



**Date:** 14<sup>th</sup> April 2015

**Your Ref:** A/23/15/OUT

**Our Ref:** 9349

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Mr N. Crowther  
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Dear Mr Crowther,

#### **REPRESENTATIONS: A/23/15/OUT – LAND SOUTH OF NEW ROAD AND EAST OF BROOK LANE**

We write on behalf of our client Store Property Investments Limited in respect of application reference A/23/15/OUT. Our client has ownership interests in land adjoining the application site, as well as land within nearby centres.

We wish to make a number of comments on the submitted documentation, and highlight omissions from the information provided. In particular, the enclosed letter from Mayer Brown details specific technical objections to the proposed access to the site and consequent transport impacts. Within this letter we seek to discuss non-transport related matters.

#### **Matters of Clarification**

There are a number of inconsistencies within the application documents for which we consider clarification should be sought. We summarise these inconsistencies below:

|                  |                                                                                                                                                                       |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Site Area        | Within the covering letter and application documents the consultants consider the site area to be 2.6ha, whereas on the application form a figure of 2.94 ha is used. |
| Employee Numbers | Throughout the application documents and the covering letter a total                                                                                                  |

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|                       |                                                                                                                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | employment figure of 110 jobs is quoted, yet within the application form a figure of 127 is used.                                                                                                                        |
| Parking Spaces        | Whilst the 196 car parking spaces is quoted throughout the application, there is a disagreement between documents as to whether this includes disabled and parent and child, or whether these spaces are in addition to. |
| Proposed Floor Levels | In a number of technical reports it is stated that ground levels will need to be remodelled, yet elsewhere including the validation checklist it is stated that the site levels will not be altered.                     |

### Documentation not provided by the Applicants

Our analysis of the application submission has found it to be deficient in a number of respects when compared to the Council's Validation Checklists. We have summarised the information we consider is missing from the application package below:

- Biodiversity Survey Evidence:** the applicant indicates that this information is going 'to follow' although no timescales for receipt are provided. This is an important omission given the target dates for determination, and the period of time given for consultation comments. Moreover, the Council's validation checklist indicates that where 'yes' is ticked to any species under the biodiversity checklist, then surveys **must** be submitted.
- Land Engineering Works Statement:** The validation checklist indicates that this should be provided where the operational site area exceeds 0.5ha and the change in level at any point exceeds 0.3m. This has not been provided. In the validation checklist the applicants claim there are no material levels changes across the site. Having regard to the existing topography of the site and the comments within the subsequent technical documents, we consider that it is extremely unlikely that levels will remain unchanged.
- Noise/Extraction Statement:** The validation checklist indicates that all types of application for planning permission for A3/A4/A5 uses should provide a noise/extraction statement. The application does not include a noise/extraction statement.
- Tree Survey:** it is clear that a tree survey has been undertaken as the Arboricultural Method Statement refers to the category of trees to be removed. However, we have been unable to find the tree survey within the application documentation. If one has not been provided, this is a further conflict with the validation requirements.

- **Parking Plan:** the validation checklist requires this to be produced for all proposals where a new parking layout and/or access form part of a proposal. Although some parking details are provided as part of the application plans, a parking plan that accords with the requirements of the validation checklist has not been provided.
- **Planning Application Summary:** the validation checklist indicates that for major applications where the amount of documentation exceeds 100 pages, a summary must be provided of not more than 20 pages providing an overview of the proposal and a clear description of its key impacts. No summary has been provided.
- **Visual Impact Assessment:** although not part of the Council Validation checklist it should be noted that Arun District Council required the development for the adjacent site to provide a visual impact assessment. Having regard to the similarities with the current application we consider that a similar assessment should be requested of the applicant.

In respect of the national validation checklist, the drawings provided are deficient in several respects:

- The landscaping drawing does not provide details of hard landscaping;
- There is no existing/proposed floor/sites levels drawing;
- The site plan does not record written dimensions to boundaries, and does not include reference to public rights of way.

### Description of Development

We believe the description of development should be amended to include reference to a new access being sought from the A259, and should be re-advertised on this basis.

The application describes the outline element of the application as A4 (public house) use. Yet the images provided and descriptions relate to 'Toby Carvery'. Although it is stated in the application that no occupier has been secured thus far, we consider that the images being presented give a false impression of what has been put forward for approval. Furthermore, the applicant has not put forward any planning conditions or legal agreement obligations that would provide the security required in respect of the proposal being a 'family' i.e. food-oriented public house. This is particularly important to the retail statement and sequential tests considered later in this letter. We note that on recent applications submitted by Mitchells & Butler (parent company of Toby Carvery) for a new Toby Carvery, the use class sought has been A3 (Restaurant). Using a company that has as its slogan 'home of the roast' is very misleading when there is nothing in the planning application that would prevent the unit, if permitted, to be used for a traditional drink-led public house. It should also be noted that the parking standards are based on A3 use.

## **Documents Specific Queries**

We provide additional queries in respect of the application documents below. As discussed above, the specific queries in relation to the Transport Assessment and Travel Plan have been set out in a separate letter written by Mayer Brown.

### Statement of Community Involvement

In section 9 the Statement of Community Involvement provides a summary of feedback. However, the diagrams are difficult to interpret as it is not clear how many responses were provided. It would be useful if the consultant could provide the breakdown for the following methods of feedback individually:

- a) Feedback forms;
- b) Comment postcard;
- c) Other

It would also be useful to understand what methods were used to ensure that people using multiple forms of communication were not double counted.

We would also consider it would be useful to know what, if any, design changes were made to the proposed development following dialogue with the local community and also with the local planning authority.

### Lighting Assessment

The assessment does not appear to be sufficiently robust. The assessment refers to advertisement signage which does not form part of the application proposals. No lighting plan has been provided and no details of the proposed lighting scheme have been put forward. The lighting assessment has not for example considered the proximity of the proposed buildings adjacent to the A259 and the associated light spill onto the highway. The report has not highlighted areas of ecological importance and associated lighting impact of the proposals. The report has not considered the timing of the lighting, particularly having regard to the provision of a public house on the site with associated late opening times.

### Operators Statement

This statement has been produced by NLP (consultants) and not by Marks and Spencer (as stated in the application covering letter). We note that the statement refers to the application “allowing Marks and Spencer to operate”, which has caused us to question the nature and timing of Marks and Spencer’s interest in the site. Given the focus on a named retailer within the application it would be useful to understand the contractual relationship between Marks and Spencer and the development partner, particularly having regard to any legal agreements that are likely to be associated with the development. Furthermore, in paragraph 2.10 of the Operators Statement it is noted by NLP that M&S has a limited capital expenditure programme and that competition with locations elsewhere is high. Whilst M&S has been looking for a site in this area for a number of years, their commitment to the area could usefully be explored, particularly in relation to the availability of sequentially preferable sites discussed later in this letter

### Retail Statement

We have significant concerns with the Retail Statement which we expect will be addressed by the Council’s Retail Consultant.

In paragraph 1.2, Blue Sky Planning (BSP) contend that the A4 (public house) element of the application does not need to be considered as part of the retail policy assessment. This is plainly wrong. Paragraph 24 of the NPPF states that the sequential test applies to ‘main town centre uses’ that are not in an existing centre and not in accordance with an up-to-date development plan. If one refers to the NPPF glossary it is clear that main town centre uses includes pubs. Furthermore paragraph 26 of the NPPF relating to impact does not specifically refer to A1 floorspace, and therefore retail impact of the proposal as a whole should be considered by the applicant. We therefore consider that the Retail Statement should be updated to address this deficiency.

In paragraph 1.5, BSP state that “Officers considered that development of the site and associated benefits would be welcomed in principle subject to full assessment of retail policy considerations...” We would welcome the opportunity to view copies of such positively worded pre-application advice.

We are concerned at the quality of health check information provided. BSP on page 4 for example has failed to mention the addition of Morrison’s to Littlehampton Town Centre.

The retail statement is misleading in its assessment of the development opportunities in the District. Speculative claims are made with little evidence, that run counter to my client’s detailed understanding of the local area. In paragraph 2.6, BSP claim that the ‘viability’ issues faced by the Co-op, would deter most other foodstore operators from the site and that a smaller local foodstore may be appropriate. My client is the owner of the site and has progressed discussions with an alternative foodstore developer. The

consultants are therefore wrong in their assumptions. Within the same paragraph the consultant speculates that demand for the Mill Lane site is likely to be from a discount operator. Whilst we agree with the analysis that the Mill Lane site will not fundamentally change food shopping patterns in the area, we wish to correct the misleading statements in the BSP report.

Paragraph 3.1 incorrectly states that only the foodstore element falls to be considered as part of the retail statements. As indicated above, this is incorrect.

In Paragraph 3.4 the statement refers to M&S being committed to opening a Simply Food Store at the application site. The nature of this commitment is however poorly understood, as discussed in relation to the Operators Statement, and further information is required.

The sequential assessment in chapter 6 is the area of the report with which we have most criticism. We consider that the proposal fails to satisfy the sequential test, and in line with paragraph 27 of the National Planning Policy Framework (NPPF), should be refused.

At the outset the A4 element of the scheme has been completely ignored. In respect of the Broadmark Lane site the consultant's assessment is now out of date as the site can no longer be considered available. However, our client wishes to point out the flawed analysis of suitability based on the viability of the site for a high end retailer. We do not agree that because one retailer ceases to trade in a centre, it follows that an alternative will not succeed. The nature of retail churn in town centres is a result of failures followed by openings. The consultant claims that "the former Co-op unit is too large to successfully cater for the type of food shopping which takes place within Rustington Village Centre". It is now well known that Waitrose are looking to locate in Rustington; serving to prove BSP's speculative assumptions wrong. Likewise the assertions in paragraph 6.28 are erroneous. The conclusion still holds, as the site is not available to M&S – however, the speculative comments made by BSP are both false and detrimental to the efforts of many to keep Rustington a vital and viable town centre. The consultant's assertion in paragraph 6.30, that a food store of 400 sq. m gross would be appropriate for the scale and function of the centre, again lacks empirical evidence or a detailed understanding of the centre.

In respect of the Mill Lane site the consultants acknowledge that the site is both available and suitable – we would agree. The consultants however, have opted to dismiss the site as not being sequentially preferable "as it shares the same status as the Application Site". We object to this assertion. Both sites are out-of-centre, however, the Mill Lane site is preferable to the application site as it has a number of advantages in accessibility terms that BSP has failed to analyse:

- We consider that the Mill Lane site offers advantages over the application site in terms of connectivity to existing centres and therefore in accordance with the NPPF should be afforded priority in retail policy terms;

- The Mill Lane site has connections by footpath and cycleway to nearby centres. Although the application site claims to be able to tie into these connections, the distance between the two are materially larger such that the Mill Lane site is preferable.
- Paragraph 2.11 of the TA states that the proposed Mill Lane Development would bring bus services within 200m of the proposed development. This in itself demonstrates that the site has superior connections to the town centre by public transport. However we consider that this measurement is an optimistic one, even assuming provision of an internal link between the sites. The walk route between the two sites utilising the vehicular accesses and A259 would be approximately 500 metres.
- The Mill Lane access arrangement has been designed to accommodate a bus to link to existing bus operations, affording superior connectivity to town centres via public transport over the application site. The application site cannot accommodate bus provision. Should the Mill Lane development not be implemented then the nearest bus service would be approximately 800m from the western edge of the site.

The Mill Lane site is therefore well connected to nearby centres and therefore preference should be given to it. The applicant elsewhere refers to the application as a 'natural extension' to the Mill Lane site. Whilst we agree that the application site should be developed for retail use, we consider that the Mill Lane site should be the immediate priority, as it is sequentially preferable. It also has better linkages to existing retail facilities by virtue of its proximity. Furthermore the Transport Assessment for the current application asserts the importance of the Mill Lane site in accessibility terms (e.g. paragraph 2.4). In paragraph 3.13 of the TA, the applicant commits to providing elements of the infrastructure provision in the event that the Mill Lane development is not constructed prior to opening. It should be noted that the consultants have not included access arrangements of the same standard however, and therefore public transport access will not be possible as currently designed for the Mill Lane site.

We are not aware of any cases or guidance where the development partner has been a relevant consideration for the sequential approach. The National Planning Practice Guidance (NPPG) (2b-011-20140306) states "Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirement which mean that they may only be accommodated in specific locations. Robust justification must be provided where this is the case, and **land ownership does not provide such a justification.**" [our emphasis]. The statement in paragraph 6.36 is not considered relevant to the sequential assessment therefore and should be deleted.

Paragraph 6.37 provides yet more unhelpful speculation about future occupants for the Mill Lane site which is both incorrect and has no relevance to the sequential assessment.

In addition to the above, the applicant has not included the current Waitrose Littlehampton site within the sequential analysis. This is not surprising as the application was submitted prior to the exit of Waitrose being announced. However, we consider that the sequential assessment needs to be updated to consider this town-centre site.

In respect of retail impact whilst we generally agree with the conclusions we would stress that the consultant has missed important components of the health of both centres, including contributions towards the nearby centres which have been made as part of recent retail schemes.

In respect of impact assessment we consider that the impacts should be assessed on a cumulative basis. In respect of impacts we would encourage the applicant not to place undue emphasis on the Sainsbury's S106 agreement. Whilst we do not doubt Sainsbury's commitment to the town centre, the consultant should correctly state the period of time specified in the S106 for which Sainsbury's is committed to a store in the town centre.

Overall we consider there are significant deficiencies with the Retail Statement that would warrant a reason for refusal unless substantial changes are made to the report and the accessibility of the scheme.

#### Flood Risk Assessment

Page 1 and introduction are based on incorrect proposal details.

#### Arboricultural Method Statement

Paragraph 2.13 makes clear that further information will need to be submitted in respect of site levels. The application was submitted premature of this information being available. Further consultation time will need to be provided to allow for this information, if it is provided in sufficient time.

#### Planning Statement

We agree with BSP that the site provides a natural extension to the Mill Lane site, however, the relationship of the Mill Lane site to nearby retail development and connectivity emphasises the sequential preference of the Mill Lane site.

The planning statement does not refer to the retail policies within the emerging local plan policy (page 10).

In paragraph 5.5 the consultant states the proposals will not have an adverse visual impact on the open landscape. Whilst we do not disagree, we do not consider the applicant has provided sufficient evidence to support this assertion.

The job creation figures for the public house (page 12) have not been substantiated. We have reviewed applications for recent Toby Carvery openings for example and the figures have not been as high as 50.

This figure should be qualified by the consultants. Also on page 12 the applicant refers to their experience elsewhere yet have not provided reference to this end. We consider that if relevant to the consideration of the Planning Statement, this information should be provided.

In paragraph 5.7 the applicant discusses the settlement boundary. We disagree with the manner in which this is expressed. From our perspective it is considered that the way policies GEN2 and GEN3 are expressed through boundaries on the ground has become out-of-date, as they need to take account of the development needs arising in the District after 2011, and as such will be revised in the emerging planning policy. Therefore policies within the NPPF would attract greater weight than both of these policies. On the basis of the above it is considered that if Officers consider that the proposal conflicts with Policies GEN2 and GEN3 of the Local Plan 2003, this is not in itself a sufficient reason to refuse the application.

Under design (page 13) the Planning Statement claims that the height of the buildings are appropriate to local context. This cannot be judged from the application document as no parameters for the outline have been set and furthermore the proposed floor levels have not been set.

In respect of local amenity (page 14) there has been insufficient assessment to determine that the development will not give rise to any material impact in terms of noise, fumes, dust, odours or vibration.

In paragraph 5.15 BSP claim there are no suitable site for a public house in Rustington and Littlehampton town centre, even though no analysis has been carried out.

#### Design and Access Statement

We consider the statement is insufficiently detailed. The statement does not explain the design rationale and fails to address the issue of sustainability.

#### Ecological Assessment

The report has not acknowledged the need for surveys to be completed prior to determination of the application and as a consequence of the surveys not being undertaken, no recommendations have been made. On the basis that further work is required, it will be necessary to provide additional time for comments to be made on the submitted information that should have been submitted with the planning application. It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before any planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

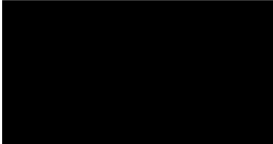
#### **Conclusion**

In conclusion, we consider there are significant deficiencies in the application. Further information and clarification could be provided, however we consider it is unlikely that this can be achieved prior to the

target for determination. In respect of the sequential assessment and access arrangements however, we consider the application should be refused.

Please do not hesitate to contact me should you require expansion on the above points.

Yours sincerely



**Serena Page**

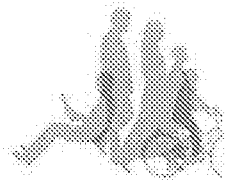
**Dalton Warner Davis LLP**

Encs. – Letter from Mayer Brown (Reference VL/SPRUSTINGTON6.1) dated 14<sup>th</sup> April



mayer brown

TRANSPORT PLANNING INFRASTRUCTURE DESIGN ENVIRONMENTAL & WATER



14 April 2015

Mr N Crowther  
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**Our Ref** VL/SPRUSTINGTON6.1  
**Your Ref** A/23/15/OUT

Dear Mr Crowther

**Mixed-Use Development on Land south of A259 New Road and East of Brook Lane,  
Angmering, West Sussex**

**Planning Application Number: A/23/15/OUT**

We write, on behalf of our client Store Property Investments Ltd to comment on the proposed development at the above site. Following the submission of the application we have had an opportunity to review the submitted documentation and wish to express serious concerns about the highway and transport impacts of the proposed development.

The proposed access design is sub-standard and the proposed mini-roundabout is insufficient to satisfactorily accommodate the four access arms resulting in a layout that compromises highway safety. This is likely to limit the current operation of sites accessed from Brook Lane and the potential of land to the west of the site.

In addition the traffic impact of the proposed development has been underestimated. Where adverse highway impacts are identified no mitigation is proposed. This, combined with the highway safety issues, results in a development where the residual cumulative transport impacts of the development are severe and the development should be refused, in accordance with paragraph 32 of the NPPF.

In terms of highways documentation, the planning application is not supported by a Design Audit, Non-Motorised Users Audit or Road Safety Audit, all of which are standard requirements for this type of development.

We consider that a holistic approach should be taken to the redevelopment of the wider area. Store Property, therefore, objects to the proposed development for the reasons set out below.

#### Proposed Access

The proposed access from the A259 does not comply with the Department of Transport (DfT) design standards. The entry radius (radius from the deceleration lane to the proposed roundabout) is shown at 20m, which is significantly below the appropriate standard. The DfT design standard DMRB TD42/95 states that for a design speed of 120kph (70mph) a minimum radius of 40m is required. To put this in context, the proposed 20m radius is only suitable for roads where the speed is below 40mph. Traffic speeds along this section of the A259 are not restricted. The Transport Assessment (TA) submitted in support of the application states that the

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traffic speed survey recorded a 67mph 85th percentile speed at the Brook Lane junction.

In our opinion the proposed mini-roundabout, which has a diameter of approximately 21m, is too small to satisfactorily accommodate four arms. The roundabout as shown is too small to provide appropriate radii and separation between arms of the junction. In particular, the accesses to Brook Lane and the land to the west are very small and appear to have been squeezed to fit in.

Brook Lane is currently a narrow access road which benefits from a straight alignment. The proposed roundabout would require vehicles to approach Brook Lane at an angle which is likely to be difficult for larger vehicles. Due to the restricted width of Brook Lane vehicles need to approach it as straight as possible. A larger vehicle would therefore be required to drive straight across the roundabout rather than navigate around the roundabout.

In addition, vehicles entering Brook Lane would need to wait on the roundabout to allow vehicles to exit Brook Lane as the access arm has insufficient width to simultaneously accommodate entering and exiting vehicles. Any vehicle waiting on the roundabout would block the exit from the proposed retail development and a larger vehicle would block both entry and exit which has adverse safety implications for both the development site and the A259. The TA assumes that Brook Lane and the land to the west will generate very low volumes of traffic. At paragraph 3.8 the TA states that *"Once within the site customers, patrons and service vehicles will pass through the on-site mini roundabout which will essentially be unobstructed by other traffic crossing their path within the site. The mini roundabout provides the most effective method of controlling the right of way for customers wishing to access and egress the main car park; for access to Brook Lane and for a potential small future development site to the west of the mini roundabout."* This is likely to limit the current operation of sites accessed from Brook Lane and the potential of land to the west of the site.

The proposed western access arm has a width of 6m, with entry radii of 4 and 4.5m. These dimensions are insufficient to accommodate HGV manoeuvres or significant volumes of traffic. The proposed access would therefore limit the future development potential of this site.

Section 3 of the TA includes consideration of compliance with relevant DfT DMRB design standards, in particular for the proposed merge and diverge lanes on the A259. The design of the proposed mini-roundabout is not discussed, yet, we understand that it is intended that the roundabout would become adopted highway. The capacity of the roundabout is not assessed.

#### Accessibility

Pedestrian access is discussed at paragraphs 3.10-3.13 of the TA and the walking catchment is shown at Figure A3. The existing public footpath to the south and west of the site which travels in a general east –west direction and crosses over the railway line to join Penfold Lane is not referenced or included in the plan. It would be relatively easy to connect the site to this existing public footpath via a pedestrian footpath along a short section of Brook Lane.

Paragraph 2.11 of the TA states that the proposed Mill Lane Development would bring bus services within 200m of the proposed development. This appears to be an optimistic measurement, even assuming provision of an internal link between the sites. The walk route between the two sites utilising the vehicular accesses and A259 would be approximately 500m. Should the Mill Lane development not be implemented then the nearest bus service would be approximately 800m from the western edge of the site, significantly in excess of the recommended 400m walk distance.

Predicted Traffic Impact

The trip rates shown at Table 4.2 of the TA are not appropriate for the proposed M&S development. The trip rates are copied from Mayer Brown Ltd.'s TA for the Mill Lane retail park development. These rates were determined based on survey data for the existing Rustington Retail Park, which includes various non-food retail developments and a Sainsbury's store. As food retail attracts significantly more trips than non-food retail, applying these rates to the food only development results in an underestimate of the M&S trips.

Based on a simple interrogation of the TRICS database we estimate that the Friday evening peak trips have been underestimated by 36%. Using the TRICS database total evening peak hour trips of 171 are predicted which is significantly more than the 126 estimated in the TA supporting the application.

The TA shows that the capacity of the A259/A2187 roundabout will be exceeded with the proposed development, with an RFC of 1.01 predicted for the A259 eastern arm of the roundabout during the evening peak hour. No mitigation is offered as the TA considers that the assessment is robust and that actual traffic flows will be less than predicted. This is not correct as the M&S traffic has been significantly underestimated. All vehicles leaving the site will turn left out and pass through the A259 eastern approach to the roundabout, irrespective of their ultimate destination, therefore, the impact on the roundabout capacity would be far greater with the correct predicted flows.

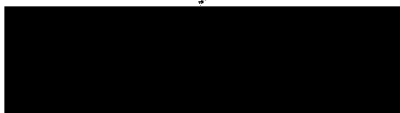
It is also noted that the growth figures shown at Table 4.1 are incorrect as traffic growth to 2016 will not be the same as growth to 2020.

Conclusion

In light of the above analysis, we consider that the proposed development would have severe transport impacts contrary to the NPPF and should, therefore, be refused.

We trust that these comments are helpful and will be considered in determining the planning application.

Yours sincerely



**Vera Lamont**  
**Director**



cc.

Sarah Wickens  
Serena Page

Store Property  
Dalton Warner Davis