

REPORT UPDATE

Application No: A/23/15/PL

Reason for the Update / Changes

The Development Control Committee resolution at 11 April 2018 was that the application be approved and the decision be delegated to the Group Head of Planning, in consultation with the Chairman and the Cabinet Member for Planning, to attach appropriate conditions to the permission, to include a S106 Agreement for contributions towards safety measures for the railway crossing and for Rustington and Littlehampton Town Centres. A Unilateral Undertaking is being prepared and an update on its status will be provided.

This update report is required to set out the amendments to the access and consider the new planning policy context following the adoption of the Arun District Local Plan and the revision of the National Planning Policy Framework.

Formal confirmation has been received that following a request to consider calling in the application, the Secretary of State decided not to call in the application.

Since the Report was originally considered, the following updates are required (listed under the original report headings):

RELEVANT SITE HISTORY:

Updates to applications listed as follows:

A/11/17/OUT:

Hybrid application - Full Planning Permission for a retail unit (Class A1) comprising 1,487sqm (1022sqm ground floor and 465sqm mezzanine) with associated access, car parking, servicing, landscaping & associated works.

Outline Planning Permission for a public house (Class A4) comprising 581sqm at ground floor level - This is a Departure from the Development Plan"

Resolution at 11 April 2018 Development Control Committee - That the application be deferred to enable the access issues to be resolved.

Applications received for the access to the adjacent site:

A/46/18/RES Land west of Brook Lane and South of A259

Approval of reserved matters following outline consent A/169/17/OUT for access. This application also lies within the parishes of Littlehampton & Rustington.

An appeal against non-determination has been received.

A/83/18/RES Land west of Brook Lane and South of A259

Approval of reserved matters following outline approval A/44/17/OUT for access only for the demolition of existing buildings on site & the erection of a mixed use development comprising up to 90 No. residential units & a care home (Use Class C2 & C3) & ancillary facilities, including railway crossing, together with associated access, car parking & landscaping. This application also lies within the parishes of Littlehampton & Rustington.

REPRESENTATIONS:

Additional representations received as follows:

Rustington Parish Council – Request for S106 funding to be considered as follows:

- Village Centre Marketing, promotion and events to directly mitigate against the impact of Marks and Spencers at the proposed location: £40,000.00 (To cover a two year period)
- Village Centre Environmental Improvements Contribution – For the purpose of funding the provision of street furniture, including bus shelter, public seats, public advertising noticeboards, reinstatement of floral baskets on lighting columns. All aimed at improving the aesthetics and facilities to promote the Village as a vital and attractive Shopping Centre: £25,000.00
- Changing Places Toilet Facility - £25,000.00 minimum
- Transport – Contribution towards the No. 12 Bus Route (currently on a trial period) bringing passengers into the Village of Rustington to shop, travelling from Littlehampton, along the seafront to Rustington Village Centre, then on to the Manor Road Retail Park and possible extension to include the new Marks and Spencer Store: (£15,000.00 per annum for a five year period) £75,000.00

Contribution towards the bus service would bring people from Littlehampton to Rustington and benefit Rustington Town Centre, in addition to providing sustainable transport to the proposed retail facility. Comments on the Travel Plan – inaccuracy relating to the provision of a bus service for the Manor Retail Park – no new bus service was considered or required as part of the permission.

Dalton Warner Davis – Agents on behalf of Store Properties (13 July 2018)

- Application needs to be returned to Committee for a decision for the following reasons:
 - No response received in relation to request to review the planning conditions and legal agreement – remain of view that S106 agreement should only be accepted by ADC if executed by all owners of the application site.
 - Members should be aware of the conflicts with the emerging Local Plan and the Inspector's Report which was not available at the time of the decision
 - From information received from a freedom of information request it has become apparent that Members have not been given robust information regarding the employment and economic benefits of the proposed development – letters from Chris Smith and James Marshall sent to Members are misleading, particularly in relation to the quantum of jobs to be provided.
 - The proposed layout is not consistent with the consented residential/ care home scheme and applicant should demonstrate how it does not prejudice the development on the adjacent site – a revised plan is required for the access. The S106 Agreement and a condition should secure access to the consented scheme.
 - M&S analysis of the sequentially preferable sites has not been made available to the Arun Planning team, nor to Members and therefore consider that the foundations upon which Members are basing their judgement could be unsound.

COMMENTS ON REPRESENTATIONS RECEIVED:

In response to the DWD concerns:

The access has been revised to take into account the access required to the consented development on the adjacent land. This initially resulted in two similar, but not identical roundabout proposals which would allow access to both sites. The applicants have confirmed that as the LHA has confirmed that either access proposal would be suitable, that they are proposing to amend their access to accord with that proposed under application A/83/18/RES.

It is not considered that the letters were misleading about the quantum of jobs. The letter from James Marshall refers to the provision of 110 permanent jobs from the development. The original Committee report included reference to the creation of 50-55 permanent jobs in relation to the public house proposal and 50-55 jobs in full and part time positions in relation to the retail element.

This application will be reconsidered by Development Control Committee in light of the adoption of the Arun Local Plan 2011-2031.

The application included sufficient information in relation to the outcome of the M&S analysis of the sequentially preferable sites, which was considered in the original reports for both applications.

In response to Rustington Parish Council's request for S106 funding:

The village centre marketing, village centre environmental improvements contributions and changing places toilet facility are not considered to be CIL compliant as there have been previous contributions to similar projects in Rustington and, as set out in the District Council's Retail Advice, Rustington is a healthy and well-managed centre which would be robust to trade diversion. The Bus contribution is considered to be CIL compliant, as it would assist in reducing the reliance on travel by car and provide public transport improvements in accordance with Policy T SP1 and T DM1 of the Arun Local Plan.

CONSULTATIONS

Additional consultation responses on the amended access plans as follows:

Highways England: Previous comments apply

Engineers (Structural): No comments

Economic Development: Confirm that the contributions towards Littlehampton Town Centre identified in 2015 remain valid to mitigate the impact of their proposal.

Local Highway Authority: Confirm that the revised drawings for the access now demonstrates that there is potential for the access to be provided to facilitate access to the site to the west. Request for conditions addressing the following matters:

- The need to produce and submit a Construction Management Plan
- That the car, cycle and motorcycle parking and internal access road, turning areas and footways and cycleways are constructed prior to first occupation of the units hereby approved
- The need to deliver the site access from the A259 in accordance with the approved drawing

Together with an Informative relating to entering into a Section 278 Agreement for works within the Highway.

CONCLUSIONS

Full element – Principles of development

The two issues set out in the Principles of development section relate to the location of the site outside the built up area boundary and the retail considerations including the impact on vitality of town centres.

The original report considered the weight to be given to the 2003 ALP and emerging ALP policies. The 2003 ALP policies are no longer part of the development plan and therefore references in the conclusion to GEN2, GEN3, DEV26 and DEV27 are no longer relevant to the re-consideration of this application. The policies were given minimal weight in the original report. As the emerging ALP has been through examination at the time the application was reported to Committee, weight was given to Policies SD SP2 and C SP1. Following adoption of the ALP, full weight can now be given to these policies. The retail policies of the emerging ALP were given substantial weight and now also have full weight. The conclusions of the assessment of the sequential test set out in the original report remain unchanged and the application remains contrary to Policy RET DM1 of the ALP. The NPPF has also been revised and paragraphs 23 – 27 have been replaced with paragraphs 85 - 90. The changes do not alter the approach to applications that fail the sequential test or are likely to have a significant adverse impact on town centre vitality and viability, which is that they should be refused. Additional wording has been added to clarify 'availability' of town centre alternatives but this does not alter the analysis as it is acknowledged that the former Waitrose unit is available.

The conclusion in relation to the Retail Impact is altered as the previous Report refers to the proposal being contrary to DEV27 (i) of the 2003 ALP, which related to the cumulative adverse impact on the Principal Shopping Areas. Therefore, the conclusion on retail impact is now that it accords with RET DM1 3a of the ALP and paragraphs 89 and 90 of the NPPF (in relation to retail impact only).

Other social and economic considerations were considered in the Report in relation to paragraph 18 of the NPPF. Paragraph 18 has been replaced with paragraph 80 which still seeks to place significant weight on the need to support economic growth and productivity. However, the previous conclusion also considered the application in relation to Policy RET SP1 and concluded that to permit out of centre convenience retail would undermine the strategic objectives of the ALP to create vibrant town centres which are a focus for quality shopping.

The overall conclusion on principle was that the proposal failed to meet the sequential test requirements contrary to RET DM1 and therefore also constituted unacceptable development in the countryside, contrary to Policy HD1 of the ANP and SD SP2 and CSP1 of the ALP remains unchanged by the deletion of references to the 2003 ALP.

Highway and transport matters

The access plan for the application has been amended and the potential link to the committed scheme A/169/17/OUT to the west of the site has been improved (Highways access plan REDW-3167-135). The LHA are satisfied that the access shown does not preclude the consented scheme from coming forward and therefore do not object. However, the proposed roundabout layout for this proposal and the adjacent access (considered under A/83/18/RES) have slightly different alignments, which would prevent one scheme being implemented. A further revised plan (REDW-3167-137) has been submitted which further amends the access plan to align with the one proposed under A/83/18/RES. There are still slight differences (with this proposal seeking a slightly larger radius roundabout). However, it is considered that the proposals could both be implemented. This would allow one satisfactory, safe and secure access to be constructed for the both schemes in accordance with Policy T SP1 of the ALP.

Accessibility

The accessibility section of the Report is now considered in relation to T DM1 of the ALP, rather than GEN15 and DEV16 of the 2003 ALP. The conclusions in relation to accessibility of the site remain unchanged in that it accords with T SP1 and T DM1 of the ALP by taking into account the need for pedestrians and cyclists to travel safely.

Bus and bus connections

The conclusions in relation to the accessibility by public transport remain unchanged, and further compliance with Policies RET DM1 and T DM1 would be ensured through the securing of a S106 contribution towards the No 12 Bus.

Parking

The conclusions in relation to parking provision remain unchanged and the proposals accord with Policy TM2 of the ANP and Policy T SP1 of the ALP.

Design, Layout and Appearance

The conclusions in relation to design, layout and appearance remain unchanged and the proposals accord with Policy D DM1 of the ALP.

Other matters

The conclusions reached in the sections on ecology, trees, flooding and drainage, archaeology, and contamination remain unchanged and the proposal accords with the adopted versions of the emerging ALP policies referenced in each section.

Infrastructure

The Development Control Committee resolution included S106 contributions towards safety measures for the railway crossing and for Rustington and Littlehampton Town Centres. The contributions listed in the original report in relation to the Littlehampton Town Centre Manager, environmental improvements and network rail contribution remain unchanged. Following negotiations and consideration of CIL compliance it has been agreed that a £75,000 contribution to the bus service in Rustington, spread over a period of five years, would provide appropriate mitigation for the impact of the scheme in relation to Rustington Town Centre. If this application were to be approved, these contributions would also be secured through a Unilateral Undertaking. The bus contribution also helps improve the sustainability of the site.

OUTLINE ELEMENT

Principle

As the consideration of the public house element of the proposal in the original report was linked to the retail element, then the amendments set out above also apply to the public house as part of the overall proposal.

Other matters

The conclusions reached in the sections on design and layout, parking, access and safety and landscaping remain unchanged and the proposal accords with the adopted versions of the emerging ALP policies referenced in each section.

UPDATED SUMMARY

At the previous Committee, Members resolved to grant approval on the basis that material considerations (namely the economic benefits of the proposal), outweighed the provisions of the development plan and NPPF in respect of the sequential test and countryside protection policies. Should Members be minded to reach the same conclusion, delegated authority to the Head of Planning would be required to allow the notification period (expiring 5th October) for the Parish Council to make representations on the minor amendment to the access plan to be concluded prior to permission being issued, unless the Parish has provided a response before the meeting. Written agreement would also be required from the applicant for any pre-commencement conditions Members consider it appropriate to impose.

UPDATED RECOMMENDATION

REFUSE FULL

1. The proposal fails to meet the sequential test requirements for convenience retail proposals in an out of centre location according to the NPPF paragraphs 86 and 90, Policies RET SP1 and RET DM1 of the Arun Local Plan (2011 - 2031). In the absence of retail justification for the proposal in this location the proposal would also constitute unacceptable development in the countryside, contrary to Policy HD1 of the Angmering Neighbourhood Plan and Policies SD SP2 and C SP1 of the Arun Local Plan (2011 - 2031).

REFUSE OUTLINE

1. As part of the overall Full scheme, the proposal fails to meet the sequential test requirements for convenience retail proposals in an out of centre location according to the NPPF paragraphs 86 and 90, Policies RET SP1 and RET DM1 of the Arun Local Plan (2011-2031). In the absence of retail justification for the proposal in this location the proposal would also constitute unacceptable development in the countryside, contrary to Policy HD1 of the Angmering Neighbourhood Plan and Policies SD SP2 and C SP1 of the Arun Local Plan (2011-2031).

PLANNING APPLICATION REPORT

REF NO: A/23/15/OUT

LOCATION: Land south of New Road (A259) &
East of Brook Lane
Angmering

PROPOSAL: Hybrid application - Full Planning Permission for a retail unit (Class A1) comprising 1,487sqm (1022sqm ground floor and 465sqm mezzanine) with associated access, car parking, servicing, landscaping & associated works.
Outline Planning Permission for a public house (Class A4) comprising 581sqm at ground floor level - This is a Departure from the Development Plan

SITE AND SURROUNDINGS

DESCRIPTION OF APPLICATION	Hybrid application for development of the site Class A1 and Class A4 Use. The proposal includes the following: Full planning permission for: Class A1 1487sqm retail (1022sqm ground floor and 465sqm mezzanine), associated access, car parking (173 parking spaces including overflow spaces), servicing, landscaping and associated works and, Outline Planning permission for: Class A4 581sqm public house at ground floor level (with scale and appearance reserved). The application has been submitted on behalf of SDB Investments Ltd, Commercial Development Projects Ltd and Marks and Spencer.
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SITE AREA	The total site area is approximately 2.60 ha
RESIDENTIAL DEVELOPMENT DENSITY	N/A
TOPOGRAPHY	The site is predominately level, sloping slightly north to south and sits lower than the A259
TREES	The site is mainly ruderal vegetation with plantation trees to the northern boundary and a group of mature trees to the south of the site.
BOUNDARY TREATMENT	The northern boundary is formed of an embankment to the A259. The other boundaries are demarcated by a mix of ditches, post and rail fencing and chain link fencing
SITE CHARACTERISTICS	The site is located south of the A259. The site is currently undeveloped greenfield land. The topography is flat, with a slight sloping north to south and is lower than the A259.
CHARACTER OF LOCALITY	The wider area to the north of the A259 still gives appearance of being rural in character with the neighbouring uses comprising a golf course and open fields beyond the A259, open fields to the west, however, the Mill Lane BMW and retail schemes to the east which have now been built which provide a more urban character and the rail line to the south.

RELEVANT SITE HISTORY

A/23/15/OUT	Hybrid application - Full Planning Permission for a retail unit (Class A1) comprising 1,487sqm (1022sqm ground floor and 465sqm mezzanine) with associated access, car parking, servicing, landscaping & associated works. Outline Planning Permission for a public house (Class A4) comprising 581sqm at ground floor level - This is a Departure from the Development Plan
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COMMENTS ON PLANNING HISTORY	This application was granted permission subject to compliance with conditions and S106 Agreement on 27 June 2016. This 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. The Order clarifies that the issue related to an inconsistency in the advice provided by the Council's retail consultants, DPDS, in relation to the sequential test and that officers should have attempted to resolve that inconsistency in their report to the Planning Committee. This application is now being re-considered concurrently to a similar application (AL/11/17/OUT) which proposes an amended access to the site. There is also a history of previous planning application on the wider area of land that includes this site.
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A/125/13/PL Hybrid planning application for the development of the site to provide in outline with all matters reserved apart from access and landscaping up to 3365 sqm A1 retail use (including parking) and full planning for 3947 sqm and Sui Generis vehicular floorspace (including ancillary facilities, landscaping and parking) including workshops, MOT facility, car valeting & car storage. New access from A259 - Departure from the Development Plan. Also within the parish of Rustington.
Approved Conditionally 13-06-2014

Land west of Brook Lane and South of A259 Angmering - the two applications below relate to the land to the west of the application proposal.

A/169/17/OUT
Approved conditionally with S106

Outline application with all matters reserved for demolition of existing buildings on site & erection of a mixed use development comprising up to 90 No. residential units, a care home (Use Class C2 & C3) & ancillary facilities including railway crossing, together with associated access, car parking & landscaping (resubmission following A/44/17/OUT). This application is a Departure from the Development Plan & lies within the parishes of Littlehampton & Rustington.

A/44/17/OUT
Approved following appeal

Outline application (with all matters reserved) for demolition of existing buildings on site and the erection of a mixed use development comprising up to 90No. residential units and a care home (Use Class C2 and C3) & ancillary facilities, including railway crossing, together with associated access, car parking & landscaping. Departure from the Development Plan. This application also falls within the parishes of Littlehampton & Rustington.

REPRESENTATIONS

Representations received in 2015/16

Rustington Parish Council support the development.

Angmering Parish Council object to the development of store, on highway grounds with vehicle movement on A259 with the adjoining development, pedestrian footpath access across the railway line (safety concern need for footbridge), no consideration to archaeological matters, accept that retail development in this location has been established but question the need for a public house. The Parish Council also raise concern especially regarding the detailed highways issues and flooding.

Four letters of objection to the development have been received from the local residents relating to highway concern and the position of the roundabout in Brook Lane considered to be too close to the A259.

48 letters have been received from local residents who support the development of Marks and Spencer store in this part of the District. They welcome the increase in retail choice in the District and locally.

Agents on behalf of Waitrose Store, object to the development on two grounds:

1. Retail Assessment of a retail store in this location on the grounds that the information provided in respect of the impact of the retail development on the town centres in Rustington and Littlehampton and number inaccuracies in the sequential test that been submitted. They have also raised concern in respect of sequential test and consider that there are alternative suitable site that would be more sustainable and have less adverse impact on the town and district centres.

2. Transport Assessment - difficult to assess the potential for vehicle/pedestrian conflict within the site without knowing the precise nature of the outline part of the application. Concern about the proposed cycle/footpath as the existing splitter island within the southern mouth of the junction with Mill Lane is considered of inadequate size to serve as effective refuge for the enhanced numbers of pedestrian and cyclists likely to be using the proposed crossing facility.

Concern over vehicle turning southbound on Mill Lane and whether they have sufficient visibility to stop for crossing pedestrians. Insufficient detail within the submitted drawings to establish if westbound cyclists using the proposed cycleway will be slowed prior to attempting to cross the junction mouth to the central refuge/splitter island. Given the indicated alignment they may do so with their backs to approaching traffic seeking to enter the development and may cross into their path, leading to conflict and collision.

The location of the proposed unloading point requires a complex manoeuvre within a confined area. Will lead to HGV's reversing into the site via the roundabout which would cause conflict. Swept path analysis for vehicles leaving the site should vehicles overrunning the centre island for almost 50% of the manoeuvre.

The Agent has also raised concern on the assessment of the County Highway Officer to the design solution for the mini roundabout on Brook Lane and the Road Safety Audit.

The Agent acting for Ropemaker Properties Ltd, the owners of the former Waitrose Store on Littlehampton, state that the applicant has not considered alternative site sufficiently and that their property in Littlehampton which was purpose built as food store would be suitable for retail food store. The property can be adopted/sub-divided to meet their requirement.

The Agents acting for the owner of the adjoining site which is being developed for Sui Generis (Car Show and related uses) and A1 retail use also raise concerns on the Retail Impact Study and the Sequential Test that has been submitted with application.

Representations received 2017

Angmering Parish Council - Objection:

- Previously stated grounds of objection remains
- Retail Statement doesn't consider the effect on Angmering, store would be within the Angmering boundary and this should be recognised.

Rustington Parish Council - Objection:

- Disagree with the accuracy of the sequential test carried out by the applicant
- Previous allocation of S106 monies between Littlehampton and Rustington should be re-appraised to reflect cumulative impact of 4.48% for Littlehampton and 6.5% for Rustington
- Retail Assessment of Rustington inaccurately reflects recent closure / re-location of businesses and migration of trade to larger out of town supermarkets
- Appendix 5 inaccurate - five vacant units, not two
- Health Check inaccuracies in respect of Rustington - only one greengrocer and 'Monsoon' is an Indian Restaurant, not the retailer

- Addition to significant out-of-town provision will have cumulative adverse impact on Rustington's village centre
- Travel Plan and Travel Assessment out of date and inaccurate
- May wish to make further comments following publication of ADC's Retail Study update.

Local residents raised the following issues in objection:

- New retail assessment inaccurate, particularly the health check section
- Retail Assessment Statement does not appraise changes to local trading conditions - 3 main retail units in Rustington have become empty since January 2017
- Citing existing out of (or edge of) centre stores on the area as reasons for no identified need and resulting diminishing of market share of existing retailers
- Concern over job losses in other existing stores
- Concerns that another existing supermarket may re-locate to occupy the store
- New Retail Assessment is required
- Disagree with conclusions in relation to vitality and viability of Littlehampton Town Centre
- Travel Plan and Transport Assessment are out of date e.g. local bus information
- Parking issues already related to BMW Chandlers site and Manor Retail Park

Dalton Warner Davis - Agents on behalf of local landowner (on behalf of Store Property Investments Ltd.) with interests in the town centre - Objection raising the issues below:

26 May

- Continue to formally object on basis that there is a sequentially preferable site, previous objections remain.

- Comments provided on Lichfields 'M&S' Statement (4th April) - stating that the former Waitrose site in Littlehampton meets the objectives and criteria for site selection set out in the Statement and performs better against the criteria than the application site. Comparison of demographic profile provided to demonstrate this and reasons for why the Waitrose site is preferable. Employment and training benefits would provide further benefit if located in town centre location.

- Comments on Retail Statement March 2017 - disagree with content of the Report. Not relevant to refer to conclusion reached in relation to the original application as decision making flawed. Disagree with view that there had not been a material change in circumstances since the previous Retail Statement. Agree that the 2016 Retail Study is a further material consideration but wasn't a full update. New retail assessment should accompany both applications to take into account relevant changes to shopping patterns in the intervening period.

- Criticism of sequential assessment - considerable detail about specifics of M&S and their format provided - contrary to need for sequential test to be fascia blind. Implications of Aldgate case not fully considered in relation to suitability and availability. Disagree with conclusions on availability. Consider Waitrose site to be vacant, actively marketed and attempts have been made to contact M&S about the site. Disagree with view that there are 'significant viability issues relating to the trading location'. Cross refer to Waitrose responses to support position. Council's Retail Study did not contain any concerns about future trading performance of the then Waitrose store. Incorrect to state that matters of retail policy were fully considered as part of the Original application. Application relies on dated Board decision and therefore cannot be said to be retailer blind. No indication that the site has been re-considered. Additional evidence required to demonstrate unsuitability.

- Criticism of Retail Impact - disagree with interpretation of retail auditors response. Point out that DPDS were not able to conclude that the cumulative impacts would be acceptable, nor that the proposed development would have a significant impact on planned investment in Rustington. Updates to retail model too limited.

11 July

- Holding objection

15th August

- Consider it in the public interest that Members of the Planning Committee have sight of legal advice provided in relation to DPDS Report.
- Recommendation of the DPDS Report is endorsed and the former Waitrose Unit should be considered available for the purposes of the sequential test and that rejection of the site's suitability is impermissibly retailer-specific. Advice in DPDS Report is that the applicant's retail assessment is flawed in terms of sequential approach and to approve the application would be to breach the sequential test.
- Retail impact - disagree with the conclusion reached by DPDS in relation to shopping patterns. Assessment of cumulative impact would be sensitive to changes in shopping patterns and applicant should be asked to update their assessment to provide full impact assessment.
- Retail impact - concerns raised by Waitrose and their client about impact of the proposed development should be taken into account when considering impact, along with Parish Council concerns.
- DPDS failed to highlight significant benefits the retail development could bring to the town centre of Littlehampton and the investment and opportunity that will be lost if sequential approach not properly followed. Waitrose site available and suitable for the proposed development.
- Consideration of alternative retail considerations - comment on weight given in DPDS report to material considerations. 'Mansfield case' clear that it is inappropriate to rule out the town centre as potentially more suitable location purely because of the identity of the proposed retailer.
- No recent evidence to show that the M&S Board would reject the town centre site and no attempt to seriously consider how the proposed use could occupy the town centre site. Examples given of retailers accepting town centre sites after arguing that they would not occupy them.
- DPDS report attempts to reapply the factors that they have ruled out from the sequential assessment - which diminishes the significance of, or overrides, consequences of failing the sequential test. Undermines the application of the test of reasons set out in Mansfield decision.
- Disagree with market view put forward by DPDS. Health check assessment shows number of vacant units in 2015 have been re-occupied. Shows continued and sustained retailer interest in the centre.
- Waitrose has highlighted that the location was viable for retail development, therefore difficult to understand how DPDS can sustain an argument that there is not a realistic prospect of re-occupation.
- Disagree with DPDS assessment that there is an 'absence of other retail harm' as no robust assessment that demonstrates whether this is the case.
- DPDS not advised how the planning permission will be made specific to M&S in the event that permission is granted on the basis of an individual retailer's refusal to occupy a town centre site.
- Request Retail Impact Analysis is based on up-to-date data on current shopping patterns in the catchment area and further information from the proposed occupier to demonstrate that there has been a detailed consideration of the available and suitable town centre site.

23 March:

- Re-iteration of concerns relating to
 - o vehicular linkage to Manor Retail Park
 - o pedestrian linkage to the south/railway bridge
 - o cumulative impacts
 - o suggested conditions if recommended for approval

Waitrose - objection (June 2017) :

- Disagree strongly with the comments that Waitrose in Littlehampton 'failed to operate successfully' or that the store was not 'viable' and was 'a failure' whilst it was open there.
- Considerable investment placed into the Littlehampton store - was purpose built as a food supermarket and physically suitable and traded well during that time, being connected to the town centre and with its own adjoining level car park.
- Decision to relocate to Rustington was due to significant and commercially generous incentive package from the landlord of the Rustington Store, not due to the performance of the Littlehampton store.
- Remain concerned that proposed Simply Food store will have significant and detrimental impact on the Rustington Waitrose Store and Rustington Town Centre as a whole.

COMMENTS ON REPRESENTATIONS RECEIVED:

The correct notices were served by the applicant.

CONSULTATIONS

Engineering Services Manager
Engineers (Drainage)
Environmental Health
Highways England
Network Rail
Ecology Advisor
Archaeology Advisor
WSCC Strategic Planning
Sussex Police-Community Safety
Parks and Landscapes
Southern Water Planning
Environment Agency
Engineers (structural)
Worthing Borough Council
Arboriculturist
Economic Regeneration
WSCC Strategic Planning
Engineers (Drainage)

CONSULTATIONS RESPONSES RECEIVED:

SOUTHERN WATER

- The applicant will need to ensure that arrangements exist for the long term maintenance of the SUDS facilities. Where a SUDS scheme is to be implemented, the drainage details submitted to the local planning authority should:
 - Specify the responsibilities of each party for the implementation of the SUDS scheme
 - Specify timetable for implementation
 - Provide a management and maintenance plan for the lifetime of the development. This should include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- Should this application be approved, the following condition should be attached to the consent:
- "Construction of the development shall not commence until details of the proposed means of foul and surface water sewage disposal has been submitted to and approved in writing by the local planning authority in consultation with Southern water."

HIGHWAYS ENGLAND

- No objection

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NETWORK RAIL

- Network Rail object to the proposed development due to its proximity to the Level Crossing on Brook Lane and the grounds of objection are:
 - An increase in use of the Level Crossing on Brook Lane which has poor sighting of trains, even with the presence of a whistle board, and poor track curvature will import additional risk to the safety of the rail network and its users.
 - Given the size and nature of the development an increase in footfall over the Level Crossing is likely to occur as pedestrians travel to the services that will be provided as part of the proposal which include retail units and a public house.
- Suitable land is available for the construction of a footbridge over the railway and Network Rail would support the construction of a footbridge at the developers expense.

WEST SUSSEX HIGHWAY

- First Response:
- The County Highway Officer raised number of issues to the details of the highway design and related information. These included:
 - the case for a further departure from standard (TD42/95 7.54) relating to the nearside entry kerb radius
 - the tight entry corner radius, restricted visibility around the exit corner radius and restricted forward visibility to the mini roundabout
 - The motorcycle parking standards: the provision falls short of the required standard, however, it is considered acceptable given the likelihood of linked trips and the nature of provision
 - Car Parking: a total of 196 car parking spaces, including 16 disabled and 8 parent/child spaces. The requirement for 5% of the parking provision to be set aside for use by disabled persons has therefore been met.
 - Cycle parking: 22 spaces have actually been provided to serve both the food store and the pub. There are no WSCC cycle parking standards for pubs but some provision should be made. The food store standard equates to 30 cycle spaces, but the TA states that 16 have been shown across the site as a whole. It appears that the provision across the site should be increased to at least meet the food store standard as the extension to the cycle/footway will encourage cycle trips to the site.
 - Servicing: the proposed units will be serviced from two separate areas. The proposed foodstore has a service yard to the east, accessed via the main internal spine road, which is 7m wide. A tracking diagram has been provided that successfully illustrates a 16.5m articulated vehicle manoeuvring through the access, turning within the yard and leaving. The pub will be serviced from an area between the main internal road and the service yard associated with the pub. Access from this area will be restricted by rising bollards to allow HGVs through only. Vehicle tracking diagrams showing a 16.5m articulated vehicle and a 12m rigid beer lorry shows that these vehicles can safely manoeuvre through the site.
 - Waste collection from the respective service yards: given that a 16.5m articulated vehicle can safely manoeuvre, a refuse vehicle will also be able to. However, tracking for a fire appliance will be required, as although it could access the service yards, it has not been demonstrated that they would be able to manoeuvre throughout the car park if a fire occurred in these locations.
 - It is considered likely that the proposed food retail store would attract pedestrians and cyclists from the nearby residential areas via this route, even though it appears there is no legal right of way over the section between the railway and the site. Contributions may therefore be sought towards surfacing improvements of footpath 2159 by the WSCC Public Rights of Way Team.

Second Response

- Vehicular Access: the deceleration lane and entry corner radius have been considered as Departure from Standard (DfS) applications and these have been signed off on the basis that a 43m increase in the deceleration lane length is provided to allow a comfortable additional deceleration down before the 20m diverge radii and the nose ahead of the merger taper has been reduced to 35m from previous 40m. This is therefore considered to be acceptable.
- Further comments have been made on the access design which will need to be incorporated. The County Highway Engineer has also provided comments regarding detailed design.
- Comments raised in the First Response have been addressed, however County Highway Officer has requested further information in respect of the following:
 - Adjustment to deceleration lane length
 - Revision to Merge Lane width
 - Forward Visibility Splay alongside splitter island
 - Consideration of redesign of mini-roundabout & speed reduction measures
 - Ped/Cycle route extension with highway boundary overlain, and implications for earthworks/retaining structures shown
 - Agreements in relation to pedestrians along Brook Lane
- Third Response
- The County Highway Officer has agreed the additional information provided and has advised that appropriate conditions are included on the planning consent to ensure compliance.
- In response to Mayer Brown letter 19 Jan:
 - Take account of committed development site A/169/17/OUT to demonstrate that the proposed application does not preclude the committed development from coming forward.
 - Take account of the trips associated with the committed scheme and demonstrate that their proposed access arrangements do not preclude the committed scheme from coming forward and that an access to this site can be achieved.
 - Access to A/169/17/OUT could be achieved via the adjacent site and a right of access agreed between both parties. The agreement of any rights of access is a private matter not a planning matter and should be agreed between the relevant land owners.
-
- WEST SUSSEX COUNTY COUNCIL ENGINEERS
 - Standard conditions should be applied. Any SuDS or soakaway design must include adequate groundwater monitoring data to determine the highest winter groundwater table in support of the design.
-
- WEST SUSSEX COUNTY COUNCIL FLOOD RISK MANAGEMENT CONSULTATION
 - No objection
-
- ENVIRONMENT AGENCY
 - That the following planning conditions are imposed as without these conditions, the proposed development on this site poses an unacceptable risk to the environment and we would wish to object to the application.
-
- Condition 1
 - The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) [32447/4001] and the following mitigation measures detailed within the FRA:
-
- 1. Any changes in ground levels are shown to not result in any loss of fluvial flood storage
- 2. Finished floor levels are set no lower than 0.3m above the 0.1% (1in1000) fluvial flood level already supplied by the Environment Agency.
-
- The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.
-

- Condition 2
- The development hereby permitted shall not be commenced until such time as a scheme to discharge surface water has been submitted to, and approved in writing by, the local planning authority. The scheme shall include:
 - 1. Calculations showing that the scheme can attenuate the 1% (1in100) annual probability event with 30% allowance for climate change on site.
-
- The scheme shall be fully implemented and subsequently maintained, in accordance with the timing / phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the local planning authority.
-
- SUSSEX POLICE
- The Design and Access statement submitted with the application fails to mention any crime prevention measure to be incorporated into the design and layout of the development. This Statement should demonstrate how crime prevention measures have been considered in the design and layout of the development.
-
- ECOLOGY
- No Objection subject to appropriate condition being included on the planning permission for the full mitigation strategy for water voles and reptiles to be submitted for approval prior to any works commencing onsite.
-
- TREE, LANDSCAPE AND GREENSPACE
- No objection subject to submission and approval of full landscape scheme. Long term management of the developing landscape would need to be considered and the landscape scheme should maximise the biodiversity of the site with the inclusion of native species and the retention of a variety of habitats.
-
- Archaeology
- There archaeological interest recently identified on the adjacent site. It would be appropriate to investigate the site in advance of development in order to identify deposits of significance that might be affected by it and to ensure their preservation, either in-situ or by further investigation and recording or both.
-
- ECONOMIC REGENERATION
- Would prefer to see a development such as this within an existing town centre. Concerned about the impact that such a development would have on the retail centres of Littlehampton and Rustington and would require that all possible measures are taken to mitigate this impact.
-
- Should permission be granted, would wish to see the developer agree to a Skills Plan and also sign up to the Arun Developer and Partner Charter, particularly important with regard to, where possible, using local companies in the physical development of the site and employment for local people. The developer should also make a contribution towards the future management and regeneration of the District and local centres in Littlehampton and Rustington.
-
- ENVIRONMENTAL HEALTH
- No objection to the proposed development. The A4 use premises will require to be registered under the Food Safety Act 1990 and will need to comply with the standards contained in the relevant Food Hygiene Regulations prior to becoming operational.
- Condition requiring Construction Management Plan to also apply to retail unit and standard condition on contaminated land.
-
- ENGINEERS (STRUCTURAL)
- No comments of a structural nature.
-
- Updated Consultee responses 2017/18:
-
- TREE OFFICER:
 - - No trees of merit within the site
 - - Previous comments apply

- Development should accord with AMS Report and Tree Protection Plan
-
- GREENSPACE:
 - Previous comments apply
 - No detailed landscaping scheme submitted
 - Trees and shrubs to frontage would soften the scheme
-
- SOUTHERN WATER:
 - Previous comments apply
-
- SUSSEX POLICE:
 - Further crime prevention advice not relevant
-
- WEST SUSSEX COUNTY COUNCIL:
 - No further comments to make
-
- WEST SUSSEX HIGHWAY
 - No further comments to make having reviewed the substitute Retail and Operator Statements.
-
- In response to Mayer Brown letter 19 Jan:
 - Take account of committed development site A/169/17/OUT to demonstrate that the proposed application does not preclude the committed development from coming forward.
 - Take account of the trips associated with the committed scheme and demonstrate that their proposed access arrangements do not preclude the committed scheme from coming forward and that an access to this site can be achieved.
 - Access to A/169/17/OUT could be achieved via the adjacent site and a right of access agreed between both parties. The agreement of any rights of access is a private matter not a planning matter and should be agreed between the relevant land owners.

Additional response 20th April:

- Applicant's response fails to address points raised above in relation to taking account of and demonstrating that it does not preclude a committed development (A/169/17/OUT) from coming forward.
- The proposed access arrangements from both sites (A/23/15/OUT and A/11/17/OUT) are conflicting. A revised drawing needs to be submitted that demonstrates how access can be provided to their site and the adjacent. Drawing number REDW-3167-131 (Highway Access Plan) should be updated to include an overlay of the adjacent site and demonstrate how a safe and appropriate access could be provided to the adjacent site.
- Consideration not given to additional flows from A/169/17/OUT within the submitted Transport Assessment.

COMMENTS ON CONSULTATION RESPONSES:

- comments noted

POLICY CONTEXT

Designation applicable to site:
 Outside Built Up Area Boundary
 Out of Town Centre

DEVELOPMENT PLAN POLICIES

Arun District Local Plan 2003:

DEV26	Criteria for Retail Development
DEV27	Retail Development Outside the Principal Shopping Areas
AREA17	Sites of Archaeological Interest
GEN3	Protection of the Countryside
GEN11	Inland Flooding
GEN12	Parking in New Development
GEN14	Public Transport
GEN15	Cycling and Walking

GEN18	Crime Prevention
GEN2	Built-up Area Boundary
GEN29	Nature and Conservation Across the District
GEN32	Noise Pollution
GEN33	Light Pollution
GEN34	Air Pollution
GEN7	The Form of New Development
GEN8	Development and the Provision of Infrastructure
GEN9	Foul and Surface Water Drainage

Publication Version of the
Local Plan
October 2014
(as updated January 2018)

QE DM4	Contaminated Land
D DM1	Aspects of Form and Design Quality
D SP1	Design
ECC DM1	Renewable Energy
EMP DM1	Employment land:Development Management
EMP SP1	Employment land provision
ENV DM3	Non Designated Sites
ENV SP1	Natural Environment
INF SP1	Infrastructure provision and implementation
QE DM2	Light Pollution
QE SP1	Quality of the Environment
RET DM1	Retail Development
RET SP1	Hierarchy of Centres
SD SP1	Sustainable Development
SD SP2	Built -Up Area Boundary
SKILLS SP1	Employment and Skills
T SP1	Transport and Development

Angmering Neighbourhood Plan 2014 POLICY TM1 Local Highways
Angmering Neighbourhood Plan 2014 POLICY HD1 Built-up Area Boundary
Angmering Neighbourhood Plan 2014 POLICY EH3 Flood Prevention
Angmering Neighbourhood Plan 2014 POLICY TM2 Cycling Walking & Equestrian

PLANNING POLICY GUIDANCE:

NPPF National Planning Policy Framework
NPPG National Planning Practice Guidance

POLICY COMMENTARY

The Development Plan consists of the Arun District Local Plan 2003, West Sussex County Council's Waste and Minerals Plans and Made Neighbourhood Development Plans.

A new Local Plan is in preparation and constitutes a material consideration when determining planning applications. The Arun District Local Plan 2011-2031 (Publication Version) October 2014 and supporting documents were submitted for independent examination on 30 January 2015. The Examination into the submitted plan was suspended whilst Arun District Council addressed matters raised by the Inspector and published modifications to the emerging Local Plan, but it resumed on 17th September 2017 and has now concluded. The Main Modifications to the emerging Arun Local Plan and evidence base were available for public consultation over a six week period which started on Friday 12 January and ended on Friday 23 February 2018. The District Council is awaiting the Inspector's report which is due out in late Spring/ early Summer 2018.

The policies are published under Regulations 19 and 35 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

The Neighbourhood Development Plan

Where applicable, Neighbourhood Development Plan's (more commonly known as a neighbourhood plan or NDP), once made by Arun District Council, will form part of the statutory local development plan for the relevant designated neighbourhood area. Whilst an NDP is under preparation it will afford little weight in the determination of planning applications. Its status will however gain more weight as a material consideration the closer it is towards it being made. Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

Made Plans in Arun District Council's Local Planning Authority Area are: Aldingbourne; Angmering; Arundel; Barnham & Eastergate; Bersted; Bognor Regis; Clymping; East Preston; Felpham; Ferring; Kingston; Littlehampton; Rustington; Walberton; Yapton.

Arun District Council will make reference to an NDP when it has, by the close of planning application consultation, been publicised for pre-submission consultation (Reg.14).

The made Angmering Neighbourhood Plan 2014-2029 is relevant to this application.

DEVELOPMENT PLAN AND / OR LEGISLATIVE BACKGROUND

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:-

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

The proposal is not considered to comply with relevant Development Plan policies in that it is outside of the built up area boundary contrary to HD1 of the ANP and GEN2 and GEN3 of the ALP and contrary to DEV26 and DEV 27 of the ALP in that the proposal fails to demonstrate that there are no suitable site can be found either within the existing town centre or on the edge of the centre, and therefore fails to retain the existing retail hierarchy.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background and this is discussed in the conclusions section of this report.

CONCLUSIONS

As this application is a hybrid application, the following report considers the full element (A1 retail, access, car parking, servicing, landscaping and associated works) and outline element (A4 public house) separately.

FULL ELEMENT

The following section of the report considers the full element of the proposal which is for Class A1 1487sqm retail (1022sqm ground floor and 465sqm mezzanine), associated access, car parking (173 parking spaces including overflow spaces), servicing, landscaping and associated works.

PRINCIPLES OF DEVELOPMENT

It is considered that there are two issues of principle central to the assessment of this application: development outside the built-up area boundary; and retail considerations and its impact on the vitality of the town centres.

Development outside the built up area boundary:

The Arun Local Plan (the 'ALP') shows the site as lying within an area outside the built up area boundary (as established by Local Plan Policies GEN2 and GEN3). Within this area only certain

categories of development are allowed as an exception to the general policies of restraint that apply. The proposal does not fall into one of these exceptions, however, GEN2 includes clause which states that outside the built-up area boundaries development will not be permitted unless consistent with other Local Plan policies. GEN3 (iv) also refers to development not being permitted unless it accords with a policy in Sections 2 and 3 of the plan referring to a specific use or type of development. Retail development therefore needs to be considered in relation to Policies DEV26 and DEV27 before it can be determined if the proposal complies with GEN2 and GEN3.

The site lies outside the built up area boundary set out in the Angmering Neighbourhood Plan Policy HD1 ('the ANP') which seeks to limit new development to within the boundary to prevent encroachment into the open countryside. The policy also includes the wording 'development outside the Built-up area Boundary shall not normally be permitted subject to the other policies in the Neighbourhood Plan, the emerging Arun Local Plan and the South Downs National Park Local Plan'. There are no relevant retail policies in the ANP but as it cross-refers back to the emerging Arun Local Plan, the retail policies below would be applicable in determining compliance with HD1.

The modified emerging Arun Local Plan (January 2018) (the 'modified eALP') shows the site as outside the built up area boundary and partly within a Biodiversity Opportunity Area. Therefore, the application should be contrary to Policy SD SP2 of the eALP which seeks to focus development within the built up areas, rather than countryside. Policy C SP1 restricts development in the countryside unless it meets the criteria in the policy (a) to (e) or accords with other policies in the Plan which refer to a specific use or type of development (f). The proposal does not meet any of the criteria (a) to (e), but criterion (f) means that it should be considered under Policy RET DM1 which specifically covers retail development. The conclusion on compliance with C SP1 is therefore considered later in the report in conjunction with RET DM1.

The weight ascribed to these policies needs to be assessed. Policies GEN2 and GEN3 in the Arun Local Plan are considered to have minimal weight as the ALP does not plan for retail development beyond 2011, it pre-dates the NPPF and the built up area boundaries are based on development needs as they were understood in 2003. The protection of the countryside for its own sake (GEN3) is also not consistent with the NPPF. Therefore, GEN2 and GEN3 should be given minimal weight.

Policy HD1 of the ANP has an identified objective of retaining the rural character of Angmering through defining the built up area boundary. As a more recently made neighbourhood plan Policy HD1 has full weight as part of the development plan. As the ANP provides a relevant and up to date development plan policy (HD1), paragraph 14 of the NPPF (which sets out a "Presumption in Favour of Sustainable Development" for decision taking) does not apply to this proposal.

The modified eALP has been through examination and further consultation on modifications following the examination which has now concluded and the Inspector's report awaited. Therefore, as it is close to being able to be adopted, some weight can be given to Policy SD SP2 and C SP1 as a material consideration.

The recent permissions granted for the use of the neighbouring site to the east for retail development (Manor Retail Park) and the land to the west for a residential development and care home (to the west of Brook Lane) in this location are also material considerations, to which some limited weight can be given. When considering the purpose of the built-up area boundary, part of its role is to preserve the setting of existing settlements by protecting the surrounding countryside from unnecessary development. It also provides a means of identifying the point of transition between the built form of a main settlement and the surrounding countryside. In this location, there were two potential boundaries to the north of Rustington - the railway and the A259. The recent permission referred to above have had the effect of moving the boundary from the railway line to the A259 and based on the principles set out in the eALP (paragraph 7.2.7) the built up area boundary would now extend around the two sites, leaving a gap in the centre of the built up area boundary. The Manor Retail Park has changed the character of this area from open countryside to a more urban form, and this proposal would be seen as an extension of that urban form - which would then continue to the west with the residential and care home permission (A/169/17/OUT), rather than an encroachment into open countryside.

The conclusion on whether the principle of development is acceptable in a countryside location is set out following consideration of the relevant retail policies.

Retail considerations:

The Arun Retail Study is also a material consideration, as it provides information on retail need to support the eALP. The Arun Retail Study (2013) didn't identify any requirements for specific retail allocations within the eALP or establish any need for out-of-centre retail development. The Study was updated in 2016 and concluded that there were no additional requirements following the increase in housing development proposed. However, the Study included the original application as a commitment which added to the turnover capacity for convenience goods. The Study establishes that the loss of the Waitrose unit from retail use in Littlehampton would reduce the surplus and that it is unlikely that the former Waitrose premise would be occupied by a convenience goods retailer, but this was made on the assumption of the original permission as a commitment.

The retail elements can be considered against ALP policies DEV26 and DEV27 and modified eALP policies RET SP1 (Hierarchy of town centres) and RET DM1 (retail development).

ALP Policy DEV26 sets out criteria for the assessment of retail developments. It states that retail development which does not affect the existing retail hierarchy will be permitted, provided that criteria are met.

As an out of centre development, Policy DEV27 applies. Part (i) requires that the proposal does not adversely affect the vitality and viability of the Principal Shopping Areas and local shopping areas, either as individual developments or cumulatively with similar existing or proposed developments. Part (ii) and (iii) relate to the accessibility of the site from the highway network and public transport and for the site to be accessible by cycle and on foot. Part (iv) requires appropriate provision to enable access for people with disabilities. The Policy also requires applications to be accompanied by a full assessment of impact on town and nearby centres as well as demonstrating that no suitable town centre or edge of centre sites can be found. The Policy also refers to demonstration of need for additional facilities.

Minimal weight is given to DEV27 as it does not fully conform with the NPPF - in that the NPPF doesn't require demonstration of need and the wording in relation to impact in the policy is 'adversely' rather than 'significant adverse impact' in the NPPF, so the bar is set higher than the NPPF.

Policy RET SP1 identifies the hierarchy of Town Centres with paragraph 9.2.1 identifying that impact assessments for growth of office, leisure and retail development will be required from a threshold of 1,000 sqm for Town Centres, Large Service Centres and the Six Villages and 200 sqm for village and suburban centres.

Policy RET DM1 (3) states that Town Centre uses located outside of the centres defined on the Policies Maps will only be permitted if;

- 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 foot;
- d. The scheme includes appropriate provision to enable access for people with disabilities.

As the Plan has reached an advanced stage towards adoption and there are no outstanding objections to the retail policies above they can be afforded substantial weight as a material consideration.

NPPF Paragraph 23 requires planning policies to be positive, promote competitive town centres and ensure sites are available in suitable centre and edge of centre sites for main town centre uses. Where centre and edge of centre locations are not available, accessible locations well connected to the town centre should be considered.

Paragraph 24 of the NPPF requires a sequential test to be applied on planning applications for main town centre uses that are outside an existing centre or not in accordance with an up-to-date development plan. 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.

Paragraph 26 of the NPPF requires an impact assessment for development located outside of a town centre or not in accordance with an up-to-date Local Plan which exceed a proportionate locally set threshold (a default threshold of 2,500sqm if there is no local policy threshold). The emerging Local Plan under paragraph 9.2.1 sets a threshold of 1,000 sqm for Town Centres, Large Service Centres and the Six Villages and 200 sqm for village and suburban centres.

Paragraph 26 goes on to note that impact assessments should consider two matters:

- i. The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- ii. The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application was 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.

Paragraph 27 states that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, it should be refused.

A key consideration in the determination of this application will be compliance with the sequential assessment and impact tests identified within the NPPF. The sustainability and accessibility issues will be considered in the highways and transport section of the report.

An applicants updated Retail Assessment (the 'Assessment') (January 2017) has been provided with the application in order to evidence the sequential test and retail impact assessment. Whilst the application has been submitted with M&S as joint applicants, the proposal is considered on the basis that it is an A1 retail foodstore, rather than specific to M&S. The Assessment sets out that the trading format proposed is for an M&S operated Foodhall.

The Council has sought retail specialist advice on the Retail Assessment from DPDS (Report to ADC June 2017, the 'Retail Advice') which has informed the assessment below and considered representations made on the retail assessment.

Sequential test-

The claim for Judicial Review that the original application (A/23/15/PL) was subject to, resulting in the decision being quashed, was due to an inconsistency in the advice in relation to the sequential test, which should have been resolved in the Committee Report. This is a new decision on a new application which relates to the same proposal in retail terms (but an amended access) as the original application. The previous decision on the original application can be taken into account as a material consideration but only very limited weight should be given to the sequential test element of that decision. There is also more up to date information and differing policy circumstances (e.g. progression of the emerging Local Plan) which mean that this application is considered differently from the original decision.

Dealing first with location, the applicant confirms the trading requirements of a Marks & Spencer Foodhall as:

Format - a store of gross 1487 sqm with a net trading area of 835sqm

Parking - level surface access for trolleys

Servicing - controlled dedicated servicing access

Location - commercial prominence and access via car to capture passing trade and divert expenditure from neighbouring out of centre retail.

The site is out-of-centre, which the applicant acknowledges and the Council's Retail Advice concurs, with the nearest centres being Rustington (2.4km) and Littlehampton (2.7km) and the village centre at Angmering (2km) and therefore, Policy DEV27 of the ALP and Policy RET DM1 of the modified eALP apply.

The Assessment establishes an area of search which considers sites within or on the edge of Littlehampton and Rustington town centres. The Council's Retail Advice agreed with the applicant that the area of search is considered to identify the most appropriate centres in relation to the proposal and so this element of the Assessment is acceptable. The Mill Lane site (which at the time had an un-implemented planning permission for retail development) was not considered to be sequentially preferable to the application site and the Council's Retail Advice concurred with it being excluded from the Assessment. The scope of the Assessment is therefore acceptable.

The NPPF requires that applicants and local planning authorities demonstrate flexibility on issues such as format and scale when applying the sequential test. The Assessment included flexibility in the criteria used for the sequential assessment, with a 10% tolerance in the store size and a site size of 0.3ha to accommodate a unit of the above size with surface level parking and servicing.

Case law is used by both the applicant, objectors and the Council's Retail Advice to seek to demonstrate flexibility. The Judicial Review claim on the original application focussed on the High Court ruling of *Aldersgate Properties vs Mansfield District Council* (8 July 2016), which makes it clear that the sequential test cannot be interpreted on the basis of an individual retailers corporate requirements or limitations and the proper interpretation of NPPF para 24, that the identity of the applicant or proposed occupier is irrelevant.

The Assessment refers to the *Tesco Store Limited v Dundee City Council* case and state that this established that local authorities should not expect applicants to have to adapt their proposals beyond what would be reasonable having regard to established business models and the development for which permission is sought. The Council's Retail Advice considers that the conclusion of the case was that 'sites should be suitable for the broad type of development proposed, not for an alternative scheme that might be suggested by the planning authority, but that did not obviate the need for the applicants to show flexibility'. The Council's view is consistent with the Retail Advice and that the case did not mean that the decision of the applicant to apply for a particular development on a particular site was a determining factor.

The Assessment also refers to the *Zurich v North Lincolnshire* case, arguing that the case demonstrated that viability issues facing M&S and the need to provide a store that complies with their specific requirements assists in the interpretation of the sequential test. The Council's Retail Advice considers that this case adds little to the understanding of 'suitable' as alternative retail unit was judged to be too small and the Court found that the LPA was entitled to find the site unsuitable. The Council's view is that the sequential test should be approached on the basis of the *Aldergate* judgement as set out above in that the specific requirements and identity of the applicant/ occupier are not relevant when considering suitability or availability and this is considered in more detail below.

Turning to the Assessment itself, the Assessment identified two sites in Rustington - the former Co-Op unit within the town centre, now occupied by Waitrose and no longer available, and a former car showroom in Ash Lane with permission for small convenience retail which was discounted due to its size (437sqm gross). It is accepted that there are no suitable opportunities in Rustington for the reasons set out above and this is supported by the Council's Retail Advice.

Two sites were identified in Littlehampton: St Martins Road Car Park which was discounted on grounds of availability and suitability; and the former Waitrose Unit at Avon Road which was excluded due to suitability/ viability considerations. The Council's Retail Advice agreed with the applicant's Assessment that these two sites are the only potential opportunities and therefore further detail on these two sites is considered below.

In relation to the Waitrose Unit it remains vacant and is being marketed, and therefore the Assessment concludes that it is available. The Assessment then considers the suitability/viability of the unit for a foodstore use generally and specifically in relation to M&S commercial requirements.

The applicants in their Assessment have raised concerns about the genuine availability of the Waitrose Unit due to the length of the Waitrose lease which expires in 2020 and the rental income received from this lease. However, the Retail Advice concludes that these arguments do not result in the unit being considered to be unavailable as the unit is on the market and Store Property Group

(who is the current leaseholder) has made submissions in respect of the Judicial Review that the unit would be made available for re-letting.

In relation to the suitability of the unit for a general foodstore, the Assessment considers that the use of the Unit as a foodstore has been tested over a number of years and that subsequent occupiers of the site have not operated successfully from the site, including Waitrose in recent years. This is disputed by Waitrose who set out that they did not move for viability related reasons and that the store traded successfully from the Avon Road Unit. From the evidence submitted, the Retail Advice advised that it is not considered that the marketing campaign demonstrates that the location is unsuitable as a foodstore, or that it is a poor trading location. Therefore, it should be considered as an available location for a general foodstore.

The Assessment then considers the specific operational viability requirements of M&S which it considers, in accordance with case law (Dundee and North Lincolnshire) are a material consideration. On this basis the Assessment concludes that evidence, including a feasibility study on how a M&S Foodhall could be provided on the site, concluded that the site size and concerns over the trading location mean that the site is not suitable or viable for the proposed Foodhall or another foodstore of a similar size. However, Council's Retail Advice considers that the interpretation of the case law is not accurate as the former Waitrose site is not a hypothetical possibility but a real world possibility which meets the requirements for a foodstore. The approach taken by M&S in discounting the suitability of the Unit is retailer specific and therefore, it should not be dismissed as unsuitable.

This conclusion differs from the original decision on A/23/15/PL which refers in the report to the applicant not considering the sites (Waitrose and Martin's Car Park) acceptable and the expert advice provided to the Council supporting that position. However, for the reasons set out above, this position has changed and the original decision is given only very limited weight.

The St Martins Road Car Park site was discounted as not being available for development within the next 12-18 months and also on the basis that the trading location of the Car Park is not suitable or viable for foodstore development, based on accessibility to the highway network, connectivity to the core shopping area of Littlehampton and the profile of the convenience shopping in the area. The Council's Retail Advice did not consider that it has been established that the site is unsuitable for a foodstore development and there are no indications in the M&S submissions that the M&S Board had concerns about Littlehampton as a food store location when it made its decision in 2011. However, it is considered that it is unlikely that the site would be accepted as available in relation to the sequential test, as little progress has been made on bringing forward the site in recent years and the Council accepts that there is no immediate prospect of the site coming forward for development. Therefore, Council's Retail Advice concurred with the applicants conclusion the St Martins Road Car Park site is not an available site that would be sequentially preferable to the application site.

Therefore, the proposal does not meet, and is in breach of, the sequential test as set out in the NPPF paragraph 26 and is contrary to Policy DEV27 of the ALP and RET DM1 of the modified eALP as the Avon Road former Waitrose Unit is sequentially preferable to the proposed site. The NPPF states that proposals that fail to meet the sequential test should be refused.

Retail Impact Assessment-

The second part of the Assessment is to demonstrate whether or not the proposal would have a significant adverse impact on investment in or vitality and viability of town centres within the catchment area. If a proposal is likely to have a significant adverse impact or it fails the sequential test then it should be refused. The proposal is under the NPPF threshold of 2,500sqm where an impact assessment is required and over the eALP threshold of 1,000sqm (which has not yet been adopted). Nonetheless, the applicant has provided a limited retail impact assessment.

An updated Retail Impact Assessment updates the position from the original 2015 application and has regard to the 2016 update to the ADC Retail Study (which includes the original proposal as a commitment), planning permissions granted at Mill Lane and the current health of Rustington and Littlehampton town centres.

Consideration of retail impact has focussed on Rustington and Littlehampton. In determining impact, consideration has been given to the turnover of existing centres, possible trade draw and turnover of existing outlets (expressed as estimated turnover of existing stores). Cumulative impact of this proposal with existing and planned development was also assessed.

The Assessment concludes that both Rustington and Littlehampton have a good level of vitality and viability as town centres. However, the Council's Retail Advice disagrees with these statements and advises that Rustington is a well managed centre which would be robust to trade diversion to an out-of-centre food store, but that Littlehampton is a commercially weak centre which is vulnerable to out-of-centre development. Rustington Town Council has raised concerns about the accuracy of the Assessment due to several businesses closing down or relocating due to trade loss to out of centre stores. Littlehampton has objected on the basis that the vacant unit should be used first and that the loss of recent shops highlights the risk from out of centre developments.

In terms of impact on investment, the impact on St Martin's car park scheme for Littlehampton and the Ash Lane garage site in Rustington are considered in the Assessment. The Council's Retail Advice concluded the proposed scheme would not create any significant impact on planned investment.

The Assessment considers two scenarios, one with the former Waitrose site occupied and one without re-occupation. The Assessment compares the impact levels with the original application. For Littlehampton (without Waitrose re-occupied) the impact levels have gone from 5.54% to 5.50%. For Rustington (without Waitrose re-occupied) the impact levels have gone from 7.29% to 6.50%. With Waitrose re-occupied, the figures are 7.33% down to 4.48% for Littlehampton and 7.45 down to 6.50% for Rustington. The Assessment concludes that based on these figures the level of economic retail impact in relation to the revised proposal is not significant.

The Council's Retail Advice assesses the retail impact of the proposal. The Advice concludes that the proposed food store would have an impact of about 3% on Rustington centre and about 2% on Littlehampton centre, assuming that the former Waitrose remains unoccupied. The figure for Littlehampton would be lower if it is re-let to a retailer. The Advice considers whether revised data and estimates would result in different figures, as suggested by some objectors to the proposal, but concludes that any reasonable impact assessment would come to the same broad level of impact and that on its own, the proposal would not have a significant adverse impact on the centres.

The Retail Advice also concludes that the cumulative impact figures, taking account of recent permissions are 5.7% for Rustington and 6.6% for Littlehampton and that whilst these are of more concern, it would not be reasonable to refuse planning permission for a development on the basis of a cumulative impact to which the development would only contribute a small proportion.

The development of new food store would therefore cause further loss of trade from Littlehampton and Rustington and this will inevitably have impact on the future viability of the town centres, however, the retail impact is not considered to be significantly adverse to warrant a refusal of permission on retail impact grounds. Taking into account both of the opinions on impact, there would be impacts on both centres but the individual impact would not be significant but that the cumulative impact is at a level where there are concerns arising. Therefore, the proposal accords with the NPPF paragraph 27 in relation to retail impact and with RET DM1 3a of the eALP, however, the proposal would be contrary to DEV27 (i) as it does cumulatively have an adverse impact on the Principal Shopping Areas.

Other social and economic considerations

There are social and economic benefits from the proposal, specifically the creation of about 50-55 jobs in full and part time positions, equating to 29 full time equivalent jobs which would create opportunities for local people. There are other economic benefits from the investment and the construction stage jobs. These benefits accord with paragraph 18 of the NPPF and should be accorded substantial weight. However, these need to be weighed against the social and economic negatives associated with the failure of the sequential test. Policy EMP 1 of the eALP seeks to promote the regeneration of the main town centres as a focus for retail, office and leisure development especially in the Bognor and Littlehampton Economic Growth Area in accordance with the sequential test. Policy RET SP1 seeks to maintain the hierarchy of Town Centres through

promotion of activities which include retail, in order to promote economic resilience for the vitality of the town centres. To permit a further out of centre convenience retail unit in this location would undermine the strategic objective of the eALP to 'create vibrant, attractive, safe and accessible towns and villages that build on their unique characters to provide a range of uses and which are a focus for quality shopping ...'

Conclusion on principle and retail considerations -

The proposal is contrary to retail policy as it fails to meet the sequential test requirements. This means that the proposal would also constitute unacceptable development in the countryside, contrary to Policy GEN2, GEN3 of the ALP, Policy HD1 of the ANP and SD SP2 and C SP1 of the eALP. It therefore needs to be considered whether there are any other material considerations which would outweigh the sequential test failure.

The Retail Advice suggests that the failure to satisfy the sequential test is not overwhelming in the absence of other significant retail harm (and the proposal complies with the retail impact assessment policies) and there is no way of predicting if M&S would take the former Waitrose unit if the proposal were refused. The M&S Board decision not to proceed in 2011 is an indication that it would not do so, but there is no more recent evidence to confirm this, therefore very little weight is given to this. As the cumulative harm to Littlehampton and Rustington town centres is not significantly adverse, this could be mitigated through a contribution to town centre initiatives, as agreed under the original permission.

Overall, the proposal would bring economic benefits to the area through the creation of jobs, and despite not meeting the sequential test, would not cause significant harm to the vitality and viability of the town centres. The proposal would form a logical extension to the Manor Retail Park and complete the built form in this constrained parcel of land when combined with the approved residential scheme to the west of Brook Lane. However, these material considerations are not considered to outweigh the failure to meet the sequential test and the resultant unacceptability of this type of development in a countryside location.

HIGHWAY AND TRANSPORT MATTERS:

A Transport Assessment (TA) has been produced to assess the transport and accessibility impacts of the proposal in accordance with paragraph 32 of the NPPF.

Traffic impacts-

In addition to the TA, separate Framework Travel Plans have been produced for both components of the site in accordance with paragraph 36 of the NPPF. It should be noted that paragraph 32 of the NPPF states that "Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe." The Transport Assessment has assessed the cumulative impacts of the development and it is concluded that the A259/A2187 roundabout would continue to operate with spare capacity after the proposals are built and trading, however this has not included consideration of the west of Brook Lane (A/169/17/OUT).

The proposed vehicle access is via a "left in, left out" site access with merge lanes and diverge lanes served from the A259 and using the route of Brook Lane.

The proposal would involve the provision of deceleration and acceleration lanes into the site to ensure safe access and to minimise potential conflicts with passing users of the A259. The Local Highway Authority (LHA) has assessed the proposed access and consider it suitable for the level of traffic likely to be generated from the proposed development. The LHA initially identified some minor issues with the detailed design of the proposal and requested that the applicants submit some further design audit work. This information was provided to the LHA and they initially agreed the details.

The applicant's TA includes evaluation of the proposed development's impact on surrounding junctions and roadways. The LHA had initially assessed this information and considered the impacts to be acceptable; however, the now permitted scheme to the west of Brook Lane needs to be taken into consideration. As this has not been done, there is insufficient information to demonstrate whether

the transport effects on the local and strategic road network can be satisfactorily mitigated contrary to TM1 of the ANP, GEN8 of the ALP and Policy T SP1 of the modified eALP.

Access-

The TA demonstrates that the opportunities for sustainable transport modes have been taken up, and that safe and suitable access to the site can be provided. The access roads have been designed to accommodate buses if a service can be secured. Issues raised by the neighbouring landowner raise concerns about the revised access location prejudicing the access to the site to the west of the Brook Lane (A/169/17/OUT). The approval for the site to the west includes a parameter plan indicating access using Brook Lane, however, the details of the access are reserved matters and not part of the outline permission. A recent reserved matters application has been submitted setting out the detail for using Brook Lane to access the outline site A/169/17/OUT, but this has not been determined. It has not been demonstrated that the access shown would not preclude another committed development coming forward as the access arrangements as shown are conflicting and a revised highway drawing is required to demonstrate how a safe and appropriate access can be provided to this site and the adjacent site. The access shown for this application could be amended more easily than the access shown under A/11/17/OUT to accommodate the access to the adjacent site (A/169/17/OUT) as they follow a similar alignment but as shown the access spur going east from the proposed roundabout does not go to the boundary of the site or join up with Brook Lane to the south.

Therefore, it has not been demonstrated that a safe and suitable access to the site can be provided, contrary to GEN7 of the Arun Local Plan.

Accessibility-

The layout of the proposal has sought to minimise conflicts with cyclists and pedestrians, and the design and accessibility of the proposal has had regard to the needs of people with disabilities in accordance with paragraph 35 of the NPPF and in accordance with saved Policy GEN15 and DEV26 iv of the ALP

The proposals have been designed to give priority to pedestrian and cycle movement and people with disabilities. The proposal includes a 3m wide shared footpath/ cycleway which runs through the site to the south of the building and car park and then runs parallel to the A259 going east and joining up with an existing cycleway/footpath at the entrance to the neighbouring retail park. This would ensure connectivity for pedestrians and cyclists, although if visiting the existing retail park they would be required to exit first, rather than a more direct connection being provided from within the existing retail site which would have been preferable. However, the cycleway proposed can be delivered within the highway boundary, whereas a more direct route would require land outside the control of the applicant which is already in use. As the cycleway would run parallel to the A259 a safety fence is proposed. A 1.5m high pedestrian guardrail is proposed along the southern side of the route, as the land slopes downwards from the cycleway to the existing retail park car park area.

In order to ensure pedestrian and cycle access for residents to the south, there needs to be a safe means of crossing the railway, as well as links to the consented residential development to the west (A/169/17/OUT). There is a public footpath (2159) which runs north from Worthing Road, crosses the railway at grade then continues north west towards and past a property called Brookenbee. There is no recorded public access right along the section of Brook Lane running north east from the rail crossing to the A259, and therefore no access right linking to the proposed development. The Rights of Way officer commented on the similar application A/11/17/OUT seeking to ensure that there is a creation of formal access rights to link from the public right of way to the site.

The adjacent site west of Brook Lane (A/169/17/OUT) proposes to close the unmanned rail crossing and provide a new pedestrian and cycle bridge over the railway, which is secured through condition and would have to be implemented prior to occupation. The parameter plan also includes footpath access to the boundary with this site. The S106 for the west of Brook Lane site requires a new footpath to connect with Manor Retail Park along Brook Lane and the A259 if this application does not provide that link within three years of commencement of the first residential phase. The Inspector considering the duplicate application west of Brook Lane (A/44/17/OUT) agreed with that approach,

ensuring that there are pedestrian links between the west of Brook Lane site and Mill Lane regardless of the outcome in relation to this proposal.

In relation to the rail crossing, the original application agreed a contribution of £12,500 for the funding of the COVTEC early warning system for the crossing, following consideration at Planning Committee. The initial response from Network Rail on the similar application (A/11/17/OUT) required a contribution of £25,000 for the COVTEC system. Network Rail's further responses on the similar application (A/11/17/OUT) supported the need for a footbridge due to the cumulative impacts of both developments (referring to A/44/17/OUT - which preceded A/169/17/OUT and has been appealed and allowed) resulting in significantly increased usage of the crossing and that the cost of the footbridge should be shared between the two applicants. The applicant does not agree with the Network Rail view and states that as there is no legal right of way access from the site over Brook Lane to reach the railway crossing, that there would not be a significant increase in pedestrian or cycle traffic from that direction.

The objection raised by Network Rail in respect of the level crossing along this PRoW has been discussed with the applicant. The applicant considers that whilst they are aware of the issue of safety at the level crossing in Brook Lane, the nature of the route that runs to and from residential area south of the railway line is not a route that visitor to the development would use. This is a PRoW that provides a link from Worthing Road (B2187) to Brook Lane on the A2159 via Penfold Lane. Penfold Lane is a grassed track that is generally very muddy with no lights. The applicant therefore considers that it should not be necessary to provide footbridge crossing at the Brook Lane level crossing.

Whilst the Council recognises the desirability of for safe crossing via footbridge as requested by Network Rail, it is considered that as result of the proposed development there will not be any significant increase in the number users along this PRoW and the level crossing given the current condition of Penfold Lane. The approved development to the west is a material consideration which needs to be taken into account. If the residential development to the west of Brook Lane is implemented, this would provide the link between the M&S site and the crossing as well as providing the bridge.

Should the railway bridge not be delivered under the adjacent permission, is not considered that the additional likely number of pedestrians to the proposed food store would be so significant as to represent a 'severe' impact where the development would be refused planning permission without a contribution towards a footbridge or to the COVTEC system.

Bus stops and bus connections-

There are bus stops located at the Manor Road Retail Park and south of Mill Road/ Worthing Road roundabout which are both approximately 800m from the site. The Manor Road Retail Park includes a bus stop within walking distance of the proposal. Therefore, the proposal accords with DEV27 ii of the ALP and RET DM1 b as it is accessible by public transport.

Parking-

Saved policy GEN12 of Arun District Local Plan 2003 states that "the Local Planning Authority will base its consideration of the need for on-site parking provision on its parking standards contained within this Plan". The maximum parking standard for superstore/supermarket is one space per 14sqm. The layout includes a total of 196 spaces (including those associated with the public house). This includes disabled and parent/child spaces proposed for the retail units and the public house which is compliant with the parking standards for the development. Whilst this falls short of the recommended maximum standard, it is considered to be acceptable on this occasion given the likelihood of linked trips and the nature of provision.

In respect of cycle parking the 30 spaces proposed across the site, which exceeds the minimum set out in the Local Plan of one cycle space per 16 car parking spaces. Eight motor cycle spaces have been provided split across two locations. Although the provision falls short, it is considered acceptable on this occasion given the likelihood of linked trips and the nature of provision.

Overall, the proposal is satisfactory in relation to highways and transport and meets the requirements of Policies GEN14 and DEV26 (ii) of the ALP through ensuring access to public transport services. The proposed pedestrian and cycle routes would ensure safe routes for pedestrians and cyclists in accordance with policies GEN15 and DEV26 (iii) of the ALP and PolicyTM2 of the ANP and provision to enable access for people with disabilities in accordance with DEV26 (iv).

DESIGN, LAYOUT AND APPEARANCE

The following assesses the design, character, layout and appearance of the proposed development.

GEN7 of the ALP seeks to ensure a high quality of design and layout for all proposals. For the retail store, the applicant is seeking full planning permission and has submitted detailed layout of the development and the design of the building, showing the detailed elevations and materials.

The proposed retail store is set back from the A259 located in the eastern part of the site. It comprises a total floor area of 1,487 square metres over two storeys (1,022 square metres footprint and 465 square metres as mezzanine for storage and staff facilities). The building comprises a single block. The building is of two storey height with an enclosed service yard to the east. The building includes a mezzanine floor of around 40% of the ground floor to provide staff and storage facilities.

The retail building is of modern design with a barrelled roof and glazed elevations facing the car park and the main road elevation with short glazed section and metallic cladding. The two storey unit has an open double height space at its western end at the customer entrance. The double height space continues outside to the main canopy which covers the external entrance and the external cafe seating area at the western end of the unit, next to the entrance. The entrance itself is announced by the four columns holding up the canopy.

The roof is a simple barrel vaulted form, this form continues in the use of a small number of good quality materials on the external elevations, namely a split face masonry which is pulled away to 'reveal' the glazed shopfront on the western ends of the North and South elevations. The masonry walls extend across both sides of the service yard. The remainder of the building is treated in contrasting dark grey and light silver metallic cladding.

The service area is to the east of the building with the enclosed service yards. The access to the service yard is from a roundabout off the access road. The detail design meets the requirement of the County Highway Officer.

The building is set well back from the highway. The area to the west of the building provides a surface car park of 100 parking spaces, with disabled parking spaces provided close to the building. There is further small over-flow car-park on the south side of the internal road providing an additional 30no spaces on reinforced grass. With the retention of the trees and additional planting on the northern boundary the impact of the building will be slightly less, however the building will be very clearly visible from the A259, unlike the adjoining site where the buildings are set back much more into the site.

The site is capable of accommodating the proposed development with associated car parking and servicing that will enable the physical regeneration of a vacant site for retail use. The scheme has been designed for retail use and the unit size, layout, car parking, serving and orientation is of appropriate scale.

The scale and height of the proposed buildings are appropriate to the local context and will relate well to the approved development on adjoining land which is now occupied. The buildings are appropriately designed to allow the best possible inclusive access including provision for the disabled and those with other mobility problems in accordance with Policy DEV27 (iv) of the ALP. The development is of high quality design and materials befitting of a modern retail scheme. This will make a positive visual contribution to the A259 which is a key transport corridor.

The Design and Access Statement sets out the objectives for the soft landscaping of the site. These include retention of the existing vegetation along the boundary with the A259 which would be reinforced with additional planting. The parking areas would include robust ornamental shrub planting

and large amenity trees and a buffer zone of species rich grassland and native hedge planting is proposed between the site and the Black Ditch tributary to provide habitat for water vole and other wildlife. The full details of the soft and hard landscaping would be required through a condition which would ensure that the proposal creates an attractive place and public realm, and high standard of landscaping in accordance with GEN7 of the ALP and Policy D DM1 of the eALP

OTHER MATTERS

Ecology-

Individual species surveys have been submitted for Water Voles, Great Crested Newts and Reptiles after the Preliminary Ecological Assessment identified the need for additional survey information. The Assessment also recommended that the woodland at the periphery of the site has potential for foraging and commuting for bats and that lighting should be kept to a minimum on the boundaries.

Overall, subject to the provision of the additional mitigation details, through a condition, it is considered that the proposed development accords with Policy GEN29 of the Local Plan and Policy ENV DM5 of the modified Local Plan in relation to the impact on protected species and the potential for the scheme to protect existing habitats where possible and provide enhancements.

Trees-

The proposal involves the removal sixteen trees to enable the access and visibility splays to be achieved. The trees to be removed are all lower quality and therefore their removal is considered appropriate. An Arboricultural Method Statement including a Tree Protection Plan has been submitted which sets out how the trees to be retained will be protected during construction and providing the detail of trees which would be removed. The Tree Officer has recommended a condition to ensure that the Statement and Plans are complied with. Subject to this condition, the proposal would comply with Policy GEN7 of the ALP as it retains the wooded area adjacent to the Black Ditch tributary and Policy ENV DM4 of the modified eALP through provision of the required documents to protect the retained trees.

Flooding and drainage (foul, surface water) -

Development should not be at risk from flooding or increase the risk of flooding elsewhere as set out in Policy GEN11 of the ALP. The Flood Risk Assessment (FRA) accompanying the application sets out that the site is generally in Flood Zone 1 with a low probability of flooding. The southern and western parts of the site are within Flood Zone 2 (medium probability). The nearest watercourse is the 'Rustington Stream' - a tributary of Black Ditch. The built development is proposed to have a floor level above a certain height (a minimum of 2.4m AOD) to ensure that the risk of flooding is mitigated, which would require an element of land raising under and adjacent to the buildings. The Environment Agency has no objection subject to conditions ensuring that the proposal accords with the submitted FRA.

In relation to surface water drainage, the system proposed would include roofwater draining to cellular storage with controlled outlets to the Stream, the service yard draining to the access road drainage system, the main access road and cycle path draining via gullies to a piped system draining to a swale on the southern side of the main access road and the main parking area would drain via permeable paving to a sub-base storage with a controlled outlet into a swale. The detailed design and maintenance of the drainage has not been provided and would need to be informed by winter groundwater monitoring. However, it is considered that these requirements could be achieved through conditions and ADC Drainage Engineers and WSCC Flood Risk Management Team support this approach.

Southern Water has confirmed that foul sewerage disposal could be provided to service the proposed development, subject to a formal application to connect and after a sewerage capacity check has been carried out. Conditions and an informative would be considered an appropriate means to secure the detail of the foul drainage and ensure compliance with Policy GEN9 of the ALP and Policy W DM1 of the modified eALP.

Overall, sufficient information has been provided to demonstrate that a SuDs scheme for the site could be developed based on the principles in the FRA in accordance with Policy GEN9 of the ALP and Policy W DM3 of the eALP and EH3 of the ANP.

Subject to conditions requiring submission of a detailed foul drainage scheme the proposal accords with Policy GEN9 of the Arun Local Plan and Policy W DM1 of the modified Local Plan as it demonstrates there is sufficient foul drainage capacity for the development.

Archaeology-

In order to assess the impact on potential heritage assets, an Archaeological Desk Based Assessment has been provided. This confirms that the site has a high potential for below ground archaeological deposits which would be negatively impacted by the proposed development. Further evaluation and investigation is required in order to ensure that there is appropriate preservation by record and publication of the results. This could be achieved through a condition requiring a Written Scheme of Investigation to be submitted and approved which would then ensure that archaeological interest of the site is not harmed.

Therefore, subject to a condition, it has been demonstrated that the development would not be harmful to the archaeological interest of the site in accordance with AREA17 of the Local Plan and Policy HER DM6 of the modified eALP.

Contamination-

A Phase 1 Contamination Assessment has been submitted which identifies a low contamination risk and ground gas production and that the site is not likely to be classed as contaminated land. The Assessment recommends a Phase 2 ground investigation is undertaken in advance of development. Environmental Health have confirmed that this is an appropriate approach which could be secured through a condition which would ensure compliance with Policy QE DM4 of the modified eALP, and this approach has been confirmed by the Environmental Health Officer.

Infrastructure

The original application was accompanied by a S106 Agreement which secured index linked contributions totalling £214,444 towards a town centre manager, environmental improvements and marketing events for Littlehampton and a contribution of £12,500 towards the COVTEC early warning system. However, as the application is recommended for refusal on retail grounds, a S106 agreement would not be required.

Overall conclusion on Full element of the proposal:

This is a complex and detailed application with a number of issues for consideration. The application falls to be determined against development plan policies and against the National Planning Policy Framework (NPPF).

The proposed retail development is intended to be occupied by Marks and Spencer Simply Food, but has been assessed in relation to the proposal rather than the proposed occupier. The NPPF places significant weight on the need to support economic growth through the planning system. The need for planning to respond positively to sustainable economic growth and prosperity that will support local economy and create employment opportunities which wishes to grow and prosper, are material considerations that count in favour of this application. However, these benefits are not considered to outweigh the social and economic dis-benefits associated with allowing an out of centre retail development to proceed in a countryside location when a suitable and available town centre site is available, contrary to the development plan, NPPF and emerging Local Plan.

The proposal is contrary to the development plan and there are no material considerations that would warrant a decision other than in accordance with the development plan.

OUTLINE ELEMENT

The Outline element of the proposal is for a Public House (Class A4) comprising 581sqm with scale and appearance reserved matters. This means that the outline includes access, landscaping and layout which are to be considered as part of the outline application. The Public House is intended as a 'family friendly' facility which would have a focus on food rather than a traditional 'local' public house.

PRINCIPLE:

The principle for a public house in this location is the same in relation to development outside the built up area boundary as set out for the full proposal above. Whilst there is no precedent for Class A4 uses in this location, the proposal would not be out of keeping with the retail uses on the Manor Retail Park or the residential uses consented on the land to the west of Brook Lane. The Public House would complement the adjacent uses and provide a community facility which would enhance the sustainability of the location in accordance with paragraph 70 of the NPPF. The proposal would also generate an estimated 50-55 permanent jobs

As a town centre use (see Glossary to the NPPF) the sequential test applies, as well as Policies RET SP1 and RET DM1 of the eALP. The Council's Retail Advice notes that the applicant has not considered more central alternative locations for this part of the development. However, to consider the public house unit separately would be splitting the development into parts, which the NPPF does not require. The Retail Advice considers that there are no reasons why disaggregation would be relevant in this instance. The applicants have not including it in the search criteria as doing so would have made suitable sites harder to find and the Retail Advice considers that the availability of alternative sites for a single public house would be of marginal significance in the determination of the application. As the retail proposal fails the sequential test and as the public house is part of the overall proposal and has not been considered separately in relation to retail/town centre uses policy, the outline part of the proposal is also unacceptable.

OTHER MATTERS:

Design and layout:

For the public house (A4 use), the applicant is seeking outline permission and has submitted indicative drawing showing the proposed layout and includes a photograph of the potential design of the public house in support of the planning application.

The public house building is to the western part of the site (east of the proposed new access) and the indicative design shows a floor area of 581 square metres and is of single storey in height with a small garden area on both the eastern and western side of the building and service yard to the southern side. The applicant has provided generic building design (photographs) of similar development to show the type of public house/restaurant that could be designed.

Parking, access and safety:

The Public House access is from an internal access road into the site. The internal roads are within the full part of the application and considered above.

The car park is within the full area and considered above. Cycle parking is provided for both staff and patrons. As set out in the parking section for the retail element of the proposal, the combined cycle parking for both elements meets the requirements of Policy GEN12 and the overall parking provision is satisfactory.

Safety issues have been raised in relation to the proximity of the public house to the pedestrian rail crossing and public safety is an important consideration. This issue is covered by the accessibility section of the full proposal, as it relates to movements of pedestrians from the site as a whole and doesn't distinguish between patrons of either of the proposed uses.

Landscaping:

The outline application area includes the garden area of the Public House. The detail of the landscaping for this area has not been included in the application, therefore it would be appropriate

and reasonable to attach a condition requiring full details of soft and hard landscaping to be submitted in order to meet the requirements of GEN7 of the ALP and Policy D SP1 and D DM1 of the modified eALP and secure a high quality of landscaping.

Overall conclusion on outline element of the proposal:

Overall, the Public House element of the proposal would provide a community facility and additional employment opportunities in the area. The site can be accessed by vehicular, pedestrian and cycle modes and provides sufficient parking for the use proposed. The layout is acceptable and provides space for a garden where there would be opportunities for soft landscaping to be provided. However, the public house is part of the overall development 'package' proposed, of which the full element is recommended for refusal, and as the public house relies on the access from the main full element of the scheme being delivered, which is considered unacceptable, and there is no separate demonstration of a lack of suitable town centre locations, as this element has been considered as a less significant element of the scheme, the outline element is also recommended for refusal.

HUMAN RIGHTS ACT

The Council in making a decision should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as Arun District Council to act in a manner, which is incompatible with the European Convention on Human Rights.

Consideration has been specifically given to Article 8 (right to respect private and family life) and Article 1 of the First Protocol (protection of property). It is not considered that the recommendation for refusal of the grant of permission in this case interferes unreasonably with any local residents' right to respect for their private and family life and home, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general interest and the recommendation for approval is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

DUTY UNDER THE EQUALITIES ACT 2010

Duty under the Equalities Act 2010

In assessing this proposal the following impacts have been identified upon those people with the following protected characteristics (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex or sexual orientation).

The proposal would have a neutral impact on the protected characteristics.

RECOMMENDATION

REFUSE FULL

2. The proposal fails to meet the sequential test requirements for convenience retail proposals in an out of centre location according to the NPPF paragraphs 24 and 27, Policies DEV26 and DEV27 of the Arun Local Plan (2003) and Policies RET SP1 and RET DM1 of the modified emerging Arun Local Plan (January 2018). In the absence of retail justification for the proposal in this location the proposal would also constitute unacceptable development in the countryside, contrary to Policy HD1 of the Angmering Neighbourhood Plan and Policies SD SP2 and C SP1 of the modified emerging Arun Local Plan (January 2018).
3. On the basis of the information submitted to the Local Planning Authority the applicant has failed to demonstrate that the application does not have an unacceptable adverse impact on adjoining occupiers, land, uses or property and, does not preclude the development of adjoining sites. The applicant has not demonstrated that by this application coming forward it

does not prevent a safe and suitable access being provided to adjacent sites in accordance with policy GEN7 of the Arun Local Plan.

REFUSE OUTLINE

2. As part of the overall Full scheme, the proposal fails to meet the sequential test requirements for convenience retail proposals in an out of centre location according to the NPPF paragraphs 24 and 27, Policies DEV26 and DEV27 of the Arun Local Plan (2003) and Policies RET SP1 and RET DM1 of the modified emerging Arun Local Plan (January 2018). In the absence of retail justification for the proposal in this location the proposal would also constitute unacceptable development in the countryside, contrary to Policy HD1 of the Angmering Neighbourhood Plan and Policies SD SP2 and C SP1 of the modified emerging Arun Local Plan (January 2018).
4. As part of the overall Full scheme, on the basis of the information submitted to the Local Planning Authority the applicant has failed to demonstrate that the application does not have an unacceptable adverse impact on adjoining occupiers, land, uses or property and, does not preclude the development of adjoining sites. The applicant has not demonstrated that by this application coming forward it does not prevent a safe and suitable access being provided to adjacent sites in accordance with policy GEN7 of the Arun Local Plan.