Report to Arun District Council

Land at south of New Road (A259) and East of Brook Lane, Angmering

Application A/11/17/OUT - Full Planning Permission for a retail unit (A1) of 1,487 sq m and Outline Planning Permission for a Public House (A4) 587sq m

On behalf of Arun District Council

June 2017

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1.0 Background

1.1 This report has been prepared by DPDS for Arun District Council and considers the Retail Assessment prepared by Montagu Evans (ME) for application A/11/17 dated January 2017. The application is by SDB Investments Ltd, Commercial Development Ltd and Marks and Spencer PLC. We have also examined all other application documents including the Design and Access Statement, Site Layout Plan (Drawing No 1117-P-11 Rev G) and the Supporting Statement by Lichfield on behalf of M&S of 4th April 2017.

1.2 The application is a hybrid application to include full planning permission for a retail unit (Class A1) comprising 1,487sq m with associated access, car parking, servicing, landscaping & associated works and outline planning permission with some matters reserved (scale & appearance) for public house (Class A4) comprising 581sq m. The food store would provide 826 sq m of food sales, 10 sq m of comparison goods sales and 651 sq m of storage, mostly on the first floor. The site layout indicates that the food store would have 100 parking spaces and the public house 44 (both figures including disabled and parent/child spaces), but this conflicts with the Retail Statement (para 3.3) which indicates 196 parking spaces. The applicant indicates that the proposed occupier of the retail unit is M&S, operating one of its Foodhalls and M&S is one of the applicants. The Foodhall concept is described in the Lichfield statement. No occupier is named for the public house, but it is indicated that it is intended as family-orientated pub/restaurant.

1.3 The application site is a narrow piece of land north of the railway and south of New Road (A259). Access would be via a left in/left out junction on the A259 leading to a small on-site roundabout. The A259 is dual carriageway along this stretch and the distance between the roundabouts that would be used is about 2km. There is a footpath crossing the railway from Brook Lane to the land the south but the commercial and residential areas south of the railway are accessible by vehicles only via the A259.

1.4 The land to the east has been developed as the Manor Retail Park with an Aldi, Next and Tapi Carpets. Further to the east is the Rustington Retail Park. This accommodates a recently rebuilt and enlarged Sainsbury food store and retail warehouse units. These units are subject to restrictions on the goods that can be sold.

1.5 The nearest M&S food outlets are the Simply Food franchises at BP filling stations at Rustington and Findon Valley. M&S opened a Food Hall on the Arun Retail Park in Bognor Regis in autumn 2015. There is a general Marks and Spencer store in Worthing town centre which NLP describe as having a floorspace of 3920 sq m and a food hall of 900 sq m.

1.6 The applicant acknowledges that the site is out-of-centre. The nearest centres are Rustington, some 2.4 km from the site and Littlehampton, some 2.7 km away, both measurements as the crow flies. Angmering has a village centre some 2km to the north-east.

1.7 The proposed development is the same as that subject to application A/23/14/OUT, except that access arrangements have been altered. The size and format of the retail unit and the public house are unchanged. The Council granted planning permission for the earlier application but submitted to judgement following an application for judicial review by Store Property Group Ltd. That application remains to be re-determined. We take the January 2017 Retail Statement as an up-to-date statement from the applicants which serves both applications.

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1.8 We have also considered objections made to the application and will consider the objections made to the earlier application so far as they can be considered to remain relevant and raise material considerations. The objections to the current application taken into account are by Dalton Warner Davis (DWD) dated 12th April and from Waitrose dated 20th April.

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2.0 Retail Planning Policy

The National Planning Policy Framework

2.1 There is no need to do more than summarise national planning policy here. The National Planning Policy Framework establishes a presumption in favour of sustainable development, and for decision taking this is defined as granting planning permission for developments which accord with the development plan, and granting planning permission where the development plan policies are absent, silent, or the relevant polices are out-of-date unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies of the framework as a whole or specific policies in the Framework indicate development should be restricted.

2.2 In relation to the specific policies, Para 23 of the NPPF sets out the objective to ensure the vitality of town centres. Para 24 sets out the sequential test in relation to main town centre uses, and para 26 the requirement for formal impact assessment. There are two impacts identified – the impact on the vitality and viability of town centres and the impact on planned investment. Para 27 states that where an application fails either the sequential or impact tests planning permission should normally be refused.

Development Plan Policies

2.3 The statutorily adopted plan is the Arun District Plan 2003. Policy DEV 26 seeks to maintain the retail hierarchy in the District. The site is shown as outside the built-up area and not in any of the Principal Shopping Areas. It therefore falls to be considered as an out-of-centre development and subject to policy DEV 27.

2.4 This policy states that planning permission will be granted for proposals for food and non-food retail development provided that:

i) the proposal would not affect the vitality and viability of the principal or other shopping areas;

ii) the site is accessible from the highway network and by public transport;

iii) there is provision for access by cycle and on foot; and

iv) there is provision for access for people with disabilities.

The policy requires a full impact assessment for major retail development and sequential site analysis. Applicants are required to demonstrate a need for additional facilities.

Where permission is granted, conditions will be applied as appropriate to restrict the range of goods sold and the minimum size of units (to not less than 1000 sq m) with no further sub-division allowed.

There is no definition of major development in the policy, and no indication of the size of development for which full impact assessments are required. The threshold of 2500 sq m set out in the NPPF therefore applies.

2.5 The policies have been saved and, with the exception of the requirement to demonstrate the

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need for additional facilities, accord with the NPPF.

2.6 The Draft Arun District Local Plan 2013-2031 will replace the adopted Local Plan. Policy RET SP 1 seeks to retain the existing retail hierarchy and to make Bognor Regis and Littlehampton the prime locations for retail development. Rustington is intended to maintain its existing role as a centre providing a good range of shops serving the local population. Out of centre retail development is controlled by policy RET DM1, and this will reflect the NPPF sequential and impact tests. The text indicates that impact assessment will be required for retail, office and leisure development over 1000 sq m. The modifications were published on the 10th April 2017 and are subject to public consultation until the end of May.

2.7 It is clear from the above that the main retail planning policy issues can be considered under the heading of the sequential and retail impact tests.

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3.0 Sequential Assessment

Preliminary Matters

3.1 The sequential approach is well understood. LPAs should ensure that sequentially preferable sites are assessed for their availability and suitability (which would include viability) and that all in-centre options have been assessed before less central sites are considered. When considering edge-of-centre and out-of-centre sites, preference should be given to accessible sites which are well connected to the town centre. This last part of the test, introduced in the NPPF, means in practice that other out-of-centre sites should be considered in the sequential approach. Where it is demonstrated that there are no town centre or edge-of-centre sites available, applicants and local authorities are expected to have shown flexibility on issues such as scale and format. The PPG indicates that it is up to the applicant to demonstrate compliance with the sequential test.

3.2 The approach to the sequential test and the need to demonstrate flexibility in terms of scale and format was explored, as the applicant notes, in the *"Dundee judgment"* with which the Council is familiar. This judgment concerned, in part, the meaning of *"suitable"* in the context of alternative sites in the test. The conclusion was that the sites should be suitable for the broad type of development proposed, not for an alternative scheme which might be suggested by the planning authority, but that did not obviate the need for applicants to show flexibility.

3.3 ME also refers to Zurich Assurance Ltd v North Lincolnshire Council (November 2012). ME considers it particularly useful because it refers to Marks and Spencer and concerns the availability of a single alternative, town centre site. In that case, the alternative retail unit was judged to be too small and the Court found the LPA was entitled to find the unit unsuitable. It therefore adds little to the understanding of *"suitable"* in the context of the sequential test.

3.4 Since our report on the earlier application, the Court has considered the application of the sequential test further in Aldergate Properties Ltd v Mansfield DC and Regal Sherwood Oaks Ltd ([2016] EWHC 1670 (Admin)). This found (para 35) that:

"Suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer".

In para 43 Mr Justice Ouseley commented that there were instances where the identity [of the retailer] may matter

"…..notably where the town needs representation by different retailers, or where town centre sites are being hoarded by developers/ retailers who refuse to develop them, but also refuse to sell them".

3.5 The judgment took account of the judgment of the Court of Appeal in Warners Retail (Moreton) Ltd v Cotswold District Council and others [2016] EWCA Civ 606), but that case was primarily concerned with the accuracy of the advice to the Planning Committee and added little to the understanding of the sequential test in the present context.

3.6 ME comments (para 6.43) that the proposal relates specifically to an M&S Foodhall and that

case law establishes that the operator's viability requirements are a material consideration. It goes on to claim that the judgments preceding the Mansfield judgment are not to be disregarded, and notes that Dundee was a Supreme Court judgment, with the implication that if there is conflict between the two judgments, Dundee should take precedence.

3.7 However, Mr Justice Ouseley considered his judgment in the context of the Dundee case and concluded that there was no inconsistency between his approach and that of the Supreme Court. He observed that the Supreme Court was focused on Tesco's argument about the role of need in the sequential test. He added that the Supreme Court:

"….cannot have intended that the identity of the applicant or proposed operator, and the commercial requirements which flow from that particular operator's manner of retailing, or competitive position, should determine the way in which the sequential search area was defined or the sites available for that type of development were considered for suitability." (para 47)

He went on to comment that the Supreme Court:

"…cannot have supposed that its approach left no issues uncovered, all to be dealt with under the rubric of the "development proposed by the applicant", qualified only by flexibility as to format and scale."

3.8 It is therefore not a question of the precedence that should be given to the Supreme Court judgment over the High Court judgment. The two are not inconsistent. We will now turn to the extent which ME relies on the identity of the operator in applying the sequential test.

3.9 We note ME's claim, quoted above, that:

- *"… the operator's viability requirements are a material consideration"*

This is misconceived in light of the *Mansfield* judgment.

3.10 ME comments in para 6.23 that:

"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 Proposal relates to specific tenant requirements. There is a requirement to provide a store of 1,400sq m gross, with a trading area (retail and café) of some 835sq m 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*

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viability of the proposed store in this catchment area."

3.11 In our view, this approach is incompatible with the *Mansfield* judgment. While ME claims that the criteria would apply to any convenience store operator seeking to operate a similar business model, it is still clearly very specific and based on M&S's own particular requirements, not on the *"broad type of development which is proposed in the application by approximate size, type, and range of goods".* The locational requirements refer specifically to M&S. Whether this is significant in the end depends on whether there are any alternative sites available which are rejected because of the specific requirements.

3.12 The proposed public house is also a main town centre use to which the sequential test applies (see the Glossary to the NPPF). As DWD noted in its objection to the earlier application, ME has not considered more central alternative sites for this development. To consider the pub unit separately would be splitting the development into bits. As noted in the Rushden Lakes decision, the NPPF does not require disaggregation. While we consider that the disaggregation of uses may be relevant in some cases, there are no obvious reasons why it should be relevant here. ME has not included it in the site search criteria when doing so would make suitable sites harder to find and we consider that the availability of alternative sites for a single pub would be of marginal significance in the determination of the application.

3.13 A number of matters can be cleared up at this stage. We agree that the appropriate centres for search are Rustington and Littlehampton. We also accept that there are no suitable opportunities in Rustington – the former Co-op store is occupied by Waitrose and the Ash Lane site is too small and is being developed as a restaurant which is due to open shortly. We concluded in relation to the earlier application that the adjacent, Mill Lane site was not sequentially preferable and this is now developed and no longer available. Within Littlehampton, the only potential opportunities are St Martin's Car Park and the former Waitrose unit.

St Martin's Car Park

3.14 The redevelopment of St Martin's Car Park is a long term aim of the Council. It is owned by the Council, but the tyre depot, in separate ownership, could also be included. ME reject the site, first because it is in active use and therefore not available, and secondly because it is, in ME's view, unsuitable for food retailing. The use of the site is as a public car park.

3.15 In relation to availability, ME quotes the Rushden Lakes decision in which the Inspector noted that the NPPF refers to sites being available, rather than the previous guidance of sites being available within a reasonable period of time. This has been interpreted as sites having to be immediately available, but the term *"immediately available"* was not used by the Inspector or the Secretary of State and is not part of the policy or its interpretation. ME notes that the M&S Foodhall on the application site would be operating in 2018 and that alternative sites should be available in similar timescale. While not adhering strictly to that view, we note that little progress has been made on bringing the site forward in the last few years. We understand that the Council accepts that there is no immediate prospect of the site coming forward for development. Overall, we consider that it would be difficult to persuade an Inspector that the site represented a realistic alternative within a similar timescale to the proposed development.

3.16 In relation to suitability, ME claims that the site is unsuitable because of its inferior location compared with the Waitrose site in terms of accessibility from the highway network and

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connectivity to the core shopping area of Littlehampton, and states that:

"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."

3.17 We disagree with this assessment. The car park site is in our view better located for vehicular access and in terms of access to the town centre than the former Waitrose unit and a food store on the site would benefit from a more prominent location relative to the highway. It was accepted that it was unlikely to prove attractive for a food store development while Waitrose was operating from an adjacent site, but this is no longer the case. There is no indication in the company's submissions on the earlier application (letter 4th June 2015) that the M&S Board had concerns about Littlehampton as a food store location in its 2011 decision. The letter described a key factor as the inappropriate size along with its location and the physical state of the building. In our view, ME has not established that the site is unsuitable for a food store development, but we do consider that it is unlikely that it would be accepted as available in sequential test terms.

The Former Waitrose Unit

3.18 ME notes that the site is being marketed but questions how available the unit really is. It notes that the Waitrose lease runs to 2020 and that, while there have been expressions of interest from retailers, there is little incentive for the freeholder to accept an offer which would provide lower return. This is rather speculative, and we note that there would be an advantage to the freeholder in settling the long term future of the unit; as always it would be a matter of the terms on offer. Furthermore there is no reason to assume, without more evidence, that another food retailer would offer worse terms than Waitrose. We understand that Store Property Group is the current leaseholder (until 2020) and in relation to the earlier application wrote indicating that it had offered terms to M&S. Notwithstanding its concerns on the genuine availability of the unit, ME acknowledges in para 6.36 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. While there is no indication of the freeholder's or leaseholders current intentions with regard to letting, the unit is acknowledged to be on the market and we do consider that it cannot be regarded as unavailable.

3.19 In relation to suitability, ME relies heavily on the unsuitability of the unit for M&S but acknowledges in para 6.37 that the sequential test needs to be conducted in a manner that is *"retailer blind"* as clarified by the Mansfield ruling. ME considers that there are significant viability issues associated with the trading location. In support of this it notes that the unit was operated by three food retailers operating in different segments of the market – Somerfield, Co-op and Waitrose – and that the viability has been extensively tested over a number of years by a range of formats. In para 6.40, ME goes on to claim that the previous food store operators were unable to operate successfully from the unit and in para 6.48 that Waitrose had tested this over a 5 year period. In fact the site has a long history of operating as a food store, operating as Gateway in the 1980s. Gateway changed its name to Somerfield in the 1990s and the chain was taken over by the Co-op in the 2000s. The circumstances of the closure as a Co-op are not known, but there is no evidence presented that it can be attributed to its trading location, rather than, for instance, the requirement that the Co-op should dispose of a number of stores if it acquired Somerfield and/or the lease position. For the avoidance of doubt the closure of the My Local in Littlehampton was caused by company failure and provides no indication of trading

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conditions for foodstores in Littlehampton town centre.

3.20 ME also offers no evidence that the Waitrose was not operating successfully and in para 6.42 that:

"…the subsequent closure of the store is a clear indication that the site is not suitable/viable for a premium food offer."

In its objection of 20th April Waitrose denies that it was trading poorly and states that its move was prompted by a highly favourable deal offered by Store Property Group. Its move to Rustington was clearly associated with what it judged was a better offer and provides no evidence of a poor trading location. ME notes that the unit was estimated to be under-trading in the Arun Retail Study, but this was the general position of food stores in Arun District; it reflects the high level of provision compared with the population. The under-trading at Waitrose in the study cannot be attributed to the store's location.

3.21 ME also refers to an unsuccessful marketing campaign, but is somewhat inconsistent, having previously expressed concern that the unit was not genuinely available. It is not surprising that there has been little interest in the unit from food retailers; it is well known that the main retailers have drastically cut back on their expansion programmes and it is difficult to see which of the main food retailers would want a unit in Littlehampton now – all are represented in the area. We do not consider that the marketing campaign demonstrates that the location is unsuitable.

3.22 In para 6.56 ME states that the M&S Board's concerns about the former Waitrose unit related as much to the suitability of Littlehampton for convenience retailing, as to the suitability of the Waitrose building. We have already commented on this in relation to the St Martin's Car Park (with which the paragraph is concerned), but it would be equally applicable to the former Waitrose unit. However, the comment is not substantiated by any evidence and Littlehampton as a poor trading location was not mentioned in the letter from M&S submitted in relation to the earlier application or in its current statement. If it were a genuine concern, it is reasonable to expect M&S to have mentioned it.

3.23 Much of the remainder of the ME chapter on the sequential test relates to the suitability/viability for M&S specifically, which ME argues is a material consideration. It notes the comments of the Supreme Court in the Dundee and North Lincolnshire judgments, and argues in para 6.43 that the judgments are not to be disregarded following the Mansfield judgment. However, as we noted in para 3.7 above, the judgments are not in conflict with each other. In para 6.49 ME argues that the assessment has to be considered in *"real world"* terms and the market in which M&S operates. The real world comment is taken from the Dundee judgment, but as noted in Mansfield the issue the Supreme Court was addressing was *"need"* in the sequential test. The term was used to distinguish the approach that should be adopted from relying on hypothetical suggestions from the local authority. The former Waitrose unit is clearly more than a hypothetical possibility – it exists in the real world and its suitability has to be assessed in terms of the broad type of development which is proposed in the application by approximate size, type, and range of goods. Within this context, M&S's rejection of the site is impermissibly retailer-specific.

3.24 We conclude that there is a breach of the sequential test. This conclusion must also be equally applicable to any re-determination of the earlier application (A/23/15/OUT).

4.0 Retail Impact

4.1 ME notes that the proposal is well below the threshold of 2500 sq m for full retail impact assessments set out in the NPPF. It also notes that the threshold of 1000 sq m proposed in the emerging local plan is not adopted. Notwithstanding this, ME has provided a limited retail impact assessment. ME also points out that the impact was assessed in relation to the earlier application, and that we concluded that the impact could not be considered as significantly adverse.

4.2 DWD state that the applicant should be required to produce a full assessment of the retail impacts based on the latest available information and a new household survey. It claims that we were not able to come to conclusion on whether the cumulative impacts would be acceptable in relation to the earlier application and that we commented on the advantages of a new survey. We will bear these comments in mind in examining the ME impact assessment and review the position in our conclusions.

4.3 The original impact assessment for the earlier application by BSP was prepared before it was announced that the Waitrose would be moving to Rustington and we recommended in our report of May 2015 that the applicant be invited to prepare a revised impact assessment taking account of the relocation and the other matters we raised. ME responded in its report of June 2015. The revised statement was considered in our Addendum report of July. This identified that a number of issues remained as detailed in para 3.13 of the addendum, and that it was impossible to come to a conclusion on the likely impact on the town centres. This led to a letter to the Council from ME (dated 30 June 2015) which set out a revised estimate of impact which we commented on in our letter of 20th August 2015. We concluded that the solus impact would be about 1.86% on Littlehampton and 3.17% on Rustington. The cumulative impacts were estimated at 4.7% and 8.0% respectively.

4.4 Since then we have reviewed the estimates of town centre turnover in the Arun Retail Study Review 2016. These take account of new population and expenditure forecasts (from Experian) and the latest forecasts of expenditure growth, which DWD considers should be used, but there was no new survey of shopping patterns. This was not considered necessary for the purposes of the up-date. The revised estimates of the town centre turnover for 2015 before adjustments are made for the relocation of Waitrose are as follows (2011 prices):

		Comparison Goods	Convenience Goods	Total
Littlehampton	2013 Study	£22.17m	£19.90m	£42.07m
	2016 Update	£21.88m	£18.12m	£40.00m
Rustington	2013 Study	£16.80m	£8.66m	£25.46m
	2016 Update	£16.29m	£9.24m	£25.53m

We concluded:

"Overall, it is concluded that the revised population and expenditure data has had a relatively minor effect on the requirements. The new population figures start from a slightly lower base,

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and show less growth. This would indicate marginally lower floorspace capacity in the up-dated figures. The expenditure data is however higher ……"

We conclude that revised population and expenditure data would make little difference to the estimated turnover of the centres.

Centre Turnovers

4.5 ME's estimates of centre turnover are based on the 2013 Retail Study estimates rolled forward to 2018 and 2020 and take account of the transfer of 85% of Waitrose's turnover (£10.14m) from Littlehampton to Rustington. They are as follows:

	2017	2018	2019	2020
Littlehampton	£29.04m	£29.76m	£30.50m	£31.26m
Rustington	£40.57m	£41.59m	£42.63m	£43.70m

4.6 Allowing for the same transfer of Waitrose turnover, the DPDS updated figures for 2015 would be £29.86m for Littlehampton and £35.67m for Rustington.

4.7 ME makes an allowance for increasing sales per sq m of floorspace. For the combined convenience and comparison goods total the allowance is 2.5% in both centres. The combined figure will depend on the balance between convenience and comparison sales in the centre, because the two sectors are expected to perform differently, but the figure of 2.5% is a reasonable basis to work on. Applied to our updated figure for Littlehampton, this would give an estimated turnover, on our figures, of £30.5m in 2017 compared with ME's £29.04m. The figures for Rustington are £37.47m and £40.47m respectively. The difference would give lower impact figures for Littlehampton and higher impact figures for Rustington, other things being equal. We conclude that the revision of the ME figures to take account of the latest population and expenditure figures would have a limited effect on the impact conclusions.

4.8 The figures set out above do assume that the former Waitrose building in Littlehampton will remain unoccupied. In the impact assessment in relation to the earlier application, ME estimated its turnover at £5.25m based on its occupation by B&M. DWD challenged the assumption that B&M would be potential tenants, but we accepted that the estimate was reasonable for any likely retailer operating from that unit. ME now question the genuine availability of the unit while DWD assert that it is available. We note that the no-occupation scenario will give a higher estimate of the impact on Littlehampton town centre and will work to that. We will revisit this issue to examine the significance and likelihood of potential re-occupation if the no-occupation scenario indicates a significant adverse impact, but for the moment will work to the no-occupation scenario.

4.9 It is necessary to adjust the turnovers of the centres for the Mill Lane development (Manor Retail Park). This was assessed by the applicant with a turnover of £21.05m and ourselves at £21.43m in relation to application A/19/15. The estimate was revised downwards to £18.90m in relation to application A/130/15 because the retailers for two of the units were by that time known. ME estimated the trade diversion from the original development to Littlehampton and Rustington at £3.0m. With the reduced turnover of the Mill Lane development it has reduced this to £2.59m, split in the same proportion between Littlehampton and Rustington, giving the trade diversions of £1.42m from Littlehampton and £1.17m from Rustington. If these trade

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diversions are deducted from the estimated turnover of the centres on 2020 (as shown in para 4.5 above) the figures would be:

	Turnover 2020	Mill Lane Diversion	Post Mill Lane Turnover
Littlehampton	£31.26m	£1.42m	£29.84m
Rustington	£43.70m	£1.17m	£42.53m

We will test the estimated trade diversion against these figures.

Turnover of proposal and trade draw

4.10 ME has used the estimated turnover of £8.74m in 2018 for the proposal used its 2015 retail assessment (Retail Policy Response June 2015). Since then there has been inflation in the price of convenience goods but we are still working with 2011 prices so no adjustment is needed for this. There has been no significant movement in sales density performance for convenience goods and, within the context of the considerable uncertainty of how an individual outlet will perform against company average, we see no need to adjust the figures.

4.11 ME has also used the same trade draw as in the earlier assessment. We regarded this as reasonable. It is assumed that 22.5% would be diverted from shops in Littlehampton and Rustington. This amounts to £1.97m. The remainder is expected to be diverted primarily from the large food stores in the area. It is assumed by ME that, following the relocation of Waitrose to Rustington, £1.67m (85%) of this would be drawn from Rustington and £0.30m from Littlehampton. These figures were used in the earlier assessment by ME, which gave solus impacts of the proposal of 0.86% on Littlehampton and 4.02% on Rustington.

4.12 We expressed some doubts about the trade draw split in our letter of 15th August 2015 but noted if the proportion from Littlehampton were increased to one-third, the trade diversion would be increased only to £0.65m – about 1.86% and the impact on Rustington reduced to 3.17%.

4.13 These figures were based on the re-occupation of the former Waitrose unit by a retailer with a turnover of £5.25m. Adopting ME's figures for the centre turnovers with the former Waitrose building unoccupied, the following impacts are indicated on the basis of one-third trade draw from Littlehampton:

	Turnover 2020	Trade Diversion M&S	% impact
Littlehampton	£29.84m	£0.65m	2.2%
Rustington	£42.53m	£1.32m	3.1%

The impacts are reduced slightly by the adoption of a later impact year but this is more than offset in Littlehampton by the reduced turnover resulting from the omission of a retailer in the former Waitrose building.

Cumulative Impact

4.14 The combined trade diversions would be:

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	M&S	Manor Retail Park	Total
Littlehampton	£0.65m	£1.42m	£2.07m
Rustington	£1.32m	£1.17m	£2.49m

Feeding these into the estimated turnover of the centres (in the no-reoccupation scenario) gives the following cumulative impacts:

	Turnover 2020	Trade Diversion M&S	% impact
Littlehampton	£31.26m	£2.07m	6.6%
Rustington	£43.70m	£2.49m	5.7%

The impact on Littlehampton would be reduced if the former Waitrose building were re-occupied. To give a feel for the impact if the former Waitrose were re-occupied, with a store with a turnover of £5m, the impact on Littlehampton town centre would be reduced to about 5.7%.

The Vitality and Viability of the Town Centres

4.15 ME has set out an assessment of the vitality and viability of the centres in Appendix 5. It refers to this as an updated assessment but the up-dating appears to be limited with respect to Rustington to amending the original statement to include references to relocation of Waitrose. The Goad data has not been updated and the reference to vacant units in Rustington still refers to the position in November 2015.

4.16 In relation to Littlehampton, the revisions to the text are more extensive but the commercial information on rents and yields has not been up-dated and it appears the former Post Office on Arcade road is still vacant. ME fails to mention the Morrison store at Wick in the amount of out of centre floorspace. ME identifies the weakness in retailer demand and seeks to attribute this to an awareness within the industry of the shortage of available units in the centre. This is highly unlikely. It is much more likely that Littlehampton is not attractive to retailers. Elsewhere it is acknowledged that the lack of national multiples and the inability of the centre to attract new ones are identified as a weakness by local agents. While it is true that, as ME states, this is common to many small towns, it just adds to the picture of the weakness of the centre. ME's conclusions that:

"Littlehampton has a strong and attractive Centre, with a robust retail base including good representation from food and non-food traders" and

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

are not in our view realistic.

4.17 We conclude that the assessment of the vitality and viability of the centres is weak and rather cursory. However, we have been familiar with the centres over many years and the assessment presented gives us no reason to amend our previously stated views: that Rustington is a healthy and well managed centre which would be robust to trade diversion to an out-of-centre food

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store, but Littlehampton is a commercially weak centre and is vulnerable to out-of-centre retail development. ME have sought to address the effect of the closure of the Waitrose on the centre in terms of vacancies, but this does not address the more immediate likely effects, such as a decline in footfall and most of the effects are likely to be longer term and to take time to become clear.

The Impact on Investment

Rustington

4.18 ME identifies the Ash Lane site (the former Chandlers Showroom) as the only possible investment site in Rustington. It considers that the permitted unit of 437 sq m is intended as a small convenience store. In its view, this would operate in a very localised catchment area providing basket shopping, and the M&S unit would therefore not compete directly with it. The investment would therefore not be undermined. This is the same as was argued in relation to the earlier application, and we concluded that the lack of objection from DWD on the impact on this potential investment indicates that it was not likely to affect the investment decision. DWD has not objected to the proposal on this basis in its letter of 12th April and we accept that unless further information is submitted, this is still the position.

4.19 ME identifies the St Martin's Car Park site as a possible investment. ME considers that the site is not viable for a retail scheme and that this has led to consideration of alternative uses. We are doubtful that a mainly retail scheme will come forward on the site in the current climate of depressed retailer demand, and do not consider that proposals for the site are sufficiently advanced to be given significant weight, but the Council will be more aware of the up-to-date position. Unless it advises us further we conclude that the proposed store would not undermine investment on this site.

Conclusions on Retail Impact

4.20 We have estimated the likely impact on Rustington at 3.1% solus and 5.7% cumulatively. In the context of a successful and healthy centre these figures could not be considered significantly adverse.

4.21 The solus impact figure relating to Littlehampton town centre is 2.2%, assuming the former Waitrose building remains unoccupied. Even bearing in mind the weakness of the town centre, this could not, in our view, be considered a significant adverse impact. There is no national guidance on what % impact should be considered significantly adverse, and it would be inappropriate in our view because it must depend on the individual characteristics of the centres in question. A figure of 10% has been suggested from time to time, but this has not been endorsed, and considerably greater impacts have been found acceptable at appeals.

4.22 The cumulative impact of 6.6% requires more consideration, but would not in our view be sufficient to justify a refusal on retail impact grounds. In our judgment, it would be unreasonable to refuse planning permission on the basis of cumulative impact for a development which made a small contribution to that overall impact. There is no clear guidance on this matter in the NPPF or the Planning Practice Guidance and we consider that it has to be a matter of planning judgement for the local planning authority in any particular case. However, in our view, an inspector is likely to give more weight to the solus than the cumulative impact in this case because the proposal's contribution to the cumulative impact is relatively small.

4.23 These figures are based on the assumption that the former Waitrose building in Littlehampton will not be re-occupied by a retail use. However, there is a reasonable likelihood of such re-occupation and that would reduce the impact. To that extent the impact figures set out above can be considered as a worst case scenario.

4.24 Overall we conclude that the impact of the proposal would be acceptable and it would be difficult to sustain a refusal of the development based on retail impact grounds at appeal.

4.25 We have considered DWD's comments that a full impact assessment with the most up-to-date population and expenditure data and a new household survey is needed. We have demonstrated that more up-to-date economic and demographic information would not make a significant difference to the conclusions. A new household survey would always be welcome, but the restricted impact arises primarily from the size of the proposed unit and the wide range of out-of-centre retail food provision from which it would draw trade. A new household survey would lead to a different impact figure, but should not fundamentally change the basic numerical relationships between the proposal, its turnover and the turnover of the centres and out-of-centre stores which determine the estimated impact. We consider that any reasonable impact assessment would not give rise to substantially different overall conclusions and the requirement for a full impact assessment could not be justified.

4.26 In addition, the proposal falls well below the threshold required for a full retail impact assessment until the emerging Local Plan is adopted. With the level of impact suggested here, there are insufficient grounds to justify a request for information which is not required by adopted planning policy or to refuse the application on the basis of a lack of a full impact assessment contrary to the adopted policy and it is unlikely to succeed at appeal if it did so.

4.27 We therefore conclude overall that the proposed food store would not have a significant adverse impact on the vitality and viability of the relevant centres or investment in them and recommend that planning permission should not be refused on impact grounds.

5.0 Summary and Conclusions

5.1 The proposal is for a new M&S Foodhall which would have a gross floorspace of just under 1500 sq m and for a public house with about 580 sq m of floorspace. It is essentially the same development that the Council granted planning permission for in 2016 (Application A/123/15) which is to be re-determined. The site is acknowledged as out-of-centre and key planning policy issues arising from the adopted Local Plan and the NPPF are the sequential test and the likely impact on the vitality and viability of town centres, including planned investment in them.

5.2 The sequential test means that more central sites and opportunities should be favoured for retail development. These have to be suitable for the development proposed in the application and available. Since the Council considered application A/123/15, the Mansfield judgment has clarified that suitability has to be judged by the suitability for the broad type of development proposed by reference to approximate size, type, and range of goods. The particular requirements of individual retailers will not generally be relevant. The sequential test also applies to the public house proposal, but we consider that the availability of suitable sites for the public house is of marginal significance in determining this application; the applicant has not claimed that alternative sites need to be able to accommodate both developments.

5.3 We accept that there are no suitable sites available in or on the edge of Rustington but there is a potential opportunity in the former Waitrose building in Littlehampton. The applicant has sought to demonstrate that the location is not suitable by reference to the history of different food retailers in the unit, but in fact this demonstrates considerable stability over a long period of time. Waitrose has confirmed that it was trading successfully from the building and its move was prompted by incentives offered to it to move to the former Co-op store in Rustington. The applicant has also questioned the building's availability because the landlord is receiving rent on it until the lease expires in 2020 and has no incentive to find a tenant. We consider that there is still an incentive to find a long-term tenant and the building is being marketed. The current leaseholder has also offered to meet M&S's requirements in the building. We conclude that it is available. We therefore conclude that applicant has not demonstrated compliance with the sequential test.

5.4 The proposal is well below the threshold of 2500 sq m requiring a full impact assessment set out in the NPPF and there is no local threshold in the adopted local plan. We conclude that the Council cannot require a full assessment. This does not in our view mean that the likely impact is irrelevant and the applicant has addressed the issue of impact in what we regard as a proportionate way.

5.5 We conclude that the proposed food store would have an impact of about 3% on Rustington centre and about 2% on Littlehampton town centre. These figures assume that the former Waitrose building in Littlehampton will remain unoccupied and the figure for Littlehampton would be lower if it is re-let to a retailer. This level of impact stems from the limited size of the proposed food store compared with the centres and the level of out-of-centre retail floorspace which would absorb much of the trade diversion. Revised data and estimates would give different figures, but in our view, any reasonable impact assessment would come to the same broad level of impact and we conclude the proposal on its own would not have a significant adverse impact on the centres.

5.6 The cumulative impact figures taking account of recent permissions are 5.7% for Rustington and

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6.6% for Littlehampton. While these are of more concern, we conclude that they are not sufficient to justify a refusal of planning permission. In any case, in our view, considerable weight has to be given to the solus impact of the proposal and it would be unreasonable to refuse planning permission for a development on the basis of a cumulative impact to which the development in question would contribute only a small proportion.

5.7 We therefore recommend that planning permission should not be refused on retail impact grounds.

5.8 Paragraph 27 of the NPPF indicates that where a development fails either the sequential or impact test permission should be refused. Policy DEV27 of the Arun Local Plan also requires compliance with both tests. We therefore conclude that the Council should refuse planning permission unless there are other material considerations which would outweigh the sequential test objection. We have not considered other aspects of the application and it is largely a matter for the Council to decide what weight to give to other factors.

5.9 In coming to that judgement, it is however, relevant for the Council to consider whether the refusal of planning permission would further the objectives of the retail policies. The purpose of the sequential test is essentially to focus retail development in town centres but it is inherent in its formulation that the overall level of development should not be restricted. We have concluded in relation to the sequential test that there is a lack of demand in Littlehampton from the other main food retailers bearing in mind they are all represented in the area already. There is therefore little likelihood of any retailer other than M&S taking the former Waitrose unit. The sequential test can only achieve its objective if there is a real likelihood of M&S taking the unit. We are led to believe that the unit has been offered at the size and format that M&S specifies and the question is therefore whether M&S would take the unit if planning permission at Brook Lane is refused. There can be no certainty either way, but we consider that the M&S Board's decision not to proceed in 2011 is significant evidence that it would not do so now. This suggests that the weight to be given to failure of the applicant to satisfy the sequential test is not overwhelming in the absence of other retail harm.

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Old Bank House
5 Devizes Road
Swindon
SN1 4BJ

t: 01793 610222
e: dpds.swindon@dpds.co.uk

3 Gleneagles House
Vernon Gate
Derby
DE1 1UP

t: 01332 206222
e: dpds.central@dpds.co.uk

www.dpds.co.uk