouse club are 9am to 9pm Mondays to Saturdays, and 11am to 5pm Sundays. For the restaurant the hours are unknown but could be assumed to be until late evening and could be controlled under licensing also.
- 6.79 An air quality assessment has been submitted, which concludes that the development would not have a major impact on air quality.
- 6.80 A lighting statement has been provided. Although it is likely that the eventual design, layout and operator would influence the final type, this suggests that the lighting would not have a negative impact on its neighbours.
- 6.81 The site has an existing operational use and is within an established commercial area with a variety of activities. I do not consider the proposed uses in this area would cause any harm to residential amenities subject to certain conditions.
- 6.82 Similarly the proposed buildings themselves under the parameters set out would not cause any harm to amenities.
- 6.83 Overall I consider it unlikely that any harm would arise for the amenities of local residents, subject to conditions to control hours of work and air and noise pollution during the construction phase, and to secure details of the extraction system for the restaurant.

### **Archaeology**

- 6.84 A desktop appraisal was produced for the applicant that stated that there is moderate potential for below-ground archaeological remains of Roman date to be present within the site. The City Archaeologist requested an intrusive evaluation to inform the decision-making process. The agent wishes it to be noted that these requirements are considered to have become a disproportionate issue in this application.
- 6.85 Clearly the site has been built on previously. Nevertheless this application needs to be determined with regard to the potential impact on heritage assets.
- 6.86 The limited amount of information provided so far is not ideal in terms of ascertaining the likely impact on archaeology. An evaluation exercise was eventually proposed, involving seven trenches around the site, however this

proved not to actually be feasible when they visited the site and only one was done. This resulted in no significant finds - evidence of ridge and furrow ploughing and a shard of roman pottery. This very limited exercise does not assist hugely in resolving the matter at hand.

- 6.87 However, it is suggested that a suite of conditions could reduce the archaeological risk to an appropriate level. In this way, in addition to the 'normal' archaeological mitigation, a condition could require a further phase of evaluation once permission has been granted. This should be used to inform the reserved matters application and would give scope to mitigate any impact by siting. A possible further phase of evaluation within the building footprint should follow if required. Finally the foundation design should be subject to approval. As such, a full evaluation can inform the ultimate design and give scope to refine the design to mitigate any impact.

### **Flooding and drainage**

- 6.88 The nearest watercourse to the site is the Wotton Brook approximately 190 metres to the northeast. It has experienced flooding issues in recent years. Slightly closer to the site is a ditch flowing towards the brook.
- 6.89 The vast majority of the site is Flood Zone 1. The very extreme edge of the site at the north/northeast is Flood Zone 2 and 3. This higher risk zone is around the brook and then expands into the area immediately before it throttles under the railway line and onwards into Armscroft Park.
- 6.90 As only the very edge of the site to the north east comes into the boundary of Flood Zone 2 and 3 and given the specific characteristics of the proposed layout I do not propose that the sequential test is imposed for this development.
- 6.91 A Flood Risk Assessment (FRA) and Drainage Strategy have been submitted in support of the application. The applicant proposes that there is no suitable watercourse near or adjacent to the site so the site will continue to discharge to the current surface water sewers. A SuDS approach is proposed although there are no details of this.
- 6.92 Those existing sewers appear however to discharge to the drainage ditch north of the site and onwards into Wotton Brook. There are known flooding problems here as the brook reaches the railway and then onwards past residential properties into Armscroft Park.
- 6.93 Foul sewerage is proposed using the existing connection to the site.
- 6.94 It would be necessary to divert both the existing sewers running across the site around any new building, for maintenance reasons.
- 6.95 National policy requires authorities to seek opportunities to reduce the overall level of flood risk in the area and beyond through the layout and form of development and the appropriate application of sustainable drainage systems.

- 6.96 The Council's Drainage Engineer has no concerns about flood risk at the site. In line with the national policy advice, a 20% reduction in runoff rates is sought from the site post-development compared with pre-development. This is considered particularly important due to the existing flooding problems along Wotton Brook. Some form of attenuation will be required. It is not clear the extent of site positively drained so it is not possible to be clear on the resultant reduction sought. A 30% uplift for climate change should be included, while the FRA notes only 20%. The FRA also appears to commit to compliance with the Strategic FRA, which would imply achievement of the 20% runoff reduction, but this is not explicit. Outline details of the SuDS proposals are also sought.
- 6.97 Details of the drainage system are often requested pursuant to a condition. In this instance where there are known flooding problems and there is a lack of clarity as to what mitigation can be achieved, I suggest we need more details and an 'in-principle' level agreement to the drainage solution, in order to move forward.

### **Sustainability**

- 6.98 There is some discrepancy between documents but there appears to be a commitment to achieving BREEAM 'very good'. As is often the case the submission discounts the majority of renewable and low carbon technologies. Proposals include use of rooflights, avoiding the need for cooling, enhanced insulation and air leakage to minimise heating demand, high efficiency equipment, and use of solar photovoltaics. It is recommended that such measures are secured by condition if permission is granted.
- 6.99 An outline Site Waste Management Plan has been provided. Again it is recommended that such measures are secured by condition if permission is granted

### **Human Rights**

- 6.100 In compiling this recommendation we have given full consideration to all aspects of the Human Rights Act 1998 in relation to the applicant and/or the occupiers of any affected properties. In particular, regard has been had to Article 8 of the ECHR (Right to respect for private and family life, home and correspondence) and the requirement to ensure that any interference with the right in this Article is both in accordance with the law and proportionate. A balance needs to be drawn between the right to develop land in accordance with planning permission and the rights under Article 8 of adjacent occupiers. On assessing the issues raised by the application no particular matters, other than those referred to in this report, warrant any different action to that recommended.

## **7.0 CONCLUSION**

- 7.1 The application has required careful consideration on a number of matters. Design, traffic and transportation, residential amenity, archaeology and sustainability matters are all considered to be acceptable subject to certain conditions being imposed.

7.2 In terms of the warehouse club, no objection is raised in terms of the sequential or impact tests in 'retail' terms. The proposal appears to be in the somewhat perverse situation of being for a use that appears to have only one operator and that operator has stated that they are not looking to open in Gloucester in the short or medium term. The proposal is for the use however, and although it may seem unlikely, it is not impossible that a business decision could change that position at any time, or indeed, that another operator comes onto the scene with the same format. It seems to me unlikely that refusing the application on such grounds could be sustained.

7.3 However, there is no sequential test justification for the proposed restaurant. There is no persuasive evidence that the restaurant should not be disaggregated from the warehouse club. Neither has any persuasive evidence been provided to demonstrate why a particular type of development must be located here that might present special circumstances to weigh against the sequential test. The applicant proposes that the restaurant would make a positive contribution assisting in achieving the objective of regenerating and re-energising this site and would assist in urban design terms, but I do not see that this outweighs the policy conflict in terms of the need for the sequential test to be passed.

7.4 The proposal might be acceptable in terms of flood risk and drainage. However, given the current level of detail provided Officers cannot be confident that there would not be an increase in flood risk. Any condition on this point ought, in my view, to include precision on what is expected in terms of mitigation/betterment in this case and it is not clear what this could be. Further information would be necessary to move to a positive recommendation in my opinion.

**8.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER**

8.1 That planning permission is refused for the following reason:

The application fails to satisfy the sequential test for main town centre uses in respect of the proposed restaurant. Therefore in accordance with Paragraph 27 of the National Planning Policy Framework it should be refused, taking into account the Planning Practice Guidance.

Decision: .....

Notes: .....

.....

.....

Person to contact: Adam Smith  
(Tel: 396702)



Adam Smith  
Development Management  
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Herbert Warehouse  
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Gloucester  
GL1 2EQ

Helmont House  
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Date 14 February 2014  
Our ref 30293/06/JCO/6319774v1  
Your ref 13/01261/OUT

Dear Mr Smith

### **13/01261/OUT: Interbrew, Eastern Avenue, Gloucester**

We write on behalf of our client Aviva Investors (Aviva) in objection to the above planning application, which is currently being considered by Gloucester City Council.

The full planning application seeks permission for:

*Redevelopment of existing warehousing and distribution site to provide Wholesale / Retail Warehouse Club (circa 13,025 square metres gross), creation of new signalised access and junction on Eastern Avenue, laying out of associated vehicle parking (circa 612 spaces) and associated servicing space, and erection of freestanding roadside restaurant (circa 420 square metres gross) and associated parking (circa 34 spaces) and servicing (outline application - means of access offered for consideration; appearance, landscaping, layout and scale reserved for future consideration).*

### **Basis of objection**

Aviva has land interests at King's Square – a retail site located at the heart of the city centre. We are concerned that this application provides an additional 13,425 sqm of floorspace to the out of centre area of Gloucester. Aviva are *concerned* about the impact such a proposal will have on the city centre both as proposed and in the future should the nature of the operation change in the future. Having reviewed the application documentation submitted by the applicant's agent PJS Development Solutions Ltd, we set out our concerns in more detail below.

### **Further strengthening of the out of centre provision**

Aviva is concerned that in recent years, the redevelopment of edge and out of centre retail has overshadowed development in the city centre. Gloucester's primary shopping area is already vulnerable with many vacant units. The City Plan: Places, Sites, City Centre Strategy Consultation document (May 2013) states:



*“The City Plan requires a City Centre first approach to development, seeking new developments which support and strengthen the role and function of the centre and regenerate and redevelop its brownfield areas.”*

Whilst the City Plan has no statutory status as yet, it is clear that Gloucester Council’s aspiration is to support the vitality and viability of King’s Square in accordance with the NPPF (Para. 23). This application, if approved could possibly further strengthen the out of town offer in Gloucester to the detriment of the designated retail centre.

### **Cumulative incremental impact of out of centre applications**

Our client is concerned that the recent series of planning applications<sup>1</sup> seeking to broaden the range of goods that can be sold from out of centre retail units could detrimentally affect the vitality and viability of King’s Square.

This application, if permitted provides an additional 13,425 sqm of floorspace. Whilst the proposal is a Sui Generis Use Class, it would still operate a significant proportion of its business (35%) in an A1 manner i.e. selling retail goods to the general public. This essentially represents out of town retail floorspace of some 4,700 sq m.

The applicants indicate that because the impact will be spread across a number of units in the city centre, the overall impact will not be significant, however, this does not take into account the cumulative impact of other out of town units that now have less restrictions on the range of goods that they can sell, and compete directly with the city centre. Not only does this have an impact on existing retailers in the city centre, but it also continues to impact on the viability of the future redevelopment of Kings Square.

NPPF specifically mentions at paragraph 26 that assessments of impact should include the impact of the proposal on existing, committed and planned public and private investment.

### **Lack of Operator Interest**

It has come to our attention that Costco Wholesale, one of the potential operators for the retail warehouse (as stated in Para 4.7 of the Planning Statement submitted as part of the application) has objected to the proposed development. Costco state:

*“Despite the use of parts of our previous applications, there are a number of errors and gaps in the application that Costco would have included and dealt with, had we made the submission. Much of the terminology and definitions are inconsistent across the application. In the event this application was permitted and if we had a requirement for Gloucester we would not feel comfortable trading under this application.”*

As one of the leading retail warehouse operators in the UK it is significant that Costco has no intention of occupying this proposed unit, and that they have concerns over the terminology used.

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<sup>1</sup> Planning applications reference: (09/01311/FUL, 13/00560/FUL, 13/00559/FUL, 13/00397/FUL)



A Retail Warehouse club is such a specific type of use, that without a confirmed operator, one must consider the scenario whereby no other operator would be interested in the unit and the development did not proceed. However, we are concerned that with the impact evidence prepared by the applicants, the Council could, in permitting the application, unwittingly be creating a 'fall back position' which justifies up to 4,700 sq m of unrestricted A1 floorspace at the site. Aviva would be very concerned of such a volume of floorspace being allowed in an out of centre location and the impact it would have on planned investment in the City Centre.

### **Restaurant Unit**

The application also seeks permission for a 420 sqm restaurant. The planning statement states:

*"In planning policy terms, roadside restaurant units are uncontroversial, subject to normal development management considerations"*

*"The restaurant unit is an important part of this comprehensive regeneration proposal and is considered acceptable in planning terms."*

Aviva disagree that the proposal is considered acceptable in planning terms.

Aviva consider that a restaurant (A3) is a town centre use and in accordance with the NPPF (Para 24) should be located in the town centre, then in edge of centre and only if suitable sites are not available should out of centre sites be considered.

We consider that the restaurant is a standalone development and not ancillary to the proposed retail warehouse. There is no reason that the restaurant as a separate unit should not be disaggregated from the Warehouse Club and subject to the sequential test. The sequential test applied by RPS does not make any reference to the 420 sqm restaurant at all.

Therefore sufficient flexibility in scale and format in applying the sequential test has not been demonstrated as requested by the NPPF (Para 24).

There are sequentially preferable units within the town centre that could accommodate the 420 sqm restaurant. 32 Clarence Street, Gloucester is available and suitable. The unit measures 370 sqm and is therefore slightly smaller than the proposed unit; however there is no end occupier for the restaurant at the moment. There is no reason why the applicant cannot demonstrate flexibility on issues such as scale and format in accordance with Para 24 of the NPPF.

We therefore consider that the applicant has not demonstrated full and correct compliance with the sequential test, and in accordance with paragraph 27 of the NPPF, should be refused.

### **The requirement of strict planning conditions and a S106 agreement**

Whilst we consider that planning permission for this development should be refused, should Gloucester City Council be minded to approve this application, then strict planning conditions should be applied to the permission in order to ensure that the retail warehouse can only be used for the purpose of a cash and carry. In addition, the Council should only approve the application subject to the signing of a S106 agreement that sets out the following points:

- The authorised use of the unit;



- The use of the Warehouse Club as a shop within Class A1 of the Use Classes Order would amount to development consisting of a change of use requiring planning permission;
- The Council shall have the right to require information on (i) the number of items (ii) the proportion of total sales made to Trade Members and (iii) the proportion of total sales made to Individual Members;
- Employees of the Council duly authorised by the Chief Planning Officer of the Council shall have the right to enter the Warehouse Club at any time during the hours in which the Warehouse Club is open for trade for the purposes of verifying information contained in a Statement and to ensure compliance with the terms of the S106 agreement.

This would assist in ensuring that the unit could not be used in the future for an alternative use to a retail warehouse that could potentially have a negative impact on the vitality and viability of King's Square. Any broadening of goods that can be sold from the unit or a change in the retail format could jeopardise future investment in the city centre and the ability for town centre regeneration policies to be realised.

## **Conclusion**

We have outlined above the significant concern that our client has regarding this application. The proposed development would further strengthen the out of town provision in Gloucester to the detriment of the city centre and planned investment. Even if the Council considered that the nature of a warehouse club would not cause adverse impact on the city centre or its planned investment, the supporting information submitted by the applicant seeks to demonstrate the acceptability of 4,700 sq m of unrestricted floorspace at the site. Given that there is no named operator for the warehouse club, and only a very limited number of potential occupiers, there is a real possibility that the consent could be 'bagged' and a fall back argument used to justify a later application for unrestricted open A1 on the site.

We have also expressed concern that the sequential test has not been fully complied with.

Aviva comment that should planning permission be granted, appropriate conditions should be applied and a S106 agreement should be signed to ensure that the unit can only be used as a retail warehouse.

On this basis our client strongly objects to the proposal and requests that the Council refuse the application.

We trust that the above is clear, however should you have any queries please do not hesitate to contact me or Gillian Jones.

**Arwel Evans**  
Planner



Nathaniel Lichfield  
& Partners

Planning. Design. Economics.

Copy

Shelagh Larard – Aviva Investors



Our Ref: ND/Gloucester/PJ GCC 160114  
Your Ref:

16 January 2014

Cllr Paul James  
Leader of the Council  
Gloucester City Council  
Herbert Warehouse  
The Docks  
Gloucester  
GL1 2EQ

BUSINESS SUPPORT  
SERVICES

17 JAN 2014

Dear Mr James

**Former Interbrew Site, Eastern Avenue, Gloucester**  
**Planning Ref: 13/01261/OUT**

My attention has been drawn to a news article in the Gloucester Citizen, in which you were quoted. The article reported that Costco were proposing to open a new branch at the above address.

I wanted to write to you in order to set the record straight. Unfortunately, we are not looking to open in Gloucester at the present time. We have indeed been interested in Gloucester in the past, but the City does not presently form part of our short to medium term expansion plans. I do hope that will change, but it will not in the foreseeable future.

I am somewhat perplexed that an application, which copies tracts from planning applications Costco have lodged elsewhere, has been made. The developer and his planning agent had not made contact with Costco prior to lodging this application. Indeed, had I not called PJS Development Solutions, the agent, I suspect the developer and his agent would still not have talked to us about this proposal.

Despite the use of parts of our previous applications, there are a number of errors and gaps in the application that Costco would have included and dealt with, had we made the submission. Much of the terminology and definitions are inconsistent across the application. In the event this application was permitted and if we had a requirement for Gloucester we would not feel comfortable trading under this application.

I am copying this email to your case officer. Costco's own planning team is now reviewing the application that has been made so that we can determine what action we should take, I would hope that we can offer your officers some guidance in terms of matters they might want to consider in determining this application. It maybe that we conclude we have to object to the application.

Of paramount importance to us is that any application purporting to be for a Warehouse Club, is indeed just that. Case Law, Appeal decisions, Call-In Inquiry decisions and a raft of planning permissions from across the country for our use have all carefully considered and defined the use in planning terms. We would want to ensure a consistent approach is adopted here.

We respectfully believe a particularly important issue your officers and planning committee should demand is a s106 agreement detailing and controlling the use that is being approved. Costco's s106 agreements are all consistent across the country and among other things explain clearly that the permission is for a warehouse Club only and that should the applicant wish to operate from the property as a retailer then a new full planning application would be required for A1 use.



Whatever Costco decide to do in terms of potential objection to this application, we would be grateful if a dialogue could be opened with the case officer so that we can ensure any permission correctly defines the use and controls the likes of membership criteria and trading restrictions and we are keen to ensure incorrect information regarding the use does not go on record. Since Costco is the only Warehouse Club operator in the UK, we fail to see how the applicant can accurately inform officers and members on the nature of the operation.

Yours sincerely

**Nicholas R Deeks**  
**Director of International Real Estate**

cc: Adam Smith – Planning Officer, Gloucester City Council



Town Planning  
Development  
Environment  
Architecture  
Urban Design  
Landscape Design  
Project Management

# Appraisal of Retail Statement

## Retail Warehouse Club, Eastern Avenue Gloucester

Application No. 13/01261/OUT

Prepared for  
Gloucester City Council

Prepared by  
DPDS Ltd  
Old Bank House  
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March 2014

DPDS Ref: /DM/NB

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## 1.0 Introduction

- 1.1 This report has been prepared by DPDS Consulting Group on instruction from Gloucester City Council (GCC) to review and assess the retail evidence submitted in support of the following application:

*13/01261/OUT Redevelopment of existing warehousing and distribution site to provide Wholesale / Retail Warehouse Club (circa 13,025 square metres gross), creation of new signalised access and junction on Eastern Avenue, laying out of associated vehicle parking (circa 612 spaces) and associated servicing space, and erection of freestanding roadside restaurant (circa 420 square metres gross) and associated parking (circa 34 spaces) and servicing on the Interbrew site, Eastern Avenue Gloucester GL4 6SW.*

- 1.2 The application is by Javelin Properties Ltd. It is an outline planning application with all matters except access reserved. The Retail Assessment is by RPS. We have also had regard to the Planning Statement by PJS Development Solutions Ltd and the layout plan.
- 1.3 The proposal is for Wholesale/Retail Warehouse Club. PJS states that there is no named operator at this stage but that at the moment there are two main operators, Costco and Booker (Planning Statement para 4.7).
- 1.4 This report is concerned only with an appraisal of the retail policy issues associated with the current proposal in regard to national planning guidance and the development plan framework. It does not address the development in terms of other material considerations such as regeneration and employment land provision.
- 1.5 Our report examines the Retail Assessment by RPS dated Dec 2013 and draws on information from the planning application form, the illustrative layout (plan no XXXX) and the Planning Statement by PJS Solutions. It has also taken account of the letter from Costco dated 16<sup>th</sup> January 2014, objections to the proposal by NLP on behalf of Aviva and PJS's response on behalf of the applicant. As background research the report has regard to Secretary of State decisions with regard to Costco applications in Gateshead, Oldham, Chingford Chester, Reading and Coventry and a range of documents submitted in relation to planning applications for Costco outlets at Farnborough and Wembley.

## 2.0 Warehouse Clubs

### The Sector

2.1 Warehouse Clubs started in the USA and offer for a wide variety of merchandise for retail sale in bulk at discount prices in functional “no frills” buildings. Customers may be required to pay an annual membership fee in order to shop. There are several operators of Warehouse Clubs in North America. They tend to offer trade membership for use by independent retailers, caterers and other types of business. The only national warehouse club company we have been able to identify operating in the UK offering non-trade membership is Costco.

2.2 Costco has twenty five units in the UK and operates from large buildings (10,000 sq m +) selling a wide range of goods. These include

- computers, cameras etc;
- electrical appliances, including washing machines, dishwashers, refrigerators etc;
- hardware, tools and DIY goods;
- furniture and furnishings;
- gardening goods including sheds, greenhouses, lawnmowers, paving and planters;
- sports and fitness goods;
- toys, baby goods and seasonal goods;
- health and beauty goods;
- jewellery and gifts;
- food and wine including fresh food (but in large quantities); and
- business supplies.

Despite the wide range, Costco apparently stock only about 4000 items at any one time. Costco offers trade and individual membership. Food and drink sales are important apparently comprising 65% of the trade according to the supporting information from Costco planning applications. According to the website, the food lines are large items or in bulk and are clearly aimed at trade members in retailing and catering. For instance, wine is sold by the crate, cheese by the whole cheese, and meat in large quantities (minimum weight 5.7 kgs). Ambient goods are sold in large packs or smaller packs with minimum number for purchase.

2.3 Trade membership is open to businesses and costs £20 a year, although a 2% discount on purchases is available for a £50 subscription fee. Individual membership costs £25 a year, although the discount is available for an annual fee of £55. Individual membership is restricted to people in qualified professions (e.g. architects, dentists, engineers) and employees of some

- organisations such as the civil service, local government and airlines. About 35% of Costco's sales are derived from individual membership and 65% from trade members.
- 2.4 There are several cash and carry warehouse chains operating in the UK. The most widely known are Booker and Makro, although Booker took over Makro last year. However, both are wholesale only and do not offer any individual membership. Others cash and carry groups include Batleys and Bestway.
- 2.5 JFT is the only other retail warehouse club chain we have been able to identify in the UK. It is concentrated in the North and Midlands and the nearest branch to Gloucester is at Kidderminster. It sells the following categories of goods; clothing and footwear, DIY, electrical goods, food and drink, furniture, household goods, pet care products, and gardening goods. It operates a membership scheme but it is free and without qualifying restrictions. Matalan used to require a membership card but no longer does so.

#### **Use Classes**

- 2.6 It was established by the Courts that Costco was not an A1 retail use (R v Thurrock Borough Council and Others ex Parte Tesco Stores Ltd and Others 1993.). What lay behind the judgement was that the sales were to members of the club only, and were not available to the general public. The judgement turned on the eligibility for Costco membership. Other membership schemes might not take the use outside of Class A1 and, as in all determinations of an activity's use class, each case would need to be treated on its merits.
- 2.7 Costco has indicated by letter dated 16<sup>th</sup> January 2014 that it does not have an interest in Gloucester and would not feel comfortable trading under the permission as sought. The Council must in our view give considerable weight to this letter. It does not, however, indicate that planning permission should be refused and it is made clear that there is no named user at this stage. (Planning Statement para 4.7).
- 2.8 Booker and Makro, which are mentioned by the applicant, do not have an individual membership schemes and are generally considered as wholesale distribution uses in Use Class B8 not warehouse clubs. Booker itself is already established at Barnwood, and Cheltenham. It is, in our view, unlikely to want another unit in Gloucester, although it should not be ruled out. However, the application form states that the current use of the site is B8 which could provide for a cash and carry warehouse.
- 2.9 Whether alternative users which do operate individual membership schemes would be able to operate under the permission sought would depend on the terms of the permission, any S106

agreement and whether the membership scheme was sufficient to exclude general members of the public. The impact assessment is based on the proposal as a Costco Warehouse Club and we have based our analysis this assumption.

### **Warehouse Club Public Inquiry Decisions**

- 2.10 There were a number of Public Inquiries in the late 1990s and early 2000's on applications by Costco. These were into proposals in Gateshead (1999), Oldham (2000), Chingford (2001), Reading (2001) Chester (2006) and Coventry (2006). The majority were call-in decisions, although the cases at Oldham and Coventry were appeals against the refusal of planning permission. With the exception of the appeals in Coventry, planning permission was granted by the Secretary of State. In Coventry the appeals were dismissed on access grounds and a further appeal on the site with revised access arrangements was allowed in 2009. The principle of the use was not considered at the 2009 Inquiry.
- 2.11 Except in the Coventry case, these Inquiries considered the relationship between the proposal and planning policy at the time, and matters arising from them will be considered in the context of current policy. All the permissions were subject to a S106 agreement which controlled the use of the site. The agreement entered by Costco in Coventry in 2009 contained the following provisions with regard to the operation of the Warehouse Club.
- approximately 65 per cent of annual turnover in total sales will be to Trade Members and approximately 35 per cent of annual turnover in total sales will be to Individual Members of the Warehouse Club;
  - the items sold will be aimed primarily at the Trade Members and will mainly consist of items packaged in institutional sizes and multi-packs
  - The parties acknowledge that the use of the Warehouse Club as a shop within Class A1 of the Town and Country Planning (Use Classes) Order 1987 would amount to development consisting of a change of use requiring planning permission
  - to operate the membership club as described in the agreement, requiring an annual membership fee, the production of a membership card and its checking on entry;
  - to restrict the sale of goods to members only;
  - to restrict the sale of goods to 4000 lines at any one time; and

- to supply the Council with information on the number of goods on sale when requested to do so.

2.12 Earlier permissions granted by the Secretary of State were based on similar S106 agreements. The undertakings and restrictions were clearly considered necessary to allow the permissions to be granted.

### 3.0 Retail Planning Policy

#### National Policy

- 3.1 National planning policy guidance is set out in the National Planning Policy Framework (NPPF). Its contents are well known and can be covered briefly in this report. Revised Practice Guidance was issued on 6<sup>th</sup> March 2014. This is in far less detail than the previous guidance but it establishes that it is for the applicant to demonstrate compliance with the impact and sequential tests. This guidance has been used in the preparation of this report.
- 3.2 The NPPF establishes a presumption in favour of development. For decision taking this means approving development which accords with the development plan without delay and where the development plan is absent, silent or the relevant policies are out of date granting planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the framework as a whole or specific policies in the Framework indicate development should be restricted (NPPF para 14). Paras 18 – 22 set out the Government's policies for economic development. They are material to the application, but not to the focus of this report.
- 3.3 National retail policies are set out in paragraphs 23 – 27. Planning authorities should promote competitive town centres, recognise them as the heart of the community and pursue policies which support their vitality and viability. Para 24 sets out the sequential test and para 26 the impact test. Para 27 states that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact, planning permission should be refused. In para 3.2 of the Retail Assessment, RPS accepts that what is a significant adverse impact is a subjective judgement, but claims that it has generally been accepted that impacts below 10% do not give rise to a "serious adverse effects.". This is certainly not our experience but we are aware of a few old planning appeals where inspector's concluded that a 10% impact on the convenience turnover of a town centre would not be significant. However, convenience turnover of the town centre is a small part of the total turnover and a 10% convenience trade loss would be a much lower percentage impact on the whole town centre trade. We would regard the loss of 10% of a town centre's turnover must be significant in the common usage of the term.
- 3.4 RPS also states in that para 3.2 that it is the impact on the overall vitality and viability that is the issue (RPS underlining). While this was the advice in early versions of PPG 6, there is no support in the current Framework or Practice Guidance for the emphasis that RPS gives it. However, in our view, while not a specific part of the impact test, the focus should be on impact of the town centre as a whole. The weight given to narrow, specific impacts will vary according

to the circumstances, but should always be considered in the wider context

- 3.5 As noted earlier, the Costco operation is not an A1 use. Following the 1993 Thurrock Judgement para 3.8 of PPG 6 noted that

*“Despite the restrictions on those who may shop in warehouse clubs or the range of goods that can be sold, these outlets often share many of the characteristics of very large retail outlets, in which case they should be treated for the purposes of this guidance as if they were retail businesses.”*

This advice was lost in subsequent documents, but the logic would still apply. In the NPPF the sequential test applies to main town centre uses and the impact test to retail, leisure and office developments outside of town centres. The glossary (annex 2 to the NPPF) defines main town centre uses as *“retail development (including warehouse clubs and factory outlet centres, leisure entertainment facilities, the more intensive sport and recreation uses (including cinemas, restaurants, drive through restaurants, bars, night clubs etc.) offices, and arts, culture and tourism development”*. It is thus clear that the tests apply to warehouse clubs with a retail element.

- 3.6 We need to point out that the Practice Guidance which was issued in relation to PPS4 to which RPS refers has been replaced by new Practice Guidance *“Ensuring the vitality of town centres”* since the Retail Assessment was submitted. However, again the logic remains and where logical the Guidance can be helpful even without the Government’s endorsement. We will therefore consider points arising from the former Practice Guidance on their merits.

### **Local Planning Policy**

- 3.7 The 1983 Local Plan forms part of the Statutory Development Plan. Saved Policy S1 establishes the aim to maintain and strengthen the sub-regional status of the City and that all major comparison goods shopping facilities will be concentrated within the city centre. Policy S1(a) states that major comparison goods shopping facilities will not normally be permitted outside of the defined main shopping centre except in accordance with other policies (Policy SC1(c) – not saved - identified two sites for DIY development).
- 3.8 Policy S2b stated the major convenience goods shopping facilities will not normally be permitted outside of the defined main shopping area. Policy S3 allowed shopping facilities to meet local needs outside of the city centre, S3 (a) sought the provision of new neighbourhood shopping facilities in developing residential areas and S3 (b) sought to retain existing local facilities.

3.9 The 2002 Local Plan has been adopted by the Council for development control purposes. The key policy for out-of-centre retail development is S4 (a). This states:-

*New retail development on unallocated sites outside designated shopping centres will only be permitted provided that it meets all of the following criteria:*

- 1. The developer has demonstrated that there is both a quantitative and qualitative need for the development.*
- 2. The developer has demonstrated that there are no suitable sites available in or on the edge of designated shopping centres.*
- 3. The development would not have an unacceptable impact on the local plan strategy of regenerating the Central Area.*
- 4. The development would not have an unacceptable adverse impact on the vitality and viability of designated centres.*
- 5. The development would be genuinely accessible by a choice of means of transport.*
- 6. The development would not have an unacceptable impact on travel patterns and would lead to less overall car use.*

This policy is clearly not up-to-date with regard to need, but encompasses the sequential and impact tests.

3.10 In para 2.14 of the Retail Assessment, RPS comments that this policy relates to new retail development on unallocated sites and is

*“therefore not strictly relevant to the development proposal, which relates to the amalgamation and extension of existing retail floorspace”*

We do not understand what this comment means as the proposal does not relate to the amalgamation and extension of existing floorspace and the current building is not existing retail floorspace. However, the matter does not emerge as of significance in formulating our advice.

3.11 The draft Joint Core Strategy is in the early stages of preparation as far as the weight that it can be given. Policy E2 of the Draft for Consultation reflects the NPPF in its objectives and policies and subjects proposals retail and other main town centre uses which are not located in designated centres to the sequential and impact tests. The document does not suggest any significant change in the direction of policy which should be considered in relation to this application.

3.12 There are a number of planning documents relating to specific sites in the city centre which may be significant in the context of the sequential test and the assessment of impact on

investment proposals. We will refer to these as necessary in those contexts.

- 3.13 The main issues arising from the relevant planning policy are the sequential test and the impact on the city and other centres.

## 4.0 The Sequential Approach to Site Selection

### Preliminaries

- 4.1 The sequential test is well known but four matters need consideration before considering the site.
- 4.2 First, in para 3.6 of the Retail Assessment, RPS questions whether warehouse clubs can be defined as town centre uses at all. As we have noted in para 3.4 above, the glossary to the NPPF leaves no doubt that warehouse clubs are to be considered as retail developments and are main town centre uses.
- 4.3 Second, there is the question of flexibility and the “Dundee judgement”. In essence, this establishes that the assessment of the suitability of sites has to be based on the operator’s need and not on some other, hypothetical ways in which a more general public need could be met. It also draws attention to the inherent tension with the need to demonstrate flexibility and that it is up to local planning authority to judge whether an applicant has shown sufficient flexibility or not. We add that it must act reasonably in doing so. It is clear that alternative sites would have to be suitable for a very large building to accommodate the warehouse club business model. The proposed building is some 13,000 sq m and we agree as a starting point that a minimum size of about 10, 000 sq m would demonstrate sufficient flexibility. RPS (para 3.14) states that this would, ideally require a site of 5 ha, but that a 2 ha minimum size has been used. The application site is given as 4.47 ha and since the building proposed is 13,000 sq m and the proposal includes a roadside restaurant, the 5 ha would be an excessive requirement, but the 2 ha minimum size is reasonable. The significance of the flexibility shown in any particular case can only be judged in the context of the sites available and whether or not this lower limit would have any significant implications for the conclusion on the sequential assessment will be considered in relation to individual sites. .
- 4.4 With regard to disaggregation, we accept that the retail element of the warehouse club cannot be disaggregated from the wholesale activity and this again points to the need for a large building because it has also to accommodate a larger wholesale use. With regard to the proposed roadside restaurant use, we note restaurants including drive-through restaurants are main town centre uses and subject to the sequential test. No case is made for this being linked to the warehouse club use - even in para 7.16 of the Planning Statement which sets out the case for the restaurant. We conclude that the restaurant could operate independently of the main proposal and it is necessary to consider whether there are any suitable sites available for

a restaurant of about this size in sequentially preferable locations.

- 4.5 With regard to the area of search, RPS identify a gap in the provision of large scale warehouse clubs between Hereford, Bristol and Birmingham and states that Gloucester is approximately in the centre of this. We accept that that is the catchment area which the development seeks to serve and that the proposal needs to be central to that catchment area. Within the context of this extensive catchment area, we consider that sites in Gloucester and Cheltenham would be sufficiently central to serve it.
- 4.6 Finally we note that the NPPF has added a requirement that when considering edge-of-centre and out-of-centre sites preference should be given to accessible sites that are well connected to the town centre. In theory, this imposes a considerable burden on the applicant to assess the accessibility of a large number of sites. We consider that a practical approach has to be adopted to this requirement.

#### **The Sites**

- 4.7 The only City Centre site considered is Kings Quarter. We accept that the accommodation of a single unit of 10,000 sq m or so would fundamentally alter the character of the development planned and as sought by the Council. The site is therefore unsuitable.
- 4.8 We are aware from our work for the City Council of a number of other retail opportunities in the city centre, including the Blackfriars area and the former Marks and Spencer unit in Northgate. None of these are of sufficient size to accommodate a building of the size sought.
- 4.9 We commented that a warehouse club in Cheltenham would appear to serve the same catchment area defined by RPS. We are also familiar with opportunities for retail development in Cheltenham. The largest site available is North Place. This has planning permission for a mixed use scheme with a Morrison supermarket, residential development and a public square. Development is imminent and the site is not available. A redevelopment between the Brewery and the High St has planning permission for about 10,000 sq m of retail floorspace but could not accommodate this in a single building or adjacent parking. Land north of the Beechwood centre is not available in the immediate future, and the Bayliss, Haines and Strange site within this area is too small. In these circumstances we conclude that there is no need to ask the applicant to consider sites in Cheltenham town centre.
- 4.10 RPS consider two out-of centre sites in Gloucester, the former cinema site in the Peel Centre and St Oswalds. The Peel Centre site is rejected as too small and we agree. The site at St Oswalds Retail Park has permission for a redeveloped Tesco store and two bulky goods units

of under 2000 sq m. RPS comments that the proposed units are much too small and this is clearly the case. The site has had permission for some time but has not gone ahead and RPS questions Tesco's commitment to large format stores. The whole site would be large enough to accommodate a sufficiently large building but this would require Tesco to move off the site and whatever its intentions are, it is very unlikely to do so. We conclude that the site is unavailable. We are not aware of any suitable sites in Cheltenham which, although out-of-centre, would be well connected to the town centre and easily accessible.

- 4.11 Unless the Council is aware of sites which are available and significantly more accessible and significantly better connected to the city centre we consider that the applicant has done enough to satisfy the sequential test with regard to the warehouse club. This is consistent with our conclusions on the availability of sites for other large space retail users.
- 4.12 This is not however, true of the roadside restaurant. There is no claim that it is necessary for or integral to the warehouse club and its justification set out in the Planning Statement and the applicant's response to the NLP objection on behalf of Aviva is that it is no different from the other facilities nearby and is acceptable in planning terms. We cannot comment on the circumstances in which the nearby facilities received planning permission, but it is clear from the NPPF that restaurants and drive through restaurants are main town centre uses and subject to the sequential test. Since neither the Retail Assessment nor subsequent correspondence addresses the proposed restaurant at all, it must be concluded that the application fails to comply with the sequential approach.

## 5.0 Retail Impact Assessment

5.1 The basic impact methodology used by RPS is to calculate the turnover of existing shops and centres from the total available expenditure in the area and the market share of the shops and centres derived from household survey results. The turnover of the proposal is estimated separately from this, from information submitted in other impact assessments. It is then estimated how much of the proposal's turnover will be drawn from each study area zone – the trade draw. The trade draw from each zone is then allocated to individual stores and centres in the study area and this trade diversion calculated as a percentage of the stores/centres original (pre-impact) turnover. The process is carried out separately for convenience and comparison goods turnover. We shall therefore consider the impact assessment under the following headings:-

1. Study Area
2. Population and Expenditure
3. Turnover of Existing Stores
4. Turnover of Proposal
5. Trade Draw
6. Trade Diversion

### The Study Area

5.2 RPS has used the same study area as the Joint Core Strategy Retail Study and this area broadly coincides with its comments regarding the catchment area serving the gap facilities between Bristol, Birmingham and Hereford. It breaks this down into three drive time areas according to the zones used in that study as follows (RPS 3.50)

0-10 mins	Zone 5
10-20 mins	Zones 1, 4 and 7
over 20 mins	Zones 2, 3, 6, 8, 9, 10, 11 and 12.

We do not have drive-time plans and at first sight, the inclusion of zone 7 (centred on Tewkesbury) in the 10-20 minutes drive-time band seems odd since it is not contiguous with Zone 5 and other zones appear nearer. However, in our experience Tewkesbury is about a 20 minute drive to Gloucester. Its inclusion in the 10-20 minute band means that the main towns of Gloucester, Cheltenham and Tewkesbury are included in the 0-20 minute bands where the bulk of the turnover should be expected to be drawn from – certainly with regard to the proportion from individual members. This appears correct to us.

### **Population and Expenditure**

- 5.3 RPS has used the base year population and local expenditure data from the JCS but reworked the forecasts to reflect the latest forecasts of expenditure growth and special forms of trading (SFT - which now consists primarily of internet shopping) from Experian (Retail Planner Briefing Note 11). This is described in RPS para 3.42. This is necessary to reflect the downward expectations of expenditure growth and increased expectations of SFT since the JCS Retail Study was carried out.
- 5.4 We are carrying out similar work to update the JCS Retail Study, but have used revised base year population and expenditure data. The revisions to the Experian base year local expenditure estimates result from long term data revisions by ONS which has resulted in lower convenience goods expenditure per head and higher comparison goods expenditure per head in the Experian 2011 based figures. (Appendix 7 of Retail Planner Briefing Note 11). We are also amending the population forecasts to reflect the ONS 2011 based population forecasts. These show more population growth in the study area as a whole and more in Cheltenham (reflecting ONS forecasts) but little change from earlier population forecasts for Gloucester. As a result of these changes, the total convenience goods expenditure available in the study area is expected to be about 5% lower in 2011 than previously estimated, and comparison goods expenditure about 2% higher.
- 5.5 RPS present a revised convenience goods capacity table for Gloucester (RPS Table 12) based on their updated expenditure forecasts. Because of the factors described above, we do not believe it to be as a reliable guide to future floorspace requirements as our emerging JCS Retail Study Update. This is likely to indicate that there will be no need for additional convenience floorspace before 2031 in Cheltenham, Gloucester or Tewkesbury. This is largely the result of planning permissions granted between 2011 and 2013. There is no requirement for applicants to demonstrate a need for additional floorspace and our update work does not indicate a refusal of planning permission.

### **The Turnover of Existing Retail Outlets**

- 5.6 The total expenditure in the catchment area is used by RPS (and in the JCS Retail Study) to calculate the turnover of the centres and other stores using the market shares derived from the JCS household survey. This is shown in RPS Tables 9 and 10 for convenience goods and Tables 17 A-C and 18 A-C for comparison goods. It follows from the preceding section that RPS will have overestimated the turnover of convenience goods outlets and underestimated the turnover of comparison goods outlets to some extent. We shall assess the significance of this in due course.

**The Turnover of the Proposal**

5.7 There are no standard sources of information on the turnover of Costco outlets. RPS estimates the turnover of the proposal based on a Costco outlet at £60.9m in 2009 prices (Table 6). This is described as derived from documentation submitted in relation to a Costco application at Farnborough, Hants. That proposal was for a Costco with 13006 sq m floorspace and the estimated turnover figure was £65m (2008 prices). The source of this figure is described as “the average turnover of a Costco Warehouse excluding London Warehouses assuming growth in sales to 2016. It is not clear what calculations have lead to a reduction in the estimated turnover for the Gloucester proposal. A recent application at Wembley estimated the turnover of a proposal of the same size at £76m although part of the difference will be due to the 2011 price base. The earlier Inquires were based on turnovers of about £55m. Allowing for inflation would suggest that the turnover would now be in excess of the estimates for the more recent proposals, but there was little experience at the time to base the earliest estimates on and they may have proved optimistic However, even if the turnover were on a par with the Farnborough proposal’s estimate, this would not substantially alter the impact figures, once the wholesale element of the turnover is excluded..

5.8 Only the retail element of the proposal is likely to be diverted from retail outlets – the wholesale element is sold through existing shops and other businesses. RPS assumes that 65% of the turnover will be derived from wholesale activities and 35% from retail. This is a standard assumption in relation to Costco which has been widely accepted elsewhere and is accepted as a limitation within the S106 agreements its signs. It follows that because the impact assessment is based on this assumption, such a limitation is necessary and should be sought if the Council is minded to approve this application. On this basis, the individual membership (retail) turnover is estimated at £21.33m (RPS Table 6B).

5.9 This figure is then divided into comparison and convenience goods turnover – again on the basis of a 65/35% split giving the following estimate of retail sales:

Convenience	£13.86m
Comparison	£ 7.46m

The 65/35% split has been widely accepted.

**Trade Draw**

5.10 RPS assume that trade would be drawn from the drive time areas as follows

0-10 mins	30%
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10-20 mins	30%
20+ mins	40%.

This is the same trade draw as assumed in the Farnborough application. The trade draw will vary considerably from area to area because it will be determined largely by where the bulk of the population live in relation to the proposal. The distribution of population within the study area is as follows

10 mins	25%	(Zone 5)
10-20 mins	25%	(Zones 1, 4 & 7)
20+ mins	50%.	(Remaining zones)

On this basis we accept that the estimated levels of trade draw are reasonable in this study area.

5.11 Zone by zone RPS has assumed the following trade draw for the convenience goods turnover (calculated from RPS Table 13).

Zone	1	2	3	4	5	6	7	8	9	10	11	12
%	18	6	4	4	30	3	9	0	11	7	9	0

They conform to the trade draw set out above (para 5.8) but it is not clear from either the report or table footnotes how the figures for individual zone have been derived.

5.12 The trade draw for the comparison goods turnover is even more obscure. Table 19 shows that the same percentage of the comparison goods turnover is expected to be drawn from each of the zones as for convenience goods turnover, but again there is no explanation of how they have been derived. While this lack of explanation is a weakness of the study in relation to both convenience and comparison goods turnover, for reasons set out in paras 5.17 and 5.20 below, it does not prevent us from drawing conclusions on the likely impact on the main centres in the area.

### Convenience Goods Trade Diversion

5.13 RPS's estimate of the convenience goods trade diversion from individual stores is shown in RPS Table 15. RPS Table 10 shows the no scheme turnover of stores (i.e. without the proposal) as it is expected to be in 2018 (assuming expenditure growth and a constant market share). In Table 13, RPS adds a row for the proposal's turnover estimated from each zone,

and then readjusts the turnover of the existing stores, so that the total in each zone remains the same. It is not explained how this is done. The results are pulled together in RPS Table 15. The difference between the total turnover shown of the individual stores in 2018 pre scheme (Table 10) and post scheme (Table 13) is shown as the trade diversion in Table 15, but it is not clear if this is how the calculations were done. What matters is that the logic of trade draw figures (how the £13.9m convenience goods retail turnover has been allocated to individual stores) in Table 15 is not sufficiently explained.

- 5.14 It is clear from Table 15 that most of the trade draw is assumed to be from the larger stores, although RPS does not include the new Morrison store on the Railway Triangle which is now trading. The main diversions estimated by RPS are as follows

Sainsbury Gloucester Quays	£0.8m
Sainsbury Barnet Way	£0.8m
Morrison Abbeydale	£0.8m
Tesco Quedgeley	£1.5m
Asda Bruton Way	£1.0m
Tesco St Oswalds	£1.1m
Morrison, Caernavon Way Cheltenham	£1.4m
Sainsbury Gallagher Retail Park Cheltenham	£1.0m
Tesco Collets Drive Cheltenham	£0.3m
Tesco Bishops Cleeve	£1.4m
Morrison Tewkesbury	£0.6m
<b>Total</b>	<b>£10.7m</b>

- 5.15 Thus £10.7m out of to £13.9m is forecast to come from the larger stores in the area. The omission of the Morrison store on the Railway Triangle is unlikely to make a significant difference to this overall figure for large stores but would tend to reduce the trade diversions from the other large stores. Although some of the individual impacts seem rather odd, (for instance the trade diversion of the Tesco on Collets Drive seems too small compared with the nearby Sainsbury store on the Gallagher Retail Park or the Tesco store in Bishops Cleeve), we accept the generality of the point that most of the trade draw would be from the larger foodstores and little from the local stores which cater mostly for top-up shopping. The Costco food offer is described in para 2.2 and is mostly of large items or in bulk suitable for resale or catering and this suggests that individual members will buy them infrequently and on specially made trips. The smaller shops are mostly used for top-up shopping when fewer items are wanted and it is not considered worthwhile making a trip to larger stores. We would expect

some impact on Aldi and Lidl stores as they compete more directly - on a limited number of lines at discounted prices, but RPS has allowed no trade diversion from these stores.

5.16 The trade diversions are small compared with the turnover of these stores. They are operated by the main grocery chains and there would be no likelihood of closure even if the trade diversion from any of the individual stores were much greater. Most of the stores, including the new Morrison store on the Railway Triangle are out-of-centre and the impact would not be a material consideration. These factors would also be true for Aldi and Lidl stores if an allowance were made for diversion from them.

5.17 We therefore conclude that despite the lack of justification for the trade diversions and impacts identified by RPS in relation to the convenience turnover of the proposal there is little risk of significant adverse impact on the study area's centres. This arises because

- the retail turnover of the proposal is relatively small;
- the proposal would attract trade from a large catchment area and the impact would therefore be spread widely rather than concentrated on a few locations;
- most of the stores that would be affected are out of centre; and
- the proposal would not attract much trade from the smaller shops in the city and town centres.

**Comparison Goods Trade Diversion**

5.18 The comparison goods turnover of the proposal is estimated at £7.46m. The trade draw from zones is the same as RPS use for convenience goods. This appears reasonable given that the purchases are likely to be made on the same trip. The figures are shown in RPS Table 19. There is again no explanation of how the turnovers of existing stores in the lower part of the table have been adjusted to take account of the turnover of the proposal. The trade diversion figures are shown alongside the pre-scheme turnovers in Table 20. The main impacts forecast are:-

Centre	Trade Loss
Gloucester City Centre	£1.56m
Gloucester Other	£1.38m
Gloucester Quays	£0.69m
Cheltenham Town Centre	£0.65m
Cheltenham out-of-centre	£1.03m
Tewkesbury town centre	£0.39m
<b>Total</b>	<b>£5.70m</b>

- 5.19 Given the extensive bulky goods offer of Costco, we accept that there would be substantial trade diversion from the out-of-centre retail parks in Gloucester and Cheltenham. The trade diversion from Cheltenham town centre seems light compared with that from Gloucester city centre, given that it is a larger centre and also lies centrally within the catchment area RPS has identified. The trade diversion from Gloucester Quays seems rather excessive given the designer clothing orientation of its offer. However, it is clear that even a substantial reallocation of the trade diversions would not lead to significant impacts on the main centres.
- 5.20 RPS sets out its retail impact estimates in Table 20. The trade diversion estimates are small compared with the turnover of the main centres as shown below

	2013 Turnover	2018 Turnover	Trade Diversion £m	Trade Diversion %
Gloucester	£307.85m	£369.04m	£1.56m	-0.42%
Cheltenham	£458.35m	£540.62m	£0.65m	-0.12%
Tewkesbury	£30.00m	£35.20m	£0.39m	-1.11%

The impact in the main centres is unlikely to be significantly adverse. The increase in the turnover of centres is based on the increase in comparison goods spending and constant market shares. This may overestimate the turnover of the centres if additional floorspace is not provided. Nevertheless, it is clear that the impact of the proposal on the main centres will not be significantly adverse even if there is less turnover increase in the centres than RPS forecast.

- 5.21 We conclude that, despite the large scale of the building the proposal is unlikely to have a significant adverse impact on the study area's centres. This is in line with the conclusions on impact made following a number of Public Inquiries into Costco proposals extending back to the late 1990s. In a large part this lack of impact arises from the limited retail turnover of the proposal. Although there is a lack of independent evidence to support the retail/wholesale split, it can be controlled by a S106 agreement. While there might be concerns about the enforceability of such an undertaking, they have been given weight in previous decisions and are now standard for Costco planning permissions. An argument that these are inadequate to stop greater retail activity is unlikely to succeed given their widespread use.

### **Cumulative Impact**

- 5.22 Although not referred to in the NPPF, the assessment of the cumulative impact is a requirement of the new Practice Guidance. NLP express concerns about the incremental

impact of proposals on the city centre. We have sympathy with this view and there is considerable pressure for out-of-centre retail development in Gloucester. We advise that the pressure should be resisted where it is reasonable to do so and particularly to resist development which will create a precedent for other applications. The existing commitments are substantial, although these mostly concern grocery retailers and their impacts will fall to a considerable extent on out-of-centre locations. Furthermore there is an application for a Factory Outlet Centre and Garden Centre pending at Tewkesbury which would, if permitted have a much greater impact than this proposal.

- 5.23 It would not be unreasonable to invite RPS to address the cumulative impact. However, in our view, the trade diversions in this case are so small that it would be unreasonable to refuse planning permission on the basis of cumulative impact, where the development would form such a small proportion of total cumulative impact.

#### **Impact on Investment**

- 5.24 The main city centre investment planned is the Kings Quarter development in Gloucester. RPS question its implementation by 2018, and while there is no reason to believe that it will not come forward in that timescale, that it not the point. The issue is whether the proposal would be less likely to come forward if this application is permitted. There is no doubt that the developer is sensitive to the threat of out-of-centre development and it has objected to many of the out-of-centre proposals. So far as we are aware, it has not done so to this one. It is reasonable to conclude from this that it is aware of the proposal and would have objected if it considered it would undermine its own investment intentions.
- 5.25 Regardless of the lack of an objection from Stanhope, we consider it unlikely that this particular proposal would affect investment decisions. First there is the limited retail turnover likely and the small trade diversion forecast. Second the proposal would be a members only business model and the risk of this particular development undermining confidence in the town centre is limited. The Kings Quarter development will not take place without a sufficient number of retailers signing up to take units. Kings Quarter is intended to be fashion led and, while this does not rule out other retailers in the development, it does mean, in terms of impact, that the main target retailers for this development would not be put off by the prospect of out-of-centre competition from this development, provided its operation is controlled appropriately by legal agreement or conditions. There would be little competition between the two – the retail warehouse club business model sells a limited range of items in bulk and aimed primarily at business rather than individual members. This does not suit the sale of fashion clothing, which depends on the display and sale of a wide range of different styles, colours and sizes which can be easily compared with each other and tried on before purchase. Furthermore, the

proposal, would not create a precedent for other out-of-centre developments provided it is limited to retail warehouse clubs. To engage in major town centre investment, either as a retailer or a developer, there must be confidence that any development's success will not be undermined by out-of-centre retail development. We do not consider that this proposal would or could be considered in that light. For these reasons, we do not believe that the proposal is likely to undermine plans for city centre investment.

- 5.26 These reasons would also apply to the planned investment in Cheltenham town centre. Plans for retail investment in Tewkesbury have not reached the stage where target retailers can be identified.

#### **Aviva Objections**

- 5.27 NLP draw attention to the concern of Aviva about the development of further out-of-centre retail floorspace and its cumulative impact on the city centre, the lack of retailer interest, the failure to comply with the sequential test with regard to the proposed restaurant, and the need for strict controls on any floorspace permitted.
- 5.28 These matters have been considered in the report and we have concluded that the cumulative impact of the proposal would not merit the refusal of this application, and perhaps even more importantly that the grant of planning permission would not set a precedent for other out-of-centre development.
- 5.29 We have also concluded that the lack of retailer interest cannot constitute a reason for refusal on its own. While NLP refer to the risk that if Costco do not operate it the Council would have created a "fall back position" which justified up to 4700 sq m of unrestricted A1 floorspace, we disagree. The 4,700 sq m (or 4550 sq m according to our calculation) refers to the floorspace that would accommodate the individual members turnover and NLP also refer to this as being open to the general public. However, the purport of the Thurrock judgement is that it is not A1 floorspace as it is not open to the general public but restricted to members. Second, the floorspace is inseparable from the wholesale floorspace – quite simply the same goods are sold from the same floorspace to trade and individual members. Thirdly as we have already noted the use can be controlled by a legal agreement and we will recommend this if permission is granted.
- 5.30 In relation to the restaurant use, we have concluded that the applicant has not satisfied the sequential test and it might be difficult for it to do so.

5.31 We agree that a S106 agreement would be necessary and set out the necessary terms in the next section.

**S106 restrictions**

5.32 The impact assessment is based on a particular business model of a warehouse club and the impact could be very different if not operated in this way. An unrestricted A1 use in a building of this size is likely to be unacceptable in impact terms. If the Council is minded to approve the application, we recommend that a section 106 agreement is necessary. The main requirements for such an agreement relate to

- an acknowledgement that the use of the building as an A1 shop would amount to development requiring planning permission;
- to operate the membership club as described in the agreement, requiring an annual membership fee, the production of a membership card and its checking on entry;
- to restrict the sale of goods to members only;
- the items sold will be aimed primarily at the Trade Members and will mainly consist of items packaged in institutional sizes and multi-packs;
- to restrict the sale of goods to 4000 lines at any one time and to supply the Council with information on the number of goods on sale when requested to do so.; and
- approximately 65 per cent of annual turnover in total sales should be from Trade Members and approximately 35 per cent of annual turnover in total sales will be from Individual Members of the Warehouse Club.

We also recommend that the Council should consider the imposition of a condition or a clause in the agreement that restricts the proportion of floorspace that could be used to sell different categories of goods so that no more than say 30% of the floorspace could be used to sell food and wines, or tools, hardware and DIY goods. The purpose of this would be to maintain the mixed character of the activity and to prevent the specialisation of the offer on one sector of goods.

## 6.0 Conclusions

- 6.1 Although it is stated that there is no named operator at this stage, the application has been prepared with Costco in mind. Costco has indicated that it has no plans for an outlet in Gloucester at the moment but this would not constitute a valid reason for refusing planning permission. The alternative operator named by the applicant, Booker/Makro, could not operate under the permission and S106 proposed because they do not have an individual membership scheme. Booker/Makro could therefore operate from the site without a change of use permission.
- 6.2 Warehouse clubs are not an A1 use. The grant of planning permission would not establish a retail use on the site. However they are a main town centre use and the retail policies of the NPPF apply, including the sequential and impact tests. These also apply to the proposed restaurant
- 6.3 The application does not accord with the sequential test. Although the applicant has demonstrated that there are no suitable sites for the warehouse club building there has been no sequential assessment of the restaurant and it has not demonstrated that the two are so intrinsically linked that they cannot be considered separately. It might be difficult for the applicant to demonstrate that there are no suitable premises in the city centre for a restaurant of this size. The NPPF indicates that planning permission should be refused where the sequential test is not met.
- 6.4 Subject to restrictions on the retail use as proposed, the proposal is not likely to cause a significant adverse impact on any retail centre.
- 6.5 The applicant has not considered the cumulative effect of recent and permitted developments. The indications are that they are unlikely to be significantly adverse on centres because the main proposals are for foodstores and are likely to effect foodstores. The applicant could be asked to undertake a cumulative exercise, but we consider it is unnecessary given the low level of impact likely. It would be unreasonable to refuse permission on this basis if the proposal formed a small proportion of the total cumulative impact.
- 6.6 If the Council is minded to approve the application a S106 would be required to prevent the retail use of the site. The applicant has indicated in general terms that it would accept this.