

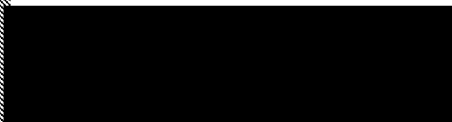
**SDB INVESTMENTS LTD,  
COMMERCIAL DEVELOPMENT  
PROJECTS LTD &  
MARKS AND SPENCER PLC**

**LAND SOUTH OF NEW ROAD  
AND EAST OF BROOK LANE,  
RUSTINGTON**

**RETAIL STATEMENT**

**March 2017**

5 Bolton Street  
London  
W1J 8BA



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## 1.0 INTRODUCTION

- 1.1 This Retail Statement has been prepared on behalf of SDB Investments Ltd and Commercial Development Projects Ltd (“the Developer”) who, along with Marks and Spencer PLC (“M&S”), are joint applicants for revised proposals to develop land south of the A259 New Road and east of Brook Lane to the north of Rustington, near Littlehampton (“*The Application Site*”) for a foodstore comprising 826sqm to operate as “M&S Foodhall” (“*The Revised Proposal*”). Whilst outline permission is also sought for a public house this element does not need to be considered as part of the retail policy assessment.
- 1.2 The Revised Proposal follows approval of a similar development by the Council on 27 June 2016 (LPA Ref: A/23/15/OUT) (“*The Original Application*”). An alternative access arrangement is now proposed. However, the scale and nature of the proposed foodstore for M&S have not changed.
- 1.3 Matters of retail policy, specifically the sequential test and retail impact, were fully considered by the Council as part of the Original Application. This included consideration of an initial Retail Statement (March 2015) and two updates (both June 2015) in response to matters raised by the Council's retail consultant (DPDS). In granting planning permission the Council accepted that there are no sequentially preferable sites for the proposed foodstore and that there would not be a significant adverse impact on Littlehampton and Rustington town centres.
- 1.4 The Original Application was subject to a claim for judicial review and was quashed by Consent Order on 9 February 2017 in relation to “Ground 1” concerning the sequential test (Appendix 1). The Order clarifies that the issue related to the application of the sequential test in respect of the former Waitrose unit, Avon Road, Littlehampton. In consenting to the Order the Council accepted that there was arguably an inconsistency in the advice provided by DPDS at the consultation stage and that officers should have attempted to resolve that inconsistency in their report to the Planning Committee.
- 1.5 We do not consider that there has been a material change in circumstances locally since permission was granted that should lead the Council to reach a different conclusion in respect of the Revised Proposal. However, we have prepared this Retail Statement in order to ensure that the assessment relating to the Revised Proposal is up to date.
- 1.6 The retail policy assessment carried out in respect of the Original Application is a material consideration albeit that elements relating to the sequential assessment were disputed pursuant to the legal challenge. The development of land to the east of the Application Site (“*The Mill Lane Site*”) for retail purposes is also a material consideration and we have had regard to the analysis of retail policy matters, where relevant, in respect of that scheme. Furthermore, the Council published an update to its 2013 Retail Study in October 2016 which is a further material consideration.

- 1.7 We therefore review the site and surrounding area and application proposals in Sections 2-3. Details of the planning policy considerations, relevant background studies and the scope of the retail assessment are set out in Sections 4-5. The main retail policy issues comprising the sequential approach to site selection and impacts arising from the proposal are addressed within Sections 6-7.
- 1.8 In Section 8 we set out our conclusions that the proposed development is acceptable in terms of the National Planning Policy Framework and development plan policy considerations.

## 2.0 APPLICATION SITE

- 2.1 The Application Site is located outside the current settlement boundary between the railway line (the settlement boundary) and the A259 New Road. There is an existing access from the A259 via Brook Lane. It is broadly rectangular in shape and comprises approximately 2.6ha of predominantly grass land with vegetated boundaries.
- 2.2 Whilst located outside of the settlement boundary, the Subject Site is sandwiched between two pieces of major transport infrastructure just north of Rustington urban area. The land does not perform a strategic function, such as to maintain a gap between settlements, nor would its development give rise to unrestrained “urban sprawl” given the limits imposed by the physical boundary of the road. The Mill Lane Site to the east shares these same characteristics and, as stated above, has now been developed for mixed commercial development to include food and non-food retail units and a car dealership.
- 2.3 The Littlehampton area is a large urban area within the District, generally within the area south of the A259 and north of the English Chanel. The subject site forms a natural part of that area being located south of the A259 New Road, close to existing retail facilities provided by the Sainsbury superstore and Rustington Retail Park and adjacent to the above mentioned consented development.
- 2.4 The area surrounding the Application Site therefore has an established retail function. It is however an “out of town” location as defined by the National Planning Policy Framework.
- 2.5 There are bus stops located at the Rustington Retail Park and south of Mill Lane/Worthing Road roundabout both approximately 800 metres (10 minutes’ walk) from the site. The approved development at the Mill Lane Site includes a bus stop within close walking distance (approximately 200m) of the Revised Proposal.
- 2.6 The Application Site is not presently connected to pedestrian footways or dedicated cycle routes. The nearest surfaced public footway crosses over the railway at the Mill Lane Bridge located approximately 600 metres east of the Application Site. Future connection can be made as part of the Revised Proposal and the Mill Lane Site.

### 3.0 REVISED PROPOSAL

- 3.1 The application is submitted in hybrid format with detailed permission sought for the M&S Foodhall store and outline consent for the public house building. Only the food store element falls to be considered within this Statement.
- 3.2 The proposed M&S Foodhall is identical in scale and function to that considered in relation to the Original Application. It comprises a standalone unit of 1,022sqm footprint and 465sqm storage mezzanine (1,487sqm gross). Internally the unit will comprise 826sqm of food and drink sales potentially including a café of around 50sqm plus around 10sqm of general merchandise. The floor area of the proposed store is to be broken down as follows:

|                                                             |                 |
|-------------------------------------------------------------|-----------------|
| Net Food Trading Area potentially including a cafe of 50sqm | 826sqm          |
| Net Non Food Trading Area                                   | 10sqm           |
| Storage/Back of House                                       | 651sqm          |
| <b>Total Floor Area</b>                                     | <b>1,487sqm</b> |

- 3.3 It is intended to access the site from New Road (A259) via a “left in left out” junction with associated acceleration and deceleration lanes and a mini roundabout. The existing access to Brook Lane is to be closed off. Access to Brook Lane and other land within the Developers’ control to the west is to be provided from the internal road within the development.
- 3.4 The development will be served by 173 car parking spaces, including disabled and parent/child spaces, a cycle parking facilities. A dedicated service yard will be provided to the east of the foodstore unit and the public house will be serviced from the car park. Provision will be made for pedestrian/cyclist access within the site and from the A259; and also to the planned development at the Mill Lane Site. Details of the proposed transport requirements and provisions are set out in the Transport Assessment, framework Travel Plan.
- 3.5 The application is submitted with the full support of M&S as joint applicants who are committed to opening an M&S Foodhall at the Application Site. The proposed trading format is a material consideration. However, the Revised Proposal must be considered on the basis that it is a Class A1 foodstore proposal and that any permission would not be personal to M&S.
- 3.6 Details of the M&S business model and trading requirements are set out below. This is to be read in conjunction with the separate Operator Statement prepared by M&S.

**M&S Foodhall Business Model**

- 3.7 Historically M&S were traditionally a town centre retailer operating large scale stores selling both non-food and food. However, as the retail market has evolved, M&S has developed a number of formats which complement each other and seek to meet the requirements of its customers.
- 3.8 M&S Foodhalls and Simply Food stores operate at the lowest tier of M&S's hierarchy below their larger stores. The first M&S Foodhall (then known as Simply Food) was opened over 15 years ago and by the end of March 2016 there were circa 226 stores nationwide. During this period the business model has evolved. This has included M&S learning hard lessons about its customer shopping habits and in some cases having to close poor performing stores which failed to meet these.
- 3.9 The M&S food outlets now comprises two main trading formats:
- 1) **M&S Operated Foodhalls** - These comprise a specialist chain of foodstores selling predominantly a range of M&S branded convenience products, as well as very limited other ancillary non-food goods (including flowers, stationery and cards), within the Company's Clothing & Home (C&H) range. Many of the more recently opened stores include an in-store café operated by M&S. A significant proportion of these stores are located on retail parks. This format is proposed for the Application Site.
  - 2) **Simply Food stores** - These are generally below 370 sqm in sales area and tend to be located at major railway stations, motorway service areas, petrol filling stations and city centres or inner urban areas. These offer a more limited range of products aimed at "passing" customers. Those at railway stations, motorway service areas and petrol filling station operate under franchise agreements and the rationale for the Simply Food stores differs from the normal site search criteria.
- 3.10 Typically, the Foodhalls are located within the wider reaching catchment of M&S's larger stores. This reflects the fact that Foodhall stores are complementary to those larger stores. In the case of Littlehampton the closest GM M&S stores within the wider catchment are as follows:

|                          | <b>GM (Sqm)</b> | <b>Food (Sqm)</b> | <b>Other (Sqm)</b> | <b>Total(Sqm)</b> |
|--------------------------|-----------------|-------------------|--------------------|-------------------|
| Worthing                 | 2,778           | 901               | 242                | 3,921             |
| Shoreham                 | 7,051           | 1,402             | 465                | 8,918             |
| Chichester (split sites) | 3,447           | 1,300             | 139                | 4,886             |

- 3.11 Both the Shoreham and Chichester stores were extended and refurbished in 2011 following significant capital expenditure. All three stores have recently been subject to the “Concept 11” store modernisation programme.
- 3.12 There are no comparable M&S Foodhalls in the Littlehampton/Rustington area. There is a franchise convenience outlet within a BP Petrol Filling Station on Worthing Road, Rustington. This is a small outlet which serves customers of the petrol station as the local “walk in” residential area.
- 3.13 M&S Foodhalls tend to serve the convenience retail needs of relatively modest sized catchment areas and enable the Company to better meet their customer needs for food shopping at a local level. The products on sale in the stores focus on M&S’s core food lines with an emphasis on high quality food, fresh produce and pre-prepared foods and meals targeted at the premium end of the market.
- 3.14 A store of the size proposed would tend to sell about 5,000 food lines of which about 100 would be non-own brand products i.e. c. 98% would be own brand goods. The strong emphasis on M&S branded goods is core to the Foodhall/Simply Food business model and central to the consideration of its place within the premium food market.
- 3.15 The total number of lines sold in M&S Foodhalls is small relative to main stream foodstore operations. The 5,000 lines proposed to be sold by this store compares with circa 20,000 lines plus in a typical main stream foodstore. In size terms, M&S Foodhalls operate between a local convenience store and a larger supermarket. It will therefore meet an element of main food shopping needs, albeit not bulk main food shopping, and top-up shopping trips.
- 3.16 M&S Foodhalls stores sell a limited range of comparison goods that are ancillary to the main food offer. Typically, these comprise flowers, cards, stationery and some seasonal products.

### **M&S Food Hall Trading Requirements**

- 3.17 Based on their experience of trading Foodhalls stores over the last 16 years or so, M&S have identified the following key factors to operating competitive and successful stores which are attractive to their customers and meet their needs. Where the trading potential is strong enough, some compromise on these elements may be possible without undermining the viability of a store. However, in the majority of cases these criteria are key to establishing a successful store.
- A catchment with sufficient numbers of the higher socio-economic groups who form the majority of M&S customers.
  - A floor area of about 1,400 sqm gross and a single level sales floor to enable them to provide the range of goods and facilities and shopping environment that M&S customers seek.

- Good access to sufficient surface level or at grade car parking to enable shoppers to use trolleys.
  - Sites where the combination of the prominence, location and proximity to other retailers provides a critical mass of attraction and the opportunity for M&S to benefit from linked trips to other retailers and 'pass by' trade.
- 3.18 Past experience shows that M&S Foodhalls with shortcomings in these factors perform more poorly and are likely not to be viable.
- 3.19 Further details concerning the M&S business model and search criteria within the Operator Statement.

## 4.0 PLANNING POLICIES

- 4.1 In this section, we set out the planning policy context relevant to the determination of the application.

### National Policy Context

- 4.2 The National Planning Policy Framework (NPPF) was published in March 2012. It restates that the statutory context for the determination of applications (i.e. in accordance with the development plan unless material considerations indicate otherwise) remains but the guidance introduces a new “*presumption in favour of sustainable development*”. In relation to determination of planning applications, this is defined as:

- 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 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 this Framework indicate development should be restricted

- 4.1 There is a clear and strong presumption to supporting sustainable economic growth.

- 4.2 In relation the town centres, Paragraph 23 of the NPPF states:

*“Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:*

- *recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;*
- *define a network and hierarchy of centres that is resilient to anticipated future economic changes;*
- *define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations;*
- *promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;*

- *retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive;*
- *allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites;*
- *allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available. If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre;*
- *set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres;*
- *recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites; and*
- *where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.*

4.3 Paragraph 25 states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

4.4 Paragraph 26 states that when assessing applications for retail development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). This should include assessment of:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;
- and

- 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
- 4.5 Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.
- 4.6 On 6 March 2014, the Department for Communities and Local Government (DCLG) launched the planning practice guidance web-based resource or NPPG.
- 4.7 With specific regards the sequential test the NPPG provides the following guidance:

*“The checklist below sets out the considerations that should be taken into account in determining whether a proposal complies with the sequential test:*

- *with due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.*
  - *is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.*
  - *if there are no suitable sequentially preferable locations, the sequential test is passed.*
- 4.8 With regards impact, the NPPG confirms:
- *The impact test **only** [our emphasis] applies to proposals exceeding 2,500 square metres gross of floorspace unless a different locally appropriate threshold is set by the local planning authority. In setting a locally appropriate threshold it will be important to consider the*
    - *scale of proposals relative to town centres*
    - *the existing viability and vitality of town centres*
    - *cumulative effects of recent developments*
    - *whether local town centres are vulnerable*
    - *likely effects of development on any town centre strategy*

- *impact on any other planned investment*
- *As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (e.g. it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities. Conditions may be attached to appropriately control the impact of a particular use.*
- *Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:*
  - *the policy status of the investment (i.e. whether it is outlined in the Development Plan)*
  - *the progress made towards securing the investment (for example if contracts are established)*
  - *the extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence*

## **Local Policy**

### Arun District Local Plan 2003

- 4.9 The Arun District Local Plan was adopted in April 2003 and covers the period to 2011. On 27 September 2007 the Secretary of State identified the policies within it that are saved, with all others ceasing to have effect.
- 4.10 The Application Site is an unallocated site adjoining the urban settlement boundary. There are no site specific policies that apply to it. However, the following (saved) general policies are relevant:
- 4.11 Policy DEV 26 sets out the general criteria for retail development. It states:

*The District Council will seek to maintain the existing hierarchy of retail centres within Arun. Retail development which accords with this objective will be permitted provided that:*

- i) it is of a high standard of design, materials and layout, and has due regard to the character of the site and its surroundings;*
- ii) it is easily accessible by public transport;*
- iii) it includes provision for access by cycle and on foot;*
- iv) it includes appropriate provision to enable access for people with disabilities; and*

v) *the design incorporates crime prevention measures*

4.12 These criteria are considered in detail in the Design and Access Statement, and the Transport Assessment. They conclude that the proposed development will provide an attractive and safe development, well related to the character of the surrounding area, in a form that is accessible to all members of the community as well as by non-car borne transport. Accordingly, we consider that the proposed development accords with Policy DEV26.

4.13 Policy DEV 27 specifically relates to retail development in out of centre locations, and states that out of centre proposals for non-food and food retail will be permitted provided that:

- (ii) *the proposal does not adversely affect the vitality and viability of the Principal Shopping Areas and local shopping areas, either as an individual development or cumulatively with similar existing or proposed developments;*
- (iii) *it is easily accessible by the highway network and public transport;*
- (iv) *it includes provision for access by cycle and on foot;*
- (v) *it includes appropriate provision to enable access for people with disabilities.*

*Applications for major development will need to be accompanied by a full assessment of the potential impact on town centres and nearby centres. Applicants proposing retail development on out of centre sites will need to demonstrate that no suitable site can be found, firstly within the existing town centre or, secondly, on the edge of the centre.*

*Applicants will also be required to demonstrate that there is a need for additional facilities. Where these criteria are satisfied and permission is granted it will be made subject to planning condition or legal agreement, as appropriate, to:*

- a) *restrict the range of products sold, and*
- b) *restrict the units' size to a minimum of 1,000 m2 (10,764 ft2) with no further sub-division allowed.*

4.14 This policy is relevant to the proposed development, which seeks permission for retail uses in an out of centre location. However, following publication of the NPPF there is no longer a requirement to demonstrate a need for the proposed development. Accordingly, the relevant elements of Policy DEV27 which relate to this Statement are the need to demonstrate that no suitable site can be found within or on the edge of an

existing town centre, or that the proposal does not adversely affect the vitality and viability of the Principal Shopping Areas and local shopping areas.

- 4.15 As noted above, the Transport Assessment considers the proposed development in terms of the effect of it on the highway network, general accessibility and access to all members of the community.

### **The Emerging Local Plan**

- 4.16 Arun District Council is preparing an updated version of the Local Plan. The publication draft was published in October 2014. This was the final stage of consultation prior to Examination which commenced is anticipated to take place in June 2015. The examination was suspended in July 2015 to enable further evidence gathering and modifications to the Plan. It is proposed to resubmit the Local Plan for examination in 2017.

- 4.17 Therefore, it is not possible to afford any weight to the draft policies of the emerging plan in the determination of planning applications at this stage. However, we summarise the relevant provisions of the October 2014 draft below.

- 4.18 Policy RETSP1 sets out the hierarchy of centres within the district which accords with that of the adopted Local Plan set out above.

- 4.19 Policy RETDM1 concerns proposals for new retail development. Like the adopted Plan it states that the Council will seek to maintain the existing hierarchy of retail centres and permit retail development that accords with it provided that:

- a. The proposal is of a high standard of design, materials and layout and has due regard to the character of the site and its surroundings, however this does not limit the potential for outstanding or innovative design to enhance the character of the area;
- b. It is easily accessible by public transport;
- c. It includes provision for access by cycle and on foot;
- d. It includes appropriate provision to enable access for people with disabilities; and
- e. The design incorporates crime prevention measures.

- 4.20 Out of centre development for non-food retail and food retail will be permitted provided that:

- a. The scheme meets the impact tests of the NPPF;
- b. The scheme is easily accessible by the highway network and public transport;

- c. The scheme includes provision for access by cycle and on foot;
- d. The scheme includes appropriate provision to enable access for people with disabilities.

4.21 Applicants proposing retail development on out of centre sites will demonstrate that no suitable site can be found, firstly within the existing town centre or, secondly, on the edge of the centre.

4.22 Paragraph 9.2.1 of the supporting text states that impact assessments will be required from a threshold of 1,000sqm. This cannot be afforded any weight at present. Therefore the NPPF default threshold of 2,500sqm for impact assessments is the relevant consideration.

## 5.0 RETAIL AND OTHER DOCUMENTS

### Councils Retail Study 2016

- 5.1 The Council commissioned a Retail Study to form part of the emerging Local Plan evidence base. This was carried out by the DPDS and was published in 2013. An update to the Retail Study was published in 2016. The purpose of the update is in part to bring retail floorspace policies into line with the higher housing allocations being considered. A new household survey has not been undertaken and therefore the 2013 Study provides the most update to date information available in this regard. However, the updated Study provides updated population and expenditure figures and takes account of commitments.
- 5.2 The approved M&S development is included as a commitment in the update. There has been a slight increase in expenditure per head on convenience goods.
- 5.3 Accordingly we have had regard to both the 2013 Retail Study and the 2016 update in respect of this assessment. However, they are considered within the context of the Original Application where a number of factors relating to be specific circumstances of the proposals were identified and agreed for the purposes of the retail policy assessment.

### Other Documents

- 5.4 A number of other documents have been published which relate specifically to the vision for future investment in Littlehampton and the potential future development of the St Martins Car Park Site.
- Littlehampton Vision adopted in 2006.
  - St Martin's Car Park Development Brief adopted October 2009
  - Strategy for Culture and Leisure Provision 2012
  - Market Report St Martin's Car Park October 2011
  - Planning for Culture and Leisure Provision in Arun to 2028 – December 2011
- 5.5 None of the documents form part of the statutory development plan and they are all now somewhat out of date.

## 6.0 SEQUENTIAL ASSESSMENT

6.1 The Revised Proposal concerns retail development at an accessible, but out of centre site. In accordance with the NPPF and the adopted and emerging development plan such proposals should be considered in terms of the sequential approach to site selection.

6.2 We set out below preliminary considerations concerning application of the sequential test in respect firstly in respect of the Original Application and then with regard to policy guidance and relevant case law. We then turn to the scope of the assessment and the analysis of sequentially preferable sites.

### **Preliminary Considerations**

#### Original Application

6.3 The assessment carried out in respect of the Original Application is a material consideration. This process identified the relevant scope of the assessment and concluded that there were no sequentially preferable sites within or on the edge of Rustington or Littlehampton Centres for the proposed foodstore. This was following a full and detailed assessment of all potential opportunities by the applicants' agent. The assessment was tested by the Council's consultant (DPDS) within the context of third party representations made by owners of the shopping centre in Rustington and the former Waitrose unit in Littlehampton (Store Property Group).

6.4 The Applicant demonstrated clearly that, having regard to the requirement to apply flexibility, none of the available sites identified were suitable a) for foodstore use generally; and b) specifically in terms of M&S's commercial requirements.

6.5 The issue relating to the claim for a judicial review focused on consideration by DPDS of the former Waitrose unit in Littlehampton and the arguable inconsistency in their advice to the Council in discounting it as a sequentially preferable site for M&S. The claim focused on a High Court ruling dated after planning permission was granted (Aldersgate Properties vs Mansfield District Council – dated 8 July 2016) in respect of the requirement to be flexible and the consideration of an individual retailer's needs.

6.6 Accordingly, it is necessary to carry out an update to the assessment of the Avon Road site in light of the above.

Policy Guidance

- 6.7 The criteria to be followed when undertaking a sequential assessment are as follows:
- Assessing sites in terms of the availability and suitability for the proposed development;
  - Ensuring all in-centre options are assessed before less central sites are considered;
  - Where there are no town centre sites, that preference is given to edge of centre locations;
  - When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre;
  - Demonstrating flexibility in terms of format and scale.
- 6.8 The sequential test seeks to encourage retail proposals to locate in sequentially preferable locations. Its purpose is not to turn away retailers or other occupiers from non-town centre locations. For this reason, local authorities should be realistic and only turn away proposals on the back of sequential testing where sequentially preferred sites are available and suitable. Both criteria need to be considered and found to be applicable.
- 6.9 The NPPF does not specifically require the consideration of “viability” as part of the assessment of sites. However, viability is closely linked to suitability and is therefore a relevant consideration.
- 6.10 In considering the potential of each site we have had regard to the advice set out in the NPPG, which states that applicants should demonstrate why sites are not practical alternatives with due regard to the requirement to demonstrate flexibility.
- 6.11 The NPPG sets out a checklist for undertaking a sequential test. It includes the following consideration:
- “..is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.”*
- 6.12 Additionally we have had regard to recent case law which has clarified to what extent developers can reasonably be expected to be flexible. The judgement handed down by the Supreme Court on 21 March 2012 in the Tesco Store Limited v Dundee City

Council case [2012 UKSC 13] is now widely accepted as the basis on which the sequential test should be applied when a specific retailer is known. At Paragraph 37, Lord Hope Stated that:

***“It is the proposal for which the developer seeks permission that has to be considered when the question is asked whether no suitable site is available within or on the edge of the town centre”.***

6.13 Lord Hope goes on to state at Para 38 that:

***“These criteria are designed for use in the real world in which developers wish to operate, not some artificial world that they have no interest in doing so”***

6.14 In terms of the need for flexibility, Lord Read Acknowledges at Para 28, with reference to previous case law, that:

***“...to refuse an out of town planning consent on the grounds that an admittedly smaller site is available within the town centre may be to take an entirely inappropriate business decision on behalf of the developer.”***

6.15 This has established that it is not for local authorities to expect applicants to adapt their proposal beyond what would be reasonable having regard to established business models and the development for which planning permission is sought.

6.16 Additionally *Zurich Assurance Ltd v North Lincolnshire Council* (November 2012) provides more recent case law which assists in the interpretation of the sequential test when applying it to specific proposals. It is particularly useful in relation to this application case as it a) relates to a proposal by Marks and Spencer and b) concerns the availability of one sequentially preferable site (in that case a vacant TJ Hughes unit within Scunthorpe Town Centre).

6.17 Paragraph 58-62 of the *Zurich vs North Lincolnshire* case relates specifically to a proposed Marks & Spencer store. The Judge’s ruling recognises the viability issues facing M&S and the need to provide a compliant store - particularly in a commercially challenging location. The case refers to the ruling of the *Dundee* case as follows:

*“61 It is also important to mark that developers, and planning authorities, work in the real world. Marks & Spencer had assessed the only available town centre alternative to the Site, and had concluded that a development that was smaller than that proposed, or one with a more restricted range of goods, was neither commercially viable nor suitable for their commercial requirements. On*

*the basis of that assessment, emphasised by their representative who spoke at the planning committee hearing, the officer and committee knew that, if this planning permission was refused, then Marks & Spencer would not locate into Scunthorpe town centre. As Lord Reed said in Tesco v Dundee, at [29]:*

*Provided the applicant has [given consideration to the scope for accommodating the development in a different form and to have thoroughly assessed sequentially preferable locations]... the question remains... whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site"*

*to which Lord Hope perceptively added, at [38]:*

*"[T]he context indicates that the issue of suitability is directed to the developer's proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer's assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers..., they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest doing so.*

*62 Working in the real world, the committee were entitled (and, indeed, bound) to take into account the evidence that any arrangement in which Marks & Spencer used the T J Hughes unit (the only available unit in Scunthorpe town centre) would not be commercially viable, and that, because of that lack of viability, Marks & Spencer would not locate to Scunthorpe town centre in the event that this application for the Site was refused. On the basis of that evidence, in the committee's view, the applicant had demonstrated flexibility in terms of the sequential approach so far as the possible disaggregation of the Marks & Spencer operation was concerned. They were entitled to come to that conclusion on that evidence.*

- 6.18 These matters are particularly relevant when we come to consider the future availability of the Waitrose unit within Littlehampton below which has been thoroughly assessed in terms of its suitability for food and premium food retailing and an M&S Foodhall.

## Scope of Assessment

### Area of Search

- 6.19 It was established in relation to the Original Application that the sequential test should consider sites within or on the edge of Rustington and Littlehampton town centres. The Mill Lane Site (then subject to an un-implemented planning permission for retail development) was not considered to be sequentially preferable to the Application Site.
- 6.20 Two sites were identified in Rustington. The first comprised the former Co-op Unit within Rustington Village Centre. This is now occupied by Waitrose following their relocation from Littlehampton. Accordingly it is no longer available. The second (former car showroom Ash Lane) was subject to a planning permission for a small convenience and discounted due to its size.
- 6.21 Two sites within Littlehampton were considered. The first was St Martins Road Car Park which was discounted from the sequential test on the grounds of availability and suitability. The former Waitrose unit at Avon Road was the second site which was excluded due to suitability/viability considerations.
- 6.22 Notwithstanding the above position, we have updated the survey of Rustington and Littlehampton centres purposes of this assessment.

### Material Considerations Relating to Revised Proposal

- 6.23 In undertaking the sequential test the following observations regarding the operational requirements of M&S Foodhalls are material considerations. These would also apply to a convenience store operator seeking to operate a similar business model i.e. offering a limited range of own brand premium goods.

**Format:** The Revised Proposal relates to specific tenant requirements. There is a requirement to provide a store of 1,400sqm gross, with a trading area (retail and café) of some 835sqm at ground floor area.

**Parking:** Easy access to car parking, at surface level (or at grade) is required, so that customers can take away goods, including by trolley.

**Servicing:** Dedicated servicing facilities should be provided enabling goods to be delivered and dispatched in a safe and controlled manner.

**Location:** M&S require a location which has commercial prominence and is easily accessible to customers of the target catchment including those travelling by car. The

ability to capture pass by trade and divert expenditure from the larger out of centre food stores are essential to the viability of the proposed store in this catchment area.

- 6.24 The M&S Foodhall is an established retail format which operates from town centre and out of centre locations. Since its launch in 2001 and based on its trading experience since then, M&S has evolved a clear business model of the form and size that is required for a successful outlet. The Revised Proposal accords with that business model and will enable M&S to successfully reach its target catchment thereby ensuring the viability of the store. By implication, material changes to the locational requirements, size (larger or smaller), form and layout will diminish that success. M&S have closed a significant number of stores in the past where they have not been viable. The Company has therefore developed a rigorous understanding of what is necessary to ensure the success of its future stores.
- 6.25 M&S have been looking for a suitable site to serve this catchment area for in excess of 8 years. The Application Site has been identified to be the only viable candidate as it meets all of the locational and operational requirements. It can also be delivered with confidence by one of the Company's established development partners (CDP Ltd).
- 6.26 The M&S Foodhall model has evolved over more than 10 years and developed through experience and a sophisticated understanding of its customer base and the dynamics of the food retail market. Where the trading potential is strong enough, some compromise on the core requirements may be possible without undermining the viability of a store. However, in the majority of cases these criteria are critical to establishing a successful store. In the case of the Littlehampton area where existing foodstore representation and customer choice is extremely strong, there is limited opportunity to deviate from the optimum trading requirements. To do so would severely undermine the viability of a store and therefore not justify the investment.
- 6.27 The Revised Proposal will result in a single store with a total floorspace of 1,487sqm including a trading area of about 836sqm at ground floor level. This will provide a compliant M&S Foodhall of an appropriate scale to serve the target catchment area. There are no distinct elements that can be disaggregated to different sites. Notwithstanding, to demonstrate a degree of flexibility we have adopted the following criteria for our sequential assessment:
- A 10% tolerance in the store size (i.e. between 1,338sqm and 1,635sqm gross);
  - A site size of circa 0.3 ha to accommodate a unit of the above size with surface level car parking and servicing.

- 6.28 It should be noted that whilst the Application Site is capable of accommodating a larger or smaller unit, the size of the proposed store has been carefully chosen to serve the target catchment. A different sized store at an inferior location would not meet the operational or commercial requirements.

### **Sequential Assessment**

- 6.29 We set out below our sequential assessment. This should be read in conjunction with the Operator's Statement prepared by M&S.

#### Rustington

- 6.30 As stated above, the previously considered former Co-op unit at No1, Broadmark Lane is now occupied by Waitrose and therefore not available.
- 6.31 The former car showroom site at Ash Lane is also too small to accommodate a foodstore of the scale proposed. The approved convenience store at the site (437sqm gross) would comprise only 30% of the proposed floorspace. Accordingly, the site is not a suitable alternative even when allowing for a reasonable amount of flexibility.
- 6.32 We carried out a survey of Rustington town centre in January 2017 and confirm that there are no other sites available for a foodstore of a similar scale to that proposed. There were only 2 small vacant retail units comprising less than 100sqm each (see schedule in Appendix 2). They would clearly not be suitable alternative locations for the proposed M&S Foodhall.

#### Littlehampton

- 6.33 We surveyed Littlehampton Town Centre for unoccupied units and potential development sites in January 2017. The schedule of vacant units is provided within Appendix 2.

#### 1. Former Waitrose Unit, Avon Road

- 6.34 The former Waitrose unit was considered in respect of the Original Application. It remains vacant and is being marketed by Colliers International (details within Appendix 3). We have discussed availability of the premises with the appointed agent and the level of interest received since marketing commenced in June 2015.

- 6.35 On the assumption that the premises was available, we previously assessed the suitability/viability of the unit for a) foodstore use generally and b) specifically in relation to M&S commercial requirements.
- 6.36 In respect of the Revised Proposal, we acknowledge that submissions made by Store Property (who hold the lease to the former Waitrose Unit) in respect of the judicial review case stated that the unit would be made available for re-letting as a whole or in an adapted format to accommodate M&S's operational floorspace requirements. We explain again later why the site has been rejected by M&S in relation to their Foodhall format.
- 6.37 However, we are mindful that the sequential test also needs to be conducted in a manner that is "retailer blind" as clarified by the *Aldersgate* ruling. Therefore, as before we have assessed whether the site would be suitable/viable in principle for a foodstore of a similar scale to that proposed.
- 6.38 Firstly, however, following our discussions with Colliers International we have concerns over the genuine availability of the site for re-occupation by other suitable town centre operators. Whilst vacant, the Waitrose lease remains in until 2020. Despite Waitrose now operating from Rustington, the rental commitment must be observed at Littlehampton until lease expiry. We understand that there have been various expressions of interest to the landlord from a range of town centre operators who would like to occupy smaller units within the building. However, in light of the rental income received under the Waitrose lease none of these proposals have been taken up by the landlord. Delivery of a multi-unit scheme in response to occupational demand would require significant capital expenditure and yield a lower rate of return than the current Waitrose arrangement. Commercially it is therefore of greater benefit to the landlord as a vacant building until the Waitrose lease expires. There have been no real efforts to secure alternative occupiers for this reason.
- 6.39 In terms of its suitability for foodstore use generally, we remain of the view that there are significant viability issues relating to the trading location. Waitrose occupied the site between 2011 and 2016. Previously it was occupied by Coop and before that Somerfield. The site has therefore been occupied by three national multiple food retailers who have operated at different levels in the foodstore market. Somerfield operated at the lower cost end of the market; Coop the mid-range; and Waitrose provides a premium offer whilst also selling a range of branded mainstream products. The site has been marketed by Colliers International unsuccessfully since June 2015 (i.e. at least 18 months) and we are advised that no foodstore operators have come forward.

- 6.40 The site therefore has an extensive history of foodstore use and the viability of convenience retailing has been extensively tested over a number of years by a range of different formats and via a marketing campaign over a substantial period of time. The previous foodstore operators failed to operate successfully which is a clear indication that there are critical underlying issues concerning the viability of convenience retailing from this location. Foodstore retailers are clearly deterred given the history of the site. The lack of demand is despite the purported availability of the unit as a whole or in a sub-divided format.
- 6.41 Our previous analysis concerning the viability of a foodstore at this site is clearly further supported by the unsuccessful marketing campaign. We remain of the view that the future lies in a more diverse offering potentially to include variety/discount retailers and other uses such as cafes. The site may also have redevelopment potential for a residential led scheme. However, clearly the landlord must be willing to invest in a long term future of the site and at present there is little commercial impetus to do so.
- 6.42 The application proposal relates to a premium foodstore and it would be appropriate to consider the suitability of the site for this format before turning specifically to the M&S Foodhall model. The suitability/viability of the site for premium food retailing has already been tested by Waitrose. The 2013 Retail Study reported that the store was underperforming significantly against the company's benchmark turnover. The subsequent closure of the store is a clear indication that the site is not suitable/viable for a premium food offer.
- 6.43 The Revised proposal relates specifically to an M&S Foodhall and, as clarified by case law (*Dundee* and *North Lincolnshire*), the particular nature of the proposal and the operator's viability requirements are material considerations. These judgements are not to be disregarded following the *Aldersgate* ruling and indeed *Dundee* was a judgement handed down by the Supreme Court.
- 6.44 The proposal has been carefully designed to meet the specific requirements of M&S for the target catchment area. Whilst the application site is capable of accommodating a much larger unit, the proposed floor area has been identified by M&S as necessary to ensure the viability of a Foodhall in this market area.
- 6.45 Whilst the operational requirements of M&S are a material consideration, it is also necessary to adopt an element of flexibility when thoroughly considering sequential sites. This was clarified in the *North Lincolnshire* case. In this regard, we refer the letter attached in Appendix 4 dated 4 June 2015 from M&S to the Council. This confirms that:
- 1) The Waitrose site was thoroughly considered by M&S in 2011 when the site was last available.

- 2) This included a full feasibility study to consider how M&S Foodhall could be accommodated at the site.
  - 3) The company were flexible in terms of their consideration of the site. The appraisal was carried out on the basis of a larger trading area to that currently proposed and with a “fallow” area of more than 10% of the building.
  - 4) The viability of the site was considered in a robust and rigorous manner. This included full consideration by the M&S board.
- 6.46 Following presentation to the M&S board in spring 2011 it failed to gain approval due to viability considerations. This related to the both the size of the site and concerns over the trading location.
- 6.47 The Revised proposal relates to a smaller floor space requirement for the area (1,487sqm) and a much smaller trading area than that considered in 2011 (835sqm). The net:gross ratios are critical to the Foodhall business model, as they are for all foodstore operators. On the basis that the Waitrose unit was considered to be unviable for a larger operation in 2011, it would be considerably less viable for the current proposal.
- 6.48 Whilst the current leaseholder (Store Property) has offered to make a smaller unit available for M&S, this does not overcome overriding concerns related to the trading location. This was tested by Waitrose, another premium food retailer, over a 5 year period. The failure of Waitrose has reinforced the concerns of the M&S board in 2011. Accordingly, it certainly would not be a viable proposition for the M&S board now.
- 6.49 Having assessed the suitability of the site generally for foodstore use and premium food retailing (i.e. tenant blind) it is also appropriate to be considered in “real world” terms and the market in which M&S operates. As was the case in *North Lincolnshire*, refusal of planning permission for the proposed Foodhall will not lead to M&S locating at the former Waitrose site due to commercial viability reasons. The company has demonstrated flexibility in considering the site and the viability concerns raised by the M&S board have been now been robustly tested through the failure of a Waitrose in this location and the unsuccessful 18 month marketing campaign.
- 6.50 Accordingly, the Council is entitled to approve the application proposal in accordance with the NPPF on the grounds that the Waitrose site is not suitable or viable for the proposed foodstore or another foodstore of similar scale.

## 2. Other Vacant Units

- 6.51 We surveyed Littlehampton town centre for unoccupied units in January 2017 and identified 10 vacant units in total. The vacant unit schedule is provided within Appendix 2.
- 6.52 The vacant units all are relatively small, ranging in size from 40-370sqm and are therefore significantly smaller than the proposed development. The largest unit is only

25% of the proposed development and would not meet any of the other operational requirements (car parking, servicing etc.). They would therefore not be suitable alternative sites for the proposed foodstore even when allowing for a reasonable amount of flexibility.

- 6.53 Additionally we note that No 12 Surrey Street (231sqm) is one of the vacant units. It was previously occupied by Morrisons as an “M Local” convenience store and traded for a relatively short period of time. This further underlines viability matters relating foodstore trading within Littlehampton.

### 3. St Martin's Road Car Park

- 6.54 The St Martins Car Park is an edge of centre site which has been identified as a development opportunity for approximately 10 years.
- 6.55 The site was considered in the Littlehampton Vision Masterplan and the Development Brief and the Council has obtained commercial advice regarding development options. However, these various initiatives are now somewhat out of date.
- 6.56 The site has also been considered in relation to a number of other retail proposals in the area and discounted from the sequential test on the grounds of availability and suitability. It was also comprehensively assessed as a sequentially preferable development opportunity in relation to the Original Application. This was carried out on basis that Waitrose was due to relocate to Rustington. It was demonstrated that:

**Availability:** The majority of the site comprises the Council owned car park and the tyre centre which is in third party ownership. Both uses are operational and the site cannot be regarded as “available” for the purpose of the sequential assessment.

M&S has a current requirement for a Foodhall which would be operational at the Application Site within the next 12-18 months. This is a significant material consideration as the St Martins Car Park site could not reasonably be expected to be made available for development within these timeframes. The development potential of this site will be delayed further whilst the future of the Waitrose unit is being considered. The availability of the site for development is therefore even less certain now.

In any event, the Secretary of State’s decision at Rushden Lakes, Northampton dated 11 June 2014 confirms that Paragraph 24 of the NPPF simply asks whether town centre or edge of centre sites are “available”. It does not ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years (Paragraph 8.55). Accordingly the St Martins Road Car Park site can be discounted from the sequential test on the basis that it is not available for development.

**Suitability/Viability:** The site would not be a suitable or viable for a foodstore of the scale proposed by M&S. The availability of the Waitrose unit for alternative forms of retailing (which we consider is the most likely future for it) does not automatically make the car park site a viable alternative proposition for a foodstore. The site occupies an inferior location to the Waitrose unit in terms of accessibility from the highway network and connectivity to the core shopping area of Littlehampton. The options are therefore relatively limited in terms of its potential for both food and non-food retailing. The potential is also limited by the scale and nature of the Centre, its position within the hierarchy of other Centres in the region (larger centres serving a wider catchment for higher order town centre retailing), and the profile of convenience shopping in the area which takes place mostly along the A259 corridor.

The concerns of the M&S board in 2011 related as much to the suitability of Littlehampton for convenience retailing, as to the suitability of the Waitrose building. These concerns have been realised by the failure of Waitrose in Littlehampton. Therefore whilst it may be theoretically possible to develop a compliant Foodhall at the car park site, it would not be a viable trading location for M&S. The “real world” principles of the *Dundee* and *North Lincolnshire* cases are therefore equally relevant when considering the St Martins Road car park site as a sequentially preferable alternative. Moreover, it is an even less viable proposition than the existing Waitrose unit on the basis that it is not readily available.

- 6.57 There have been no material change in circumstances locally since the above assessment was carried out. Accordingly, the St Martins Road car park can be discounted from the sequential test on the grounds that it is not available for the proposed development and, would not be suitable or viable for a foodstore development.

### Sequential Test Conclusions

- 6.58 We have considered sequentially preferable sites within and on the edge of Rustington and Littlehampton Centres in terms of their availability and suitability as alternative locations for the Revised Proposal whilst applying a reasonable amount of flexibility. We have demonstrated that there are no sites in sequentially preferable locations that that would be available or suitable. Therefore the Revised Proposal passes the sequential test and accords with Paragraph 26 of the NPPF and Policy DEV 27 of the adopted Local Plan.

## **7.0 RETAIL IMPACT**

- 7.1 The NPPF requires that retail development should not lead to significant adverse impacts. Where no significant adverse impacts are identified (and there are no suitable and viable sequentially preferable sites available) planning applications should be approved.
- 7.2 Paragraph 26 of the NPPF requires applicants to assess the retail impact of development proposals greater than 2,500sqm on the vitality and viability of existing centres. The Application Proposal is significantly below the national floorspace threshold and therefore is not of a scale that would generally be regarded as a significant threat in retail impact terms.
- 7.3 Indeed the retail impact of the Original Proposal was thoroughly assessed and deemed not to be significant. The various parameters relating to the impact assessment were agreed with the Council's consultant (DPDS) having regard to data contained within the 2013 Retail Study and assessments relating to various other retail developments which had been approved. The impact of was tested on a solus and cumulative basis having regard to extant approvals at the Mill Lane Site and adjustments in town centre turnovers in Littlehampton and Rustington following the anticipated Waitrose relocation. It was therefore a robust assessment.
- 7.4 We do not consider that there has been a significant change in circumstances since the final conclusions were reached in respect of the Original Proposal. However, we have updated the impact assessment below having regard to the 2016 Retail Study update, planning permissions granted at the Mill Lane Site and observations concerning the current health of Rustington and Littlehampton town centres.

### **Arun Retail Study 2016 Update**

- 7.5 The 2016 Study updates population and expenditure figures and inputs relating to retail commitments. It does not provide a householder survey and therefore the 2013 Retail Study provides the most up to date information in respect of expenditure patterns.
- 7.6 For the purposes of this impact assessment we have not used the updated population and expenditure data in order to enable comparisons with the Original Application to be made more easily. The Original Application is included in the 2016 Study as a commitment and is therefore part of the baseline position within the authority. The updated capacity assessment includes the out-of-centre convenience stores around Littlehampton and Rustington within the overall turnover figures for the centres and therefore it is not possible to use these when calculating the potential impact of the Revised Proposal on the centres.

### **Mill Lane Applications**

- 7.7 Details of the most recent applications at the Mill Lane Site are set out below along with extracts from the Officer's reports.

| Application and Decision Date                                                                                                                                                                                    | Extract from Officer Report                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>A/130/15/PL</p> <p>Installation of mezzanine floor</p> <p>11 January 2016</p>                                                                                                                                 | <p><b>Retail Impact</b></p> <p>A retail addendum (RIA) has been provided by the applicant, it has been included to support the combined retail proposals. There is an increase in the number of units from two to three and also through a separate application; the addendum addresses the increase in the level of retail floorspace, with the addition of a mezzanine floor, introduced to the Next unit. The RIA addendum takes account of the split in retail floorspace now that the development proposal has moved forward from the outline stage and can more accurately predict turnover levels within the development now that two of the occupiers of the three retail units are known. The addendum specifically relates to both the reserved matters and the separate mezzanine application.</p> <p>The scope of the addendum has been discussed and agreed with ADC retail consultant's prior to submission. In particular it was agreed that the retail impact assessment necessitates a reassessment on the estimated turnover based on the known occupiers and the revised floor space figures. In the event that the estimated turnover is less than previously tested no further impact work would have been required.</p> <p>The original application for Manor Retail Park estimated a turnover figure of £21.05m (the breakdown being £13.4m Food; £5.2m Non Food (clothing and footwear); £2.45m non food bulky goods). The council's retail consultant had estimated £21.43m. The retail addendum indicates revised estimate based on two known operators for the three units. This indicated a revised development turnover of £18.9m based on ALDI, Next and the third unit which has a 523sq.m turnover. On the basis of the figures there is no additional impact from the revised proposal as it remains below the initial £21m assessment approved by the council.</p> <p>The sequential assessment included is limited to the additional floorspace being sought for the Next proposal and provides an update on the availability and suitability of each of the sites and the applicant's conclusions in relation to each sequential site. The addendum concludes that there are no available and suitable sequential sites that would be available to accommodate the Next store, nor for the Manor Retail Park development on a cumulative basis.</p> <p>In relation to the various sequential sites assessed by the applicant the St Martin's Car Park site and the former Waitrose site both in Littlehampton are the most obvious alternatives. It is stated by the applicant that St Martin's car park is not suitable for comparison goods retail. The council's retail consultant does not fully agree with this conclusion but does agree that it is unlikely to be available in a reasonable timescale. The car park has been discounted as a sequential site in relation to the outline application established the principle of retail development in this location, ref A/125/13/ and was also discounted in the M&amp;S Simply Food application, ref A/23/15. The site is therefore not sequentially more acceptable. The former Waitrose store in Littlehampton was previously considered to be unsuitable when assessed as part of the outline planning application which has established the principle for retail development at Manor Retail Park. This reserved matters application does not provide an opportunity to reassess the principle of retail development at the application site.</p> <p>In summary, the proposal would not have a significant adverse impact on Littlehampton or Rustington town centres. The Council's retail consultant concurs with the submission.</p> |
| <p>A/131/15/RES</p> <p>Reserved matters following outline approval of hybrid planning application A/125/13 for the development of the site to provide up to 3,365 sq m A1 retail use</p> <p>22 December 2015</p> | <p><b>Retail Impact</b></p> <p>A retail addendum has been provided by the applicant, it has been included to support the retail proposal. There is an increase in the number of units from two to three and also through a separate application; the addendum addresses the increase in the level of retail floorspace, with the addition of a mezzanine floor, introduced to the Next unit. The RIA addendum takes account of the split in retail floorspace now that the development proposal has moved forward from the outline stage and can more accurately predict turnover levels within the development now that two of the occupiers of the three retail units are known. The addendum specifically relates to both the reserved matters and the separate mezzanine application.</p> <p>The sequential assessment included is limited to the additional floorspace being sought for the Next proposal and provides an update on the availability and suitability of each of the sites and the applicant's conclusions in relation to each sequential site. The addendum concludes that there are no available and suitable sequential sites that would be available to accommodate the Next store, nor for the Manor Retail Park development on a cumulative basis.</p> <p>In relation to the various sequential sites assessed by the applicant the St Martin's Car Park site and the former Waitrose site both in Littlehampton are the most obvious alternatives. It is stated by the applicant that St Martin's car park is not suitable for comparison goods retail. The council's retail consultant does not fully agree with this conclusion but does agree that it is unlikely to be available in a reasonable timescale. The car park has been discounted as a sequential site in relation to the outline application established the principle of retail development in this location, ref A/125/13/ and was also discounted in the M&amp;S Simply Food application, ref A/23/15. The former Waitrose store in Littlehampton was previously considered to be unsuitable when assessed as part of the outline planning application which has established the principle for retail development at Manor Retail Park. This reserved matters application does not provide an opportunity to reassess the principle of retail development at the application site.</p> <p>In summary, the proposal would not have a significant adverse impact on Littlehampton or Rustington town centres. The Council's retail consultant concurs with the submission.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

## Updated Heath Checks

- 7.8 The Original Application included updated heath checks for Rustington and Littlehampton centres having regard to the anticipated relocation of Waitrose. Following our survey of the centres in January 2017 these heath checks have been updated again (see Appendix 5). In summary we have found that:

Rustington

- 7.9 As anticipated the departure of Co-op from the anchor unit was a temporary vacancy and the refurbished building is now occupied by Waitrose which appears to be trading well and having an overall positive impact on vitality and viability. The centre continues to provide a variety of goods and services to a large and relatively affluent residential population within an attractive and well maintained centre which has a very low level of vacancy and is well used.
- 7.10 Accordingly, Rustington has a strong and robust Centre which is attractive and well maintained and used by a loyal local customer base. It is therefore has a very good level of vitality and viability.

Littlehampton

- 7.11 Despite the departure of Waitrose from Avon Road, the vacancy rate in Littlehampton has not materially changed since the Original Application was considered. Furthermore there is evidence that a number of previously vacant units have been re-occupied and of tenant churn in other units.
- 7.12 Littlehampton continues to have a strong and attractive Centre, with a robust retail base including food and non-food traders. The town centre area provides shopping and associated services in a safe and pleasant environment. This provides a clear indication that the vitality and viability of the Centre has not suffered since the relocation of Waitrose to Rustington.
- 7.13 In any event, we consider that the large vacancy at the former Waitrose unit, Avon Road is capable of being resolved in the short term if the landlord is willing to accommodate known demand for a multi-unit scheme and make the necessary capital investment. Should this not take place until the existing lease arrangement expires in 2020, the above observations indicate that the health of the centre will not decline significantly in the meantime.
- 7.14 Littlehampton therefore has a vital and viable town centre.

**Updated Assessment of Impact on Town Centre Vitality and Viability, Local Consumer Choice and Trade in the Town Centre and Wider Area**

- 7.15 The previously submitted impact assessment was accepted by the Council following scrutiny by DPDS and the levels of impact were not considered to be significantly adverse. The following factors agreed in relation to the original impact assessment remain unchanged:
- Predicted M&S Store Turnover - £8.74m
  - Trade draw diverted from Rustington £1.67m
  - Trade draw diverted from Littlehampton £0.30m

- 7.16 The original retail impact assessment adopted a base year of 2015 and a design year of 2018. This has now been updated to a base year of 2017 and a design year of 2020. As the Waitrose store has relocated from Littlehampton to Rustington this has now been adopted as the baseline position. Two scenarios have been considered as part of this assessment, one makes an assumption that the former Waitrose unit will be reoccupied and one makes the assumption that it will not.
- 7.17 The above mentioned applications relating to the Mill Lane Site (A/130/15/PL and A/131/15/RES) were approved within the context of the Original Application. The most recently submitted impact assessment (September 2015) indicates that the turnover of the scheme will be lower than that previously assessed. Consequently we have therefore reduced the level of trade diversion from Littlehampton and Rustington to the revised Mill Lane Site.

#### Former Waitrose not Re-occupied

- 7.18 **Tables 1 – 3** (below) set out the impact of the proposed development on the assumption the former Waitrose store in Littlehampton is not reoccupied over the study period. In reality occupiers may be secured at least by 2020 when the Waitrose lease ends. However, it is additionally recognised that this could be re-developed for alternative uses such as residential.

**Table 1: Survey Derived Turnover**

|               | 2017  | 2018  | 2019  | 2020  |
|---------------|-------|-------|-------|-------|
| Littlehampton | 29.04 | 29.76 | 30.50 | 31.26 |
| Rustington    | 40.57 | 41.59 | 42.63 | 43.70 |

**Table 2: Turnover 2020**

|               | Turnover<br>£ million | Mill Lane<br>Diversion<br>£ million | M&S Diversion<br>£ million | Post<br>Developments<br>£ million |
|---------------|-----------------------|-------------------------------------|----------------------------|-----------------------------------|
| Littlehampton | 36.78                 | 1.42                                | 0.30                       | 35.06                             |
| Rustington    | 43.70                 | 1.17                                | 1.67                       | 40.86                             |

**Table 3: Impact of Revised Proposal**

|               | Cumulative Impact<br>% | M&S Solus Impact<br>% |
|---------------|------------------------|-----------------------|
| Littlehampton | 5.50                   | 0.96                  |
| Rustington    | 6.50                   | 3.82                  |

#### Former Waitrose Re-occupied

- 7.19 **Tables 4 – 6** (below) set out the impact of the proposed development on the assumption that the former Waitrose in Littlehampton is re-occupied by the end of the study period.

- 7.20 The Council's 2016 Study assumes a turnover of £5,000/sqm for new comparison goods floorspace in the centre and identifies that the net sales area of the unit to be 1,356sqm. In order to be consistent with the Study we therefore assumed that the reoccupied Waitrose unit would have a turnover of £6.78 million.
- 7.21 As identified previously, this unit is highly unlikely to be re-occupied as a foodstore and therefore we have not undertaken an assessment based on an average convenience goods turnover.

**Table 4: Survey Derived Turnover**

|               | 2017  | 2018  | 2019  | 2020  |
|---------------|-------|-------|-------|-------|
| Littlehampton | 35.65 | 36.54 | 37.45 | 38.38 |
| Rustington    | 40.57 | 41.59 | 42.63 | 43.70 |

**Table 5: Turnover 2020**

|               | Turnover<br>£ million | Mill Lane<br>Diversion<br>£ million | M&S Diversion<br>£ million | Post<br>Developments<br>£ million |
|---------------|-----------------------|-------------------------------------|----------------------------|-----------------------------------|
| Littlehampton | 38.38                 | 1.42                                | 0.30                       | 36.66                             |
| Rustington    | 43.70                 | 1.17                                | 1.67                       | 40.86                             |

**Table 6: Impact of Revised Proposal**

|               | Cumulative Impact<br>% | M&S Solus Impact<br>% |
|---------------|------------------------|-----------------------|
| Littlehampton | 4.48                   | 0.78                  |
| Rustington    | 6.50                   | 3.82                  |

**Comparison with Previous Assessment**

- 7.22 As a result of the reduced turnover of the Mill Lane site the cumulative impact has been reduced. **Tables 7 and 8** (below) compare the levels of impact accepted for the Original Application against those proposed by the Revised Application taking into account the potential for the former Waitrose unit to be reoccupied.

**Table 7: Comparison of Impact Levels – Waitrose Not Reoccupied**

|               | Original Application<br>% | Revised Proposal<br>% |
|---------------|---------------------------|-----------------------|
| Littlehampton | 5.54                      | 5.50                  |
| Rustington    | 7.29                      | 6.50                  |

**Table 8: Comparison of Impact Levels – Waitrose Reoccupied**

|               | Approved Scheme<br>% | Revised Scheme<br>% |
|---------------|----------------------|---------------------|
| Littlehampton | 7.33                 | 4.48                |
| Rustington    | 7.45                 | 6.50                |

- 7.23 This clearly demonstrates that the level of economic retail impact related to the Revised Proposal is not significant.

### **Updated Impact on Existing, Committed and Planned Development**

- 7.24 It was established in relation to the Original Application that the proposed M&S foodstore would not have an impact on existing, committed and planned development within the centres. There have been no material changes locally that would lead to a different conclusion. However, we have revisited the assessment below for completeness.

#### Littlehampton

- 7.25 The Littlehampton Vision Masterplan highlights two sites within and on the edge of the Centre for development including retail facilities as detailed below:
- 7.26 Former Market, Surrey Street - The former market site has now been redeveloped principally for housing. It is clear, therefore, that approval of Revised Proposal will not prejudice this scheme.
- 7.27 St Martin's Car Park – The St Martin's Car Park has been identified for development by the Council for a variety of uses over a long term period. We have outlined above why a retail scheme will not be viable and this has led to consideration of alternative options for the site.
- 7.28 Given the nature of, and timescales for, the St Martin's Car Park development it is clear that the Revised Proposal will not prejudice the prospects of development coming forward in the longer term.

#### Rustington

- 7.29 The only committed or planned development in Rustington town centre comprises redevelopment of the Ash Lane Site to provide a local convenience store of 437sqm following relocation of the car dealership. An operator is not known at present but the scheme has been designed to meet the generic requirements of those companies which operate small convenience stores.

- 7.30 We have explained previously that the site would not be large enough for an M&S Foodhall. It would serve a very localised catchment area providing for “basket” shopping to local residents and workers (similar to Tesco Express within the Centre). The proposed M&S would serve a different shopping function and also appeal to a much narrower customer base due to the premium range on offer. Therefore, approval of the Revised Proposal would not have an impact on delivery of the approved Ash Lane development.

### **Retail Impact Conclusions**

- 7.31 We have carried out an updated retail impact assessment in accordance with the NPPF and associated guidance within the NPPG utilising information contained within the Council’s Retail Study (as updated) and with regard to matters previously agreed in respect of the Original Application and other recent approvals at the Mill Lane Site.
- 7.32 We have demonstrated that the M&S Foodhall would not, on its own or cumulatively, have a significant adverse impact on:
- 1) Town centre vitality and viability, local consumer choice and trade in the town centre and wider area; or**
  - 2) Existing, committed and planned development within the Centres.**
- 7.33 Paragraph 26 of the NPPF states that the planning permission should only be refused where the impact would be significant. The application proposal would give rise to minimal impact on Centres which have strong levels of vitality and viability. Accordingly the impact test set out within the NPPF and Policy Dev 27 of the adopted Local Plan has been passed.

## **8.0 CONCLUSIONS**

- 8.1 This Retail Statement has been prepared in respect of the Revised Proposals for development of land off New Road, to the north of Rustington, near Littlehampton. The Statement addresses the retail policy issues raised by the proposed development of the site for an M&S Foodhall.
- 8.2 The Revised Proposal has been assessed in accordance with the NPPF, associated guidance within the NPPG and adopted Local Plan Policy DEV27. Regard has also been had to the relevant evidence base, case law and material consideration relating to the proposal.
- 8.3 We have considered sequentially preferable sites within and on the edge of Rustington and Littlehampton Centres in terms of their availability and suitability as alternative locations for the revised proposal whilst applying a reasonable amount of flexibility. We have demonstrated that there are no sites in sequentially preferable locations that that would be available or suitable. Therefore the Revised Proposal passes the sequential test and accords with Paragraph 26 of the NPPF and Policy DEV 27 of the adopted Local Plan.
- 8.4 We have also assessed the potential effect of the proposed development on Littlehampton and Rustington Centres. We consider that both are vital and viable centres, that there will be no significant adverse retail impact arising from the Revised Proposal. The application therefore accords with Paragraph 26 of the NPPF and Local Plan Policy DEV27.
- 8.5 The proposed development therefore complies with national and development plan policy concerning out of centre retail proposals.

## **APPENDIX 1**

## **FINAL CONSENT ORDER**

IN THE HIGH COURT OF JUSTICE  
QUEEN'S BENCH DIVISION  
PLANNING COURT

CO/3987/2016

BETWEEN:



R.  
(on the application of  
STORE PROPERTY INVESTMENTS LTD)

Claimant

- and -

ARUN DISTRICT COUNCIL

Defendant

- and -

(1) SDB INVESTMENTS LTD  
(2) COMMERCIAL DEVELOPMENT PROJECTS LTD  
(3) MARKS & SPENCER PLC

Interested Parties

---

CONSENT ORDER

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UPON permission being granted to apply for judicial review in this matter at an oral hearing on 27 October 2016;

AND UPON the Defendant reviewing its defence;

AND UPON the court noting the 'Statement of Reasons' appended to this order;

IT IS HEREBY ORDERED BY CONSENT THAT:

1. The claim for judicial review is allowed on Ground 1.
2. The decision that is challenged in the claim, namely the Defendant's decision on 27 June 2016 to grant planning permission for a retail development with associated features on a site south of New Road (A259) and east of Brook Lane, Angmering (Council Reference: A/23/15/OUT), is quashed.
3. Application A/23/15/OUT is remitted to the Defendant to be reconsidered.
4. The Defendant is to pay the Claimant's reasonable costs of these proceedings up to and including the date of this order, to be subject to detailed

assessment if not agreed and capped in any event at £35,000 given that this is an Aarhus Convention claim for the purposes of CPR 45.43.

5. The hearing of the claim listed for 30 March 2017 be vacated.

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Bauhaus

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M3 4AW

[REDACTED]  
Solicitors for the Defendant

Arun District Council

Arun Civic Centre

Maltravers Road

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BN17 5LF

[REDACTED]  
Solicitors for the Interested Parties

Forsters LLP

33 Hill Street

London

W1J 5LS

ADMINISTRATIVE COURT OFFICE  
BY CONSENT ORDER AS ASKED

09 FEB 2017  
[REDACTED]

*By the Court*

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## STATEMENT OF REASONS

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1. In this claim for judicial review, the Claimant challenges the decision of Arun District Council ("the Council") on 27 June 2016 to grant (i) full planning permission for a retail unit (Class A1) with an area of 1,487sqm and related works; and (ii) outline planning permission for a public house (Class A4) with an area of 561sqm ("the Permission") on a site south of New Road (A259) and east of Brook Lane, Angmering ("the Angmering Site").
2. The Permission was obtained by SDB Investments Ltd and Commercial Development Projects Ltd – the First and Second Interested Parties respectively – with the expectation that the retail unit would be occupied by a 'Simply Food' store operated by Marks & Spencer Plc (the Third Interested Party) ("M&S").
3. The Claimant is a property investment company with holdings in two settlements in the Council's District: Rustington and Littlehampton. It is the lessee of premises in Avon Road, Littlehampton, which were until recently occupied by a Waitrose food store ("the Avon Road Site"). Waitrose vacated the Avon Road Site to move to a new site in the centre of Rustington.
4. The Claimant is aggrieved that the Permission was granted on the Angmering Site, which is not in a town centre, given its belief that the Avon Road Site offered a "sequentially preferable site", in policy terms, for the Interested Parties' proposals.
5. The claim is made on 2 grounds, the first of which concerns the Defendant's application of the sequential test. Having reviewed the papers again following the grant of permission to apply for judicial review, the Council accepts that there is force in the argument that the report prepared by its officers on the planning application did not reflect the latest advice that the Council had received on the application from its retail consultant, DPDS, by letter dated 20 August 2015. The Council accepts that this advice was arguably inconsistent with advice previously given by DPDS on the same application and that officers should have attempted to

resolve that inconsistency in their report. By not doing so, the Council accepts that the members of the Planning Committee arguably failed to take a relevant matter into account and that the decision to grant the Permission should therefore be quashed due to an error of law.

## **APPENDIX 2**

### **VACANCY SCHEDULES**

**Vacancy Schedules**  
**Survey January 2017**

**Vacant Units - Rustington**

|                |
|----------------|
| 27-29 Sea Lane |
| 25 Church Road |

**Vacant Units - Littlehampton**

|                                |
|--------------------------------|
| Former Waitrose, Avon Road     |
| Vacant Post Office Arcade Road |
| 1-2 Surrey Street              |
| 6 Surrey Street                |
| 12 Surrey Street               |
| 33 High Street                 |
| 10 Beach Road                  |
| 22 Beach Road                  |
| 34-36 Beach Road               |
| 3A East Hill                   |

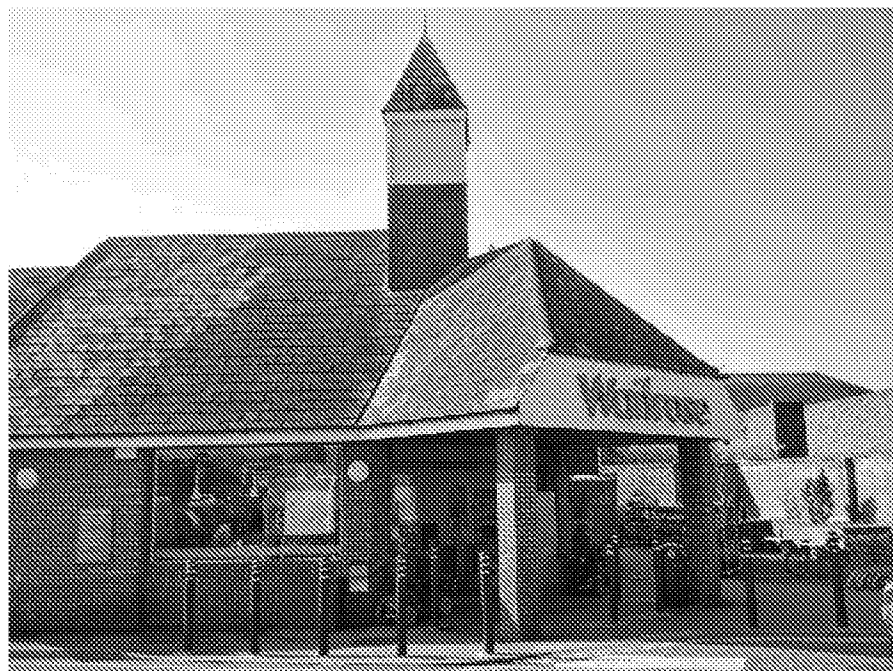
## **APPENDIX 3**

### **COLLIERS DETAILS**

# FOODSTORE/LARGE RETAIL UNIT – LEASE FOR SALE



Littlehampton – Avon Road, BN17 6AT



> Prominent town centre  
foodstore/large retail unit

> 95 car parking spaces

> Available August 2015

## LOCATION

Littlehampton is located on the south coast approximately 50 miles south west of London with a population of approximately 182,000 within a 10 mile radius.

The property is located immediately north of High Street in a prominent town centre location accessible from Franciscan Way and East Street.

## ACCOMMODATION

The property is arranged over two floors providing the following approximate gross internal floor areas:

|              |              |            |
|--------------|--------------|------------|
| Ground Floor | 18,934 sq ft | 1,760 sq m |
| First Floor  | 6,636 sq ft  | 617 sq m   |

The demise also includes the adjacent car park, currently providing 95 spaces.

## TENURE

The property is held by way of a lease expiring 24<sup>th</sup> December 2020, at a rent of £331,500 pax.

## RATES

We have been advised by the Local Authority that the premises are assessed for rating purposes as follows:

|                 |          |
|-----------------|----------|
| Rateable Value: | £277,500 |
| UBR (2015/16):  | 49.3p    |
| Rates Payable:  | £136,808 |

## EPC

An Energy Performance Certificate for the property is available on request.

## COSTS

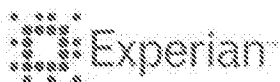
Each party is to be responsible for their own legal and all other professional costs incurred in the transaction.

## CONTACT US

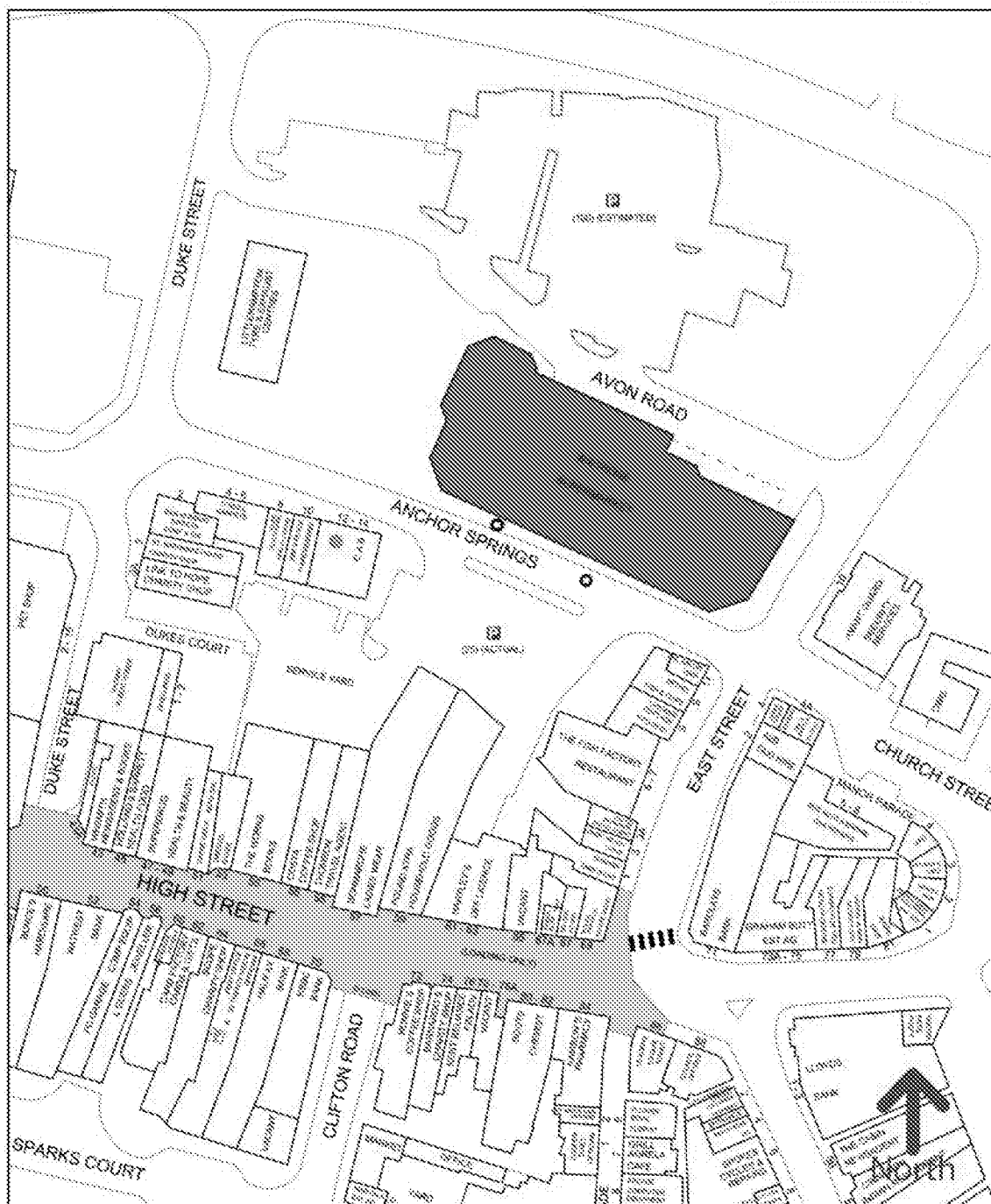
All viewings to be arranged with Colliers International, through:

Dan Simms  
+44 20 7344 6869  
Dan.simms@colliers.com

Colliers International  
50 George Street  
London W1U 7GA



Littlehampton



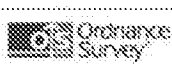
50 metres

Experian Goad Plan Created: 26/03/2015

Created By: Colliers International

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## **APPENDIX 4**

### **M&S LETTER**

Mr McEwan  
Planning Department  
Arun District Council  
Arun Civic Centre  
Maltravers Road  
Littlehampton  
West Sussex, BN17 5LF

4<sup>th</sup> June 2015

Dear Mr McEwan

**LPA Ref A/23/15/OUT: LAND SOUTH OF NEW ROAD (A259) AND EAST OF BROOK LANE, ANGMERING**

Marks and Spencer Plc (M&S) are joint applicants in respect of the above planning application which seeks full planning permission for a retail unit (Class A1) (which will be occupied by M&S). The proposed retail unit has a gross floorspace of 1,487 sqm (1,022 sqm at ground floor with a 465 sqm mezzanine).

We have reviewed the report prepared by DPDS for the Council which assesses the Retail Assessment prepared by Blue Sky Planning (BSP) to accompany the planning application. The DPDS report highlights the recent announcement regarding the closure of the Waitrose in Littlehampton (and its relocation to Rustington) and recommends that the applicant updates the sequential assessment in relation to both the Waitrose unit and its implications for the wider St Martin's Lane car park site.

Whilst the response being undertaken by BSP (now Montagu Evans (ME)) focusses on the key planning issues we have been asked to provide our comments on the former Waitrose site and the extent to which it may be suitable and viable for occupation for the proposed M & S Simply Food store. Our comments are provided in the context of the recent Tesco Stores Ltd v Dundee City Council Supreme Court Judgment (March 2012) in which Lord Hope observed (para 38) that *"the [sequential test] criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so"*. The response from ME also refers to the subsequent Zurich vs North Lincolnshire case which relates specifically to a proposed Marks & Spencer store and recognises the viability issues facing M&S in the context of the sequential approach.

**Waitrose Unit, Littlehampton**

We are very familiar with this retail unit, indeed M&S considered occupying it in Spring 2011 when it was still occupied by Somerfield. We undertook a detailed Feasibility Study which included preparing an internal layout (extracts of our 2011 feasibility study are attached – we request that these are treated in confidence). This process demonstrated however that the unit was significantly larger than our requirement (indeed our plans responded to the size of the store by proposing a "fallow" area of some 280 sqm).

In 2011 we were in fact seeking a slightly larger store than our current proposals and these proposals would have resulted in a store with a gross area of 2,436 sqm and a net sales area of 1,115 sqm (including a café of 223 sqm). In other words the store was so oversized that it would have resulted in a highly inefficient store that had a net : gross ratio of 46:100 which is entirely inconsistent with our, or any other food store operators, business model for new acquisitions. Our current proposals, with a lower net sales area of 835 sqm would result in an even more inefficient net : gross ratio.

The inappropriate size of the store was a key factor in our 2011 proposal failing to obtain M&S board approval (alongside concerns about its location and the physical state of the unit). The recent experience of Waitrose in trading from the unit for such a short period confirms both that this location was clearly not viable for Waitrose, and that it was not, and is not, a viable site for us. In summary therefore this site was a marginal location for M&S in 2011 and the experience of Waitrose means that we now have even greater concerns about locating there.

On the basis of the above, the Waitrose unit in Littlehampton is clearly not suitable or viable for M&S. The Operator Statement prepared by NLP on our behalf to accompany this application emphasises that M&S has a limited capital expenditure programme nationally for their Simply Food programme and strong competition from different locations for these monies. This means that if an opportunity being pursued proves not to be viable, the capital expenditure is likely to be reallocated to another location elsewhere in the Country where M&S are confident there are good prospects of a deliverable viable alternative and indeed this was the approach that we followed in 2011.

## **Conclusion**

Our summary above clearly demonstrates that, based on an extensive analysis in 2011, the Waitrose unit is not suitable or viable for M&S. We therefore hope the Council will recognise this and support the application proposals which will result in significant economic benefits. The M&S store alone will provide about 55 jobs in a mix of full and part time positions with most being recruited locally.

We are happy to meet with you and your colleagues, or Council members, to discuss the above and any other queries they may have in relation to our proposals.

Yours sincerely,



**Chris Smith**  
**Simply Food UK Acquisitions Manager**  
DDI: 0208 718 2863  
Email: [chris.smith@marksandspencer.com](mailto:chris.smith@marksandspencer.com)

## **APPENDIX 5**

## **HEALTHCHECKS**

## **Rustington Village Centre**

We have set out below an assessment of the vitality and viability of Littlehampton Town Centre having regard to findings of the Council's 2013 Retail Study, more recent data published by Experian Goad and our review of the Centres in January 2017.

Rustington Village Centre fulfils a District Centre role. Rustington provides 115 units in 15,338sqm retail floorspace (Experian Goad Centre Report August 2013). It is well let, providing a good range of retail and service uses with Waitrose operating as an anchor trader. Other food retailers include Iceland and Tesco Express along with independent green grocers, butcher and bakers.

### Diversity of Uses

The Goad Survey identifies that Littlehampton comprises the following:

- Convenience Goods 14% (UK average 8%)
- Comparison Goods 41% (UK average 40%)
- Service Goods 39% (UK average 36%)

The proportion of comparison, convenience and services provision is therefore above the national average.

The Council's 2013 Retail Study identified that the household survey had confirmed high levels of satisfaction with the range and choice of shops. An even higher level of satisfaction was outlined in terms of the choice and quality of service facilities.

### Retailer Representation and Intention to Change

The Centre is focused on The Street, which is anchored by a Tesco Express and Iceland supermarket. Waitrose acts as the main anchor for the Centre occupying a recently upgraded building at No1 Broadmark Lane. Other national retailers with a presence in Rustington include Boots, Superdrug, Monsoon and WH Smith. There are a good selection of banks as well as restaurants and cafes.

### Edge/ Out of Centre Provision

There is significant out of Centre provision within the wider Rustington area to the north. This includes the redeveloped Sainsburys store, Rustington Retail Park and the new development at the Mill Lane Site to be occupied by Next and Aldi. These developments are concentrated south of the A259.

### Potential Capacity for Growth

Due to the proximity of residential development on all sides, there is little opportunity for further expansion of Rustington. There is an extant planning permission for redevelopment of the former car dealership on Ash Lane which, if built out, would expand the choice of convenience top up shopping within Centre.

### Proportion of Vacant Street Level Property

We recorded 2 vacancies within the Centre in November 2015 which represents 1.7% of total units. This is well below the UK national average of 9% in terms of unit numbers. The vacant units are small scale shops less than 100sqm.

### Retailer Demand and Commercial Indicators

There is no published information for Rustington concerning commercial indicators of vitality (rental levels, yields, retail demand etc). The centre is however well managed by the owners and benefits from its own website which appears to be updated regularly with information concerning existing retailers, any vacant space, car parking and other attractions.

### Pedestrian Flows

From our own observations of pedestrian flows we found the centre to be extremely well populated with shoppers. There are good levels of footfall associated with the parades of shops along The Street. Pedestrian movement around the Centre is very good.

### Accessibility to Centre

The Centre is accessible by bus and car. Public car parking is available via two public car parks at Broadmark and Churchill Parade providing easy access to the facilities. On the day of survey both car parks were well used and it is clear that in tandem both form a vital function in ensuring the vitality and viability of the centre.

### Perception of Safety and Occurrence of Crime

Rustington appears to be and feels like a safe place to shop. The town centre environment is of high quality and provides pleasant pedestrian areas within which shoppers are segregated from vehicles. There is little sign of graffiti, damaged property or litter.

### Environmental Quality

The Centre benefits from an attractive streetscene with no obvious environmental or safety problems. It has a 'garden village' feel with well-maintained landscaping and trees between the shopping parades and the highway. The Centre is maintained to a high standard with good quality street furniture, signage and cleanliness which contribute to an attractive shopping environment. The owners have obtained planning permission to redevelop the former car showroom on Ash Lane which would be an improvement when complete.

### Conclusions on Health of Rustington Village Centre

The above demonstrates that the Rustington Village Centre provides a variety of goods and services to a large and relatively affluent residential population within an attractive and well maintained environment which has a low level of vacancy and is very well used.

Accordingly, Rustington has a strong and robust Centre which is used by a loyal local customer base. It is therefore has a very good level of vitality and viability.

## Littlehampton Town Centre

We have set out below an assessment of the vitality and viability of Littlehampton Town Centre having regard to findings of the Council's 2013 Retail Study, more recent data published by Experian Goad and our review of the Centres in January 2017.

Littlehampton is a medium sized town providing a range of shopping and other facilities. Shopping is primarily focussed on High Street, Surrey Street and the Beach Road. According to Experian Goad survey, Littlehampton comprises 166 units within 28,670qm retail floorspace. The Centre is anchored by Sainsbury. Waitrose relocated from Avon Road to the former Co-op unit in Rustington in 2016.

### Diversity of Uses

The most recent Goad Survey identifies that Littlehampton comprises the following:

- Convenience Goods 7% (UK average 8%)
- Comparison Goods 44% (UK average 40%)
- Service Goods 38% (UK average 36%)

However, this does not reflect the closure of Waitrose or the existence of Lidl which occupies an edge of centre location. We consider that it is highly unlikely that the unit will be re-occupied as a foodstore which would mean that the convenience offer within the central area would be significantly below the national average. However, this is balanced out by the Lidl store which attracts shoppers to the centre. Furthermore the relatively low convenience offer can easily be explained by the pattern of foodstore development in the catchment area which is focused around the A259.

Therefore the Centre is broadly in line with national average rate with marginally less convenience and comparison goods provision. Service uses are important in the Centre, again similar to (and slightly below) equivalent national average figures.

Within the centre, 38 outlets are operated by national multiple companies. This represents a rate of 28% compared to the national average of 28%. Only 5 of the 31 Experian "*Major Retailers*" are represented in Littlehampton Town Centre. The multiple traders include Boots, Sainsbury's, Superdrug and New Look. However, there is also a strong representation of independent retailers.

There are leisure uses such as the Inspire Leisure centre, hotels such as the East beach Guesthouse and Arun Sands Hotel, as well as private and public offices (including the Borough Council) places of worship and the Littlehampton Learning Centre. These all contribute towards, and enhance the mix of uses within the centre.

Therefore, there is a good range and diversity of uses within Littlehampton Town Centre.

### Edge/ Out of Centre Provision

There is an edge of centre Lidl supermarket which has broadened the range and choice of food shopping in and around the town centre.

Out of centre retail floorspace is limited to Tesco, Currys and Wickes at Broad Piece. Further to the north east are Sainsbury's, Rustington Retail Park and the Mill Lane Site (Next and Aldi) on the A259.

### Potential Capacity for Growth

The B2185 to the north/ west, B2187 to the east, and New Road to the south restrict opportunities to further expand the centre offer. The Littlehampton Vision Document chose to focus on identifying existing sites within the town centre for redevelopment rather than identifying opportunities to further expand the town centre as a whole. The Development Brief for St Martins Car Park envisaged a retail led redevelopment of this area. However, the aspirations for the site changed following further analysis. We consider that the site, once made available for development, presents an opportunity for leisure and/or residential uses.

### Retailer Representation and Intention to Change

The Centre contains a good variety of land uses, including approximately 38 multiple traders. The interest in convenience retailing has reduced in recent years with the closure of Waitrose and the Morrisons "M Local" store. However, the centrally located Sainsbury's and edge of centre Lidl continue to attract shoppers complimented by independent traders.

We understand that there have been expressions of interest from a range of non-food town centre operators who wish to occupy the former Waitrose unit in a subdivided format. Whilst the landlord has not yet responded to this interest it highlights some trader confidence in Littlehampton centre.

Furthermore, we note that a number of units identified as vacant in 2015 have been re-occupied and that there has been occupier churn in other units. This further outlines confidence and activity in Littlehampton despite the recent departure of Waitrose.

Littlehampton is also a tourist destination and the Centre is able to attract more diverse visitation and expenditure than competing Centres. This is a particular strength.

### Proportion of Vacant Street Level Property

Our survey of Littlehampton town centre highlighted only 10 vacant properties. This figure represents 6% of the total number of units within the town centre. This figure is considerably below the national

average of above the national average of 12%. This represents a change of only 2% since the assessment in 2015 which is explained by the closure of Waitrose and M Local (which are both now vacant). Vacancy within the rest of the Centre has therefore not changed following the closure of these stores which clearly indicates that it continues to operate well with a reduce convenience offer.

The vacancies are relatively scattered in throughout the centre without any significant concentrations of void units.

As explained above, there has been interest in the former Waitrose unit from a number of non-food operators. We consider that the unit will be re-occupied once the landlord is ready to accommodate the various requirements.

The largest vacant other unit in the city centre is the former Vacant Post Office on Arcade Road. It comprises 370sqm within a secondary location of limited appeal to most retailers. It would be better suited to a non-retail use, adding to the diversity of facilities in the Centre. Other vacancies are small scale shop units.

Therefore, the Centre does not have a problem of unduly high vacancy rates, or concentrations of vacant property.

#### Retailer Demand

Other than the interest expressed in the former Waitrose unit, there is little published demand from retailers wishing to locate in Littlehampton. The Council's Retail Study identifies that occupational requirements have diminished over the long term. However, this should not be regarded as a particular weakness as Littlehampton also has a history of low vacancy rates. Therefore the limited scope to gain representation with the Centre will be well known within the retail industry.

#### Commercial Indicators

The Valuation Office produces bi-annual reports of yields for shopping centres across the UK. This began in 1994. The latest report was produced in July 2008; the report stated that prime shopping centre yields in Littlehampton stand at 8%. This figure has been consistent for the preceding 18 months. The figure is comparable with Shoreham by Sea (8%) and slightly higher than Bognor Regis (7.25%).

The Council's Retail Study reports prime Zone A retail rents in the town centre are circa £30/sq. Ft which have fallen from £45/sqft in 2008. Secondary rents in areas such as Beach Road are £18-£20/sq. The recession has placed downward pressure on rents with landlords keen to retain tenants and retailers pushing for lower overheads. There has been a greater focus from retailers on investment in larger centres, such as Bognor Regis, than smaller ones.

An underlying weakness reported by local agents focused on the general absence of, and ability to attract new multiple retailers to the town in order to help to attract greater footfall and expenditure. The proximity of Littlehampton to the higher order centre of Worthing was identified as a key competitor when seeking to attract new retailer representation in the town.

We consider that the above factors are similar to pressures faced by many smaller towns located close to larger retail centres. The smaller Centres cannot compete with the critical mass and higher footfall of larger centres, and retailers will often not open multiple stores within the same catchment.

### Pedestrian Flows

From our observation, Littlehampton appears to have a healthy pedestrian footfall through the town centre. Pedestrian footfall is at its highest on High Street. Pedestrian footfall is at its lowest towards on South Street, however this may be due to the poorer quality retailers located within this part of the centre.

### Accessibility to the Centre

Littlehampton Town Centre is accessible by a choice of means of transport. By car the Centre is accessed via the A259 to and is in close proximity to the A27.

There are a variety of bus services providing access to and from the Littlehampton urban area, and nearby towns including Bognor, Wick and Worthing, to the town centre.

Littlehampton's main train station is located the west of the town centre. Train services are provided to London Victoria.

Currently there is excellent car parking provision servicing Littlehampton town centre including 19 car parks. The main car parks are located at -

- Manor House
- Surrey Street
- St Martins
- Anchor Springs

Specific allowance has been made for disabled access through the provision of disabled parking bays.

### Perception of Safety and Occurrence of Crime

Littlehampton appears to be a relatively safe place to shop. The town centre environment is of high quality and provides pleasant pedestrian areas within which shoppers are segregated from vehicles. There is little sign of graffiti, damaged property, litter and so forth.

The centre has a CCTV system to help maintain security and to provide re-assurance to users of the centre.

Furthermore, as a vibrant centre comprising a variety of uses throughout the day and the evening, the Centre benefits from natural surveillance provided by users of it.

### Environmental Quality

Littlehampton provides an attractive place for shoppers and other users. The High Street provides a positive shopping environment within a pedestrianised environment.

Redevelopment of the former market site on Surrey Street is now complete and has made a significant positive contribution to the Town Centre environment. The Centre provides a mixture of traditional and new buildings. In addition, St Martins Car Park offers the potential further enhancement when it is made available for development.

We therefore consider that Littlehampton has an attractive and well managed town centre.

### Conclusions on Health of Littlehampton Town Centre

The above demonstrates that that Littlehampton has a strong and attractive Centre, with a robust retail base including good representation from food and non-food traders. The recent closures of Waitrose and M Local have not impacted the general vitality and viability of the Centre. The town centre area provides shopping and associated services in a safe and pleasant environment. The Centre has been subject to recent investment through the redevelopment of the former market site on Surrey Street. Future investment in the former Waitrose site will enable demand from non-food retailers to be accommodated. Redevelopment of the St Martin's Car Park site offers further opportunity for improvement when made available for development.

Littlehampton therefore has a vital and viable Town Centre which displays no obvious signs of weakness.

