

GLOUCESTER CITY COUNCIL

COMMITTEE : **PLANNING**

DATE : **06 SEPTEMBER 2016**

ADDRESS/LOCATION : **PEEL CENTRE, ST ANN WAY**

APPLICATION NO. & WARD : **16/00007/FUL & 16/00008/FUL
MORELAND**

EXPIRY DATE : **25th MAY 2016**

APPLICANT : **PEEL GROUP AND NEXT PLC**

PROPOSAL : **APPLICATION 1: 16/00007/FUL - Variation of
condition 1 of permission 09/01308/FUL to
alter the range of goods that can be sold to
allow a full range of non-bulky comparison
goods to be sold from 1,263sq m net within
new sub-divided unit 1B and 1,015sq m net
from unit 3A**

**APPLICATION 2: 16/00008/FUL - Variation of
condition 1 of permission 13/00559/FUL to
alter the range of goods that can be sold to
allow a full range of non-bulky comparison
goods to be sold from 1,263sq m net within
new sub-divided unit 1B and 1,015sq m net
from unit 3A**

REPORT BY : **ED BAKER**

**NO. OF APPENDICES/
OBJECTIONS** : **SITE PLAN
EXECUTIVE SUMMARY REPORT BY
CARTER JONAS**

1.0 SITE DESCRIPTION AND PROPOSAL

- 1.1 The applications relate to land at the Peel Centre, St. Ann Way. The Peel Centre is an out of town retail park located to the south of the city centre.
- 1.2 The Peel Centre has a frontage to the south side of St. Ann Way from which it is accessed. To the other side of St. Ann Way to the north is Gloucester Quays Retail Outlet, next to which are redundant docklands buildings, including the Llanthony Provender Mill. To the west, the site backs onto the Gloucester and Sharpness Canal. To the other side of the canal further to the west is a Sainsbury's supermarket. To the south side of the Peel Centre is the

Madleaze industrial estate. Bristol Road bounds the Peel Centre on its east side which has a mixture of commercial and residential uses.

- 1.3 The applications relate to Units 3A and 1B of the existing retail warehouses that are situated parallel to and face St. Ann Way.
- 1.4 The Docks Conservation Area is located to the other side of St. Ann Way to the north. This includes a number of nearby Listed Buildings including:
 - Llanthony Provender Mill, Grade II Listed;
 - Iron Framed Shed, Grade II Listed;
 - Downing Malthouse, Grade II; and
 - Downings Malthouse Extension, Grade II Listed
- 1.5 The site is located to the immediate south of an Area of Principal Archaeological Interest.
- 1.6 The site is within Flood Zones 2 and 3.
- 1.7 This report relates to two applications that seek permission for the same proposal. “**Application 1**” (16/00007/FUL) seeks Variation of condition 1 of permission 09/01308/FUL to alter the range of goods that can be sold to allow a full range of non-bulky comparison goods to be sold from 1,263sq m net within new sub-divided unit 1B and 1,015sq m net from unit 3A.
- 1.8 “**Application 2**” (16/00008/FUL) seeks Variation of condition 1 of permission 13/00559/FUL to alter the range of goods that can be sold to allow a full range of non-bulky comparison goods to be sold from 1,263sq m net within new sub-divided unit 1B and 1,015sq m net from unit 3A
- 1.9 The applications are supported by the following documentation:
 - Planning & Sustainability Statement;
 - Retail Planning Statement;
 - Transport Statement;
 - Travel Plan;
 - Flood Risk Assessment;
 - Statement of Community Involvement; and
 - Plans and drawings.
- 1.10 The applications are brought to the planning committee because of the scale and nature of the proposals. The planning committee will need to make a separate resolution on each of the two planning applications.
- 1.11 The Local Planning Authority is also considering an application seeking planning permission to redevelop the former cinema for retail purposes. That proposal includes the demolition of two Class A3 restaurant buildings; the conversion of the former cinema building to Class A1 retail use including mezzanine floor; and the erection of extensions to the former cinema building

to create new Class A1 retail floor space. The proposal would result in four new Class A1 retail units (16/00005/OUT).

- 1.12 That application has been submitted by the same applicant and, along with applications 16/00007/FUL and 16/00008/FUL, are presented by the applicant as a “package of measures” aimed at enhancing the Peel Centre. Given the cumulative impact of all the proposals, and the similarity of the issues that arise, the three applications are brought before the committee together. However, Members are advised that each of the applications should be determined on their own individual merits.

2.0 RELEVANT PLANNING HISTORY

- 2.1 The Peel Centre has a long and complex planning history. Previous decisions which are considered most relevant to the current applications are summarised below in chronological order.

11159/11a - approved

- 2.2 This was an application for the erection of 93,000 square feet retail, new highway, drive-through restaurant and formation of car park. The application was approved in April 1989.

11159/11b – approved

- 2.3 This was an outline planning application, with planning permission being granted for 16,000 square feet of retail development, plus a multiplex cinema, theme bar, restaurant and car park. Reserved matters approval was subsequently granted via applications 11159/11b(i) and (ii). It does not appear that the retail element of this permission was implemented.

11159/13 – approved

- 2.4 This was an application for the erection of 41,000 square feet retail units and formation of car parking area. The application was approved in August 1989.

05/00751/COU – approved

- 2.5 This was an application for change of use of Unit 7 from assembly and leisure (class D2) to restaurant / cafe (class A3). The application was approved in August 2005.

08/01116/FUL - approved

- 2.6 This was an application for the extension and refurbishment of the existing cinema, the erection of an attached building to provide 4 (no.) units for class A3/A4/A5 use, canal-side public realm improvements, erection of 4 (no.) wind turbines (later removed) and associated car park re-arrangements and landscaping works. The application was approved in June 2008. However, the permission was not implemented and the permission expired.

09/01308/FUL – approved

- 2.7 This was an application to vary condition 6 of planning permission ref. 11159/11a to alter the range of goods that can be sold. The application was approved in July 2010.

09/01310/FUL – withdrawn

- 2.8 This was an application to vary condition 2 of planning permission ref. 11159/11b to alter the range of goods that can be sold. The application was withdrawn in April 2010.

09/01311/FUL – approved

- 2.9 This was an application to vary condition 4 of planning permission 11159/13 to alter the range of goods that can be sold. The application was approved in July 2010.

11/01292/FUL – approved

- 2.10 This was an application for alterations to and change of use of the existing cinema building to retail use (class A1), erection of extension to building for retail use (class A1), and associated alterations to parking and servicing arrangements, landscaping and public realm works. It was granted subject to conditions (including notably a “bulky goods” condition to reflect that imposed at the time on the remainder of the Peel Centre) in July 2012. The applicant has apparently commenced works to keep this permission alive although no formal determination has been made by the Local Planning Authority that works lawfully started and that the permission remains extant.

13/00559/FUL – appeal allowed

- 2.11 This was an application to vary condition 1 of planning permission ref. 09/01311/FUL to alter the range of goods that can be sold from amalgamated Unit 3a and 3b for occupation by “Home Bargains”. It was refused by the City Council but allowed at appeal following a public inquiry.

13/00560/FUL – withdrawn

- 2.12 This is an application seeking to vary condition 3 of planning permission ref. 11/01292/FUL (to allow the sale of an unrestricted range of goods from the existing cinema building, with no change to the restricted range of goods from the extension). The application was withdrawn in March 2013.

14/01173/FUL - withdrawn

- 2.13 This was an application to vary condition 3 of permission ref. 11/01292/FUL to alter the range of goods allowed to be sold and provide flexibility by allowing one retail unit of up to 4,048sq m gross floor space in the converted and extended cinema to sell toys. The application was withdrawn in October 2015.

14/01445/FUL – approved

- 2.14 This is an application seeking variation of condition 1 of planning permission 09/01308/FUL to alter the range of goods that can be sold from an amalgamation of Units 3a and 3b. The application was approved in March 2015.

15/00004/FUL – approved

- 2.15 This is an application seeking alterations to and change of use of existing cinema building to retail use (class A1), erection of extension to building for retail use (class A1), associated alterations to parking and servicing arrangements, landscaping and public realm works - Variation of condition 2, and removal of conditions 19 and 20, of planning permission 11/01292/FUL, to omit the requirement for compensatory flood storage works and allow a lower finished floor level. The application was approved in August 2015.

15/00155/FUL – appeal withdrawn

- 2.16 This is an application seeking variation of condition 1 of permission 09/01308/FUL to alter the range of goods that can be sold from Unit 3a and new sub-divided Unit 1b - to allow a full range of non-bulky comparison goods (original development is the erection of 93,000 sq. ft. retail, new highway, drive-through restaurant and formation of car park). The applicants appealed against non-determination, however, the appeal was later withdrawn.

15/00156/FUL – appeal withdrawn

- 2.17 This is an application seeking variation of condition 1 of permission 13/00559/FUL to alter the range of goods that can be sold from Unit 3a and new sub-divided Unit 1b - to allow a full range of non-bulky comparison goods (original development is the erection of 41,000 sq. ft. retail units and formation of car parking area). The applicants appealed against non-determination, however, the appeal was later withdrawn.

15/00157/FUL – approved

- 2.18 This is an application seeking planning permission for external alterations and enhancements to existing retail warehouse units including complete re-cladding with modern glazing and materials and new entrance lobby for Unit 1A. The application was approved in July 2015.

15/00158/FUL – appeal withdrawn

- 2.19 This is an application for alterations to, and change of use of, vacant cinema building to retail use (Class A1), erection of extension to building for retail use (Class A1), and associated alterations to parking and servicing arrangements, landscaping and public realm works. The applicants appealed against non-determination, however, the appeal was later withdrawn.

15/00490/NMA – approved

- 2.20 This was a non-material amendment proposal to alter condition 2 (approved drawings) and pre-commencement conditions 7, 8, 11, 12, 13, 14, 15, 17, 19, 22, 23, 25, 26, 28, 29 and 30 of permission ref. 11/01292/FUL to exclude the laying of foul water services to the proposed retail units from pre-commencement conditions. The application was approved in May 2015.

15/01126/FUL – undetermined

- 2.21 This is an application seeking alterations to, and change of use of, vacant cinema building to retail use (Class A1), erection of extension to building for retail use (Class A1), and associated alterations to parking and servicing arrangements, landscaping and public realm works. The application is undetermined pending the outcome of applications 16/0005/OUT, 16/0007/FUL and 16/0008/FUL.

15/01127/FUL – undetermined

- 2.22 This is an application seeking variation of condition 1 of permission 09/01308/FUL to alter the range of goods that can be sold from Unit 3a and new sub-divided Unit 1b - to allow a full range of non-bulky comparison goods (original development is the erection of 93,000 sq. ft. retail, new highway, drive-through restaurant and formation of car park). The application is undetermined pending the outcome of applications 16/0005/OUT, 16/0007/FUL and 16/0008/FUL.

15/01128/FUL – undetermined

- 2.23 This is an application seeking variation of condition 1 of permission 13/00559/FUL to alter the range of goods that can be sold from Unit 3a and new sub-divided Unit 1b - to allow a full range of non-bulky comparison goods (original development is the erection of 41,000 sq. ft. retail units and formation of car parking area). The application is undetermined pending the outcome of applications 16/0005/OUT, 16/0007/FUL and 16/0008/FUL.

16/00007/FUL – undetermined

- 2.24 This is an application seeking variation of condition 1 of permission 09/01308/FUL to alter the range of goods that can be sold to allow a full range of non-bulky comparison goods to be sold from 1,263 sq. m. net within new sub-divided unit 1B and 1,015 sq. m. net from unit 3A. The application was submitted alongside the application subject to this report and is being considered concurrently.

16/00008/FUL – undetermined

- 2.25 This is an application seeking variation of condition 1 of permission 13/00559/FUL to alter the range of goods that can be sold to allow a full range of non-bulky comparison goods to be sold from 1,263 sq. m. net within new

sub-divided unit 1B and 1,015sq. m. net from unit 3A. The application was submitted alongside the application subject to this report and is being considered concurrently.

16/00320/NMA – approved

- 2.26 This was a non-material amendment proposal to amend the external alterations approved under permission 15/00157/FUL. The application was approved in April 2016.

3.0 PLANNING POLICIES

- 3.1 This part of the report identifies local and national planning policies that are relevant to the consideration of the applications and considers the weight that can be afforded to them.

Statutory Development Plan

- 3.2 The statutory Development Plan for Gloucester remains the partially saved 1983 City of Gloucester Local Plan ("1983 Local Plan").
- 3.3 Paragraph 215 of the National Planning Policy Framework ("NPPF") states that '*...due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.*'
- 3.4 The 1983 Local Plan is more than thirty years old and, according to the Inspector who presided over the appeal relating to Units 3A and 3B at the Peel Centre (13/00559/FUL), '*...its sheer age suggests it must be out of date...*' (par. 11 of the Inspector's report).
- 3.5 The 1983 Local Plan policy most relevant to the proposals is Policy S.1(a):
'Major comparison shopping facilities will not normally be permitted outside the main shopping area, defined on Plan 10, other than in accordance with the specific provisions of other policies.'
- 3.6 Policy S.1(a) is out of date and superseded by national planning policy, namely section 2 of the NPPF, *Ensuring the vitality of town centres*.

National Planning Policy Framework

- 3.7 The NPPF published in March 2012 is a material consideration of considerable importance. It sets out the Government's planning policies for England and how these are expected to be applied.
- 3.8 Guidance on how to interpret the NPPF is provided by the online National Planning Practice Guidance ("NPPG").

3.9 Annex 1 of the NPPF provides advice on the weight that should be afforded to adopted Local Plans that pre-date the NPPF, and emerging Local Plans.

3.10 Paragraph 14 of the NPPF says that: '*At the heart of the National Planning Policy Framework is a **presumption in favour of sustainable development**, which should be seen as a golden thread running through both plan-making and decision-taking...*

...For decision-taking this means:

- *Approving development proposals that accord with the development plan without delay; and*
- *Where the development plan is absent, silent or relevant policies are out-of-date, granting planning permission, unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in the Framework indicate development should be restricted.'*

3.11 Section 2 of the NPPF, *Ensuring the vitality of town centres*, provides national policy on how to deal with proposals for town centre development.

Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury

3.12 The City Council is currently working on a new Development Plan that will replace the 1983 Local Plan. The new Development Plan will comprise the Joint Core Strategy for Gloucester, Cheltenham and Tewkesbury ("JCS") and Gloucester City Plan ("City Plan").

3.13 The JCS was submitted to the Government for Inspection in November 2014. Policies in the Submission Joint Core Strategy have been prepared in the context of the NPPF and are a material consideration.

3.14 Paragraph 216 of the NPPF states that weight can be given to relevant policies in the emerging plans according to:

- The stage of preparation of the emerging plan;
- The extent to which there are unresolved objections to relevant policies; and
- The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF.

3.15 The JCS is part way through the Examination process and the Inspector published her Interim Report in May 2016. However, a number of proposed modifications will be made to the policies in the plan. The legal advice that the Council has received is that the JCS can be given limited weight at this time.

Gloucester City Plan

- 3.16 The City Plan will sit underneath the JCS and provide locally specific site allocations and development management policies, within the strategic context of the JCS. To date, consultation has taken place on Part 1 of the City Plan, which sets out the context, strategy and key principles, and Part 2, which sets out a draft City Centre Strategy and looks at potential site opportunities. The next stage will be the publication of a Draft City Plan for public consultation. This will include an updated Part 1 and Part 2, along with a range of locally specific Development Management policies. The City Plan can be given no meaningful weight at this time.

Gloucester Local Plan, Second Stage Deposit 2002

- 3.17 Regard is also had to the policies contained within the Gloucester Local Plan, Second Stage Deposit 2002 ("2002 Local Plan"). The 2002 Local Plan was subject to two comprehensive rounds of public consultation and was adopted by the Council for development management purposes.
- 3.18 However, the 2002 Local Plan was never subject to Examination and was never formally adopted. In this regard, the weight that can be given to the Local Plan is, therefore, limited. This view is supported by the Inspector presiding over the 13/00559/FUL appeal, who commented that: '*The Gloucester Local Plan did not progress beyond the Second Stage Deposit of 2002; while its policies were adopted for development control purposes, they cannot carry any significant weight.*' (par. 12 of the Inspector's report). This approach is, however, contradicted in other appeal decisions where Inspectors choose to give policies in the 2002 Local Plan reasonable weight.
- 3.19 The main body of the committee reports refers to policies contained in 2002 Local Plan where they broadly accord with policies contained in the NPPF, and are applicable to the proposal. Policy S.8 of the 2002 Local Plan identifies the Primary Shopping Area in the City Centre. Policy S.10 identifies Quedgeley Centre as a District Centre.

Other relevant policies

- 3.20 The following policy documents are considered relevant insofar as they demonstrate the Council's on-going commitment to seeing the redevelopment of the Kings Quarter area and the regeneration of the city centre more generally.

Revised Draft Central Area Action Plan 2006

- 3.21 This reached preferred options stage in August 2006. It was subject to two rounds of public consultation. 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 management policies. It is a non-statutory document and of limited weight. 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

- 3.22 This set out the Council's approach to the development of this area. It was not formally adopted by the Council but was prepared in accordance with the relevant planning regulations and subject to extensive public consultation. It is a non-statutory document and is updated by the 2013 concept statement.

Kings Quarter Planning Concept Statement 2013

- 3.23 This statement carries forward previous policy objectives for the Kings Square and Bus Station area of the City. It is a non-statutory document. It was subject to a six week period of consultation, amended in light of consultation responses, and was adopted by the Council as interim SPD for development control purposes. The Concept Statement sets out the opportunity and objectives 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. The scheme sought to deliver a significant change in the City's retail performance by achieving a substantial level of new retail-led, mixed use development to act as a catalyst for the continued regeneration of the wider city centre area and city as a whole.

Emerging Gloucester City Plan – Sites and places Consultation – May 2013

- 3.24 The City Plan covers the whole of the Council's administrative area and once adopted will provide locally specific development management policies and site allocations (in general conformity with the JCS). "Part 1" sets out the context and key principles for the plan, which include the delivery of a transforming city that brings regeneration benefits, continuing the longstanding strategy of delivering development on a city centre first approach and the primacy of Kings Quarter redevelopment as the Council's priority regeneration site for delivering a step change in its retail performance. "Part 2" sets out sites in the City that are being considered for development, the uses they are being considered for and how they could have a positive contribution to the city. Given the Council's longstanding strategy for the retail-led regeneration of King's Quarter, this proposal is carried forward.
- 3.25 The Draft City Centre Strategy forms part of "Part 2" of the City Plan and has been prepared partly in response to evidence (JCS Retail Study Phase 1) that the City Centre is underperforming for a City the size of Gloucester and the identification of underlying weaknesses such as an under representation of certain categories of retailing and a poor quality environment. It sets out a draft vision, objectives and key components of a strategy such as strengthening the City centre as a regional shopping destination and improve its retail ranking, to maintain and improve the vitality and viability of the city centre, the delivery of a 'step-change' in the retail performance of the City centre and quality urban spaces through the bringing forward of the Kings Quarter scheme, delivery of a new high quality bus station in the Kings

Quarter scheme that will provide a key gateway feature, and applying the 'city centre first' approach.

Strategic Economic Plan for Gloucestershire 2014

- 3.26 The Kings Quarter scheme is identified as a key county-wide regeneration priority for helping to deliver the Strategic Economic Plan for Gloucestershire, a document sponsored by the Local Enterprise Partnership.

Gloucester Regeneration Strategy 2016 - 2021

- 3.27 The Council's regeneration strategy sets out a clear strategic framework of priorities that received Member endorsement. A consultation draft was subject to a period of consultation in spring 2015. The strategy is not a statutory planning document. Kings Quarter is identified as a major strategic regeneration priority. The City Plan will be the statutory development plan to deliver the strategy spatially.
- 3.28 The 1983 Local Plan, JCS, draft City Plan and 2002 Local Plan can be viewed at the relevant website address:- Gloucester development plan policies – <http://www.gloucester.gov.uk/resident/planning-and-building-control/planning-policy>. The NPPF and NPPG can be viewed at the Department of Community and Local Government website – <http://planningguidance.communities.gov.uk/>.

4.0 CONSULTATIONS

- 4.1 Highway Authority (Gloucestershire County Council)

No objection.

- 4.2 Environment Agency

No comments.

5.0 PUBLICITY AND REPRESENTATIONS

- 5.1 The applications have been publicised by way of a press notice and the display of site notices. In addition, 58 neighbouring properties have been directly notified of the applications in writing.
- 5.2 Representations have been received from a number of different parties and are summarised below. The full content of all correspondence on these applications can be inspected at Herbert Warehouse, The Docks, Gloucester, or via the following link, prior to the Committee meeting:

<http://planningdocs.gloucester.gov.uk/default.aspx?custref=16/00007/FUL>
<http://planningdocs.gloucester.gov.uk/default.aspx?custref=16/00008/FUL>

Ellandi LLP

5.3 Ellandi manages the Eastgate Shopping Centre in Gloucester City Centre on behalf of Lone Star Funds. Ellandi has submitted three objections against applications 16/00005/OUT, 16/00007/FUL and 16/00008/FUL.

24th February 2016 – holding objection

- Several letters of objection were submitted against previous applications 15/01126/FUL, 15/01227/FUL and 15/01128/FUL, which are currently pending and will be withdrawn depending on the outcome of the current applications;
- Ellandi continues to have fundamental concerns as to the likely significant adverse impacts of the proposal on the city centre;
- The proposal would have long lasting implications for the City Centre including shifting the balance of retail provision towards Gloucester Quays and the Peel Centre and away from the City Centre's traditional primary shopping areas;
- The Peel Centre would command a clear competitive advantage over the City Centre as a shopping destination and would not complement the City Centre as the applicant suggests. The Peel Centre will compete "head on" for shopping trips, expenditure and retailers; and
- A more comprehensive review of the applications will be undertaken. In the interim, this holding objection has been submitted.

29th March 2016 – objection

- The proposal will bring no material benefit to the vitality and viability of the City Centre and runs counter to the Council's 'Regeneration and Economic Development Strategy'. The proposal represents further incremental change to provision outside the City Centre boundary in an area where the applicant has a vested interest to deliver retail uses;
- The applicant states that the range of goods sought is necessary for the Peel Centre to compete with other retail parks in the area. This is not a planning argument that we have come across before. It is neither an objective of the NPPF or NPPG. National policy seeks to foster competitive town centres through directing town centre uses to them;
- The proposal will compete directly with the City Centre, which is unacceptable. The Peel Centre should remain a bulky goods retail park. The applicant has had ample opportunity over time to invest in the Peel Centre but it has been allowed to deteriorate over time. Regeneration is not an appropriate term for the proposals at the Peel Centre. The proposal would not deliver a combination of social, environmental and economic benefits;
- The applicant's ownership in and around Gloucester Quays is substantial and includes the remainder of the GQ redevelopment and regeneration area, the Peel Centre retail park, Madleaze industrial

estate and adjacent development sites. Incremental and ongoing improvements are likely to be part of a strategy to further strengthen the retail offer in the area. The effect will be to dilute the City Centre's retail offer and shift the balance of retailing to Peel's ownership;

- The City Centre should be allowed to strengthen without being undermined by unsustainable out of town developments such as that proposed. The proposal represents a significant risk to delivery of the regeneration strategy for the city centre;
- The proposal will likely result in significant adverse impact on Gloucester City Centre. It will undermine existing and planned investment in the City Centre. It will lead to a significant impact on the City Centre's vitality and viability;
- The proposal would give the Peel Centre a clear competitive advantage over the city centre as a shopping destination (providing free parking, easy access by car and lower rents). The applicant does not address the shifting of balance of retail in the City Centre towards out of centre locations. The application is heavily reliant on qualitative assessment to demonstrate acceptability. The assessment should take account of local circumstances derived from a qualitative assessment, as is made clear in paragraph 017 of the NPPG;
- The applicant's assertion that linked trips would increase is highly questionable. The proposal would lead to a reduction in trips where a wider range of retail uses at the Peel Centre would simply remove the need for shoppers to visit the City Centre;
- The applicant's interpretation of the 2012 exit survey is also misleading. The applicant cites 26% as being the figure for linked trips, which masks the fact that 74% of customers stated that they did not visit the City Centre. This figure is only likely to increase if the proposal goes ahead. The applicant actively discourages customers leaving the Peel Centre by foot (the applicant has a policy of clamping vehicles not belonging to customers of the Peel Centre);
- There are no obvious pedestrian friendly routes between the Peel Centre and City Centre. The journey to the PSA is convoluted and over half a mile (>800 metres), including a steep incline. The applicant has significantly over-played the linked trips;
- There are a number of units that remain vacant in the City Centre. A number of others are let on a temporary basis. There is a real risk that overall improvement will not be maintained. A number of the City Centre's key anchors have a recent track record of taking space in out of centre locations;
- The applicant's assessment fails to mention that the proposal will be in direct competition with the remainder of the City Centre (i.e. existing investment) including Eastgate and Kings Walk shopping centres;
- The applicant has not offered a no-poaching clause – even if it did the clause provides little comfort as it still allows a retailer to take a second

but primary unit at the Peel Centre whilst maintaining minimal presence in the City Centre. The enforceability of such clauses is questioned;

- The lack of named occupiers (other than Next) makes assessment of impact difficult. The proposal for open Class A1 use will be of significant interest to retailers. The proposal would compete directly with the City Centre;
- The proposal would have significant impact on the emerging revised proposals for the redevelopment of Kings Quarter;
- There will be little commercial incentive for Ellandi to make its planned improvements to the Eastgate Centre which includes reconfiguration of units, refurbishment of the existing mall space and options for major redevelopment of the first floor shopping centre, which is currently vacant. These proposals can only come forward if they are viable. A factor will be whether there are any other schemes that will undermine consumer sentiment and lead to a reduction in City Centre footfall;
- The complex planning history of the Peel Centre leads to considerable confusion as to what is currently permitted on site (i.e. the fall-back position). Ellandi provides a summary of what it believes Units 1, 2, 3 (3A and 3B), 4A, 5A, 5B, former cinema building, and the former Angel Chef and Pizza hut units can be lawfully used for in terms of use and planning restrictions;
- The proposal will not bring about regeneration in the true sense. It will serve to redevelop a first generation retail warehouse park which has fallen into a state of disrepair. Redevelopment will be at the expense of much needed regeneration of the City Centre. The proposal will do little to encourage new tourists to the area. Job creation will largely be job displacement from the City Centre. 'Environmental improvements' are restricted and could be addressed by other means;
- The proposal is contrary to both national and local planning policy which seeks to maintain and strengthen the vitality and viability of town centres. The proposal is also contrary to the objectives of the Council, investors and City Centre businesses. The applications should be refused without delay for the following reasons:
 - The proposal has potential to accommodate a wide range of retailers, a number of which already serve as anchors in the city centre. Examples that have leases expiring in the next 3 years or where there are lease renewal discussions are River Island, Dorothy Perkins, Burton and Primark;
 - BHS has entered into administration and there is significant risk that it may choose not to continue operating from its Gloucester store at Kings Walk, which could leave their 47,500 sq. ft. store available for Next to occupy;
 - Impact from the proposal will be on a like for like basis with these stores. The relocation of any of these stores to the Peel Centre will substantially reduce footfall in the City Centre. This will have

consequences for consumer choice and trade. The impact on vitality and viability of the City Centre will likely be significant;

- The proposal will undermine investor confidence in the city and weaken attempts to bring forward regeneration and renewal. The scheme is not linked to the City Centre;
- The proposal will undermine the Council's aspiration to control retailing in this out of centre location. The applicant has further substantial landholdings around the site and will very likely seek to consolidate their position as a new city centre for Gloucester;
- The proposal will result in displacement and relocation of jobs rather than a net increase in employment; and
- The proposal would have a direct and significant impact on Quedgeley District Centre. The loss of a key anchor (Next) from the District Centre will likely be a significant as it removes the main fashion draw from Quedgeley.

17th May 2016 – objection

- The proposal will result in future closures and/or relocations of existing retailers who currently serve as anchors in the City Centre;
- Regardless of whether or not a no-poaching clause is put in place, there is very little that be done to prevent the eventual relocation of these stores to the Peel Centre;
- The following City Centre stores will be reaching the end of their lease in the next five years:
 - Primark
 - Argos
 - River Island
 - New Look
 - Acadia (Topshop, Topman and Dorothy Perkins)
- All of these retailers have a track record of taking space in out of centre locations, often relocating from nearby allocated centres. The proposal would accommodate these retailers. These are also the types of retailers that Next would seek to co-locate with and this will likely be a condition of their relocation to the Peel Centre;
- A number of other City Centre retails are considered 'at risk':
 - BHS is currently in administration. Closure will leave a large vacant unit in a prime city centre location (circa 4,000 sq. m.);
 - Recent acquisition of Argos by Sainbury's is expected to result in a number of relocations / closures. The Sainbury's store adjacent the Peel Centre is large enough to accommodation an Argos concession; and
 - Marks and Spencer has relocated a number of their town centre stores to out of centre stores and this could happen in

Gloucester. It has already occurred in Rugby, Great Yarmouth, Stevenage and Hartlepool.

- The loss of these stores will have a significant and long lasting impact on the City Centre which is already showing signs of vulnerability. The proposal will undermine attempts to fill voids where there is already tempered demand in Gloucester as a whole;
- The combined floor space of these stores is between 9,000 and 19,422 sq. m. or between 6.5% and 14% of the total floor space in the City Centre. Large, persistent voids in the City Centre undermines visitor perceptions and investor confidence;
- These stores currently perform an important and vital role in attracting visitors to the City Centre and drives footfall. The loss of any number of these stores would be significant. It would also compound current high vacancy rates in the City Centre and the constrained demand for new retail floor space in Gloucester as a whole. This will result in retailers and jobs relocating to out of centre locations. It will also reduce the chances of a leisure-led scheme coming forward at Kings Quarter;
- The aforementioned stores are large and it would be difficult to find a new occupier following relocation / closure. A prime example is the former Marks and Spencer store on Northgate Street which was either vacant or temporarily occupied for over five years;
- The City Centre is highly vulnerable to out of centre development such as that proposed. Even modest trade diversion from a new development may lead to a significant adverse impact;
- We consider no-poaching conditions to be highly ineffective. The condition proposed by the applicant does very little to prevent the eventual relocation of stores to the Peel Centre. The clause is only a short term measure and does very little to prevent impact on investment in the City Centre. It will not prevent a loss of investor confidence and will not guard against the applicant's goal to provide a modern retail park in an out of centre location;
- The proposed wording only prevents retailers from relocating to the Peel Centre for 12 months. A retailer would have two options: either cease trading in the City Centre for 12 months or keep the existing city centre operating for 12 months and endure the cost of running two stores for that period. However, it is likely that the retailer would choose either option, especially if the expected "incentives" such as 12-24 months free rent at the Peel Centre are on offer from the applicant. The condition also does not prescribe what level of trade should continue from the existing City Centre unit during that 12 month period;
- The no-poaching clause would be wholly ineffective in mitigating the impacts of the proposal on the City Centre;
- We are surprised that the applicant has no clear steer as to who is targeted to occupy the development, other than Next and possibly Iceland, particularly given the level of investment in the proposal. Reference to Iceland is a red herring as it is the only store not in the

City Centre or in close proximity to the site. Iceland is not an occupier that Next tends to re-locate with;

- Refers to Carter Jonas' letter of 24th March 2016 which raises concerns about linked trips between the Peel Centre and City Centre (Carter Jonas has been appointed by the Council to provide specialist retail advice on the planning applications). The applicant's 2012 exit survey of customers is fundamentally flawed. The Peel Centre also actively discourages customers leaving their cars there and walking to the City Centre with the threat of clamping of vehicles not belonging to customers of the Peel Centre. Ellandi also questions the level of scrutiny of the 2012 exit survey at the Home Bargains public inquiry, which was a proposal for only one unit;
- The applicant is unwilling to commit to a planning condition that would require all four units to be built at the same time – this illustrates the applicant's intentions to bring about further improvements to the scheme once the principle of open Class A1 use is established;
- Remain unconvinced of the fall-back position of the two existing Class 3 restaurants being converted to retail use. Both these units are poorly configured, cannot be viewed particularly well from the road and are considerably dated;
- We welcome the applicant's acceptance of conditions to prevent subdivision of the proposed four units and not to install any additional mezzanine floors. However, since the application is in outline, we question how the conditions would work in practice. We also query whether these conditions should also be applied to the proposals to vary conditions (Units 3A and 1B);
- Ellandi wishes to emphasise the extent of the applicant's land holdings to the south of the city centre (Madleaze Industrial Estate). They do not doubt that the applicant has seriously considered the reconfiguration of current existing floor space to include some of this land to the south. Once open A1 retail floor space is established at the Peel Centre it will be far easier to promote a reconfigured scheme that relies on the current proposal as a fall-back;
- The wording of conditions proposed by the applicant to control the types of goods that can be sold from the units is not accepted as they fail to mitigate the inevitable loss of trade from the city centre; and
- Ellandi asks that the applicant addresses all the points they raise.

Aviva Investors

- 5.4 Aviva has land interests at Kings Walk in Gloucester City Centre and has submitted an objection against applications 16/00005/OUT, 16/00007/FUL and 16/00008/FUL.

4th May 2016 – objection

- The Peel Centre and Kings Walk have the same catchment areas, and compete for the same retailers. The Local Planning Authority should consider the proposal very carefully, in particular the potential impacts on Gloucester City Centre and investor confidence;
- Aviva objected to the suite of applications at the Peel Centre submitted in January 2015 for a different redevelopment scheme. The applicant appealed against non-determination and subsequently withdrew the appeals. Aviva's primary concern about the previous applications were:
 - i) The applicant had downplayed progress that is ongoing with regards to redevelopment of Kings Quarter;
 - ii) That the proposals do not accord with the emerging JCS, which seeks to protect key regeneration proposals such as Kings Quarter from inappropriate developments elsewhere.
- Since January 2015, further progress has been made with King Quarter including planning permission for a new bus station. That site is next to Kings Square and forms part of the first phase of the Kings Quarter redevelopment;
- Aviva is concerned about the impact of the proposal on the vitality and viability of the City Centre, as well as impact on existing, committed and planned public and private investment;
- Agrees with the content of the letter Carter Jonas's letter of 24th March 2016 to the Local Planning Authority that raises a number of '*key issues, inconsistency, and gaps in [the applicant's] evidence pertaining to the retail planning case, and specifically on the robustness of the sequential and impact assessment*';
- The Peel Centre is a large scale retail warehouse centre that is defined by the NPPF as being 'out of centre'. The applicant argues that the Peel Centre is highly accessible from the City Centre Primary Shopping Area ("PSA"), even though it is located approximately 870 metres from it. The applicant explains that 26% of Peel Centre customers also visited the 'city centre' as part of their trip. Carter Jonas does not consider this figure to be particularly high. Aviva agrees with this judgement and further agrees with Carter Jonas that there are significant flaws with the data being used by the applicant to substantiate the linked trip theory. The results of the survey are inaccurate and misleading. This figure will be even lower should the proposal be granted planning permission. This is because the types of goods sold will be very similar to the goods that are usually sold within the City Centre. Because of this, it is likely that a customer would visit either the City Centre or the Peel Centre, but not both;
- The letter from the Highway Authority provided at Appendix H of the Retail Planning Statement is misleading because it discusses connectivity between the City Centre and Gloucester Quays, and not the Peel Centre. Their point should therefore be disregarded. Any

linked trips between the Peel Centre and defined City Centre should not be given significant weight when the application is considered;

- There has been an historic increase in the amount of retail floor space outside the defined City Centre and this is of particular concern to Aviva. The proposal is akin to a comprehensive out of centre retail development. Aviva's concerns are:
 - i) The impact on the vitality and viability of the City Centre;
 - ii) The impact on existing, committed and planned public and private investment at Kings Quarter.
- The main impact on vitality and viability is due to the proposal attracting the same type of operators that are traditionally located within the City Centre. This is evidenced by the fact that Next, being a traditional town centre use, is seeking to locate to the site. The Peel Centre would become a retail destination in its own right, and not just for bulky goods. This will reduce visitors to the city centre;
- Quotes the PPG on the issue of impact on investment;
- The applicant seeks to dismiss investment at Kings Quarter as having any policy status. Aviva argues that this is not completely accurate. The Kings Quarter Concept Statement was adopted by the Council in January 2013 as interim Supplementary Planning Guidance. Whilst this does not have the same weight as a development plan document, it does nonetheless give Kings Square policy status. The document states that the proposal for Kings Quarter '*... forms a key part of the City's longstanding and ongoing regeneration strategy for the City, which seeks to deliver a City Centre first approach...*'
- The bus station development is phase 1 of the Kings Quarter proposals and will act as a catalyst for further phases of the development;
- The application also dismisses the progress that has been made on the JCS, which is now at an advanced stage. Aviva quotes par. 4.3.6 of the JCS: '*It is important... that key regeneration proposals, such as Kings Quarter, are protected from inappropriate developments elsewhere and realised in the context of the clear strategy for the City centre in its City Plan.*';
- Some weight can now be given to the emerging JCS as it has reached an advanced stage in preparation and there are no significant unresolved objections relating to the retail policies in the plan; and
- Aviva believes that mention of Iceland is a red-herring as they are the only store not in the city centre or close to the site. Moreover, Iceland does not tend to co-locate with Next.

The Royal London Mutual Insurance Society Ltd

- 5.5 The Royal London Mutual Insurance Society Ltd ("RLMIS") is the owner of the Quedgeley Retail Park in Quedgeley. RLMIS has submitted an objection against applications 16/00005/OUT, 16/00007/FUL and 16/00008/FUL.

25th May 2016 – objection

- Quedgeley Retail Park is a defined district centre within Gloucester. Next occupies a sizeable unit on the retail park and is proposing to relocate from Quedgeley to the application site;
- As a District Centre, Quedgeley Centre has the same policy status as a town centre. By contrast, the Peel Centre is “out-of-centre”;
- A significant component of Quedgeley Centre is the Quedgeley Retail Park, which comprises 7 units, including larger retail units accommodating Next, Brantano, Matalan and Boots. The retail park provides a good range of non-food goods and makes a significant contribution to the vitality and viability of Quedgeley Centre;
- Reference to paragraph 023 of the NPPF;
- The sequential test and retail impact test apply as set out in the NPPF;
- RLMIS’s concern primarily relates to the loss of Next from Quedgeley Centre and the implications for the vitality and viability of this district centre. The applicant has submitted no information on the availability of alternative sites in Quedgeley Centre. Therefore, the sequential test has not been satisfied;
- The proposal is to relocate Next from Quedgeley Centre to the application site. The Next unit at Quedgeley is approximately 780 sq. m. It is a sizeable unit in the context of Quedgeley Centre. If the unit becomes empty for a significant period, this will have a harmful impact on the vitality and viability of the district centre. There is no evidence as to the prospect of the unit being re-let in the foreseeable future;
- The applicant’s sequential test focuses on the City Centre and provides no assessment of the availability of sites within and on the edge of Quedgeley Centre. Therefore, the sequential test cannot be satisfied. Reference to Carter Jonas’ letter of 24th March 2016, which comments on this specific issue; and
- It would be far preferable for Next to extend or relocate within Quedgeley Centre.

Vixcroft Ltd

- 5.6 Vixcroft are the prospective new owners of Kings Walk in Gloucester City Centre having exchanged contracts with Aviva to take over the lease of the shopping centre. Vixcroft has submitted an objection against applications 16/00005/OUT, 16/00007/FUL and 16/00008/FUL.

8th August 2016 – objection

- Kings Walk is an important element of the City Centre and requires revitalisation. The asset includes the BHS store which will imminently cease to trade from BHS’s insolvency. The BHS store is a prominent and important element of the City Centre’s retailing and its re-

occupation is dependent upon retailer's confidence in the future of the City Centre;

- The health and vitality of the Gloucester City Centre rests, to some degree, on the decision of the Local Planning Authority in relation to these three planning applications, which are a serious threat to the viability of the City Centre. This is because diversion of retail activity, which should otherwise be naturally concentrated on the City Centre in accordance with planning policy, will harm the City Centre;
- Future investment should be directed to Gloucester City Centre to support its vitality and viability. Out of centre development, such as that proposed, which diverts economic activity out of the City Centre, should be refused;
- Reoccupation of the BHS store will be assisted by the protection of the City Centre. Vixcroft are unable to say at this stage what will happen to the BHS unit, and this is one element of the City Centre. The Local Planning Authority's concerns should be City-wide, albeit the BHS situation is an indicator of the wider issues facing the City Centre; and
- Resolution and implementation of the Kings Quarter development will significantly support the future regeneration of the City Centre. For these same reasons, the outcome of the three planning applications will have a significant bearing on the viability, fundability and thus deliverability of the Kings Quarter project. As a consequence, there is a strong case for refusal of these planning applications.

Letters of support

5.7 Five letters of support from local people have been received. The points that are raised are summarised below.

- The regeneration of Gloucester over the last 20 years has been incredible and there is more to come. The applicant has been instrumental in supporting this growth, including commitment to regenerate Gloucester Quays. This has brought employment opportunities and visitor growth for Gloucester;
- The proposals provide many economic opportunities for Gloucester. The City needs a boost for high end retailers. The proposed Next store will open the flood gates for new retailers and employment opportunities for Gloucester;
- Following the change of focus for Kings Quarter, there is no risk of competition and the application proposals will support the regeneration plans for the City. The applicant will be able to attract the bigger retailers to Gloucester and this would complement the range of shops at the Peel Centre, thus improving the retail offer for local people. It would also add to the existing attractions and help to improve visitor numbers to the City;

- Believes that the proposal can only be considered a good thing in enhancing the overall Peel centre and creating jobs for the city;
- The applicant has demonstrated a long term commitment to Gloucester for over 20 years and has been a driving force behind regenerating the quayside in Gloucester, creating over 1,000 permanent jobs;
- The proposed Next store would provide a major boost to the local area. It would substantially improve the retail offer and act as a catalyst to attract a wider range of big-brand new retail tenants to the area. This is particularly important now that the King's Quarter regeneration has moved away from a retail focus;
- Gloucester has limited retail offer which means that one has to travel further afield to shop;
- The proposal would provide a significant number of new jobs for local people as well as additional business rates to the local council thereby providing economic benefit to the whole of Gloucester;
- It is a shame to waste ugly space with lots of commercial potential; and
- The only proviso should be that the design fits with that of The Quays and the docks more generally so as you walk or look along the river you get a sense of the heritage of the City.

6.0 OFFICER OPINION

Legislative background

- 6.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the Local Planning Authority to determine planning applications in accordance with the Development Plan, unless material considerations indicate otherwise.
- 6.2 Section 70(2) of the Town and Country Planning Act 1990 (as amended) states that in dealing with a planning application, the Local Planning Authority should have regard to the following:
- a) the provisions of the development plan, so far as material to the application;
 - b) any local finance considerations, so far as material to the application; and
 - c) any other material considerations.
- 6.3 Members are advised that the main issues relevant to the consideration of the applications are as follows:
- Planning history
 - Application of planning policy
 - Impact on the vitality and viability of Gloucester City Centre and Quedgeley Centre and the application of the sequential test
 - Investment and economic benefits
 - Impact on neighbouring property

- Access and parking
- Flood risk
- Local finance considerations
- Procedural matters

Planning history

- 6.4 The Peel Centre has a long and complex planning history. The two applications subject of this report propose a variation to the types of goods that can be sold from Units 3A and 1B, as approved under application 09/01308/FUL (Application 1) and 13/00559/FUL (Application 2).
- 6.5 Permission 09/01308/FUL grants a variation of condition 6 of the original planning permission for the Peel Centre, permission 11159/11a.
- 6.6 Condition 1 of permission 09/01308/FUL reads as follows:

'Notwithstanding the provisions of Class A1 of the Schedule of the Town and Country Planning (Use Classes) Order 1987 or any other Order revoking, amending or re-enacting that Order with or without modification, the retail units as defined in green on Plan A (received by the Local Planning Authority on 3rd December 2009) in so far as the same form part of the development hereby approved shall not be used for the sale of the following goods unless expressly provided for below and/or on a basis which is incidental and/or ancillary to the main goods sold:

- 1. Food and drink, other than for consumption on the premises;*
- 2. Clothes and fashion accessories;*
- 3. Footwear excepting only the sale of footwear from no more than 1,185 square metres of gross floor space within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009);*
- 4. Sporting goods, equipment, clothing and footwear excepting only the sale of such items from no more than 2,388 square metres of gross floor space within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009);*
- 5. Toys excepting only the sale of toys from no more than 4,048 square metres of gross floor space within one only of the retail units as defined in green on plan A (received by the Local Planning Authority on 3rd December 2009);*
- 6. Books and stationery except where included as part of the range of a toy retailer;*
- 7. Cameras, video equipment, mobile phones, audio and visual recordings except where included as part of the range of an electrical retailer selling other items such as white goods, TVs, computers, etc;*
- 8. Pharmaceutical goods, perfume goods and toiletries;*
- 9. Jewellery goods, clocks and watches; and*

10. All uses within categories A1 (B to F) of Class A1.

Reason: To safeguard the vitality and viability of the City Centre.'

6.7 Permission 13/00559/FUL in turn grants a variation of condition 1 of permission 09/01311/FUL (which itself varied permission 11159/11a). The purpose of application 13/00559/FUL was to enable a wider range of goods to be sold from specific maximum floor areas within Units 3A and 3B.

6.8 Condition 1 of planning permission 13/00559/FUL (granted at appeal) reads as follows:

'Notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 or any Order revoking, amending or re-enacting that Order with or without modification, the retail units outlined in green on Plan A, ref. A024676/D, dated 1 December 2009, shall not be used for the sale of the following goods unless expressly provided for and/or on a basis which is incidental and/or ancillary to the main goods sold:

- 1. food and drink, other than for consumption on the premises, except for no more than 690 square metres of gross floor space within amalgamated Units 3a and 3b as defined in blue on plan ref. A024676/E, dated 1 December 2009;*
- 2. clothes and fashion accessories;*
- 3. footwear excepting only the sale of footwear from no more than 1,185 square metres of gross floor space within one only of the retail units as defined in green on Plan A, ref. A024676/D, dated 1 December 2009*
- 4. sporting goods, equipment, clothing and footwear excepting only the sale of such items from no more than 2,388 square metres of gross floor space within one only of the retail units as defined in green on Plan A, ref. A024676/D, dated 1 December 2009;*
- 5. toys, excepting only the sale of toys from no more than 4,048 square metres of gross floor space within one only of the retail units as defined in green on Plan A, ref. A024676/D, dated 1 December 2009, and from no more than 230 square metres of gross floor space within amalgamated Units 3a and 3b as defined on plan ref. A024676/E, dated 1 December 2009;*
- 6. books and stationery except where included as part of the range of a toy retailer;*
- 7. cameras, video equipment, mobile phones, audio and visual recordings, except where included as part of the range of an electrical retailer selling other items such as white goods, TVs, computers, etc.;*
- 8. pharmaceutical goods, perfume goods and toiletries, except from no more than 230 square metres of gross floor space within amalgamated Units 3a and 3b as defined on plan ref. A024676/E, dated 1 December 2009;*
- 9. jewellery goods, clocks and watches; and*

10. *all uses within categories (b) to (f) inclusive of Class A1 in the Town and Country Planning (Use Classes Order) 1987.*

6.9 For Members' information, in relation to item 10, categories (b) to (f) read:

- b) as a post office,
- c) for the sale of tickets or as a travel agency,
- d) for the sale of sandwiches or other cold food for consumption off the premises,
- e) for hairdressing,
- f) for the direction of funerals

6.10 This report goes onto assess the impact of the proposed widening of the range of goods that can be sold from Units 3A and 1B.

Application of planning policy

6.11 Given that the 1983 Local Plan (being the statutory Development Plan) is out-of-date, the applications should be determined in accordance with paragraph 14 of the NPPF. This says that planning permission should be granted: '*...unless any adverse impacts of doing so would **significantly and demonstrably** [my emphasis] outweigh the benefits, when assessed against the policies in [the NPPF] taken as a whole...*'

6.12 Members should have this in mind when they consider the range of benefits and impacts of the proposals as discussed in the various sections of the report below.

Impact on the vitality and viability of Gloucester City Centre and Quedgeley Centre and application of the sequential test

Background

6.13 The Local Planning Authority has commissioned Carter Jonas ("CJ") to provide specialist retail advice on these applications, as well as related application 16/00005/OUT. CJ has provided a detailed report on the impacts of the proposals that can be found at the following link: <http://planningdocs.gloucester.gov.uk/default.aspx?custref=16/00007/FUL> ("Report from Council's consultant" received 11.8.16). An Executive Summary of the report is appended to this committee report.

6.14 Given that the Local Planning Authority does not have an up-to-date Development Plan and that only limited weight can be given to emerging local planning policy, the applications should be considered in accordance with the NPPF and NPPG, with particular reference to section 2 of the NPPF: *Ensuring the vitality of town centres*.

6.15 The NPPF says that '*Local Planning Authorities should recognise town centres as the heart of their communities and pursue policies to support their viability and vitality*' (par. 23). National planning policy advocates a "town centre" first approach to protect the interests of city, town and district centres.

- 6.16 This part of the Peel Centre is situated approximately 750 metres from the Primary Shopping Area (“PSA”) in the City Centre as defined by the 2002 Local Plan. In respect of the PSA in the emerging JCS, this distance is slightly lower at around 650 metres. In both cases, this means that the site is “out of centre” for the purposes of retail policy (i.e. more than 300 metres from the primary shopping area but within the urban area) (Annex 2 of the NPPF).
- 6.17 The proposals relate to the retail use of Units 3A and 1B, which is a “main town centre use” according to the NPPF. The NPPF says that proposals for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan should be subject to a “sequential test” (par. 24). Moreover, such proposals should also be subject to a retail impact assessment where the floor space is greater than 2,500 sq. m., as is the case with the application proposals (par. 26). The impact assessment should include an assessment of:
- i) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
 - ii) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.
- 6.18 The NPPF is clear that ‘*Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.*’ (par. 27)

The proposal

- 6.19 Under planning permission 13/00559/FUL, Units 3A and 1B can also be used for the sale of food and drink (up to 690 sq. m.), toys (up to 230 sq. m.) and pharmaceutical goods, perfume goods and toiletries (up to 230 sq. m.).
- 6.20 The applicant wishes to widen the types of goods that can be sold from these units to any non-food sales in Unit 3A (up to 1,015 sq. m. net) and 1B (up to 1,264 sq. m. net).
- 6.21 The applicant is proposing the following planning conditions:

Condition 1A:

‘Notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 or any Order revoking, amending or re-enacting that Order with or without modification, with the exception of 1,263sq m net floor space within Unit 1B and 1,015sq m net floor space within Unit 3A (this amount of floor space within Units 3A and 1B may be used for the sale of any non-food goods) the retail units outlined in green on Plan A, ref. A024676/D,

dated 1 December 2009, shall not be used for the sale of the following comparison goods unless expressly provided for and/or on a basis which is incidental and/or ancillary to the main goods old:

- 1. clothes and fashion accessories;*
- 2. footwear excepting only the sale of footwear from no more than 1,185 square metres of gross floor space within one only of the retail units as defined in green on Plan A, ref. A024676/D, dated 1 December 2009;*
- 3. sporting goods, equipment, clothing and footwear excepting only the sale of such items from no more than 2,388 square metres of gross floor space within one only of the retail units as defined in green on Plan A, ref. A024676/D, dated 1 December 2009;*
- 4. toys, excepting only the sale of toys from no more than 4,048 square metres of gross floor space within one only of the retail units as defined in green on Plan A, ref. A024676/D, dated 1 December 2009, and from no more than 230 square metres of gross floor space within Unit 3b as defined on plan ref. A024676/F, dated 25 April 2016;*
- 5. books and stationery except where included as part of the range of a toy retailer;*
- 6. cameras, video equipment, mobile phones, audio and visual recordings, except where included as part of the range of an electrical retailer selling other items such as white goods, TVs, computers, etc.;*
- 7. pharmaceutical goods, perfume goods and toiletries, except from no more than 230 square metres of gross floor space within Unit 3b as defined on plan ref. A024676/F, dated 25 April 2016;*
- 8. jewellery goods, clocks and watches; and*
- 9. all uses within categories (b) to (f) inclusive of Class A1 in the Town and Country Planning (Use Classes Order) 1987.'*

Condition 1B:

'Notwithstanding the provisions of Class A1 of the Town and Country Planning (Use Classes) Order 1987 or any Order revoking, amending or re-enacting that Order with or without modification, with the exception of no more than 690 square metres of gross floor space within Unit 3b (as defined in blue on plan ref. A024676/F, dated 25 April 2016) the retail units outlined green on Plan A, ref. A024676/D, dated 1 December 2009, shall not be used for the sale of food and drink, other than for consumption on the premises.'

The Sequential Test

- 6.22 The applications are supported by a Retail Planning Statement ("RPS"), which seeks to address both the sequential and retail impact tests.
- 6.23 *'The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. It supports the viability and*

vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.' (par. 008 NPPG, revision date: 06 04 2014)

- 6.24 It is for the applicant to demonstrate compliance with the sequential test, wherever possible, supported by the Local Planning Authority. The application of the sequential test should be proportionate and appropriate for the given proposal. Applicants and local planning authorities are required to demonstrate flexibility on issues such as format and scale: *'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 to consider what contribution more central sites are able to make individually to accommodate the proposal.'* (par. 010, NPPG, 06 03 2014)
- 6.25 The applicant has examined a number of potential alternative sites within and adjacent the Primary Shopping Area. In order to do this, they have established some parameters. The site area of the application site is 1.2 hectares (ha) and in order to demonstrate a "degree of flexibility", the applicant has extended the site search to land up to 20% less in overall size (i.e. sites of 0.96 ha and above). There is no specific reasoning as to why a reduction of 20% is used and this seems to be an arbitrary figure.
- 6.26 CJ advises that the applicant's scope for flexibility on format and scale should be greater by virtue of the fact that other than Next (in relation to application 16/00005/OUT), there are no named occupiers for Units 3A or 1B. Any potential sequential sites should be assessed on their potential to accommodate the proposed floor space of the application proposals, with adequate servicing arrangements.
- 6.27 On the question of "disaggregation" (whether proposals can be subdivided in order that they can be accommodated on sequential preferable sites), CJ refers to the decision in *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13. The Court held that when it comes to flexibility, local planning authorities are expected to consider different built forms and sub-division of large proposals:
- 'As part of such an approach, they are expected to consider the scope for accommodating the proposed development in a different built form, and where appropriate adjusting or sub-dividing large proposals in order that their scale may fit better within existing developments in the town centre'* (para 28)
- 6.28 CJ advises that where an application proposal comprises a number of separate units or different uses, a combination of more central sites should be considered provided that they do not require any of the individual retailers to disaggregate their offer. By way of clarification, the proposed Asda store that was the subject of the Dundee decision was a single free-standing store in a single building which could only have been reduced in size through the disaggregation of the store's offer. There is a fundamental difference between the disaggregation of a single store compared with the sub-division of individual retailers forming part of a larger development. A sequential approach that prevents the assessment of whether some retailers on a large

scheme might be accommodated on sequentially preferable sites runs totally against the town centre first approach. The unintended consequence of this is that it creates an incentive for applicants to propose schemes so large that they will never be able to be accommodated on central or edge of centre sites.

6.29 In terms of the requirement for sequentially preferable sites to be “available”, CJ advises that this should be considered in the context of the timescales for development of the application proposals, if permission is granted, and on the facts of the case, including Local Plan policy and regeneration objectives. Indeed, the Inspector presiding over the appeal against the Council’s refusal of application 13/00559/FUL took the view that for a site to be “available” it does not necessarily have to be immediately available: ‘... *depending on the circumstances of the case, having to be immediately available for occupation seems somewhat too restrictive.*’ (par. 17 of the Inspector’s decision). That said, CJ do advise that the Local Planning Authority should not place significant weight in their sequential assessment on more central sites if they are likely to be delayed for a substantial period.

6.30 The applicant has examined a number of potential sequentially preferable sites including the former M&S at 17-23 Northgate Street; Greater Blackfriars; Kings Quarter; and the BHS unit at 27-39 Eastgate Street. The Local Planning Authority has also considered the availability of the Eastgate Centre.

Former M&S unit at 17-23 Northgate Street

6.31 It is understood that TK Maxx has recently agreed terms on this unit and as such it is not available.

Greater Blackfriars

6.32 The City Council and County Council are jointly working together to bring forward a Local Development Order for the Barbican car park and Quayside House sites. The LDO is envisaged to be housing led with some small-scale offices and commercial uses. Public consultation on the proposals is planned to take place in September 2016. The site is therefore unlikely to be available.

6.33 At the JCS Examination in Public, the City Council identified part of Greater Blackfriars as having potential for retail development (up to 3,200 square metres of retail floor space across three separate sites) and that this would be explored further through the development plan process. These sites would not accommodate the proposed development. In addition, the sites would likely not be available for a number of years. This land can therefore be discounted.

Kings Quarter

6.34 Kings Quarter is located in the heart of the City Centre to the north east of Eastgate Street and south east of Northgate Street. The site covers approximately 4 ha and includes Kings Square, the bus station, Market Parade and the adjoining multi-storey car park.

- 6.35 The Kings Quarter site has been an identified regeneration site for a number of years and remains the Council's key priority for the transformation of the City Centre through new development and public/private sector investment. This is demonstrated by the series of local policy documents issued over the last ten years for redevelopment of the Kings Quarter site (see pars. 3.22 to 3.27 inclusive of this report). The Kings Quarter Planning Concept Statement 2013 sets out proposals to redevelop the area, creating a vibrant addition to the City Centre's shopping offer, including a new and improved bus station, improved linkages to the railway station, Northgate Street and the City Centre, as well as public realm improvements. In December 2015, planning permission was granted for the creation of a new bus station (15/01142/FUL).
- 6.36 More recently, in July of this year, the City Council went out to public consultation on alternative options for mixed use redevelopment of the Kings Quarter site. The new scheme is expected to include an indoor market, new multi-storey car park, a variety of restaurants and shops, residential development and a hotel. Although the level of new retail floor space has been reduced in comparison with previous proposals for the site, the current options would deliver between approximately 5,000 and 10,000 sq. metres of retail floor space. This will include a Tesco convenience store (400 sq. m.) and is likely to include some ancillary Class A3/A4/A5 uses. A planning application is expected to be submitted early in 2017 with the scheme developed out in three phases. Phase 1 consists of the redevelopment of the bus station and should be complete by summer 2017. Phase 2 is likely to include the indoor market, some retail, car park and possibly the hotel. This is expected to be completed by Spring 2019. Phase 3 is likely to include the remaining retail floor space and residential with completion by Summer 2019.
- 6.37 Aviva has agreed to sell their interest in the adjoining Kings Walk to Vixcroft for a sum in the region of £20 million. Vixcroft anticipate investing a further £5 million in improvements to Kings Walk and have also expressed an interest in working with the City Council to invest significantly in the Kings Quarter redevelopment scheme.
- 6.38 The retail element of the new Kings Quarter scheme is not expected to be delivered until mid-2019, or by 2020 at the latest. Pre-application discussions have only just begun and planning applications are due to be submitted early next year. In view of these timescales, it is considered that the Kings Quarter redevelopment will not occur soon enough to be considered a realistic alternative to the application site. With this in mind, it is considered that Kings Quarter is not available at this time.

Eastgate Centre

- 6.39 In their objections, Ellandi (which manages the Eastgate Centre) have referred to proposals to deliver up to 2,000 sq. m. of new retail floor space at first level at the Eastgate Centre. However, there is no indication of timescales or availability. Opportunities at the Eastgate Centre can therefore be discounted at this time.

BHS unit at 27-39 Eastgate Street

- 6.40 BHS has recently been forced into administration and is in the process of closing its 163 stores across the country with the loss of over 11,000 jobs. This includes the store in Gloucester City Centre, which has now closed. The BHS unit in Eastgate Street will therefore be available in the short term and as far as the Council is aware there are no prospective occupiers in place for all or part of the store.
- 6.41 BHS is a key anchor store with a prominent frontage onto Eastgate Street within the Primary Shopping Area of the City Centre. It is understood that the store has a total gross area of 3,993 sq. m. of which 2,050 sq. m. is at ground floor level and the remainder (1,943 sq. m.) at first floor.
- 6.42 CJ is unconvinced by the applicant's sequential case in relation to Units 3A and 1B. With a total proposed gross floor space of 3,950 sq. m., the BHS unit (which is 3,993 sq. m. gross) could accommodate the application proposals in full, assuming some flexibility in terms of format and scale.
- 6.43 The applicant argues that the proposal to widen the types of goods that can be sold from Units 3A and 1B is essential to the viability of the wider scheme (in conjunction with the cinema redevelopment proposed under application 16/00005/OUT), although there is limited information to support this. In any event, it is considered that such argument is more pertinent to the applicant's enabling case that would see the wider proposals lead to new investment in the Peel Centre (which is material consideration dealt with elsewhere in this report). It is not a matter that directly satisfies the sequential test.
- 6.44 Members are advised that the BHS unit represents a sequentially preferable location. For these reasons, the applications therefore fail the sequential test.

Quedgeley Centre

- 6.45 Neither the applicant nor CJ are aware of any sites either in or on the edge of the District Centre that could accommodate the proposals, even after assuming some flexibility in terms of format and scale. The representation from Royal London Mutual Insurance Society Limited (owners of Quedgeley Retail Park) did not indicate the availability of sequentially preferable sites within the District Centre. It is considered that there are no sequentially preferable sites within or on the edge of Quedgeley Centre.

Retail impact

- 6.46 CJ has considered the retail impacts of the proposal in two inter-related parts. Firstly, an appraisal of impact on centre trade and turnover. Secondly, an assessment of impact on centre vitality, viability and investment. CJ considers the impact of the proposed variation of condition applications in isolation; cumulatively alongside existing retail commitments in the area; and alongside the proposed cinema redevelopment under application 16/00005/OUT.

Impact on centre trade and turnover

- 6.47 CJ has tested the applicant's assessment of the likely trade diversion (£m) and impact (%) on the turnover of the City Centre and Quedgeley District Centre. "Trade diversion" is a store's turnover that would have otherwise been spent in the City or District Centre (e.g. £15m from Newtown town centre). "Trade draw" is defined as the area from which a store would draw its trade and is normally zoned (e.g. 50% of turnover is from Zone 1 etc.).
- 6.48 In their RPS, the applicant carries out four impact assessment scenarios as described below:
- Scenario A – existing/permitted scenario of the previously approved cinema development (11/01292/FUL and 15/00004/FUL); Units 3A and 1B used for the sale of bulky goods; and the vacant Angel Chef and Burger King units occupied by non-bulky good retails;
 - Scenario B – broadening the range of goods to be sold from Units 3A and 1B only (applications 16/00007/FUL and 16/00008/FUL);
 - Scenario C – the proposed development only (16/00005/OUT); and
 - Scenario D – the proposed development (16/00005/OUT) and the widening of the goods sold from Units 3A and 1B (16/00007/FUL and 16/00008/FUL).
- 6.49 The NPPF requires that impact on city/town centre trade/turnover should be carried out '*up to five years from the time the application is made.*' (par. 26). The applicant assumes a base year of 2015 and a design year of 2020. CJ agrees with this approach.
- 6.50 The RPS forecasts that the cumulative proposals will have the following turnover:
- Next store (Unit 6D) - **£9.5 million** in 2020
 - Units 6A and 6B (non-food open retail) - **£16 million**
 - Unit 6C (food) - **£9.5 million**
 - Unit 3A (bulky and non-bulky sales) - **£5 million**
 - Unit 1B (bulky and non-bulky sales) - **£8.4 million**
- 6.51 The applicant suggests that the turnover of the development can be discounted by £3.25 million, which is the amount of turnover forecast for the Angel Chef and Pizza Hut units if they were used for open Class A1 sales. The applicant believes that it is a plausible fall-back that those two existing units could be used for retail sales as the change of use from Class A3 (restaurant/café) to Class A1 (retail) is permitted development. They cite instances where this has occurred elsewhere in the country. CJ are dubious, expressing the view that the existing Class A3 units do not meet the needs of modern Class A1 retailers and that is therefore highly unlikely that they would be used for retail sales. However, Members are advised that some weight

should be given to this fall-back because if the Local Planning Authority was faced with a planning application to modify the two buildings so that they can better accommodate retail operators, it is unlikely that it would be able to raise objections about the retail use of the buildings.

- 6.52 The RPS forecasts that the permitted scheme (Scenario A) would have a total turnover of £18.9 million.
- 6.53 CJ notes that the applicant has made no allowance for the growth in turnover up to 2020, having used turnover at 2015 (2013 prices). CJ go onto undertake their own “sensitivity testing” of the figures assessing the impact of higher turnover forecasts, and this is examined later in this section of the report.
- 6.54 The applicant calculates the turnover of the existing City Centre and CJ is satisfied with the assumptions that the applicant uses. In 2015, the City Centre achieved a turnover of £334.7 million of which 95% of turnover was for comparison good sales. Quedgeley Centre is estimated at achieving a turnover over £149 million in 2015, of which 37% related to comparison goods. The applicant calculates the turnover of the existing Next store at Quedgeley Centre as generating £3.9 million turnover.
- 6.55 Interestingly, the combined turnover of Gloucester Quays and other out-of-centre shopping facilities such as the Peel Centre, St. Oswald’s Retail Park and Eastern Avenue, is £300.8 million – equivalent to 90% of the City Centre’s total turnover.
- 6.56 The applicant assesses the sales area and turnover performance of known commitments in Gloucester. This assumes that new commitments will achieve a total comparison goods turnover of £46.6 million.
- 6.57 Regarding “trade draw”, the RPS predicts that the open Class A1 units would draw 40% of the forecast turnover for those units from the City Centre. CJ is very concerned that the proposal for open Class A1 retail would potentially result in the relocation of existing retailers from the City Centre to the application site, and this would lead to a much higher trade draw and impact on the City Centre’s turnover. CJ advises that the trade draw from the City Centre will be much greater than assumed by the applicant.
- 6.58 Insofar as “bulky goods” sales, CJ advises that trade draw from existing large format retailers at Quedgeley Centre will be higher than the 2% assumed by the applicant in their RPS. Similarly, CJ predicts a higher trade draw of convenience goods from Quedgeley Centre than calculated in the RPS.
- 6.59 Turning to trade diversion and impact, the applicant assumes the following:
- Scenarios A-D – existing retail commitments will have a -3.8% impact on the City Centre; -2.7% impact on Quedgeley Centre; and -5.2% impact on Abbeydale Centre;
 - Scenario D – there will be a -3.2% solus impact on both the City Centre and Quedgeley Centre; and -0.5% impact on Abbeydale Centre;

- The cumulative impact of existing retail commitments and the proposals are -7.0% on the City Centre; -5.9% on Quedgeley Centre; and -5.7% on Abbeydale Centre; and
- Net difference between impact of existing retail commitments and proposed development – -2.0% on the City Centre; -2.9% on Quedgeley Centre; and -0.5% on Abbeydale Centre.

- 6.60 The applicant considers that the additional impacts on the centres would be low when compared to the impact of existing retail commitments. The applicant further argues that in reality these impacts will be even less because the calculations have assumed that the approved Tesco store at St. Oswald's Retail Park will go ahead (it is understood that Tesco will now not build the store). In addition, the applicant says that the calculations do not take account of the further linked trips between the Peel Centre and City Centre that would result if the proposed development went ahead. The applicant carried out a customer survey in 2012, which concluded that 26% of shoppers visiting the Peel Centre also visited the City Centre, and these linked trips provide spin-off benefits to the City and Docks areas. According to the applicant, these factors are likely to overstate the true level of impact on the City Centre.
- 6.61 The applicant also assesses the sensitivity of the "solus" impact of the proposals assuming higher trade draws from the City Centre for the non-bulky goods at 50% and 75% ("sensitivity testing"). For Scenario D, it calculates the impact on City Centre turnover as -2.1% (50% draw) and -3.1% (75% draw). The applicant makes the point that even at an unrealistic and overinflated assumption of 75% draw, the impact on City Centre would be low and certainly not significant.
- 6.62 CJ has carried out its own sensitivity testing of the proposal based on corrected turnover, trade draw assumptions and updated commitments. It models three different impact scenarios. Scenarios 1 and 2 are based on previous assumptions with regard to retail commitments in Gloucester, whereas Scenario 3 draws on the latest evidence relating to retail commitments, having regard to the JCS Inspector's recent update on retail matters. Scenario 3 therefore represents the preferred impact position.
- 6.63 In their note of 27th July 2016, the JCS Inspector commented that neither the Tesco permission (St. Oswald's Retail Park) nor the Interbrew scheme should be treated as commitments for the purpose of meeting Gloucester's short term need for new comparison goods floor space up to 2021. Accordingly, CJ has removed these commitments from the impact assessment. However, in terms of remaining commitments, CJ has allowed for a number of other factors. Firstly, an uplift in turnover at the Peel Centre of £2.6 million arising from the Home Bargains permission. Secondly, the recent planning permission for the Ashchurch Designer Outlet Centre, which comprises a net sales area of 13,436 sq. m. along with a garden centre of circa 6,460 sq. m. That development is expected to achieve a comparison goods turnover of £70 million. It was reported that the proposal would draw significant trade from Gloucester City Centre (-£18.5 million). Thirdly, that the permission for the

Tesco includes an element of bulky goods retail warehousing and this is included in the assessment.

- 6.64 In terms of the “solus” affects of the proposed widening of goods applications, CJ advises that the impact on the City Centre would be -2.0% and the impact on Quedgeley Centre would be -0.5%. However, the effect of existing retail commitments, including the Ashchurch decision dated 30 June 2016, is significant. Allowing for these commitments, CJ forecasts that the total cumulative impact of the proposals under applications 16/00007/FUL and 16/00008/FUL on the City Centre will be **-7.3%** and on Quedgeley Centre the impact would be and **-0.7%**. The proposals would divert significant trade; up to £28.9 million from the City Centre. This level of impact is considered to be significantly adverse. When then combined with the proposed cinema redevelopment (16/00005/OUT), the cumulative impacts on the City Centre and Quedgeley Centre would clearly be even greater at -11% (£43.2 million) and -5.4% (-£8 million) respectively.
- 6.65 CJ considers that its analysis is reasonable, robust and realistic. It reflects the fact that the widening of goods proposals will compete “like-against-like” with the types of retailers and retail offer in these existing centres. The fact that the only named retailer for the wider proposals is Next, which is currently trading at Quedgeley Centre, clearly supports these assumptions.
- 6.66 CJ gives little weight to the applicant’s argument that the proposal would result in significant linked trips with the City Centre. CJ advises that allowing for a mix of new open Class A1 retail units (application 16/00005/OUT) and widening the conditions on the existing floor space (applications 16/00007/FUL and 16/00008/FUL), this will create a more attractive standalone shopping destination that will compete with, rather than complement, the City Centre’s retail offer. If linkages and benefits should arise from the proposal, the main beneficiary would likely be Gloucester Quays to the other side of St. Ann Way. The concern is that the Peel Centre and Gloucester Quays will become an overly strong combined competitor destination in its own right and customers will less likely need to visit the City Centre to shop.

Impact on Centre vitality, viability and investment

- 6.67 CJ go on to assess the impact of the proposal on the overall vitality and viability of the City Centre and Quedgeley Centre, including the impact on any existing, committed and planned public and private sector investment, and on local consumer choice. CJ deals with the impact on the City Centre first.

Impact on Gloucester City Centre

- 6.68 Although on the surface the City Centre seems to be performing relatively well against a number of key performance indicators, CJ still have concerns about its overall vitality and viability. There has been limited investment in new retail floor space in the City Centre over the past decade or more and the City Centre has been losing its competitive edge to other centres and out-of-centre

retailing over the same period of time. There has also been a long term decline in the requirements from retailers for space in the City Centre and the prime retail area in the City Centre has become increasingly compact.

- 6.69 The JCS Retail Study confirms that there are several underlying weaknesses in Gloucester that need to be addressed, not least the under-provision of comparison goods retailing in the City Centre and lack of investment over the years. GVA's appraisal of the health of Gloucester City Centre also concluded that it has '*...struggled in terms of its performance in terms of certain key indicators in recent years*' (par. 4.103) and it has '*...lost market share in comparison goods shopping and the proportion of clothing/fashion retailers in the centre has fallen*' (par. 4.104).
- 6.70 Although the applicant points out that vacancy rates have fallen back from a high of 21% in 2010, current figures show that more than one in ten of all units in the Primary Shopping Area are vacant. This will be exacerbated by the closure of the BHS unit on Eastgate Street. The City Centre has also fallen in the National rankings from 84th in 2008 to 98th in 2014 and Prime Zone A rents are significantly below the levels achieved pre-recession. There are also reduced requirements from retailers for representation in the City Centre.
- 6.71 This explains in part why the Council and its development partner, Stanhope, have struggled to deliver a retail-led redevelopment scheme for Kings Quarter in the post-recession period. Indeed, investor and business confidence in the City Centre, and indeed other centres across the UK, has been further dented by the collapse of BHS, which will result in a large vacant unit on Eastgate Street in the City Centre. Store Twenty One has also entered into administration and could close its store in the City Centre in the near future. The issues and challenges facing the City Centre and other town centres across the UK have been further exacerbated by the growth in out-of-town retailing and online shopping. This has impacted on shopper behaviour and expenditure, as well as retailers' business models.
- 6.72 In Gloucester, there has been a significant increase in retail floor space located outside of the City Centre, and an increase in the range of goods sold outside it. Gloucester's five retail parks alone provide over 71,800 sq. m. of floor space and this excludes other standalone stores and permitted space. Evidence indicates that the market share of the City Centre has fallen over time, whereas the market shares of out-of-centre locations have increased.
- 6.73 In response to these concerns, many traditional based "city/town centre" retailers are moving to out-of-centre locations. Examples include Marks and Spencer's, Debenhams, Dorothy Perkins, Wallis, Miss Selfridge and Burtons. There is real concern that with the "pool" of available retailers shrinking, the proposed widening of the sale of goods at the Peel Centre will compete "like-against-like" with existing retailers in the City Centre and potential occupiers of existing and new space, such as Kings Quarter.
- 6.74 There is further risk that existing retailers in the City Centre and Quedgeley Centre on temporary leases, or leases coming up for renewal, could choose

to move out of the centres. On this point, the objection from Ellandi (which manages the Eastgate Centre) identifies that a number of key stores in the City Centre will be reaching the end of their lease term in the next five years. These include Primark, Argos, River Island, New Look and Arcadia (incorporating Top Shop, Top Man and Dorothy Perkins). These retailers are all taking space in out-of-centre locations elsewhere in the country, often relocating from existing centres.

6.75 In terms of impact on investment, CJ raise concerns about the impact of the proposal on the delivery of the Kings Quarter scheme. This important redevelopment scheme is a longstanding priority for the Council and is a key part of its policy/regeneration initiatives for the City Centre. The revised scheme for Kings Quarter is expected to deliver at least 5,000 square metres of retail floor space. CJ advises that the proposal will compete “like-against-like” with the proposed Kings Quarter investment, and other existing and planned investments across the City Centre, including the Eastgate Centre. At this critical time in the recovery of the City Centre, after a long period when the majority of new investment in the area has occurred outside the City Centre, CJ advises that the proposal would have a significant adverse impact on operator demand and investor confidence in the City Centre.

6.76 CJ does not believe that the proposal will generate significant linked trips and expenditure to the City Centre that will outweigh any of the significant adverse impacts identified. Indeed, the reverse is very likely because the increase in scale and quality of retail offer at the Peel Centre will effectively help to create a standalone out-of-centre scheme that will function as a destination in its own right, particularly given its linkages with Gloucester Quays. This will further increase the critical mass of retail and commercial leisure uses to the south of the City Centre to its significant detriment. This will further erode the vitality and viability of the City Centre, impacting on investor confidence and market demand.

“No poaching” condition

6.77 The applicant has sought to further address the impact of the proposal on the Centres by offering what is commonly known in the planning industry as a “no poaching condition”. The purpose of such a condition is to regulate the occupation of new retail development by existing tenants in a town/district centre. In this case the applicant confirms the no poaching condition would relate to both Gloucester City Centre and Quedgeley Centre.

6.78 The applicant suggests the following wording for the condition.

- i) *‘Otherwise than in the circumstances set out at (ii) below, for a period of five years from the date on which the development is first occupied, no retail floor space hereby approved shall be occupied by any retailer who has within a period of 12 months immediately prior to their occupation of the development hereby approved, occupied retail floor space which exceeds 250 sq. m. [Gross External Area] within the Primary and*

Secondary Frontage of Gloucester City Centre (as shown on plan X, dated X).

- ii) *Such Occupation shall only be permitted where such retailer as identified in (i) above submits a scheme which commits to retaining their presence as a retailer within the Primary and Secondary Frontage of Gloucester City Centre (as shown on plan X, dated X) for a minimum period of 5 years following the date of their proposed occupation of any retail floor space hereby approved, and such scheme has been approved in writing by the Local Planning Authority.'*

- 6.79 There is much debate amongst planning practitioners as to whether no poaching conditions are workable in practice. The condition suggested by the applicant above is based on a condition that was subject to a legal ruling in the case of *Skelmersdale Ltd Partnership, R (on the application of) v West Lancashire Borough Council & Anor* [2016]. The central issue was whether the condition was lawful and capable of being enforced. The aim of the condition was to protect the viability of an existing shopping centre by preventing retailers currently operating from that centre from occupying retail space within the new development without first submitting a scheme for the local planning authority's approval committing them to retaining a retail presence in the old shopping centre for at least five years.
- 6.80 The condition subject to the challenge required the retailers who wished to take up floor space in the new development to submit to the local planning authority a scheme to "commit" to remaining in the existing shopping centre and for that scheme to be approved by the local planning authority. However, the condition did not contain a specific implementation clause requiring the commitment to be complied with following its approval. The judge held, notwithstanding the absence of such a clause, the condition to be sound and did not give leave for the condition to be challenged by Judicial Review.
- 6.81 The City Council's legal advisors have reservations about the wording of the condition referred to in the ruling and suggested by the applicant. Although the judge rejected the claim, he did not provide specific guidance on how the condition would be implemented in the specific circumstances of the proposals. It remains unclear how the parties would deal with the implementation process in part ii of the condition (e.g. what would a "scheme" comprise?) or whether the Council would have any recourse if the relevant town centre operation were to cease within the 5 year period and what effect this would have on the continuing presence of the same operator in the Peel Centre.
- 6.82 Moreover, the wording of the first part of the condition suggested by the applicant differs from the condition subject to the ruling. The applicant's condition requires that for a period of five years from first occupation of the proposed development, no retailer that has occupied a City Centre site within 12 months prior to their occupation of the development may occupy the development. The applicant's wording is somewhat muddled. It refers to '*...any retailer who has within a period of 12 months immediately prior to their*

occupation of development... The point is that the retailer would not be able to occupy the proposed development and so the requirement '*...prior to their occupation of the development...*' could never be met. Furthermore, the condition subject to the ruling also related to any City Centre retailer at the date of the planning permission. If planning permission were to be granted then there would be a build time which would very probably be over 12 months. According to the applicant's condition, on the granting of planning permission, any existing City Centre retailer that wanted to move to the Peel Centre could give notice and wind their business down during the requisite 12 months set by the condition, and then move straight into the proposed development when it is opened, free from restriction. The City Centre would lose a retailer which would result in potential harm to its vitality and viability.

- 6.83 One of the practical criticisms of part ii) of the applicant's condition – which provides for an alternative whereby an existing City Centre retailer who wants to move to the Peel Centre may do so if they submit a scheme that requires their continued presence in the City Centre for five years – is open to potential abuse. Were it to approve such a scheme, the Council would have little or no control over the efforts that the retailer would make in continuing a meaningful and viable presence in the City Centre. There is concern that the retailer could wind down their City Centre store, fail to invest in it properly and make it a "clear second" to their new store at either Unit 3A or 1B.
- 6.84 There is also concern that a no poaching condition would be unable to guard against a change of format by a particular retailer. For example, Topshop, Topman, Miss Selfridge, Dorothy Perkins, Burton and Wallis – which all fall under the Arcadia Group – may all operate as individual outlets and could be protected as such. However, if the retailing offer changes to an Arcadia Outfit model, which includes representation from any combination of these outlets under one store, they may not be protected by a no poaching condition, and could move from the City Centre to the Peel Centre.
- 6.85 The reality is that even if a no poaching condition is imposed, confidence in the City Centre is still likely to be significantly undermined by the proposal for open Class A1 out-of-centre comparison retail development at the Peel Centre as proposed through the relaxation of the conditions. The granting of planning permission for the proposed development would send the wrong message that existing Centres do not come first. The no poaching condition would also fail to control existing non-City Centre retailers who are looking to locate to Gloucester for the first time. Moreover, the effects of the no poaching condition would only be for five years, after which time existing retailers in the City Centre or Quedgeley Centre would be free to move to the Peel Centre.
- 6.86 For these reasons, members are advised that whilst a no poaching clause could have some effect, it would likely not prevent significant adverse impacts on the vitality and viability of the City Centre and Quedgeley Centre identified by CJ.

Conclusion on retail impact

- 6.87 National and local planning policies promote a “town centre first” approach to help maintain and enhance the vitality and viability of town centres. The NPPF states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact, ‘*it should be refused*’ (par. 27).
- 6.88 The sensitivity testing undertaken by CJ forecasts that the proposals will have a potential solus impact on the City Centre and Quedgeley Centre of up to -2.0% and -0.5% respectively, and combined with other retail commitments, a cumulative impact of -7.3% and -0.7%. Although these figures might be considered low in percentage terms, they mask the fact that the proposed widening of the sale of goods from Units 3A and 1B will divert significant turnover of up to £28.9 million from the City Centre. Moreover, when combined with the proposed cinema redevelopment (16/00005/OUT), the cumulative impacts on the City Centre and Quedgeley Centre would be -11% (-£43.2 million) and -5.4% (-£8 million) respectively.
- 6.89 Based on its review of the health of the City Centre and Quedgeley Centre, and the potential impact on existing, planned and committed investment and consumer choice, CJ advises that the proposal to widen the sale of goods from Units 3A and 1B will have a significant adverse impact.
- 6.90 At this critical time in the recovery of the City Centre and following a long period when the majority of new investment in Gloucester has occurred outside the City, it is advised that the proposals will have a significant adverse impact on operator demand and investor confidence in the City Centre. Furthermore, based on the review of the evidence submitted, CJ advises that the proposal will not generate significant linked trips and expenditure to the City Centre to outweigh any of the significant adverse impacts identified.
- 6.91 CJ have assessed the proposed five-year ‘no poaching’ clause/condition suggested by the applicants. It is advised that the condition would not mitigate the harm caused to the City Centre and Quedgeley Centre.
- 6.92 Members are advised that these objections should be given very significant weight in the decision making process.

Investment and economic benefits

- 6.93 The applicant says that the proposed relaxation of conditions forms part of a comprehensive regeneration/redevelopment package for the Peel Centre. The applicant believes that the proposals represent sustainable development, achieving economic, social and environmental gains simultaneously.

Economic considerations

- 6.94 The applicant contends that the wider proposals would have significant regeneration benefits through the enhancement of the appearance of the tired and dated former cinema, Angel Chef and Pizza Hut buildings, as well as

improvements to the canal-side public realm, car park and landscaping. Combined with the visual improvements secured under permission 15/00157/FUL (and 16/00320/NMA), the applicant suggests that the proposals will significantly regenerate and modernise the Peel Centre. Furthermore, the proposed development will likely give rise to further linked trips and spin off benefits with additional footfall for the wider Peel Centre.

- 6.95 Gloucester Quays Retail Outlet is located opposite the Peel Centre on the other side of St. Ann Way and the applicant notes that the retail park is a key gateway site to the City, therefore, emphasising the importance of visual regeneration of the application site and wider Peel Centre.
- 6.96 The applicant argues that the proposals would help strengthen the City Centre. The applicant states their belief that the proposals would not result in significant adverse impact on any other potential investment in the City, and considers that they would complement rather than conflict with the Kings Quarter redevelopment. The applicant is further of the view that the proposal would encourage further linked trips between the Peel Centre and City Centre providing further spin-off benefits to the City Centre and the docks area.
- 6.97 However, these views are contrary to the advice provided by the Council's retail specialist, CJ. As explained in depth in the previous section of this report, Members are advised that the proposals to relax the conditions would have a significant cumulative adverse impact on the vitality and viability of both the City Centre and Quedgeley Centre. There is deep concern that the proposals will compete with the City Centre on a "like-against-like" basis and create a robust standalone retail destination its own right, particularly in conjunction with Gloucester Quays. The proposals would compete for the same retailers who are either already in or interested in moving to these Centres. Investor confidence in the Centres would be harmed.
- 6.98 It is further considered that the applicant's argument of linked trips between the Peel Centre and City Centre is significantly overplayed. The applicant bases their assumptions on linked trips in the light of a customer survey that was carried out at the Peel Centre in 2012. This reported that 26% of customers visiting the Peel Centre also linked their trip with a visit to the City Centre. There are a number of weaknesses with the survey. Firstly, it was undertaken in 2012 and is not up to date. The survey pre-dates the relocation of the cinema from the application site to Gloucester Quays and this alone represents a considerable change in how customers use the Peel Centre. Furthermore, the survey question around linked trips with the City Centre is non-specific as it does not provide a definition of the City Centre. For example, some customers might consider the "city centre" to include Gloucester Docks, the nearby Sainsbury's supermarket and possibly even the Peel Centre itself. For planning purposes, it is clear that City Centre means the Primary Shopping Area. Finally, the figure of 26% linked trips is not in itself considered substantial.
- 6.99 The applicant also argues the case for job creation at the Peel Centre. They cite the *Centre for Cities Outlook Report (2015)*, which identifies Gloucester

as the ninth fastest growing city in Great Britain, yet it is also identified as the city with the lowest job growth between 2004 and 2013. The applicant says that the proposals would generate a significant number of full and part time jobs, although they do not confirm how many jobs there might be. The applicant says that the proposals would also support construction jobs when the development is built.

- 6.100 Members are advised that whilst the proposals might create new jobs and support existing jobs, this could well be at the expense of jobs in the City Centre and Quedgeley Centre. The diversion of trade from the City Centre would likely result in business and job casualties. It is considered that there is not a strong and compelling case on the job creation/consolidation argument that outweighs the serious concerns about the impact of the proposals on the health and wellbeing of the City Centre and Quedgeley Centre.

Social considerations

- 6.101 The applicant makes various points with respect to social sustainability. These include the accessibility of the site by non-car modes; and that the proposed development would be DDA compliant. None of these points are unusual or persuasive, and do not off-set the considerable concerns about the adverse impact on the vitality and viability of the City Centre and Quedgeley Centre.

Environmental considerations

- 6.102 The applicant goes onto to raise a number of environmental sustainability criteria. The accessibility of the site is emphasised including accessibility by public transport. Another point is that at 870 metres from the Primary Shopping Area, the site is within walking distance of the City Centre. The applicant states that the proposals would not result in a material increase in traffic; that the strategic location of the site will encourage further linked trips (thereby reducing vehicle trips and emissions); and that the increase in retail warehouse offer will reduce the need to travel farther afield. These environmental considerations do not overcome the significant concerns about the impact of the proposals on the vitality and viability of the City Centre and Quedgeley Centre.

Other factors

- 6.103 The applicant cites Policy MU.2 of the 2002 Local Plan, which seeks the regeneration of the "Western Waterfront". The 2002 Local Plan is not specific as to what this regeneration might entail for the Peel Centre. The Western Waterfront allocation refers to mixed use to include residential, employment, retail, education, leisure, hotels, culture, community facilities and services. It also refers to the provision of a canal-side footpath and cycleway and site-specific obligations. It is not therefore specific that the regeneration must be for retail uses; other uses may be equally acceptable in achieving this end – housing for example, or leisure, and agents have advised the Council that the leisure market has been improving recently. Moreover, the regeneration

emphasis for the City has now changed, as supported by the Council's *Regeneration and Economic Development Strategy*.

Design enhancements

- 6.104 The applicant confirms that as part of the package of proposals, they would implement the planning permission for design improvements to the existing warehouse buildings at the Peel Centre. This would see the implementation of non-material amendment 16/00320/NMA that amends the design approved under planning permission 15/00157/FUL. The applicant has indicated that they wish to implement the design changes in full although it is unclear how they would be secured as part of the current proposal. Indeed, the applicant confirms that they would be unable to accept a planning condition to require implementation of 16/00320/NMA because this would hold them to ransom to individual tenants. For Members' information, application 16/00320/NMA can be viewed at the following link:
<http://planningdocs.gloucester.gov.uk/default.aspx?custref=16/00320/NMA>
- 6.105 The existing retail warehouse buildings at the Peel Centre are tired and dated, and are not particularly attractive. The design changes proposed under application 16/00320/NMA would upgrade the "artificial façade" of Units 1 to 5. These changes include increased glazing at ground level; micro rib metal cladding at the top; and new entrance canopies with timber effect framing and timber louvres. The alterations would enhance the visual appearance of the existing warehouses, although the design and quality of the materials is not particularly high. Indeed, the Local Planning Authority reported at the time of granting planning permission for these alterations that there is '*...some sympathy with the view that there are some missed opportunities and the scheme could be more aspirational, however, there is little doubt that with the use of appropriate materials the result would be an enhancement in the appearance of these buildings.*'
- 6.106 Whilst the design of the existing warehouse buildings at the Peel Centre is considered poor by modern standards, the approved alterations are simply satisfactory and what one might expect from a "standard retail park". The design changes represent a stepped improvement over the existing appearance of the buildings but are not exceptional. It is arguable that the physical alterations are neither below nor above the mediocre. With this in mind, the weight that can be attached to these improvements is limited, particularly bearing in mind that there is no clear mechanism to secure the design improvements if permission is granted for the proposal. Certainly, the design benefits do not outweigh the concerns about significant adverse impact on the vitality and viability of the City Centre and Quedgeley Centre if the proposal were to go ahead.
- 6.107 Members are advised that even if the design improvements were of substantial and innovative design quality, this would still not be sufficient to outweigh the fundamental objections to the scheme.

Investment in the Peel Centre

6.108 The Peel Centre has a number of vacant uses and current occupation of the retail park is broken down as follows:

- Unit 1A – Toys R Us
- Unit 1B – vacant
- Unit 2 – Hobbycraft
- Unit 3A – vacant
- Unit 3B – vacant (prospective occupation by Home Bargains)
- Unit 4A – Gala Bingo
- Unit 4B – vacant
- Unit 5A – Bensons for Beds
- Unit 5B – Dreams
- Unit 6 (former cinema) – vacant
- Unit 7 (former Angel Chef) – vacant
- Unit 8 (former Pizza Hut) – vacant

6.109 The applicant acknowledges that the Peel Centre has a poor physical environment. They say that without further investment those tenants that remain may look to relocate to alternative destinations which are either further afield and in less sustainable locations. The result being that a prominent retail park on a gateway connection would further deteriorate.

6.110 The applicant says that the existing units have been subject to an extensive marketing exercise. They confirm that there has been no interest from “bulky goods” retailers that would meet the current restrictive conditions that limit occupation of many of the units to bulky goods only. The Council appointed Rapleys to provide specialist marketing advice on the similar previous planning applications at the Peel Centre. Rapleys were satisfied with the marketing campaign carried out by the applicant (letter from Rapley’s, 16 July 2015). It would seem that there is little demand from bulky retailers to occupy the Peel Centre.

6.111 The applicant says that without new tenants, the refurbishment of the Peel Centre would not be viable. This will in turn affect whether existing tenants decide to remain at the retail park. This is of serious concern to the applicant and has motivated the promotion of the current suite of planning applications. The applicant has agreed terms with Next to occupy Unit 6D as a Home & Fashion store. They say that they have had to offer Next a significant incentive package to secure their relocation from Quedgeley Retail Park. Next would not open a new state of the art store in a predominantly vacant and tired retail park. The applicant confirms that developing just the Next element of the proposals is not financially viable without all the other elements delivered, including the proposal to widen the sale of goods from Units 3B and 1A.

6.112 The applicant has provided some high level information on the costs of the wider scheme. The cost of the cinema redevelopment (16/00005/OUT), including reverse premium payable to Next as part of the package of

incentives to attach them to the Peel Centre, is £11.5 million. The cost of the refurbishment of Units 2 to 5; works to create a new unit for Home Bargains (Unit 3B); and potential subdivision of Toys R Us (Unit 1A) is in the region of a further £5 million. This equates to a total investment of over £16 million over the next three to five years.

- 6.113 Rent levels are on average £11 per square foot, which the applicant claims is lower than at St. Oswalds Retail Park which achieves rents of around £20 per square foot. If the proposed development proceeds, rental levels are expected to rise to around £15 per square foot initially and are likely to remain below £20 per square foot at the first rental review. The applicant says that if the proposals do not go ahead, it is likely that existing rental levels at the Peel Centre will do nothing but stagnate.

Conclusion

- 6.114 It is apparent that the Peel Centre is in a difficult state in terms of its inability to attract new bulky goods retailers to the retail park and the number of current vacancies. The package of measures proposed by the various planning applications both current and past, would seemingly help in the attempt to reverse the decline in competitiveness of the Peel Centre and would result in stepped visual improvements to the appearance of the retail park.
- 6.115 However, the Peel Centre is an out-of-centre retail park for planning policy purposes and is afforded no policy protection, unlike the City Centre and Quedgeley Centre. National planning policy in the NPPF is reiterated: local planning authorities should treat '*... town centres as the heart of their communities and pursue policies to support their vitality and viability*' (par. 23). The deterioration and present state of the Peel Centre is unfortunate but is the result of market forces and possibly a lack of investment over the years. Interestingly, Rapleys advised the Council that the deterioration of the Peel Centre could have been limited by earlier action to invest.
- 6.116 The health, vitality and viability of the City Centre and Quedgeley Centre, and wellbeing of Gloucester as a whole, must take precedence in accordance with national and local policy. Therefore, the weight that can be afforded to the material considerations advanced by the applicant in favour of the proposals, as outlined above, is substantially outweighed by the significant adverse impact that the proposal would have on the City Centre and Quedgeley Centre if the proposals were to go ahead.

Impact on neighbouring property

- 6.117 The proposed relaxation of the conditions would not give rise to harmful environmental impacts on neighbouring property. In this regard, the proposal accords with Policy BE.21 of the 2002 Local Plan.

Access and parking

- 6.118 The applications are supported by a Transport Assessment which assesses the impacts of the proposal on the highway. The Highway Authority has assessed the proposal and offers no objection to the applications.
- 6.119 There are no objections on highway safety grounds. No severe impacts on the highway network are identified. The proposal is considered to accord with Policy TR.31 of the 2002 Local Plan.

Flood risk

- 6.120 The Gloucester and Sharpness Canal is located to the immediate west of the site. The site is located within Flood Zones 2 and 3, which means that it is at both medium and high risk of flooding.
- 6.121 However, the proposed widening of the range of goods that can be sold from Units 3A and 1B will not materially impact on flood risk. The Environment Agency has no comments on the applications. The proposals are considered acceptable having regard to Policy FRP.1a of the 2002 Local Plan.

Local finance considerations

- 6.122 The proposal may have some limited benefit in terms of business rates. No particular local finance considerations have been identified.

Procedural matters

- 6.123 Under the Town and Country Planning (Consultation) (England) Direction 2009, the Local Planning Authority is required to refer the applications to the Department of Communities and Local Government (“DCLG”) if the planning committee resolves to grant planning permission. This is because of the cumulative level of retail floor space that is proposed. The Local Planning Authority would be unable to issue the decision without confirmation from DCLG.
- 6.124 Members are advised that the requirement to refer the applications to DCLG should not be considered a “safety net”. Members will note that the application for the much larger Ashchurch development in Tewkesbury Borough was not “called in”.

7.0 CONCLUSION

- 7.1 The proposal is to widen the range of non-food comparison goods sales from Units 3A and 1B. Up to 2,278 sq. m. could be used for the sale of any non-food products across these two units. National planning policy requires a ‘*city centre first*’ approach to proposals for retail development. Applications must satisfy both the “sequential” and “retail impact” tests.

- 7.2 Members are advised that the BHS unit on Eastgate Street in the Primary Shopping Area in Gloucester City Centre is capable of accommodating the proposals. The BHS unit is sequentially preferable to the application site. As such, both applications fail the sequential test.
- 7.3 There is no “universal threshold” which can be applied to indicate whether an impact on trade/turnover is likely to be “significantly adverse”, as it will depend on the individual circumstances of the locality and type of centres based on a more detailed assessment of their overall vitality and viability. In this case, it is considered that the proposal would have a significant adverse impact. The ‘solus’ impact of the proposal on the City Centre would be -2.0% and on Quedgeley Centre, -0.5%. Taking into consideration existing retail commitments, the impacts would be **-7.3% (-£28.9 million)** and **-0.7% (-£1.1 million)**. The level of impact on the City Centre is considered to be significantly adverse. Moreover, when combined with the proposed cinema redevelopment (application 16/00005/OUT), the combined impacts would be -11% (-£43.2 million) and -5.4% (-£8 million).
- 7.4 At this critical time in the recovery of the City Centre, and following a long period when the majority of new investment in Gloucester has occurred outside the City, the proposal will have a significant adverse impact on operator demand and investor confidence in the City Centre. The proposal, if granted, could place some risk on planned investment in the City Centre including at Kings Quarter, Kings Walk and the Eastgate Shopping Centre. The proposal would not generate significant linked trips and expenditure to the City Centre to outweigh any of the significant adverse impacts identified.
- 7.5 The Peel Centre is out-of-centre and is not protected by retail planning policy. The material considerations advanced by the applicant in favour of the proposals, including the economic and environmental enhancement of the Peel Centre, are not compelling and do not outweigh the significant adverse impacts that the proposal would have on the vitality and viability of both the City Centre and Quedgeley Centre.
- 7.6 Relevant retail policies in the 1983 Local Plan are out-of-date and the applications should be determined in accordance with national planning policy contained in the NPPF. In accordance with paragraph 14 of the NPPF, planning permission should be granted unless ‘...*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies [in the NPPF] taken as a whole*’.
- 7.7 Members are advised that the adverse impacts of the proposed development, namely the adverse impacts on vitality and viability of the City Centre and Quedgeley Centre, significantly and demonstrably outweigh the benefits of the proposal. Accordingly, the planning applications should be refused.
- 7.8 The proposal has been considered with regard to the provisions of Sections 66 and 72 of the Planning (Listed Buildings and Conservation Area) Act 1990, which require special attention to be paid to the desirability of preserving

nearby Listed Buildings and their setting, and to preserve or enhancing the character or appearance of the Conservation Area.

8.0 RECOMMENDATIONS OF THE DEVELOPMENT CONTROL MANAGER

8.1 That planning permission is refused for the following reasons:

- i) The BHS unit on Eastgate Street in Gloucester City Centre’s Primary Shopping Area could accommodate the level of open Class A1 comparison goods sales proposed by applications 16/00007/FUL and 16/00008/FUL. The BHS unit is sequentially preferable to the application site and the proposal therefore fails the sequential test. The proposal fails to accord with paragraphs 24 and 27 of the National Planning Policy Framework (published March 2012) and is unacceptable.

- ii) The proposal would give rise to significant and demonstrable adverse impacts on the vitality and viability of Gloucester City Centre and Quedgeley District Centre. The proposal would have a harmful impact on operator demand and investor confidence in the City Centre by providing an appreciable amount of open retail floor space in an out-of-centre location. The proposal fails to accord with paragraphs 26 and 27 of the National Planning Policy Framework (published March 2012) and is unacceptable.

Decision:

Notes:

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Person to contact: Ed Baker
(Tel: 01452 396835)

7 SUMMARY & CONCLUSIONS

- 7.1 Carter Jonas ('CJ') was instructed by Gloucester City Council (the 'Council') to provide independent advice on the retail planning merits of the planning applications by Peel Holdings (Land and Property) Limited ('Peel') and Next plc (the 'applicants') submitted in January 2016. The current applicants are seeking to expand the (Class A1) retail offer and widen the range of comparison and convenience goods that can be sold from the Peel Centre located outside of Gloucester City Centre
- 7.2 Our appraisal has been based on a thorough review of all the relevant evidence and supplementary information prepared by the applicants and third parties set out in Section 1 to this report. It sets out our independent advice on the retail planning (sequential and impact) merits of the application proposals carried out in compliance with local and national planning policy guidance, and specifically the National Planning Policy Framework ('NPPF').
- 7.3 In summary, national and local plan policies promote a '*town centres first*' approach to help maintain and enhance the vitality and viability of town centres. Although policy does not prohibit out-of-centre development per se - dependent on the satisfaction of the sequential and impact tests - it equally does not seek to protect existing out-of-centre schemes, unless they are identified and allocated in up-to-date development plan policies. In this case the Peel Centre is in an out-of-centre location¹ and is afforded no policy protection. The NPPF states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact, "*it should be refused*" (paragraph 26).
- 7.4 Notwithstanding our findings and advice on the retail planning merits of the application proposals, it is ultimately for the decision-taker, in this case the local planning authority, to weigh the merits of each application in the balance against other key material considerations. It should be noted at the outset that we have not been instructed by the Council to consider any potential wider economic, regeneration, planning and policy considerations that may be material to the overall assessment and determination of the application proposal; this includes the applicant's case for enabling development.
- 7.5 In summary the Peel Centre occupies a prominent location on the main route south from the City Centre, and is located to the south of St Ann Way, to the east of the Gloucester and Sharpness Canal and to the west of Bristol Road. The Peel Centre's current tenant mix and planning history is summarised in Section 2 of this report.

¹ It is accepted by the applicant (for example, see paragraph 2.2.4 of WYG's RPS) that the centre lies some 870 metres from Gloucester City's (draft) Primary Shopping Area (PSA), as defined by the Draft City Plan (Part 2, 2013) and the emerging Gloucester City Plan. It is therefore defined by the NPPF as being 'out-of-centre' in retail planning policy terms and subject to the sequential and impact tests.

7.6 The application proposals which the Council is required to assess and determine are as follows (also see Section 2):

- **16/00005/OUT: Hybrid retail conversion and extension to vacant cinema** seeking the demolition of the former Angel Chef and Pizza Hut units, the conversion of the vacant cinema building and extension to provide four new retail units comprising:
 - 4,194 sq m gross (GIA) / 2,555 sqm net of comparison goods retail for the proposed Next Home and Fashion store with ancillary cafe;
 - 4,328 sq m gross (GIA) / 3,679 sqm net of comparison goods retail within two retail warehouse units; and
 - 929 sq m gross (GIA) / 743 sq m net of convenience goods retail within one retail warehouse unit.
- **16/00007/FUL & 16/00008/FUL: seeking variation of condition 1 of permission 09/01308/FUL & 13/00559/FUL respectively** to alter the range of goods that can be sold to allow a “full range of non-bulky comparison goods” to be sold from 1,263 sqm net within new sub-divided unit 1B and 1,015 sqm net from unit 3A²;

7.7 The applicant is seeking to broaden the range of comparison goods permitted to be sold from part of Unit 3A (1,476sq m) and Unit 1B (2,474sq m – the downsized Toys R Us store) to allow a full range of non-bulky comparison goods to be sold. In their letter of 6th May 2016, WYG set out their preferred wording for the planning condition relating to retail goods restriction for the retail conversion and extensions to the vacant cinema building (see paragraphs 3.24-3.25 of CJ’s appraisal).

7.8 WYG’s **sequential assessment** in support of the application proposals is set out in Section 3 of their RPS and draws on their previous assessments carried out in support of the 2015 applications. Our appraisal of the applicant’s sequential approach is set out in Section 4 of this report, and is informed by the NPPF and other material considerations; including the *Planning Practice Guidance* (PPG), the ‘*Dundee Judgement*’ and other case law, including the recent ‘*Mansfield*’ judgement. The NPPF states that applications should be refused where they fail the sequential test (NPPF, para 27)³. Based on our interpretation of the sequential test, and the need to demonstrate flexibility on issues such as format and scale, we conclude that there are no sequential sites that are currently available and/or suitable that could reasonably accommodate the proposed cinema redevelopment application (16/00005/OUT). However, we do consider that the BHS unit in the City’s Primary Shopping Area (PSA) is available and does represent a sequentially preferable alternative for application proposals 16/00007/FUL and 16/00008/FUL.

² WYG state that the reason for the second and third applications - which are both seeking to vary the goods conditions attached to parallel planning permissions for units 1B and 3A (i.e. 09/01308/FUL and 13/00559/FUL) - is to address the Council’s views expressed at the Home Bargains appeal (see WYG’s RPS, para 2.3.6).

³ PPG (para 010; Reference ID: 2b-010-20140306) also states that failure to undertake a sequential assessment could in itself constitute a reason for refusing permission

- 7.9 Turning to the applicant's economic **impact assessment**, our preferred impact scenario forecasts that the 'solus' impacts of the variation of condition application and the cinema redevelopment will be -2% and -3.6% respectively on the City Centre. The 'solus' impacts of the two application proposals on Quedgeley District Centre will be -0.5% and -4.8% respectively. In our judgement and experience these forecast 'solus' impacts of -2% to -3.6% would not normally give cause for concern. However, the cumulative impact of the two application proposals on the City Centre when considered with the planned retail commitments, including the Ashchurch DOC, are "*significantly adverse*" in our view and represent reasonable grounds for refusing both applications.
- 7.10 However, as we conclude in Section 5, it is necessary to assess the likely impact of proposals in terms of the overall vitality and viability of centres. Based on our review of the health of the City Centre and Quedgeley District Centre, and the potential impact on existing, planned and committed investment and consumer choice, carried out accordance with the NPPF and PPG, we conclude that the application proposals will have a "*significant adverse impact*" on both centres (see Section 6). At this critical time in the recovery of the City Centre, and following a long period when the majority of new investment in Gloucester has occurred outside the City, we consider that the application proposals will have a significant adverse impact on operator demand and investor confidence in the City Centre. Furthermore, based on our review of the evidence submitted, it is our judgement that the application proposals will not generate significant linked trips and expenditure to the City Centre to outweigh any of the significant adverse impacts identified.
- 7.11 With regard to Quedgeley District Centre, we conclude that the proposed relocation of Next to the Peel Centre represents a significantly adverse impact, and this will be further exacerbated by the loss of linked trips, footfall and expenditure to other shops, businesses and services in the District Centre.
- 7.12 In conclusion, based on our detailed appraisal of the application proposals we advise the Council that both applications fail the impact test, and applications 16/00007/FUL & 16/00008/FUL also fail the sequential approach. They should therefore be refused in accordance with local and national planning policies.
- 7.13 We have also been asked by the Council to consider whether the five-year '*no poaching*' clause/condition forwarded by the applicants (most recently in their letter to the Council dated 16th June 2016) has a material effect on our overall assessment of the impact of the application proposals and, it follows, our advice to the Council.

- 7.14 We have given this issue careful thought throughout our assessment. It is clear in this case that the application proposals are seeking a significant quantum of Open A1 retail floorspace in an out-of-centre location that will compete “*like-against-like*” with the City Centre for shoppers, retail expenditure and retailers. In our judgement the grant of planning permission in this case, even with a ‘*no poaching*’ clause in place, would have a significant adverse impact on the already fragile business and investor confidence in the City Centre. This concern has been underlined by the responses by Ellandi, owners of the Eastgate Centre, and other key stakeholders in the City and District Centres to the application proposals. It is apparent that the City Centre has suffered from a lack of investment in the scale and quality of its retail offer for a number of years and, as a result, it is losing market share to competing centres and out-of-centre shopping facilities, as well as online shopping. The ‘*no poaching*’ clause will not, for example, prevent retailers who may in normal circumstances take space in the City Centre from choosing to locate in the Peel Centre ahead of the City. This would further impact on the City Centre’s market share, turnover and viability as a shopping location.
- 7.15 This needs to be considered against the background of the City Council’s key objective for the City Centre, namely to deliver the King’s Quarter redevelopment opportunity. Although the emerging masterplan design concepts indicate that its retail floorspace will be significantly reduced compared with previous proposals, the plans are still for approximately 5,000 sqm of new Class A1 retail floorspace. It is vital that the Council’s plans for King’s Quarter and other potential investments in the City are not derailed by proposals for new Class A1 retailing outside the City Centre, and we cannot see how the ‘*no poaching*’ clause would effectively reduce the impact of the application proposals on this important City Centre investment.
- 7.16 In summary we consider there are a number of significant “*unknowns*” and “*risks*” with regard to the ‘*no poaching*’ clause, and we are not persuaded that it would mitigate against the significant adverse impacts we have identified in this case.
- 7.17 Notwithstanding our conclusions, and as stated throughout this appraisal, it is ultimately for the Council as decision-taker in this case to weigh all the positive and negative economic, social and environmental impacts of the application proposal in the balance.
- 7.18 We trust that this appraisal is helpful to the Council in its consideration of the merits of the application proposal.

16/00007/FUL & 16/00008/FUL

Peel Centre
St Ann Way
Gloucester

Planning Committee

