



# Report to the Secretary of State for Communities and Local Government

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MRTPI**

an Inspector appointed by the Secretary of State  
for Communities and Local Government

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Date: 22 July 2010

TOWN AND COUNTRY PLANNING ACT 1990

**ARUN DISTRICT COUNCIL**

**APPLICATION BY**

**SAINSBURY'S SUPERMARKETS LTD & SIME DARBY LONDON LTD**

Inquiry held on 11-25 May 2010

LEC Refrigeration Ltd, Shripney Road, Bognor Regis, West Sussex PO22 9NQ

File Ref: APP/C3810/V/09/2117516

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**LEC Refrigeration Ltd, Shripney Road, Bognor Regis, West Sussex PO22 9NQ**

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 17 November 2009. The direction was amended by a letter dated 9 March 2010.
- The application is made by Sainsbury's Supermarkets Ltd & Sime Darby London Ltd to Arun District Council.
- The application Ref BE/122/08 is dated 10 December 2008.
- The development proposed is "Demolition of existing buildings and erection of Class A1 superstore with associated car parking, landscaping, petrol filling station, car wash and jet wash and creation of new access from A29 and internal estate roads together with replacement car dealership facility fronting Shripney Road".
- The reason given for making the direction was that the Secretary of State was of the opinion that the application was one which he ought to decide himself.
- On the information available at the time of making the direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purposes of his consideration of the application:
  - a) The extent to which the proposed development is in accordance with the development plan for the area, having regard to the Regional Spatial Strategy for the South East – South East Plan published 6<sup>th</sup> May 2009 and the Arun District Local Plan (saved policies).
  - b) The extent to which the proposed development is consistent with any emerging Development Plan Documents, including consideration of the weight to be attached to them.
  - c) The extent to which the proposed development accords with Government planning policy advice in Planning Policy Statement 6 (PPS6): *Planning for Town Centres* with particular regard to:
    - (i) whether need has been adequately demonstrated in terms of quantitative need for additional floorspace for the proposed class of goods or services;
    - (ii) whether there are any qualitative considerations;
    - (iii) whether it has been demonstrated that a sequential approach has been applied in selecting the location for the proposed development, and specifically whether:
      - the applicant has demonstrated flexibility in terms of the format, design and scale of their (sic) proposal, the amount of car parking, and the scope for disaggregation;
      - any sequentially-preferable alternative sites are available, suitable and viable;
    - (iv) whether the scale of the proposal is related to the role and function of the centre and its catchment;
    - (v) the degree to which the proposal would have an impact on existing centres;
    - (vi) the degree to which the proposal would be accessible by a choice of means of transport, and specifically whether:
      - the proposal would have an impact on the overall distance travelled by car;
      - the proposal would have an effect on local traffic levels and congestion, after public transport and traffic management measures have been secured;
    - (vii) the degree to which other considerations, such as physical regeneration, employment, economic growth and social inclusion are material to this application;
    - (viii) the extent to which the proposed development would secure a high quality of design, having regard to the policies in Planning Policy

Statement 1 (PPS1): *Delivering Sustainable Development*, current advice on good design practice in *By Design – Urban design in the planning system: towards better practice*, *PPS6 Planning for Town Centres* and in *Planning for Town Centres: Guidance on Design and Implementation Tools*.

- d) Whether there are any other material planning considerations relevant to the Secretary of State's consideration.
- e) Whether any permission granted for the proposed development should be subject to any conditions and, if so, the form these should take.
- f) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.
- In a letter dated 9 March 2010 the Secretary of State referred to the issuing of new national policy, and stated that he now wished to be informed for the purposes of his consideration of the application as follows:
  - a) The extent to which the proposed development accords with Government planning policy advice in *Planning Policy Statement 4 (PPS4): Planning for Sustainable Economic Growth* with particular regard to:
    - (i) the extent to which the applicant has demonstrated compliance with the requirements of the sequential approach (policy EC15);
    - (ii) the extent to which the proposal is likely to lead to adverse impacts in terms of any one of the impacts set out in policies EC10.2 and 16.1 (the impact assessment), taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments.
  - b) Whether there are any other material planning considerations relevant to the Secretary of State's consideration.
  - c) Whether any permission granted for the proposed development should be subject to any conditions and, if so, the form these should take.
  - d) Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.
- In letters dated 4 May and 5 May 2010 the Secretary of State gave clarification of the letter of 9 March 2010, and stated that the following matters were still relevant and needed to be addressed at the inquiry:
  - a) The extent to which the proposed development is in accordance with the development plan for the area, having regard to the Regional Spatial Strategy for the South East – South East Plan published 6<sup>th</sup> May 2009 and the Arun District Local Plan (saved policies).
  - b) The extent to which the proposed development is consistent with any emerging Development Plan Documents, including consideration of the weight to be attached to them.

**Summary of Recommendation: That the application should be approved and planning permission granted subject to conditions.**

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**List of Abbreviations and Acronyms**

|                    |   |                                                       |
|--------------------|---|-------------------------------------------------------|
| ADLP               | - | Arun District Local Plan                              |
| BR21               | - | Bognor Regis 21 Partnership Board                     |
| BRMP               | - | Bognor Regis Masterplan                               |
| BRRG               | - | Bognor Regis Regeneration Group                       |
| BRRTF              | - | Bognor Regis Regeneration Task Force                  |
| BRRVG              | - | Bognor Regis Regeneration Vision Group                |
| BRSS               | - | Bognor Regis Seafront Strategy                        |
| CABE               | - | Commission for Architecture and the Built Environment |
| CIL                | - | Community Infrastructure Levy                         |
| The Council        | - | Arun District Council                                 |
| The County Council | - | West Sussex County Council                            |
| CSOG               | - | Core Strategy: Options for Growth                     |
| DPD                | - | Development Plan Document                             |
| EA                 | - | Environment Agency                                    |
| FRA                | - | Flood Risk Assessment                                 |
| IHT                | - | Institution of Highways and Transportation            |
| LAA                | - | Local Area Agreement                                  |
| LDF                | - | Local Development Framework                           |
| LDS                | - | Local Development Scheme                              |
| LHA                | - | Local Highway Authority                               |
| LNIA               | - | Local Neighbourhood Improvement Area                  |
| LSOA               | - | Lower Super Output Area                               |
| Morrisons          | - | Wm Morrison Supermarkets PLC                          |
| PPG                | - | Planning Policy Guidance Note                         |
| PPS                | - | Planning Policy Statement                             |
| PSA                | - | Principal Shopping Area                               |
| St Modwen          | - | St Modwen Developments Ltd                            |
| SDLL               | - | Sime Darby London Ltd                                 |
| SEEDA              | - | South East England Development Agency                 |
| SEP                | - | South East Plan                                       |
| SSL                | - | Sainsbury's Stores Ltd                                |
| SOCG               | - | Statement of Common Ground                            |
| SPD                | - | Supplementary Planning Document                       |
| SUDS               | - | Sustainable Urban Drainage System                     |

## **Preliminary and Procedural Matters**

1. Wm Morrison Supermarkets PLC ("Morrison's") was granted Rule 6(6) status under The Town and Country Planning (Inquiries Procedure) Rules 1992 on 3 December 2009. Morrison's was represented at the inquiry and put forward evidence in opposition to the proposed development.
2. Four Statements of Common Ground ("SOCG") were submitted. These comprise a tripartite SOCG between the applicants, Morrison's and Arun District Council ("the Council"), a SOCG on highway and transport matters between the applicants and West Sussex County Council ("the County Council") as local highway authority ("LHA"), and 2 SOCG between the applicants and the Council on general planning matters and on retail issues.
3. Paragraph 1.26 of the tripartite SOCG gave a list of plans, which were confirmed to be the application plans. The list included "Proposed Masterplan – No. CHQ.08.8157-002A (revision submitted 17.06.09)". That drawing was not provided with the application papers, but an earlier version with the same number was submitted, dated 16 December 2008. Due to the potential for confusion in having 2 drawings with the same number, I asked that the revised drawing be provided as Revision B. In the event, 2 revisions were submitted. Drawing No. CHQ.08.8157-002B (Doc. A24) is the version of the Masterplan as it was revised on 17 June 2009. Drawing No. CHQ.08.8157-002C (Doc. A17) is a revision dated 10 March 2010 which added a bio-mass boiler and a wood chip store to the scheme. Although that plan was amended, no drawing was provided giving details of the appearance of the boiler and store. The condition suggested to deal with this matter referred only to the boiler and not to the store (No. 26 in Doc. Gen5). After the close of the inquiry, I asked the Planning Inspectorate office to seek comments on a minor change to the wording of that condition. Only the applicants' agent responded, and no issue was raised with respect to the suggested rewording. I have taken that response into account.
4. A Section 106 Agreement between Sime Darby London Ltd ("SDLL"), Sainsbury's Supermarkets Ltd ("SSL"), the Council and the County Council was submitted on the last day of the inquiry.
5. With respect to The Town and Country Planning (Environmental Impact Assessment)(England and Wales) Regulations 1999, as amended, the Council considered that the proposal did not constitute EIA development. This was considered by the Government Office for the South East in a Screening Note of 26 November 2009, which concurred with the Council's Screening Opinion in stating that the proposal was Schedule 2 development that was not likely to have significant effects on the environment and did not require EIA. On the available evidence, I find no reason to disagree with that conclusion, and I have proceeded on the basis that an Environmental Statement is not required.
6. Following the Council's notification letters, 15 representations were received from interested persons and organisations, and letters of representation from Nick Gibb MP were received by the Secretary of State and the Chief Executive of the Planning Inspectorate. Before the end of the inquiry some 1,067 further representations were received from local people and from one other organisation. Most were written in response to letters sent on behalf of SSL to 4,820 Nectar Card holders and to 111 residents who had been supportive of the development at a public exhibition in November 2008 (Details in Doc. A25).

7. The inquiry sat for 9 days between 11 and 25 May 2010. I carried out an accompanied visit to the application site on 25 May, and I made unaccompanied visits to other locations during the inquiry and on 26 May 2010.
8. This report includes descriptions of the site and its surroundings, details of the planning history and of the proposed development, relevant planning policy, other agreed matters, details of other relevant proposals, the gist of the evidence given and submissions made at the inquiry and in writing, and my conclusions and recommendation. The application was supported by the Council. As well as the objection by Morrisons, the proposal was opposed in writing by St Modwen Developments Ltd ("St Modwen"). All of the other people who spoke at the inquiry supported the proposal.
9. The main parties' cases as reported are based on their closing submissions, augmented by reference to proofs of evidence, appendices and the results of cross-examination, re-examination and Inspector's questions. Lists of appearances and documents are at the end of the report. Proofs of evidence as originally submitted are included in the list of documents. These do not take account of changes that occurred during the course of the inquiry.

### **The Site and Surroundings**

10. There are brief descriptions of the application site and of the immediate surrounding area in the tripartite SOCG (Doc. SOCG1). There is a brief description of the local highway network in the SOCG on highway and transport matters (Doc. SOCG4). The site comprises some 3.68ha of land about 1 mile to the north east of Bognor Regis town centre. It is an out of centre site in terms of the definitions in Annex B of Planning Policy Statement ("PPS") 4. It lies roughly 5½ miles to the south east of Chichester town centre, and a similar distance to the west of Littlehampton town centre.
11. The site is bounded to the west by the A29 Shripney Road, which in the vicinity has a curving alignment. Southwards from the site it curves towards the south west. The site is bounded to the east by the railway line from Bognor Regis via Barnham and other stations to London Victoria. The southern boundary of the site is irregular. In the south eastern corner it adjoins a watercourse, the Aldingbourne Rife, but closer to the A29 this boundary turns around the eastern and northern sides of the Shripney Trade Park, where there are modern commercial units occupied by trade counter and vehicle related users including Topps Tiles, Bathstore, Just MoTs, Brandon Tool Hire and Arc Car Wash.
12. The northern boundary of the site is not marked on the ground, but represents a line subdividing the land owned by SDLL between the application site and what is known as the "retained land" (Plan in Doc. CD/F3 shows the boundary of the retained land). Beyond the retained land to the north there are various industrial and commercial uses. These include the Clock Park Industrial Estate adjacent to the A29 frontage, the New Era Estate adjacent to the railway line, and the Southern Cross Industrial Estate further to the north. These form parts of an area of industrial and commercial development which occupies a widening wedge of land between the A29 and the railway as far north as the roundabout junction of the A29 with Rowan Way. The buildings in this area are mainly modern industrial/warehouse sheds, and they include a terrace of such industrial/warehouse buildings along the eastern side of the A29 southwards from the Rowan Way roundabout.

13. There is further commercial development to the south of the Aldingbourne Rife, including the Arun Business Park, which has a variety of commercial, vehicle related and trade counter uses and a household waste and recycling centre. Beyond that, there is a Nissan car dealership with a garage/showroom and open car sales display areas. There are residential areas further to the south and across the railway line from the Arun Business Park.
14. To the south west Shripney Road forms a roundabout junction with Orchard Way. From that junction towards the north east, and then towards the north, the west side of Shripney Road has a mix of industrial and commercial uses and caravan and park home sites. Near the roundabout, the Durban Road/Durban Park industrial area abuts Shripney Road. Travelling north eastwards there is then a Tesco superstore and, across the Aldingbourne Rife, the Riverside Caravan Centre, a holiday caravan site with static caravans. Beyond that, and opposite to the application site, is the Arun Retail Park. This has fast food restaurants and retail warehouse units, occupied by Pizza Hut, Burger King, Kwik Fit, Comet, Carpetright and Pets at Home.
15. To the north of that retail park there is then a short ribbon of housing on the A29 frontage, punctuated by an access to an estate of park homes. To the west of the residential ribbon, there is another area occupied by static caravans, although this is not apparent from Shripney Road due to the screening along the frontage. Further north on the approaches to the A29/Rowan Way roundabout there is a car sales site and the Bognor Regis Retail Park. The units there are occupied as retail warehouses and for other uses by Halfords, Dreams, Fitness First, Bensons/Ponden, Lidl, Matalan and KFC.
16. To the east of the site, across the railway line, there is open land including an unused airfield site with a hard surfaced runway.
17. There are various vacant buildings on the site which were formerly occupied for purposes associated with the manufacturing of refrigerators. Most prominent from the A29 is a substantial 3-storey office building, which lies on the southern part of the frontage behind a narrow forecourt. Although of quite modern appearance, this building is in a state of disrepair with window panes missing. It is partly screened by hoardings with attached visual displays, orientated to face on-coming traffic. Other display panels have been fixed to the face of the building, but the hoardings and displays do not mask the semi-dereliction of the building, which remains evident particularly with respect to the upper floors.
18. To the north of that building there is a service road of crescent shape, leading from and to the southbound side of the A29. The main existing access points are taken from that service road, although there are also accesses direct from the A29. The land contained between that main road and the service road is occupied for car sales purposes. At the time of the inquiry all of this land, including a modern car showroom, a smaller sales office building and the open areas, were occupied by a business known as Green Topper.
19. There are buildings of various shapes and sizes on the rest of the site, with the largest of these spanning the boundary into the retained land. These buildings are mainly of an industrial character and of unattractive appearance, due to the mix of external materials, with extensive areas of old fashioned sheet cladding. The buildings are in various stages of disrepair and semi-dereliction, and there is little if any visual relief by landscaping. The exception is the building on the

retained land close to the A29 frontage, known as the Widdowson Building. This is in continuing use, including for site management by SDLL, and is not affected by the proposed development in the called-in application scheme.

20. The adjacent section of the A29 is a dual-carriageway with a 40 mph speed limit and street lighting. There is high hedge planting on parts of the central reservation between the roundabout to the north and the Clock Park Industrial Estate, but with lengthy gaps between the planted sections. To some extent that planting, and the curving alignment of the road, limit the prominence of the appeal site on approaching from the north. The existence of the car sales use on part of the frontage also serves to divert attention to a degree from the industrial buildings further into the site.
21. There are footways and cycleways along both sides of the A29 for most of its length between the Rowan Way and Orchard Way roundabouts. The footways and cycleways are located adjacent to each other, with markings to delineate the areas to be used for those respective purposes. The cycleways are part of the West Arun Cycle Network (Doc. A/PR3A, App AMB-3).

### **Planning History**

22. There have been industrial and business uses on the site in the past. The main use up to 2004 was as a LEC refrigeration factory. The southern part of the site had been occupied by a gas works from 1913 to 1958. It was accepted in the tripartite SOCG that there were no previous planning applications relating to the site that were of relevance to determination of the called-in application.
23. In October 2009 outline planning permission was granted on the retained land for external alterations to the Widdowson Building, the erection of a Class B1 unit (2,100 sq m), the demolition of existing structures, site preparation works and laying out of a new access road (Doc. CD/F1-F3). That scheme would share a common access with the called-in proposal. The access road from the A29 up to a proposed internal roundabout was approved as part of that permission.

### **The Proposal**

24. A full description of the proposal is in Section 5.1 of the Design and Access Statement (Doc. CD/E1d). The application is for full planning permission. The scheme includes demolition of the existing buildings. The main element of the redevelopment is a Class A1 superstore, comprising a gross external floorspace of 9,163 sq m, and a sales area of 5,210 sq m on the Competition Commission definition. The sales area would comprise 3,570 sq m for convenience goods and 1,640 sq m for comparison goods. The scheme includes 602 surface level parking spaces, 19 cycle stands with 38 cycle spaces (22 for staff in the service yard and 16 for customers near the store entrance), landscaping, a petrol filling station with kiosk, car wash and jet wash, and a new access from the A29. The store would be located at the southern end of the site. Its main elevation would face roughly north eastwards across the main area of parking, and would be a prominent feature on approaching from the north. A service access would run down the east side of the site to a service yard in the south east corner, where a bio-mass boiler and a wood chip store would be sited. The service access would provide for deliveries and would serve an area of staff parking.
25. The superstore would be of a contemporary design and appearance. Its main elevation would be mainly glazed, with glazing extending onto parts of the side

elevations facing the railway and the A29. There would be raised sections above the entrance lobby and at the corner adjacent to the A29. The latter has been described as a “large feature tower”. The raised sections would have wave profile roofs rising above the rest of the building. Signage conveying a welcome to Bognor Regis would be included on the front beneath the wave roof closest to the road and on the glazed part of the elevation facing the railway. The rear elevation, and the non-glazed parts of the side elevations, would be clad with white horizontal metal panels, broken into smaller scale sections by the use of expressed joints. Decorative art panels with local themes would be incorporated into the design of the roadside elevation.

26. The petrol filling station, and the related kiosk, car wash and jet wash, would be located within the curves of the access road at the northern end of the site. A replacement car sales site would be created to the north of the junction of the access road with Shripney Road, forward of the Widdowson Building. This would include a single storey office building of 47 sq m, and would accommodate the Green Topper business. A traffic light controlled junction is proposed between the access road and the A29, with a left-in/left-out arrangement from and to the southbound side of the A29, and a right-in arrangement from the northbound side. There would be new signal controlled pedestrian and cycle crossings on Shripney Road and on the access road at its junction with Shripney Road.
27. The proposal would require the stopping up of a highway, comprising the crescent service road from and to the A29, but consideration of a Stopping Up Order would be a matter for a later stage. As part of the overall development with the retained land, it is also intended to divert a public footpath which runs from the A29 to a crossing of the railway beyond the north eastern corner of the retained land (Plan in Doc. A/PR2C, App 8). Consideration of a Diversion Order would also be a matter for a later stage. [Inspector’s Note: at the inquiry it was stated for the applicants that the diversion of this footpath did not relate to the site of the called-in application but to the retained land. Whether that is in fact the case is unclear, given that the proposed siting of the car sales use would prevent users of the footpath on its present line gaining access to the footway along the A29].

## **Planning Policy**

28. It was agreed between the main parties that the following Planning Policy Guidance Note and Planning Policy Statements were relevant:

- PPS1: Delivering Sustainable Development;
- PPS4: Planning for Sustainable Economic Growth;
- PPG13: Transport;
- PPS23: Planning & Pollution Control;
- PPG24: Planning & Noise;
- PPS25: Development & Flood Risk.

Although PPS23 and PPS24 were included in that list, and some of their provisions were detailed in the evidence, their policies were not invoked in the planning assessments made, nor were they referred to in closing the parties’ cases. The applicants’ evidence stated the Government’s objectives for contaminated land as reiterated in PPS23, which are: to identify and remove unacceptable risks to human health and the environment; to seek to bring damaged land back into beneficial use; and to seek to ensure that the cost

burdens faced by individuals, companies and society as a whole are proportionate, manageable and economically sustainable.

29. From a national perspective, the Communities and Local Government document "Planning for Town Centres: Practice guidance on need, impact and the sequential approach" ("PPS4 practice guidance") is also relevant. So too is the "Planning Policy Statement 25: Development and Flood Risk Practice Guide" ("PPS25 practice guidance").
30. The development plan comprises the South East Plan ("SEP"), published on 6 May 2009, and the Arun District Local Plan ("ADLP"), adopted on 17 April 2003. The West Sussex Structure Plan 2001-2016 was a Core Document (Doc. CD/C1), but is no longer part of the development plan. Parts of the ADLP were quashed by the High Court, but those parts which are relevant to the application were not affected. The ADLP policies that are relevant to the proposal were included in those which were saved by Direction of the Secretary of State on 25 September 2007, and so they are of continuing effect.
31. It was agreed by the main parties that the development plan policy of most relevance was ADLP policy DEV27. This relates to "Retail Development Outside the Principal Shopping Areas". It provides that proposals for non-food retail and food retail outside the Principal Shopping Areas ("PSA") will be permitted subject to provisos. These seek to avoid any adverse effect on the vitality and viability of the PSAs and local shopping areas, either individually or cumulatively with existing or proposed developments, and cover accessibility by the highway network, public transport, cycle and on foot, including access for people with disabilities. The policy requires a full assessment of the potential impact on town centres and nearby centres, and that it be demonstrated that no suitable site can be found within the existing town centre or on the edge of the centre. It also requires applicants to demonstrate that there is a need for additional facilities. In addition, the policy provides for permission to be made subject to a condition or legal agreement to restrict the range of products sold and the minimum size of units, where appropriate.
32. The policies of the SEP which were regarded as relevant were CC1 - Sustainable Development; CC2 - Climate Change; RE3 - Employment and Land Provision; RE4 - Human Resource Development; T1 - Manage and Invest; T4 - Parking; NRM4 - Sustainable Flood Risk Management; BE1 - Management for an Urban Renaissance; SCT1 - Core Strategy; SCT2 - Enabling Economic Regeneration; and SCT3 - Management of Existing Employment Sites and Premises (Policy wordings in Doc. LPA9). The applicants and the Council produced an agreed note on the application of these policies to the proposal (Doc. A37).
33. Other policies of the ADLP which were considered to be relevant by the Council and/or the applicants are dealt with in the same note. These are policies GEN2 – Built up Area Boundary; GEN7 – The Form of New Development; GEN8 – Development and the Provision of Infrastructure; GEN9 – Foul and Surface Water Drainage; GEN11 – Inland Flooding; GEN12 – Parking in New Development; GEN14 – Public Transport; GEN15 – Cycling and Walking; GEN18 – Crime Prevention; GEN32 – Noise Pollution; and GEN33 – Light Pollution (Policy wordings in Doc. LPA8).
34. The Council has made limited progress on documents which will make up the Local Development Framework ("LDF"). Save for the Local Development

Scheme (“LDS”) and the Statement of Community Involvement, the only relevant document is the “Arun Core Strategy - Options for Growth” (“CSOG”) (Doc. CD/C5). This was prepared for a consultation exercise from February to April 2009, and sets out 3 alternative strategic growth strategies.

35. The Bognor Regis Masterplan (“BRMP”) is a non-statutory planning document (Doc. CD/C3). It was intended to form the basis for Supplementary Planning Guidance to the ADLP, but changes to legislation introducing the LDF system prevented that course of action. Instead, the BRMP was amended following consultation and has the status of a non-statutory informal planning guide based on the provisions of the ADLP. The tripartite SOCG conveys agreement that its purpose is to encourage and assist economic regeneration of Bognor Regis town centre. It was also agreed that the BRMP identified 7 “character areas” broadly related to development opportunities. These included the “Healthy Living” site, including the Hothampton car park, and the “Retail Quarter”, including the core retail uses in the town centre.
36. The Bognor Regis Seafront Strategy (“BRSS”) of 2009 is also a non-statutory document (Doc. CD/C4). It was developed to identify the strengths and weaknesses of Bognor Regis seafront and to prepare a co-ordinated programme of possible developments and projects that had been tested and consulted on with the public. It covers a study area of a 2½ mile stretch of seafront, but the depth of the area back from the front is not marked by any definite boundary. The document states that it was devised and written within the context of national and regional planning policy, and that it sought to address each of the principles in the Sustainable Community Strategy for Arun. It also made reference to the vision for Bognor Regis established by the BRMP. The BRSS has no formal status as a planning policy document.

### **Other Agreed Matters**

37. The tripartite SOCG contained a number of other matters of agreement, which are recorded in the paragraphs in this section of the report.
38. There are a number of detailed reports and other documents which accompanied the application, either initially or subsequently. These include:
  - Retail Assessment (Document CD/E1e);
  - Transport Assessment (Document CD/E1f);
  - Flood Risk Assessment (Document CD/E1h) – with a subsequent Addendum (Document CD/E1q);
  - Ecological Assessment (Document CD/E1i);
  - Energy Efficiency and Carbon Management Assessment (Document CD/E1j);
  - Statement of Employment Aspects (Document CD/E1k);
  - Report on Community Involvement (Document CD/E1l);
  - Travel Plan (latest version in Document CD/E1o);
  - Environmental Desk Top Study (Document CD/E1g);
  - Regeneration Statement (Document CD/1Ep);
  - Illustrative sketch from the A29 (Document CD/E1m).

39. The Council's retail consultants when the application was considered were DTZ. They undertook a review and critique of the applicants' Retail Assessment in a letter of 3 February 2009 (Doc. CD/E5). The applicants' retail consultants WYG responded with a revised Retail Impact Assessment in May 2009 (Doc. CD/E6). Further comments were then made by DTZ by letter dated 19 June 2009 (Doc. CD/E7). A final response by DTZ was submitted on 31 July 2009 (Doc. CD/E8).
40. West Sussex County Council was consulted on the application as LHA and raised no objection (Doc. A/PR3A, App AMB-5).
41. The application was reported to the Council's Development Control Committee on 7 October 2009 with a recommendation for approval (Doc. CD/E4). The Committee resolved unanimously that planning permission should be granted subject to conditions set out in the officer report, and one additional condition detailed in the minutes, and subject to a Section 106 agreement.
42. Bognor Regis town centre was agreed to be the only relevant centre for the purposes of applying the sequential approach to site selection in PPS4. It was also agreed that the relevant sites to be considered were the Morrisons' site and the Hothampton site.
43. Several matters relating to the existing Morrisons' store were agreed. This store is located to the west side of the primary shopping area. It is a former Safeway store, and before that had been a Presto store. Its gross area is 3,520 sq m, with a net sales area of 1,745 sq m. An adjacent surface level car park with 175 spaces is owned and operated by Morrisons. The Fitzleet multi-storey public car park above the store is owned by the Council, which also owns the freehold reversion to the store. The store and the car park above are leased to Morrisons under the terms of a long lease.
44. The Morrisons store site was referred to as a potential "Retail Quarter" in the BRMP, which stated that the store (then referred to as Safeway) did not make optimum use of its "pivotal site". The BRMP also stated that the site was likely to be the most difficult to develop, and that, due to physical and legal constraints surrounding land ownership, medium and longer term development options had been devised for the Retail Quarter. The proposed development principles in the BRMP included a mixed use development, with retail units on the ground floor, with on-site car parking provision, and including office and residential uses as well as an element of affordable housing. [Inspector's Note: although the text of this paragraph conveys matters agreed in the tripartite SOCG, there is some ambiguity in the BRMP. While the text can be read as indicating that the Retail Quarter is what is now the Morrisons' store, the plan of the Retail Quarter indicates a wider area].
45. On 29 April 2009 Morrisons submitted a planning application for development described as: "Demolition of the existing store and multi-storey car park, garages to the rear of Queensway and buildings 60-64. Erection of new supermarket, retail units, car parking and deck car parking with associated trolley bays and cycle parking provision" (Doc. CD/G1). Notice of the application was served on 4 different land owners. The application has not been determined, but an update report was taken to the Development Control Committee on the same date that the called-in application was considered. This had been to ensure that the members reached a decision on the latter in full knowledge of the latest position on Morrisons' proposal.

46. Although the BRMP envisaged that development briefs would be produced for some of the key sites in and around the town centre, no such briefs have been produced. A development brief has been prepared for the site covered by the called-in application (Doc. CD/D1). This brief is a non-statutory document which was prepared on behalf of SDLL. Two stages of consultation had been undertaken in its preparation (Doc. A/PR2B, App GM-2). A comparison had been made with the statutory process required prior to adoption of a Supplementary Planning Document ("SPD") (Doc. A35). The brief was endorsed by the Council's Cabinet in July 2008, except for its reference to residential use.
47. A marketing brief for the Hothamton site had been prepared in January 2006, with the intention of inviting 6 companies to prepare regeneration proposals (Doc. CD/I1). This brief identified that the proposed uses for the site would be expected to include B1 office accommodation for the County Council with potential for other users; health uses; retail; and high density residential development, with affordable housing. The type of retailing was not specified, although the winning submission by St Modwen referred to "larger retail units".
48. The Council signed a development agreement with St Modwen in December 2007, that company having been chosen as the preferred developer in July 2006 on the strength of its proposals to deliver a comprehensive mixed-use scheme. This was to include an entertainment centre and bowling alley, a health centre and library, shops, restaurants, cafés/bars, homes, extensive works to the promenade and pedestrianisation of The Esplanade. Although the agreement was not prescriptive of the form and nature of the development, it marked a pledge to deliver the development described in the marketing brief. [Inspector's Note: Although the uses listed in this paragraph were included in the tripartite SOCG in a section headed "Hothamton", it is clear from the evidence that the development agreement also included another site, the Regis Centre, and some of the listed uses were to be provided there, particularly the entertainment and leisure uses.]
49. In January 2008 public consultation had been carried out on the development proposals (Doc. CD/I5). The consultation material stated that the development would include "Enhancement of the retail offer for the town, possibly to include a new foodstore". This was identified in the exhibition documentation as a change since the developer selection exhibition. The consultation responses revealed that 53% of those questioned thought a new high quality foodstore in the town centre would meet the needs of the town.

### **Other Stores and Other Relevant Proposals**

50. The locations and details of the major foodstores in Bognor Regis and nearby towns/cities are relevant to the consideration of the application. The stores in Bognor Regis comprise out of centre Tesco and Lidl outlets, both on Shripney Road, and an in centre Morrisons store. The main store at Chichester referred to in the evidence was the out of centre Sainsbury's at Westhampnett Road. There is also an out of centre Tesco store at Chichester. (Plan of store locations and photographs/ descriptions in Doc. A/PR1A, vol.1, App C; a schedule of store sizes is in Doc. A34).
51. In 2008 an application was made by Asda for a mixed use development including a Class A1 grocery store of 4,459 sq m net sales area at Oldlands Farm. This site is allocated by ADLP Policy Site5 for employment development.

It is a greenfield site about 600m north of the site subject of this report. The application was refused for reasons of loss of allocated employment land, lack of evidence of demand for the B1 office development proposed, insufficient retail need, and insufficient evidence regarding flooding (Docs. CD/H1-H3).

52. The planning application for redevelopment of the Morrisons store, with respect to which agreed matters are detailed above in paragraph 45, would involve demolition of the store, the multi-storey car park and some other buildings in separate ownerships. The proposal incorporates 2 other new retail units as well as a new store for Morrisons. That store would have a net retail sales area of 2,978 sq m, representing an increase of 1,233 sq m over the existing store, and a gross area of 6,930 sq m, an increase of 3,410 sq m. The redevelopment would in part occupy the adjacent surface level car park.
53. In October 2009 the Council's Development Control Committee endorsed the officers' opinions that this redevelopment should be welcomed and encouraged in principle, but that the consequent loss of public parking spaces was not acceptable. Officers were authorised to negotiate changes to mitigate that loss. Plans showing another storey of public parking on the scheme have been submitted very recently, but the Council considered that a new planning application would be needed and this has not been received.
54. Planning permissions have been granted for 1,350 houses on land allocated under ADLP Policy Site6 to the north of Bersted and Felpham (Doc. LPA12). Implementation of those permissions has recently started. There is a current outline application on the "BREQ" site for mixed use development including 2,000 dwellings which has not been determined (Doc. LPA12).
55. There are 2 current applications for retail development at Chichester. Both involve variations of conditions to allow convenience goods sales. A proposal at the Homebase store at Discovery Park involves a gross floor area of 6,039 sq m, and 3,965 sq m of net sales area. The other proposal at Portfield Retail Park seeks variation of a condition to allow convenience goods retail sales from one unit, amounting to 1,394 sq m net sales area. It would also allow some other changes to the goods permitted to be sold (Details of the applications are in Doc. LPA11). The applications have not been determined. The Council has objected to the application relating to the Homebase store, and has asked that this be called in if Chichester City Council's officers are minded to approve it.

### **The Case for the Applicants (SSL and SDLL)**

The material points were:

#### *Introduction*

56. There was overwhelming support for the proposal from the organisations and people of Bognor Regis. All the bodies with a remit to protect the interests of the town were strongly in favour of it, including the Council, the Chamber of Commerce, the regeneration bodies and the local MP. The Council's committee had supported the scheme unanimously. The residents of the town were also supporting the scheme strongly, with only a tiny minority against it, and then generally for reasons of preferring a different retailer. The extent of local support was very unusual and was a matter to which the Secretary of State should pay great attention. The Government had said that it would give local

people more power to shape the places in which they lived. It would be contrary to that principle to ignore the wishes of the local community.

57. The level of public support was also an indicator of current problems with retail provision in the town which were twofold. First, the Tesco store on Shripney Road was overly dominant, taking almost 50% of convenience expenditure within the primary catchment area of the town. As a result, many people felt that they had no genuine choice of stores unless they went to Chichester. Second, there were very large numbers of people who did not want to shop at Morrisons in the town centre. All the bodies with responsibility for Bognor Regis were clear that the proposal would benefit the town rather than harm it. It would both provide choice and competition and send out a positive message about investment in the particular site and in the town.
58. There were 2 main issues which needed to be considered. The first concerned the impact the proposal would have on Bognor Regis town centre, in terms of percentage impact on trade and impact on investment. The second related to the benefits of the proposal, particularly with respect to regeneration.

### *Background*

59. From 1948 the site had provided employment as the LEC refrigeration factory. Following the relocation of that business to the New Era Estate, and its later demise after a take-over, the site had declined and was now largely derelict. The buildings were in a poor state of repair and appearance, and of low value for any employment generating uses. Only the Widdowson Building was occupied, but it was not on the current application site. The site was in a strategically important location on the road and rail approaches to the town, and in its current state it gave a poor first impression to visitors and did not take advantage of its strategically important location.
60. Since early 2004 it had been SDLL's intention to deliver the regeneration and re-use of the site in a commercially viable way which responded to the needs and aspirations of the local community and the Council's regeneration objectives. As the site was not allocated for a particular use in the ADLP, nor protected by any of its policies, SDLL had decided to prepare a non-statutory development brief to clarify the potentially acceptable uses so as to inform market interest (Doc. CD/D1). Background technical studies were undertaken, and there was extensive consultation (Doc. A/PR2, Section 3.0). SDLL had been commended for its approach to consultation and community engagement. The brief provided Council-endorsed guidance on the nature and scope of redevelopment of the site, and was the context for the preparation of the planning applications. It was a material consideration to which considerable weight should be attached, reflecting the fact that the consultation undertaken was similar to that which would be required in the preparation of a SPD.
61. An underlying principle in preparing the brief had been that the site should accommodate high value land uses as a mechanism to offset likely high costs of site preparation. Such costs would arise due to the need to demolish extensive buildings and structures and to remediate contamination, including removing asbestos. Apart from housing, which the Council did not support, the other uses identified in the brief were food retail, non-food retail, hotel and car showrooms. In seeking a development partner, it became clear that the only secure commercially viable use was likely to be food retailing. Following approval of

the brief, there had been negotiations which led to a partnership between SDLL and SSL being announced in August/September 2008.

62. There was a shared aspiration that the whole LEC site should be developed, with the high value use being needed to facilitate development of the rest of the land for more traditional employment uses. However, the Council had accepted that no party had the ability to bring about occupation of buildings for such employment purposes, and so the agreed intention was to deliver a site which would be attractive for development for a range of potential employment uses in terms of having been re-mediated and made accessible. That had led to a masterplan approach and to 2 planning applications being made. These were the application for the superstore and an application on the retained land. The latter was an outline application so as to give flexibility in negotiations to secure an end user of the proposed employment facility. There was no reason to suppose that such an occupier would not be found in due course.
63. The key benefit of this approach was that it would enable remediation of the entire LEC site and lead to comprehensive development. This would accord with one of the options in the development brief, and would provide an appropriate balance between the community's needs and the requirement to deliver value from the site. In that regard, the brief recognised that a full assessment of the potential impact on the town centre and nearby uses would be required to accompany any planning application for major retail development. Such an assessment had accompanied the called-in application. The further requirement in the brief for a justification to be provided of the need for additional retail facilities was no longer relevant, as PPS4 had removed the requirement to demonstrate need from Government guidance.

#### *Planning Policy*

64. The application scheme met the requirements of relevant policies of the SEP, which were considered to be policies CC1, SCT1 and SCT2, for reasons contained in a note which had been agreed with the Council. It also met the requirements of the relevant policies of the ADLP for reasons that were contained in the same agreed note (Doc. A37).
65. Retail policy in the ADLP was out of date. Policy DEV27 did not reflect the guidance in PPS4, as it required the need for additional facilities to be demonstrated, but the PPS had removed the test of need. As a result, the most relevant planning policies were those in Government guidance, particularly PPS4. Policies EC10 and EC17 of that PPS were central to the case.
66. The latter related to the consideration of applications, such as the called-in application, which were for development of main town centre uses not in a centre and not in accordance with an up to date development plan. Policy EC17 required the applicant to have demonstrated compliance with the requirements of the sequential approach in policy EC15. In addition, there should be no clear evidence that the proposal would lead to significant adverse impacts in terms of any of the impacts in policies EC10.2 and EC16.1. Policy EC17 placed all these impacts on the same footing. As a consequence, while it was right to say that PPS4 maintained the town centre first approach, there was also far more weight given to employment creation and regeneration than in the previous guidance in PPS6. There was now a clear linking of the town centre policies with economic

development by the combination of the issues into one PPS, and by the links between policies EC17, EC16 and EC10.

67. Morrisons, as objectors, had placed great weight on the BRMP. That was a non-statutory document, which was now 6 years old and was plainly out of date due to the effects of the recession. It had been subject to no more consultation than had the development brief for the application site. It merited only limited weight. While the BRMP supported a town centre first approach, that approach was not disputed by the applicants. However, it did not answer the issues that needed to be considered with respect to the application proposal.

*Vitality and Viability of Bognor Regis Town Centre*

68. The context for consideration of the vitality and viability of the town centre was its place in the shopping hierarchy. It was surrounded by higher order centres with Portsmouth to the west, Worthing to the east and Chichester to the north-west. It was classified as a Major District centre by Management Horizons, whereas Worthing was a Regional centre and Chichester a Sub-Regional centre. Whilst it was the main shopping centre in Arun, the proximity of Chichester exerted a strong influence on shopping patterns in Bognor Regis, and it was not only much larger than Bognor Regis but also more upmarket in character. It was the pre-eminent non-food shopping destination for residents of Bognor Regis. [Inspector's note: Both Bognor Regis and Chichester are identified as "Secondary Regional Centres" in the SEP; Worthing is identified as a "Primary Regional Centre" – Doc. Gen2].
69. In determining whether the proposed development would have a significant adverse impact it was necessary to consider the current health of the town centre. Bognor Regis was in fact a town which had found its niche and was performing well. It was accepted that it was not equivalent to Chichester or Worthing in terms of indicators such as rents or yields, but it was never going to be because Chichester had a different role, with quality shops and services targeted at a more affluent customer profile. Bognor Regis had a more limited catchment than Chichester, and had its own role serving the value end of the market, because that was what a large proportion of its catchment population wanted and needed and also because it traded in the shadow of Chichester. It also catered for a tourist and visitor trade. Within those constraints, the town centre was doing rather well, particularly through the severe recession which was having a more significant impact on many other centres.
70. The clearest indicator of its success was a very low vacancy rate, which was less than 4% against a national average of about 12%. When units did become vacant, they were quickly occupied. When 2 large units operated by Woolworths and Littlewoods had become vacant, they were immediately taken up by Wilkinsons and New Look, who were large and successful multiple retailers. Despite suggestions by Morrisons to the contrary, neither of those retailers had needed to take the premises occupied by their new stores as part of a package, but had clearly wanted to trade in Bognor Regis in large stores. New Look had relocated from smaller premises, which demonstrated confidence in the town centre. Only the former Millets unit had not been re-occupied.
71. This success in filling vacancies contrasted with the situation in many other centres where vacancies were running at higher rates. Some vacancies that had arisen had been attributable to circumstances other than any failing in

Bognor Regis town centre. For example, the former Tchibo store at 6-8 London Road had become vacant because that firm had decided to withdraw from the UK. The vacancy of the Millets store could also have been due to the difficulties of its parent company, rather than to any inherent failing of the Bognor Regis store.

72. The town centre had a good representation of national multiple retailers, mainly on the pedestrianised part of London Road. Most were mid-market or value retailers. Banks, building societies and estate agents were located mainly on High Street. The northern part of the centre had a wide variety of independent retailers, charity shops, service outlets and food and drink uses, and the centre appeared as a result to be well balanced. The presence of 9 charity shops was not a sign of weakness, bearing in mind that some of these were formal lettings on a permanent basis, and none were in the prime shopping area.
73. It was accepted that rents in the town centre were not high in relation to other centres, and that yields there were not low, but that was a function of the town being a value centre. As a result, one would not expect either yields or rents to be comparable to those in centres such as Chichester. What was more important was that rents and yields had not been volatile, had stood up well during the recession and had not suffered the sort of declines seen elsewhere. In that regard, the Town Focus Report indicated a rise in zone A rents from £430 per sq m in June 1987 to £645 per sq m by June 2008, although they had fallen back to about £592 per sq m more recently. That compared to current levels of about £1,722 per sq m in Chichester and £1,076 per sq m in Worthing. The yield profile in Bognor Regis had been relatively stable in the period since 2000 at between 7% and 7.5%.
74. The case which Morrisons had put forward had sought to diminish the vitality and viability of the town centre by underplaying the situation. The reality was evidenced by the most recent transaction for a shop unit at 6-8 London Road, where what was a standard sized unit had gone on offer within 24 hours of being placed on the market, and where the lease had been completed in the few days before the end of the inquiry at a zone A rent equivalent to £604 per sq m (Doc. A28). This was a more representative transaction than the lower rent achieved for the Wilkinsons store. That was a large unit, and so its rent would inevitably have been discounted for size, and that had been accepted by Morrisons' witness.
75. In terms of footfall, it was clear that the town centre was performing well. The strongest pedestrian flows were on the pedestrianised part of London Road, and Morrisons had accepted that this road was palpably busy. There was also strong pedestrian movement between London Road and the Morrisons store and related car parks, along the northern part of Bedford Street. It was not disputed that Morrisons was an important part of the town centre, or that it helped to attract people into the centre. Whether or not it was the anchor store, it was an important attractor. However, the main draws to the town centre were probably the multiple retailers on London Road, including Boots and WH Smiths. Their presence demonstrated the strong profile of the town.
76. The town centre had been successful in attracting new retailers, with 31 new fascias there since September 2005. That showed that it was an attractive centre for retailers to consider. There were some published requirements for retailers who were not represented in the town, although demand was not

overly strong. Although Morrisons had argued to the contrary, it was maintained that there were outstanding requirements from the mid-market fashion retailer TK Maxx and the department store operator TJ Hughes (Docs. A27 & A/PR4C, App GFC 13). Although those requirements were limited, that was at least partly a function of a lack of appropriate available space. The application scheme would not result in those requirements being lost.

77. Taking all these matters into account, and notwithstanding that the town centre had fallen quite markedly in the national rankings of centres since 2001, it was clear that Bognor Regis had a healthy town centre with good levels of vitality. The centre was meeting the challenges of the recession better than many other centres, and was robust and stable. It had a complementary role to the significant non-food retail warehousing provision in the town, which was mostly located close to the application site along Shripney Road (Details of retail warehouse locations are in Doc.A/PR1, Fig.3, p.10).

### *Impacts*

78. In assessing the potential impact that the proposed superstore would have on the pattern of retail expenditure in the area, the methodological approach set out in the PPS4 practice guidance had been followed (Described in Doc. A/PR1, Section 6). There were no recent permissions, developments under construction or completed developments that needed to be taken into account. In the terms of PPS4 policy EC17.3, whilst regard had been had to the ADLP in the assessment of the impacts of the proposal, that Plan was not up to date and had mostly been superseded by national policies.
79. The level of impact on Bognor Regis town centre from the proposal was easier to predict than in many other cases, because it would effectively lie in the same location as the existing Tesco store and would be of a similar size and format. In that regard, paragraph D.20 of Appendix D of the PPS4 practice guidance stated that the best evidence of the likely catchment area and trade draw pattern of a particular proposal was likely to be comparative evidence of similar developments in similar circumstances elsewhere. In this case, there was every reason to believe that the proposed store would draw its trade in a similar way to the Tesco store, save that it would draw people back who currently travelled to Chichester to shop in the Sainsbury's store there.
80. The pattern of trade draw to Tesco had been identified from a new household survey that had been undertaken in January 2010, and so the information was up to date (Survey described in Doc. A/PR1, para. 5.02 et seq). This had been used as the starting point in determining the pattern of trade to the proposed store from the survey zones. Account had also been taken of the level of leakage of trade to Sainsbury's in Chichester, estimated at over £34m in total from the primary and secondary catchment areas, and of the different trading characteristics of the existing stores. With respect to the latter point, the most notable difference was that the Morrisons store in the town centre relied on non car borne shoppers, resulting in more frequent visits and smaller basket sizes of shopping purchased at each visit.
81. The principal difference between the retail impact analysis presented by the applicants and that given by Morrisons related to differences in draw from different zones (Doc. A10). The applicants' figures were based largely on the different trading draws of the stores and, therefore, were likely to be accurate.

The applicants' analysis had entirely followed the advice in the PPS4 practice guidance, and that had not been disputed.

82. The weight to be attached to the applicants' analysis was increased by the fact that it was based on the fresh household survey. This was in accordance with the advice in paragraph B.32 of Appendix B to the PPS4 practice guidance, which expressed a preference for the use of bespoke survey and published data on local shopping patterns, and commended the use of household surveys of customer shopping habits. By contrast, Morrisons had not carried out their own survey. It was notable that the outcome of the household survey and the applicants' retail impact analysis accorded quite closely with that undertaken for the Asda application at Oldlands Farm. It was interesting that the predicted overall impact on Morrisons was roughly similar for those 2 exercises.
83. It was important when considering the figures to remember that they could never be an exact guide to future impact, as there were too many uncertainties and variables. Moreover, the PPS4 practice guide acknowledged that there were no meaningful benchmarks of what constituted an acceptable level of trade diversion, and that this was dependent on the circumstances of each case. In the current case, it was important to step back and consider the key features of the existing trading pattern and how likely those features were to affect the trading patterns of the new store. There were a number of such key features.
84. Firstly, Bognor Regis was a town with one extremely dominant out of centre store, the Tesco. As a result, it was highly likely that the proposed store would draw a very high proportion of its trade from Tesco. Such a conclusion was supported by the advice in paragraph D30 of Appendix D of the PPS4 practice guidance, which referred to the general assumption that "like affects like", so that in an area such as Bognor Regis already served by large modern foodstores, the effects of a new large food superstore were likely to fall disproportionately on the existing competing stores.
85. The second key feature was the existing outflow of trade to Sainsbury's at Chichester, which the household survey indicated was not simply connected with people working in Chichester. Some of it was likely to be attributable to customers who had a "brand loyalty", and those customers were more likely than others to make use of the proposed superstore. In that regard, the household survey revealed that 10.7% of people who shopped for their main food shopping at the Chichester Sainsbury's did so because of a preference for the retailer, while 15.8% did so because of the quality of the goods and 10.5% out of habit (Doc. A/PR1A, vol.2, Qu. 03, p.171). In that light, it was highly likely that a significant proportion of the outflow would be attracted back to the proposed Sainsbury's store on the application site. This had been assessed in the final analysis as contributing some £5.08m to the proposed superstore's predicted convenience goods turnover in 2013 of some £30.3m.
86. A third key feature related to the reasons why people who shopped at the Morrisons store chose to do so. The household survey revealed that people chose to shop there because they liked the store and it was convenient for them, and they often walked, cycled or used the bus to get there. Those factors would not be changed by opening of the proposed Sainsbury's store. It was not true, as Morrisons had sought to suggest, that it was the town centre location of the Morrisons store which led people to walk to it. The household survey showed that a more significant factor was car ownership, as 40% of Morrisons'

customers did not have cars, whereas the equivalent proportion for customers of Tesco was 9%. There was a close correlation between the number of Morrisons' customers who owned a car and the proportion of its customers who chose to use a car to go to that store, which was 37%.

87. It was difficult to see why people who shopped at Morrisons would change that pattern. On the basis that the PPS4 practice guidance said that like stores affected like, the proposed large out of centre store was much more likely to impact on a similar store, specifically on Tesco. It was unlikely to impact significantly on the Morrisons, which was dissimilar to the proposed store in that it was much smaller (Doc.A34), had a large walk-in trade, catered for many shoppers who did main food shopping more than once a week and who travelled by means other than the car, and had less convenient car parking facilities for persons undertaking main food shopping. In short, the household survey demonstrated that the Morrisons store traded in a different way to the existing Tesco, and the proposed store would trade in a more similar way to the latter than to the former.
88. To some degree these factors had become less critical towards the end of the inquiry, when the limited differences between the retail witnesses for the applicants and for Morrisons had been exposed. With respect to the impact on Morrisons, the applicants now predicted an impact on convenience goods trade of £2.54m, or 15.7%, compared to Morrisons' prediction of an impact of £4.6m, or 25.7%. With respect to the town centre as a whole, the applicants predicted a £3.89m impact, some 4%. Although Morrisons had not given a comparable figure, the impact based on their analysis would necessarily be marginally greater. Neither the applicants nor Morrisons had predicted a material impact in respect of comparison goods.
89. The critical issue was where the predicted impact would leave Morrisons in terms of trading relative to company benchmark level. Such benchmarks were averages, and so necessarily almost 50% of stores would trade below benchmark. The fact that a store traded below benchmark did not mean that it was not profitable, and paragraph B.43 of Appendix B to the PPS4 practice guidance advised that benchmarks should be used with care. The applicants' analysis suggested that Morrisons would trade at 91% of benchmark following opening of the proposed Sainsbury's store. On Morrisons' own analysis its store would trade at 82.5% of benchmark. Even on that figure, Morrisons would trade well within an acceptable range relative to the benchmark.
90. Morrisons had chosen to give no evidence as to what level of trading below benchmark it would find acceptable, either at its Bognor Regis store or as a general guide. It was claimed that the information was commercially confidential, but the decision to offer no evidence in this regard meant that there was nothing to substantiate any claim that the future of the Morrisons store would be in jeopardy if the called-in application were to be approved. When faced by the evidence of the Council's retail witness from his experience that the Co-operative would trade at 40% below benchmark, Morrisons' retail planning witness had been unable to offer any evidence one way or the other.
91. It was also relevant that Morrisons had expressed interest at an earlier stage in operating from the LEC site. The evidence given by Morrisons' retail planning witness with respect to that matter was that it was not uncommon for a retailer to operate 2 stores in the same town, implying that Morrisons could have traded

both from the existing town centre store and from the LEC site. That evidence seemed to be highly contrary to Morrisons' position as advanced at the inquiry regarding the possible closure of its town centre site if a Sainsbury's store were to open on the LEC site.

92. Morrisons' position was completely unacceptable in that it had chosen to produce the actual turnover figure for its Bognor Regis store, which was information generally considered to be commercially confidential, purely because that helped its case. With that context, it was fair and reasonable to infer that the choice not to produce figures on trading in relation to benchmark figures on grounds of commercial confidentiality was because such information would not help its case. It was the normal expectation that companies would not produce commercially confidential information, but if they chose to lift that protection they could not be allowed to do so when it suited them but not when the relevant evidence would be against them. To do so created a distorted and unreliable interpretation of commercial reality. There was in fact no objective evidence to show that there would be any unacceptable impact on the Morrisons store or that there was any risk of that store closing. The suggestion that there would be such an impact was at odds with observations which showed that the store was always very busy, and often congested.
93. Morrisons had relied on the views of DTZ, but DTZ had not analysed the impact having regard to the differences of the stores, but instead had treated Tesco and Morrisons in the same way. As a result, the letters from DTZ (Docs. CD/E5 & E7) told one little about the actual impact upon Morrisons, as that impact had been averaged with the impact on Tesco. DTZ's overall view was much influenced by the fact that they had found no quantitative need for the proposed Sainsbury's store, but that was no longer part of the PPS4 tests. In any event, DTZ's work was indicative that there would be capacity for additional convenience retail floorspace of 1,734 sq m at 2013. That would equate to about 2,000 sq m by 2015, being the 5 year projection period advocated by PPS4, if growth was assumed to continue at the same rate. While that was less than the floorspace of the proposed superstore, it was more than the 899 sq m of additional convenience space that was being proposed in Morrisons' redevelopment scheme.
94. The criticisms made by DTZ of the applicants' original retail assessment were no longer relevant. The detailed evidence before the inquiry now gave a much better basis for judging the impact on Bognor Regis town centre, including through use of the up to date household survey. For example, the catchment area used had been validated by reference to the survey's results, lower rates of growth in expenditure had been used than in the earlier assessment, and the actual decline in expenditure which had happened between 2007 and 2008 had been factored in. Tourist expenditure had been validated by reference to independent studies on visitor expenditure in Arun, and from Nectar card data in other tourist areas (Doc. A/PR1, Fig.5.2, p.25), so as to arrive at a conservative assumption of 10% of the proposed store's trade coming from outside the survey area.
95. With respect to the views of Knight Frank, the consultants who had advised Bognor Regis Regeneration Task Force on the application, their concerns were based on impact on the proposals by St Modwen for the Hothampton and Regis Centre sites (Doc. CD/E2, Divider A). Those concerns seemed to have proceeded on the basis that development of the Hothampton site would include a

food retailer. That was highly unlikely for reasons which would be returned to. Knight Frank had not themselves undertaken either a town centre health check or an impact assessment.

96. The impact on the town centre as a whole would be small. Any abstraction of customers from the centre would involve few people, and would be more than made up for by new growth in Bognor Regis. The household survey showed that a high proportion of those who shopped at Tesco's store still came into the town centre regularly to do other shopping, and that pattern would continue with the proposed store. By clawing back to Bognor Regis a large number of people who currently went to Sainsbury's at Chichester, there was a real possibility that the proposed store would encourage more people to shop in the town centre. In addition, the attributes of the town centre meant that it would remain an attractive and convenient place to shop, and would retain its profile as a centre for value retailing. That was to be seen as a positive profile, which supported smaller centres such as Bognor Regis, rather than a negative one.
97. With respect to PPS4 policy EC16.1b, the proposal would not cause any adverse impact on town centre vitality and viability, including consumer choice and the range and quality of the comparison and convenience retail offer. With reference to PPS4 policy EC16.1d, the proposal would not give rise to any materially adverse impact on in-centre trade/turnover in the wider area, taking account of current and future consumer expenditure capacity in the catchment area in the next 5 years. Accordingly, in relation to PPS4 policy EC17.1 there was no clear evidence that the proposal was likely to lead to a significant adverse impact on the town centre in respect of the matters in those parts of policy EC16.1. In addition, with regard to ADLP policy DEV27, the proposal would not materially affect the vitality and viability of Bognor Regis town centre as defined by the PSA designation.
98. With respect to possible impact on investment in the town centre, 2 sites needed to be considered. The first was the Morrisons site. There was absolutely no objective evidence to show that closure of the Morrisons store was a possibility. That company's suggestion that it may close should be accorded no weight in the absence of any such evidence. The company statement provided said nothing more than that the impact would be reviewed and that future viability would then be considered (Doc. MOR4).
99. There were several reasons why Morrisons would be most unlikely to proceed with its scheme whether or not the Sainsbury's store were to be permitted. There was no evidence that Morrisons had undertaken any viability appraisal of its scheme, and so it was asking the Secretary of State to assume that it would spend upwards of £20m without any evidence that the scheme was viable.
100. The applicants' retail property witness was very experienced in such matters. His evidence was that a retailer would carry out a proper development appraisal as well as considering matters such as future trade and potential loss of trade. His appraisal indicated that the total value of the proposed scheme would be about £30.2m, but that the costs of creating it would be about £36.3m, indicating a loss of some £6.1m. The loss would be almost £10m if a developer profit at the lower end of normal expectations was allowed for. That did not make any allowance for the possibility that costs could be involved if a compulsory purchase order ("CPO") proved to be necessary, and also did not

include any compensation that might be payable. Therefore, the proposal was unviable on the basis of a usual commercial appraisal assessment.

101. Further costs would be incurred if the existing store had to close for a period of time, or to operate under sub-optimal conditions, during redevelopment. For example, there could be additional finance charges if the development period were to be extended, and some custom could be lost, possibly for good. In any event, the redevelopment would be likely to cause great disruption in the town centre, probably for between 1 and 2 years. Even after the development the store would remain a town centre food supermarket, albeit a larger one. It did not seem credible that Morrisons would embark on such a significant loss making development simply to retain that existing trading profile and function, which the existing store preformed well and effectively.
102. It could clearly be inferred that if Morrisons had undertaken an appraisal which had found the proposed redevelopment to be viable, that evidence would have been produced. At the very least the evidence that the exercise had been carried out would have been provided, but that had not happened. While Morrisons had disputed that it would assess a development scheme on the basis of a commercial development appraisal of the type the applicants had undertaken, it had not even produced any evidence to show that it had undertaken the exercise of considering the future turnover and trade of the store which its own evidence had suggested was what a retailer would do. Morrisons was a well run public company which prided itself on its financial acumen. It was inconceivable that it would decide to build a new store involving this level of expenditure without careful financial appraisal, and without taking the value of its existing investment into account. Public companies were required to value their property assets in accordance with standard accountancy practice. In this case the leasehold interest of the Morrisons store was assessed by the applicants' property expert as having an existing value of about £7.4m, and its freehold interest in the surface car park as having a value of about £2m.
103. The applicants' witness had done further appraisals of the redevelopment scheme using the figures used by Morrisons' retail property witness, save that these values of Morrisons' existing investment had been taken into account. On that basis, the scheme would still make a loss of £3.74m (Doc. A12). Using the higher construction costs produced by the quantity surveyors employed by SSL, the loss would be £10.06m (Doc. A13). Therefore, it was very questionable whether Morrisons would be prepared to undertake the redevelopment. The payback period would be long, and only a modest amount of extra floorspace would be created. In addition, the store would lose its link with Bedford Street, the visibility of its entrance from London Road, and the advantages of the sales floorspace being at ground floor level. The new store would be at 1<sup>st</sup> floor level with access by travelators and lifts. Although the redeveloped store would have a frontage to High Street, there would be no "at grade" entrance in that location.
104. It was also inconceivable that Morrisons would have committed to spend £20m without Board approval or a similar process. There was no reference to Board approval in the company statement provided, and the clear inference must be that such approval did not exist. Morrisons had not put forward a corporate witness, and had only called consultants who claimed to know nothing about the company's internal processes, either generally or in this specific case.

105. Another indicator was that there had been no pre-application public consultation on the Morrisons proposal. The scheme required the acquisition of land which Morrisons did not presently control. One of the affected land owners had apparently learned of the proposal for the first time from the local newspaper. A phasing programme and costs schedule for the scheme had been produced at the inquiry, but there was no evidence of any such documents having existed previously. There was also relevant evidence in an email written in October 2008 when Morrisons was involved in negotiations for the LEC site. This conveyed that if the LEC site “went away from” Morrisons (referred to in the email by the code name of “Clematis”), they would have no alternative but to protect their own position by submitting a planning application to redevelop their own site (Doc. A/PR2C, App GM-19).
106. In the absence of any evidence other than a one sentence statement from a Morrisons’ executive that the company intended to proceed with its redevelopment, the Secretary of State would have to consider very carefully what weight to give to Morrisons’ proposal. On the evidence it was no more than a “spoiler”, and Morrisons could have no intention of proceeding with it. It was being used in an attempt to stop Sainsbury’s becoming a competitor in the town, and the Secretary of State should not accept Morrisons’ stated position in the absence of evidence to support it.
107. The second site to be considered in relation to investment in the town centre was the Hothamton site. It was not disputed that the Council supported its redevelopment, and had done for many years, or that this would be of great benefit to Bognor Regis. However, if the scheme on this site were to comprise of the mixed comparison retail, residential, community and other uses originally envisaged, then there was no evidence that the proposed superstore would have any material impact on the prospects for that redevelopment. None of the retail impact evidence before the inquiry showed that there would be any material effect on the town centre’s comparison goods trade, and the retail planning witnesses had agreed that large superstores mainly competed with each other for their comparison goods sales. With that context, the crucial issues were whether there was any reason to believe that redevelopment at Hothamton would include a foodstore and whether such a use would be viable. The key point was that there was absolutely no ground for belief that a foodstore would be forthcoming at Hothamton even if the called-in application were to be refused.
108. There were a number of reasons for that. First, it had been no part of the Council’s brief for the Hothamton site, or of St Modwen’s tender for it, that the site should be used for a large foodstore (Doc. CD/I2). Second, St Modwen’s consultation of January 2008 referred only to a “possible” foodstore (Docs. CD/I5 & A16), which indicated that even St Modwen were very cautious about the matter. Third, that consultation exercise had not led to any proposals, or to a planning application, either incorporating a foodstore or otherwise. Fourth, the Council had not even considered whether a foodstore would be acceptable on the site, either as local planning authority or as landlord. Fifth, and probably most importantly, there was no interest in the site by any food retail operator.
109. On the latter point, Sainsbury’s had appraised the Hothamton site, and had found it not to be viable by a wide margin (Doc A/PR2B, Apps GM-12 & GM-13). Morrisons had said that it would not move there. Despite having had permission refused at Oldlands Farm 2 years ago, Asda had shown no interest in

Hothamton. St Modwen had made no reference to any interested food retailers in its objection to the called-in application. There was no basis for Morrisons' suggestion that if this application were to be refused, retailers would reconsider the Hothamton site. If Asda had felt that to be the case, it could have been expected that St Modwen would have said so in its objection. Sainsbury's own rejection of Hothamton on viability grounds had had nothing to do with potential competition from their own proposal at Shripney Road.

110. There were obvious reasons why food retailers were uninterested in Hothamton. The site could only accommodate a maximum sales area of 3,516 sq m, which was considerably smaller than the existing Tesco store and the Sainsbury's store at Chichester (Doc. A34). The potential number of parking spaces would be about half those at Tesco, and the parking would not be as convenient to use as it would be underground. Such a limited sales area, compounded by the parking provision, could not meet the demand or need to clawback trade and offer choice. As a result, a foodstore at Hothamton would not generate enough trade to be viable. That would be exacerbated by the fact that such a store would be within 200m or so of the Morrisons store, which would be in close and direct competition with it as a like for like store. Consequently, the Hothamton site was a fundamentally unappealing proposition for any food operator.
111. A foodstore at Hothamton would have a far greater impact on Morrisons than the called-in application proposal. As a result, Morrisons would have a very strong planning case to object if an application were to be made for such a store. That was because Hothamton was an edge of centre site, and objection could be made on the grounds that the resulting diversion of trade would be detrimental to the town centre and that Morrisons store was on a sequentially preferable site. What would probably be a bigger and more modern foodstore at Hothamton might genuinely put the Morrisons store in jeopardy, as a result of the large trade diversion that could be anticipated.
112. With that background, it was possible that Morrisons could persuade the Secretary of State to reject the proposed Sainsbury's store at Shripney Road, and then further persuade either the Council or the Secretary of State to reject a foodstore at Hothamton. That would result in Bognor Regis losing out on all investment as a consequence of Morrisons using the planning system to its commercial advantage. Morrisons' retail planning witness had accepted that this scenario was possible. Morrisons' commercial interests should not be allowed to harm the much wider interests of Bognor Regis in that way.
113. In short, it was totally unrealistic to think that there would be 2 medium sized foodstores next to each other in Bognor Regis town centre. In that regard, it was not possible to know what St Modwen's analysis had been in floating the possibility of a foodstore at Hothamton. The 2 obvious explanations were either that it was aware that Morrisons was considering moving to Shripney Road, so that a new foodstore at Hothamton would not face competition from Morrisons' town centre store, or that it was hoping to persuade Morrisons to move to Hothamton. Those matters could only be speculation due to St Modwen's absence from the inquiry.
114. A further relevant consideration with respect to the Hothamton site was that it was the only apparent location for providing the type of large units for comparison goods retailers that the town centre currently lacked. For example, the expressed requirements of TK Maxx and TJ Hughes could potentially be

accommodated on this site. Although it was doubtful that a foodstore development would be achievable on the site, if that were to happen it would remove the potential to enhance the town centre by providing large comparison goods shops of the kind that would be needed to fill the void in the centre's retail fashion offer. That had been the retail use of the site which the Council's advisers DTZ had envisaged in the Coastal Districts Retail Study of 2005 (Doc. CD/C6).

115. On a balanced view, the called-in application scheme was more likely to assist viability of the St Modwen proposals for the Hothampton site than to harm those proposals. That was because of the benefits of the application scheme, including through the provision of increased employment and additions to the expenditure potential within the Bognor Regis area.
116. There were a series of other impact considerations arising from PPS4 policy EC10.2. With respect to EC10.2a, a renewable energy and energy efficiency assessment had been prepared (Doc. A/PR2b, App GM-4). Based on its proposals, the store would have no adverse impact, significant or otherwise, in terms of the matters incorporated in that assessment. As a proper starting point, SSL employed measures to reduce the energy used in its stores, and had a commitment to that effect across its business. Design features would be incorporated into the proposed store to limit carbon dioxide emissions, including a bio-mass boiler, solar pipes across the roof and an air source heat pump. Rainwater would be recycled. The boiler alone would generate 31% of the total energy requirements from renewable sources, in excess of the 10% requirement in SEP policy NRM11.
117. Carbon dioxide emissions would also be reduced as a result of the accessibility of the site by means other than the car, and the improvements to be made to public transport, and the LHA accepted that the site was in a sustainable location. The travel plan would encourage staff to make their journeys by sustainable means (Doc. CD/E10).
118. Although the calculation was not an exact science, the proposal would lead to very substantial sustainability benefits in terms of journey savings, by reducing commuting to shop in Chichester and other towns. The main differences between the applicants' and Morrisons' evidence on this matter arose from the trade draw assumptions, but there were other differences. Morrisons' criticism that the applicants had not taken account of diverted trips to the proposed store was not valid, as similar diverted trips were made at present, for example by people working in Chichester and diverting to Sainsbury's store there on their way home. Morrisons' suggestion that journey savings should be reduced due to the lack of a right turn facility onto the A29 from the store was also invalid. Customers leaving the store to travel north would have to first go south to turn at the Orchard Way roundabout, but that was replicated in existing trips to and from Tesco. The applicants' calculation was conservative, as users of Tesco who wished to travel south on leaving had to go north to the Rowan Way roundabout to turn before going south, and those arriving at Tesco from the north had to go south to Orchard Way before turning to head north to access that store.
119. The applicants' transport witness had accepted that journey savings should be reduced to take account of trips that would still be made after opening of the proposed store, such as linked shopping trips to Sainsbury's at Chichester by people who worked near by. However, on the basis that the split would be

80:20 between saved journeys and those that would still take place, a conservative estimate was that there would still be savings of about 3.3m km per annum, and there would be further savings of about 1.8m km if allowance were to be made for the shortening of the overall journeys of customers diverting from Tesco to do their shopping at the proposed store. On that basis, the potential journey savings would be about 5.1m km per annum. Even using the trade draw assumptions in Morrisons' evidence, the total savings on an equivalent basis would be 3.1m km (Doc. A30). These potential journey savings were more than the 1.6m km per annum which another Inspector had regarded as "most impressive" (Doc. A26, para. 200, p.30-31). On the applicants' view, they represented about 25% of the total of existing journeys for main food shopping purposes.

120. The Flood Risk Assessment ("FRA") had demonstrated that the proposal had been designed to take account of the effect of climate change on flood risk (Doc. CD/E1h & q). There would be a net benefit as flood mitigation and storage measures had been designed into the proposal, which would as a consequence be less at risk than the existing site. A flood emergency plan had been accepted by the Environment Agency ("EA"). With respect to flood risk, the proposal complied with ADLP policy GEN11.
121. With respect to PPS4 policy EC10.2b, it was not suggested that the application site was as accessible as the Morrisons store, and it was true that relatively few people would travel to the proposed store other than by car. However, that was because most people with access to one chose to use the car to do their bulk shopping for reasons of convenience. It was not realistic to expect people with a car and busy lives to shop 2 or 3 times a week, and to carry their shopping home by bus, or by walking or cycling, except in circumstances such as those that applied in central London where people were stopped from owning a car.
122. The policy in PPG13 sought to ensure that people had a choice of mode of transport so that they did not have to use a car. The application would comply with that policy. With respect to walking, there was a population of about 6,800 within a 30 minute walking distance, including a significant area of Bersted and residential areas to the south. The site was also accessible within that distance to the proposed residential expansion to the north of Bersted (Isochrone plan in Doc. A/PR3A, App AMB-6). Nevertheless, it was accepted that there would be little walk in trade to the proposed store.
123. It was estimated that over 10,000 people would have access to the proposed development within a 10 minute cycle ride, and in excess of 35,000 people within a 20 minute cycle ride (Isochrone plan in Doc. A/PR3A, App AMB-8). The site was well located to attract cyclists from the growth areas identified as policy Site5 and policy Site6 in the ADLP. Whilst it was accepted that cycling would always be a minority mode for main food shoppers, there would be good potential for Sainsbury's employees to use cycles to get to work.
124. Most importantly, buses to the store would offer a good alternative, and would provide a choice for people who did not wish to travel by car. A new bus stop would be provided on the southbound side of the A29, and a contribution made to improvements to the bus stop on the northbound side (Plan in Doc. A/PR3A, App AMB-10). The public bus service past the site would be roughly doubled, to serve outlying settlements to the north at Shripney, Westergate and Yapton. That service was also due to benefit from contributions made by Section 106

125. As well as complying with PPG13, the proposal met the objectives of ADLP policy GEN7(iii), due to the accessibility by modes other than the car, and the savings that would arise in the length of car journeys. It also complied with ADLP policy GEN14, in making provision for new and improved public transport facilities.
126. The submitted Transport Assessment included a full capacity assessment of the proposed site access and local road junctions (Doc. CD/E1f). This took account of the proposal, the development of the retained land and other local committed developments. It demonstrated that the proposal would not have an adverse impact on local traffic levels or congestion. That view was supported by the LHA. The site was about 7km from the closest trunk road, the A27(T). The Highways Agency had been consulted and had raised no objection. There would be no adverse impacts on the local highway network.
127. The proposed car parking provision of 602 spaces would not be excessive. It was below the maximum indicated by Appendix D to PPG13 of 655 spaces, and below the maximum standard in the ADLP which would equate to 916 spaces. The parking for disabled persons would be in accordance with the standard from the ADLP. Although Morrisons had argued that the proposed parking was more than would be needed, and would not discourage use of cars, the methodology used had wrongly assumed that the parking area would be empty at the start of the assessment, and had involved a smoothing of the peaks of demand. Furthermore, Morrisons had proposed a higher ratio of parking to floorspace when it had been interested in the LEC site (Doc. A/PR2C, App GM-19).
128. Having regard to all relevant matters, the proposal would have a positive impact with respect to PPS4 policy EC10.2b.
129. With reference to the impact consideration relating to design in PPS4 policy EC10.2c, which echoed the design sentiments of PPS1, the proposed store would be of a high quality design which was entirely in accordance with the aspirations of those policies. In that regard, the design had been informed by discussions with the Council from an early stage, adopting a masterplan approach to ensure that the various elements worked together and that shared facilities such as access were possible. The design had been arrived at in accordance with CABI's advice on inclusive design so as to ensure accessibility by all. It would comply with Part M of the Building Regulations, and its design took account of the Disability Discrimination Act 2006.
130. The store would be at the southern end of the site because of its gateway location, so that it would be readily visible on the approach into the town. It would be viewed across a foreground of trees set around and within the car park. To tie in with the gateway location, it had been agreed that the building would sit close to the roadside and have a prominent feature in the form of an extended height tower with wave-form roof facing the approaching visitors. There would be a feature of similar design over the store entrance. Reflecting

the gateway location, SSL had agreed to incorporate signage to welcome people to Bognor Regis.

131. There was no particular design style in the area to which the development could be related, as the surroundings were mostly a mix of retail warehouse and industrial warehouse buildings, and the area's character and quality was poor. In that context, the proposed building would lift the vitality and vibrancy of the area. Its frontage would take a simple form, being largely of glazing. Activities inside would be visible from outside, resulting in the building connecting well with the environment around it. Due to shelving and storage requirements, parts of the roadside elevation would be clad with white panels, but these would be enlivened by artistic panels facing the A29, with local themes relating to matters such as tourism or the site's history. The appearance of that elevation would also be broken up by landscaping.
132. The superstore building would have a very positive impact on visitors to the town. The consolidation of the Green Topper dealership would significantly improve the appearance of that element of the site compared to its present state. The proposal as a whole would result in a marked visual improvement over the image that such visitors got at present, as the site in its current state was a significant eyesore and an unwelcome entrance to the town, both as seen from the road and the railway (Doc. A/PR2B, Apps GM-5 & GM-7). In terms of other design features, the proposal would be beneficial in reducing and minimising the number of access points, and providing a single central access to serve all the development on the site and the retained land. Overall, the proposal would have a positive impact with respect to policy EC10.2c.
133. With respect to the impact considerations relating to economic and physical regeneration in PPS4 policy EC10.2d, the proposal represented a projected investment of some £50m. It would have overwhelming regeneration benefits, as was evidenced by the high level of support from the public and stakeholders. Many of these benefits were also relevant to the necessary consideration of the impact on local employment, which was referred to in PPS4 policy EC10.2e.
134. The regeneration benefits would be at least threefold. First, there were the remediation benefits. Not only would contamination of the application site be remediated, but the retained land would also be remediated. That would be achieved through the mechanism of the Section 106 agreement. With respect to the retained land, the development would also provide enabling works in the form of laying out the access road and the utility services to facilitate the site coming forward for Class B1 development. SDLL was seeking to secure an appropriate end user for that element of the redevelopment of the overall LEC site. Second, the physical improvement of the site already referred to would be an important factor in improving investor confidence in the town, particularly having regard to the fact that the St Modwen development schemes had so obviously stalled.
135. The third matter was that there would be a huge benefit in terms of job creation and the provision of training. Despite the arguments Morrisons had put with respect to the relative deprivation levels of the Lower Super Output Areas ("LSOA") containing the application site and the Morrisons store, there could be no doubt that Bognor Regis was a town with high levels of unemployment and low levels of qualifications. LSOAs were an unsuitable basis for assessing relative levels of deprivation (Doc A/PR2C, Section 4).

136. Bersted Ward, within which the application site was situated, had been designated as a Local Neighbourhood Improvement Area ("LNIA"), indicating that it was suffering from multiple deprivation. Furthermore, in March 2009 the town of Bognor Regis had 5.2% of its working age population on Job Seekers Allowance, compared to 3.5% across Arun, 3% in West Sussex and 4% in England (Doc. A/PR2B, App GM-9 p.150). Unemployment rates were rising in the Chichester and Bognor Regis Travel-To-Work Area, and 20% of those registered recorded "sales and customer service occupations" as the main type of work they were seeking (Doc. A/PR2B, App GM-10), which was just the kind of employment the proposal would create. At the 2001 Census, 30.1% of the town's population aged 16-74 had no qualifications, compared with 29.2% across Arun, 26.2% in West Sussex and 28.9% in England. Wider West Sussex had seen a decline in workplace based employment of 6.3% from 2002-06, and the SEP and SEEDA's Economic Strategy (Doc. CD/B2) both recognised the continuing economic and social decline in the Coastal South East.
137. With that context, the creation of 400 jobs, with a mix of full and part time positions, together with Sainsbury's extensive training schemes, would be a real plus for the town. There would be 266 full-time equivalent store jobs, and some seasonal jobs. About a third of the jobs would be full-time. It was important that by combining the previously separate policies on economic development and retailing, PPS4 marked a change in how retail employment was perceived. Retail jobs were economically important, and accounted for 1 in 10 of workers in the UK economy as the third largest employment sector (Doc. CD/E1k). The importance of retail employment in Bognor Regis was indicated by the fact that Tesco was the largest employer.
138. Job opportunities would include sales and support staff, skilled positions in bakery, butchery, fishmongery and pharmacy, and management roles. In addition, the relocation of Green Topper would be provided for, securing a well established local business. Further employment benefits would arise during demolition, remediation and construction phases of the development, and from spin off employment. While spin off jobs were often not in the local area, SSL had initiatives seeking to encourage local suppliers. SSL had also signed the Bognor Regis Developer and Partner Charter, the objectives of which included an aspiration to draw on local businesses in the construction and on-going maintenance of operations.
139. SSL aimed to attract and recruit the best people, and was committed to developing and growing its own talent. It was the only national food retailer to have achieved Investors in People re-accreditation. The company worked with a number of Government and local employment initiatives (Doc. CD/E1k, paras. 4.25-27). It was the first retailer to offer its workforce the chance to gain nationally recognised qualifications, including NVQ level 1 or 2 in maths and English. It also ran apprenticeships in bakery, butchery and fishmongery. Those training benefits would be available at the proposed store, and a requirement for that was incorporated in the Section 106 agreement for a period of 5 years from the store opening.
140. A final element of the potential employment benefits of the scheme involved a contribution of £125,000 which was to be made towards enterprise provision on or near the LEC site. That would go towards the creation of starter units or enterprise space for new and emerging businesses. This could possibly be

provided in the proposed B1 building on the retained land, but the Section 106 agreement's terms were flexible as to where the provision would be made.

141. Therefore, the proposal would have substantial positive impacts with respect to PPS4 policies EC10.2d and EC10.2e. The arguments put forward by Morrisons that job losses would be caused should be discounted. There would be no loss of potential increases in employment in the Morrisons store, as it was extremely unlikely that the redevelopment of that store would actually take place. If any loss of employment arose from the impact on the town centre, it would be likely to involve only a very small number of jobs, if any at all.
142. Having regard to all the relevant matters, in the terms of PPS4 policy EC17.1b there was no clear evidence that any significant adverse impact would be caused by the proposed development in respect of any of the impact considerations in PPS4 policies EC10.2 or EC16.1.

### *Sequential Assessment*

143. The requirement to carry out a sequential assessment was set out in ADLP policy DEV27 and in PPS4 policy EC14.3. PPS4 policy EC15 set out how a sequential assessment was to be undertaken. This required that sites should be assessed for their availability, suitability and viability, and that in considering sites developers and operators must have demonstrated flexibility in terms of scale, format, parking provision and in the scope for disaggregating specific parts of a retail or leisure development, although arbitrary sub-division of proposals should not be sought.
144. Although PPS4 had removed the requirement to demonstrate need for a retail development, it was relevant in this case to consider need in the context of the sequential assessment. As trade was currently leaking out of Bognor Regis to other towns, it was necessary to consider whether a store of a particular size was required to facilitate claw-back of the leaking trade, which was desirable for reasons which included sustainability in the form of reducing car trips.
145. It was also relevant to the sequential assessment in this case that, having regard to paragraph 10 and policy EC1.4dii of PPS4, the Government aspired to increase competition in the grocery market. In Bognor Regis that would require a store comparable in size, extent of surface parking provision, accessibility and location to the Tesco store. A further small or medium sized supermarket in the town centre would only be effective in competing with the Morrisons store for the same town centre bound customers, but would not compete effectively with the Tesco or be likely to reduce customers travelling to Chichester and Littlehampton for their food shopping.
146. In sequential approach terms a site must be capable of competing effectively with Tesco and the stores in nearby towns, and so must be able to accommodate a store in the region of 4,500 sq m net sales area and a large enough area of surface level car parking. Although the guidance in PPS4 about retailers needing to be flexible was noted, in Bognor Regis the specific need was for a new superstore genuinely able to compete with the dominant Tesco. In that regard, paragraph 6.24 of the PPS4 practice guidance was relevant in recognising that needs could arise because of a deficiency in the range, quality or choice of existing facilities. It was a deficiency in superstore provision which the proposal specifically sought to address.

147. The 2 sites which really needed to be considered were Morrisons and Hothamton, but the Regis Centre and Covers sites had also been looked at. It was accepted that the Morrisons site could be made available for an expanded convenience retail use. However, it was not currently available, as the land needed for its redevelopment was in a number of separate ownerships. It was quite possible that the site might ultimately require CPO powers to be exercised.
148. The Morrisons site was suitable for a larger convenience store, but in considering suitability it was essential to have regard to whether it could meet the need/demand which the called-in application was seeking to address. That was made clear by the definition in paragraph 6.37 of the PPS4 practice guidance. Paragraph 6.42 conveyed that when judging suitability it was necessary to have a proper understanding of the scale and form of development needed, and what aspect or aspects of need were intended to be met by the site. That required a more sophisticated approach than the one Morrisons had applied. The latter was not adequate in judging suitability only on the basis that its site was in the town centre and suitable for convenience retail use. Whilst it was necessary to start the sequential assessment in the town centre, paragraph 6.45 of the PPS4 practice guidance clearly indicated that if a retailer could show that the town centre site was unable to meet the need/demand satisfactorily, then that was justification for moving to a less central site.
149. The reason behind the called-in application scheme was the need to clawback trade from Chichester, and also to provide choice and competition with the Tesco store. That constituted a "location specific" need in the terms of paragraph 6.26 of the PPS4 practice guidance, in that it arose from a deficiency in the range and choice of existing facilities for residents of Bognor Regis. That was both the need, in terms of the PPS4 practice guidance, and the commercial justification for the scheme. If the application could not meet the twin objectives of clawback and provision of choice and competition, then there was no commercial justification in pursuing it.
150. Redeveloping Morrisons store in the way proposed would not meet that need. It would remain a town centre foodstore of a limited size and car parking provision. That redevelopment would not persuade people to radically change their shopping habits, so as to go to Morrisons instead of to Tesco or Sainsbury's in Chichester. For those reasons, the Morrisons site was not suitable to meet the need/demand that had been identified. In any event, for reasons already explained, the Morrisons' redevelopment was unlikely to be viable and so would not be carried out.
151. The Hothamton site was available, but only for mixed use development. Even if a foodstore operator were interested in that site, there would be significant issues about it being available for that type of development. For reasons given earlier, the site was not suitable to meet the need identified. In addition, there was no indication that the Council would find a convenience store to be a suitable use on that site, and, in terms of the retail needs of Bognor Regis, a foodstore would be a poor use of it.
152. The Hothamton site was not viable for redevelopment at the present time. It had been identified for redevelopment as long ago as 2004 in the BRMP, but there had been a failure to secure its development even in the retail boom that followed. It was unclear when it would become viable, if at all. It was not viable for a foodstore, as had been shown by Sainsbury's appraisal of it (Doc.

A/PR2B, App GM-13). Viability for that use would not be achievable as it would be competing for the same catchment as Morrisons and it would have little chance of bringing trade back to the town centre from Tesco or from Chichester.

153. The Regis Centre site was not appropriate for large food retailing. The Covers' site was in use by a firm of builders merchants. This site was close to Bognor Regis railway station, was in beneficial use and there was no indication that its existing users wished to move. The site could not be regarded as available. It was also unsuitable in its extent for the size of foodstore which Sainsbury's wished to provide, and there were difficulties arising from the fact that it had a shared car park with the station. Therefore, there were no sequentially preferable sites available for the proposed development.

### *Regeneration*

154. Many of the regeneration benefits had been referred to in relation to the impact considerations in PPS4. The need to regenerate the site was the most important other material consideration. It was an eyesore which stood as a symbol of the decline and deprivation of Bognor Regis, and which served to reduce confidence in the town for potential investors. It had become a magnet for anti-social behaviour (Doc. A/PR2C, App GM-14). There was a very strong desire to regenerate the site, and the community had made clear that "do nothing" was not an option.
155. The only realistic way to secure regeneration of the site was to approve this planning application. Notwithstanding that site investigations were far from complete, it was clear from reports that the site was heavily contaminated (Doc. A22). Further work was needed before a remediation strategy could be drawn up, but that was standard procedure. Morrisons' experts on this matter, Sirius, did not dispute that there was significant contamination (Docs. MOR/PR1A, App 2, & MOR/PR1C, App 4). There was no doubt that if planning permission were to be granted both the application site and the retained land would be remediated to a standard necessary for the development proposed. That would be secured by the mechanism of conditions and the Section 106 agreement.
156. Although Morrisons had suggested that SDLL could be liable to remediate the site without development, no evidence had been called to support that suggestion. It was not supported by Sirius or by Morrisons' property witness who dealt with the contamination matter. Sirius had made clear that the site was very unlikely to require remediation to protect human health or controlled water receptors if the site were to remain in its current condition (Doc. MOR/PR1A, App 2, para. 31). There were no significant pollutant linkages arising from the land's current state.
157. It was accepted that the projected costs of remediation had varied, but that was due to the fact that a remediation strategy had not been fixed. The reduced costs now envisaged resulted from the likelihood that contamination would be dealt with on site rather than off site. The potential fall in costs made no difference to the issues. The current estimate for remediation was £1m plus demolition, asbestos removal and fees (Doc. MOR/PR1C, App 1), but that figure was highly provisional, partly because no approval had yet been sought from the EA. Even at that level, a high value end use was needed to make development viable. Sirius had not suggested that the costs were likely to fall any further. Instead, the concern was that the costs might be higher. If the

proposed development did not take place, the benefits of decontamination would not be secured.

158. The proposal was supported by the encouragement given in PPS1 to authorities to recognise that economic development could deliver environmental and social benefits, which were to be considered alongside any adverse impacts. It also accorded with the aspirations of SEP policy SCT2 seeking to steer expenditure and promotion of social and economic regeneration towards areas in greatest need. Bognor Regis, and Bersted Ward in particular, were such areas.

#### *Alternative Uses*

159. There were no other potential uses of the site which could in reality achieve its regeneration. The main use put forward by Morrisons was residential, but there were overwhelming planning objections to that use in terms of flood risk. Residential was a more vulnerable use in the terms of PPS25, and the sequential test would have to be applied. By reference to an appeal decision nearby at Durban Road (Doc. A/PR2C, App GM-12) there would be sequentially preferable sites for residential development, and that had been accepted by Morrisons' planning witness. Although a sequential assessment had not been specifically undertaken, it was obvious that the site would fail the sequential test in PPS25.
160. Morrisons had suggested that it was necessary to apply paragraph 4.38 of the PPS25 practice guidance, as the site was subject of a regeneration strategy. It was ironic, and indicative of the inconsistent and self serving nature of its case, that Morrisons relied on regeneration need when arguing for housing, while rejecting a regeneration argument for retail use. In any event, that paragraph of the practice guidance did not assist Morrisons. PPS25 was plainly intended to ensure that lower vulnerability users should be placed on the land in areas of flood risk. Even if the site was subject of a regeneration strategy, the requirement must be to place a less vulnerable user on it, such as retail, rather than a more vulnerable user, such as housing. It was wrong to interpret the practice guidance as meaning that the sequential test was irrelevant if land was subject to a regeneration strategy. That would run counter to the purpose of PPS25 to avoid flood risk, and there was nothing in that PPS to suggest that the sequential test could be set aside to deal with decontamination of land. Morrisons' argument that the risk of retail harm was more important than the need to protect residents from flooding was also self serving.
161. Ultimately under the exception test in PPS25 it was essential to ensure that any development was safe. It was far from clear how housing on the application site could be made safe. If it could, it was likely that very expensive flood mitigation measures would be needed. That would reduce the developable area, increase costs, and so further impede the site's viability. It was inevitable that the EA would object to housing on the site on flooding grounds, and highly likely that such development would be rejected as being contrary to PPS25.
162. There were other problems with the land as a housing site. It was in a very undesirable location between a railway, a main road and areas of business development. That made it a highly unattractive site, as did the fact that housing would be located behind the Green Topper car sales use. If SSL did not exercise its option to acquire that company's existing site, and relocate the use as proposed, it would most probably remain on its original site.

163. Another factor was that the remediation requirements for housing were likely to be more exacting, and costly, than for retail or other uses. Extensive greenfield sites were in the course of development to the north, which would make it even more difficult to attract house builders to the site. It was highly unlikely that the site as a whole would at present be viable for housing development. Whilst the less contaminated northern part might be viable, a piecemeal development would lose the opportunity to cross-subsidise the remediation of the other parts of the site. In planning respects, it would be undesirable for development not to achieve comprehensive development of the whole of the LEC site. In any event, the Council did not favour a housing use, and such a use had little public support. The site was stated to be unsuitable for housing in the Council's Strategic Housing Land Availability Assessment (Doc. A/PR2C, App GM-17).
164. With respect to sheltered housing, the site was not the kind of location that was attractive to developers of that type of housing. The site did not fit the requisite profile of being a quiet and peaceful location, close to local amenities.
165. It was highly debateable whether a mixed development with housing to the north and bulky goods retail warehousing to the south would be either viable or acceptable in terms of flood risk. Be that as it may, such development would be undesirable in that it would make the northern part of the LEC site a small residential enclave surrounded by commercial and retail uses. It would also be difficult to achieve satisfactory access arrangements to a development for such a mix of uses, and Morrisons had provided no indicative layout plan or proposals for a mixed use development which might allow its feasibility to be assessed.
166. There was no evidence of any interest by residential developers since the height of the market in 2007. Insofar as there was evidence of such demand at that time, it was relevant that at that stage there had been less knowledge of the contamination of the land. The evidence indicated that George Wimpey had walked away from an interest in the site once it became aware of the contamination issues. It was also unclear whether the residential developers who had expressed an interest had knowledge of the flooding issues.
167. The evidence was overwhelming that the site could not, and would not, be developed for housing. Even if it were to be developed for such use, such development would bring none of the benefits of the current application scheme in terms of jobs and training.
168. There was no potential for the site to be developed for industry. Such a scheme would not be viable. There would be no demand for the site for that purpose having regard to the existing provision of industrial and trade park units in the area, and the fact that the status of Bognor Regis as an industrial centre was unlikely to improve in the foreseeable future. There was evidence of some demand for about 1.6ha for bulky goods retailing, but that would represent only a small proportion of the current application site and would do nothing for the achievement of comprehensive development. All the interested bulky goods retailers would have to be attracted to any scheme, which would result in any developer being in a weak position, making such a development highly unlikely.
169. With respect to the suggestion that a budget hotel might locate on part of the land, the site was not an attractive location for such a use, and Morrisons' own evidence was that the demand was for town centre or seafront sites. Given that Bognor Regis was trying to promote itself as a tourism/leisure destination, the

seafront was a far more appropriate location for such a use. As the town was not an office location, there would be little interest in a business orientated hotel on its outskirts, and it was not a good location for passing business trade as the A29 was not a strategic route.

170. If the Secretary of State were to adopt the suggested “rag bag” of unviable/low demand alternative uses as grounds for refusing the application, it would in reality mean that the site would continue to lie vacant for an indeterminate period of time, and that no regeneration benefits would flow from it.

#### *Section 106 Agreement*

171. There were some important contextual matters regarding the effect of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (“the CIL Regulations”). First, the substance of the tests in that regulation was the same as that of the tests in Circular 05/2005. The Secretary of State’s thinking seemed to be that the test of relevance to planning in the Circular was otiose, and that the test of reasonableness was incorporated in the test of being fairly and reasonably related in scale and kind to the development. Therefore, there did not seem to be any material changes to the tests that had to be applied.
172. Second, and most critically, if an individual obligation in a Section 106 agreement failed the tests in Regulation 122(2) that did not mean that the whole of the agreement could not be taken into account. If one or more elements of an agreement did not meet the tests that did not mean that the whole agreement should fail. Third, the wording of Regulation 122(2) did not say that a non-conforming element of an agreement could not be taken into account as a material consideration; it only stated that it could not be a reason for granting permission. With respect to this last point, it was stressed that the applicants did not wish the Secretary of State to make a ruling on this submission. The applicants did not wish this to become a test case.

#### *Conclusions*

173. The regeneration case for permitting the development was overwhelming, and the impact on the town centre which was showing healthy levels of vitality and viability would be small. There was no evidence to support any suggestion that the existing Morrisons store in the town centre would close. It was not necessary to be concerned about the impact on investment in the town centre, as there was no rational basis for believing that the redevelopment by Morrisons would go ahead in any event, and there were no grounds to believe that the Hothampton site would be developed for food retailing. The proposal would be beneficial in terms of adding to competition and choice, as it would provide the local shopping public with a third major food retailer within the town and a second large food superstore. Taking account also of all the other advantages of the scheme that had been referred to, the application should be approved.

#### **The Case for Arun District Council**

The material points were:

##### *Planning Policy*

174. The starting point for the assessment of this application was the development plan, which now comprised the SEP and the ADLP. The relevant policies were a matter of agreement between the Council and the applicants.

175. Policy SCT3 was the most relevant SEP policy. The application was in accordance with this policy, which sought to ensure the delivery of sufficient appropriate sites and premises for business and other uses that would help to facilitate the regeneration of the local economy. Amongst other matters, the policy included provisions which sought to develop and co-ordinate with other agencies delivery mechanisms to unlock and implement important sites including those that had persistently remained undeveloped.
176. The Council concurred with the applicants that the proposal was in accordance with SEP policies CC1, SCT1 and SCT2, for the reasons given in the agreed note (Doc. A37). It complied with SEP policy CC2 on climate change, as it incorporated sustainable drainage, would offer greater protection from the impact of flooding, would reduce the need to travel and ensure good accessibility by sustainable modes of transport, and would provide a new building with improved energy efficiency and carbon performance.
177. SEP policy RE3 related mainly to the preparation of Local Development Documents, but the site met its expectations that employment sites should be accessible to the existing and proposed labour supply, should make efficient use of under-used sites, should be focussed on urban areas and should promote the use of public transport. The proposal also complied with its indication that accessible and well located industrial and commercial sites should be retained where there was a good prospect of employment use. The improvement of skills and qualifications was a matter covered by the Section 106 agreement. In that respect, the proposal met the expectations of SEP policy RE4 that authorities should work jointly with business sectors and education and training providers to deliver co-ordinated programmes to ensure that the skills provision met business requirements and that the workforce was equipped to access and benefit from new opportunities.
178. The proposal met the aim of one key component of SEP policy T1, which was to influence the pattern of activities and new developments so that more people would have the opportunity to work and shop closer to their home location. The level of car and cycle parking to be provided in the scheme, and the public transport improvements to be made, brought the proposed development into compliance with SEP policy T4. Bearing in mind that the EA had not objected to the proposal, and because sustainable urban drainage systems ("SUDS") were to be used, the proposal complied with SEP policy NRM4.
179. The proposal was in accordance with SEP policy BE1, which sought to use opportunities associated with new developments to help provide significant improvements to the built environment. In the terms of that policy, the scheme represented a design solution that was relevant to its context, and which built upon local character and distinctiveness and sense of place.
180. The Council concurred with the applicants that the proposal was in accordance with the relevant policies of the ADLP for the reasons given in the agreed note (Doc. A37). Although ADLP policy DEV27 was relevant, it needed to be taken into account that this policy had been prepared before publication of PPS4 and so included a needs test. Nevertheless, the proposal was in accordance with that policy.
181. With reference to emerging Development Plan Documents ("DPD"), an updated Employment and Economic Land Assessment was being undertaken, which had

delayed the programme in the LDS. No new timetable had been agreed. The only document produced to date was the Arun CSOG, but little weight could be attached to it.

182. There were some relevant non-statutory policy documents. A development brief for the site had been produced by the site owners following public consultation. The Council's Cabinet had endorsed this brief, save for its references to residential use. Although the view of the Cabinet could not be regarded as an indication of any future planning permissions, some weight should be attached to the brief. The BRMP and the BRSS were non-statutory documents which merited little weight.
183. The most pertinent national guidance was that in PPS4 and the PPS4 practice guidance. PPS1, PPG13, PPS23, PPS24 and PPS25 were also relevant. In essence PPS4 required that retail development should be seen in a wider economic context. As the proposal was located outside the town centre, policy EC17 of PPS4 was relevant. It set out policy for the consideration of planning applications for town centre uses not in a centre.
184. In line with that policy, planning permission should be refused if the applicant had not demonstrated compliance with the requirements of the sequential approach, in PPS4 policy EC15, or if there was clear evidence that the proposal would be likely to lead to significant adverse impacts in terms of any one of the impact considerations set out in PPS4 policies EC10.2 and EC16.1. If no significant impacts were identified, PPS4 policy EC17.2 indicated that applications should be determined by taking into account the positive and negative impacts of the proposal in terms of policies EC10.2 and EC16.1 and the likely cumulative effect of recent permissions and developments under construction and completed. Important changes from the policy previously in PPS6 were the omission of the needs test and the inclusion of the balancing test in policy EC17.2.

#### *Existing Shopping Patterns and Facilities*

185. There had been 2 household surveys of shopping behaviour, one in November 2007 for the Asda application at Oldlands Farm (Doc. LPA/PR1A, App DAM2), and the other in January 2010 for the current application (Doc. A/PR1A, App G). Although there were small variations, the main shopping patterns revealed were broadly the same, and showed that the Tesco store in Shripney Road was the dominant destination for main food shopping, with a very large market share (44% in the first survey and 42% in the second), and that Morrisons in Bognor Regis and Sainsbury's in Chichester were the next most popular destinations (Market share percentages are in Doc. LPA/PR1, Table DAM2, p.12). The significant outflows to the Chichester store were notable, and appeared to reflect customer preference.
186. For comparison goods it was not possible to directly compare the results of the 2 surveys. However, they indicated that Bognor Regis was a significant destination for the more commonly bought comparison goods, but had a weak clothing and footwear goods offer.
187. The existing provision for food shopping in Bognor Regis was poor for an urban area of this size. Visits to the Tesco and Morrisons stores showed substantially filled car parks, aisles that were generally busy, and queues at checkouts. The fact that Sainsbury's at Chichester was the third most popular destination for

main food shopping, with a market share similar to or just below that of Morrisons in Bognor Regis town centre, was also indicative of an undersupply of convenience goods floorspace in the area and a lack of choice.

### *Vitality and Viability of Bognor Regis Town Centre*

188. The town centre was set back from the seafront, and linkages between were weak. It was a reasonably large centre, but about half the size of Chichester or Worthing. It lacked any historical character, but the centre was well kept and maintained and did not create a negative impression. The main shopping street was London Road, with secondary shopping on High Street to the south and Queensway to the east. The Primary Retail Frontage defined in the ADLP was coterminous with the pedestrianised area of London Road.
189. Applying the health checks in Annex D of PPS4, the centre was in good health. It was in a stronger position than many town centres of its size, partly due to the fact that tourism made an appreciable addition to retail spending in the town, but also due to the fact that spending by the relatively older population profile was supported by pensions as well as by employment.
190. The town centre was not over-reliant on the convenience goods sector. Indeed, the number of convenience units was below the UK average, and it had a relatively strong comparison goods offer with above average proportions of comparison, service and miscellaneous uses (Doc. LPA/PR1, Table DAM3 p.15). A key indicator of the health of the town was the rate of vacancies for retail units. This was well below the national average, and that was not disputed by Morrisons as an objector to the proposal.
191. It was common ground that there were strong levels of pedestrian flow in the town centre, even outside the tourist season, with the highest footfall on the pedestrianised part of London Road. The centre was relatively compact and accessible by all modes of transport. There was a good sized walk-in population, a selection of convenient car parks, and a range of bus and rail services. The most recent household survey showed that the town centre was well used by local residents (Doc. A/PR/1A, App G). Very few respondents to that survey had expressed any concern about safety or the occurrence of crime in the town centre.
192. With the sites identified in the BRMP, there was a reasonable capacity for growth and change in the town centre. There had been interest in development of the main sites, as was evidenced by the development agreement between the Council and St Modwen with respect to the Regis Centre and Hothampton sites identified in the BRMP. The failure to progress those developments was due to national economic conditions rather than local circumstances.
193. In terms of retailer representation, there were several national multiple retailers on London Road (Doc. LPA/PR1, para. 4.28). The clothing offer tended towards mid-market or value retailers, with few independent clothes shops. There was a wide variety of independent retailers along Queensway and Station Road, to the east and north of the PSA. Demand from retailers wanting to come to the town did not appear to be strong, but the low level of vacancies suggested that there was reasonable demand. The vacant units were mostly in secondary locations, with a preponderance of small units, and so were unattractive to national multiples. There was a lack of suitable accommodation for such retailers.

194. The evidence of the 2005 Coastal Districts Retail Study indicated that shop rents in Bognor Regis were relatively low, but they had remained relatively static over a 10 year period, with slight increases in 1998 and 2003 (Doc. CD/C6, para. 5.46, p.77 & Fig. 3.11, p.32). Yields on retail property were quite high, but were broadly what would be expected for a town of this size, and had remained reasonably stable (Doc. LPA/PR1, Table DAM6 p.19).
195. The existing Morrisons' store was located in the town centre and it appeared to be trading well. Based on his considerable experience, the Council's retail witness considered that this store was important, but that it was not the anchor store. It was a store used for main food shopping, and it was clear that users went there regularly to buy small amounts. That was in line with the results of the 2 household surveys, which revealed that the town centre met most of the more frequent needs of the residents of the town, but that they tended to travel to larger centres for clothing and fashion.

### *Sequential Assessment*

196. A sequential assessment was required in the light of PPS4 policies EC14.3 and EC15, and the relevant requirements were set out in the PPS4 practice guidance, which made clear that it was for the decision maker to judge the extent to which an applicant had demonstrated compliance with the sequential approach. The applicants were required to show that there were no suitable, viable and available sites in, or on the edge of, the town centre, and that the chosen site was well served by alternative means of transport.
197. The BRMP had considered 7 key sites within the town centre, of which only 2 were considered suitable for retail use. These were denoted as the Retail Quarter, where the Morrisons site was located, and the Healthy Living Quarter, comprising Steyne Street and Queensway and including the Hothamton site.
198. The current planning application for the Morrisons site sought permission to demolish the store and multi-storey car park and erect a new supermarket and car parking. This had been welcomed in principle by the Development Control Committee in October 2009, but officers had been authorised to seek mitigation of the loss of public parking involved. No substantial progress had been made since, and no response had been received to the heads of terms provided for the development in September 2009.
199. Although there were 4 separate landowners on that application site, there was no indication that any of the necessary negotiations had taken place with the other owners. This site could not be regarded as being currently available in PPS4 terms. With reference to the PPS4 practice guidance, it could not be said that there was confidence that there were no insurmountable legal or ownership problems with this development proposal. In addition, it appeared that Morrisons' proposal would constitute a very expensive scheme. It would require the acquisition of land and possibly tenancies, the demolition of a multi-storey building and the erection of a high quality building on stilts, in order to create quite a small amount of extra floorspace. Bearing those points in mind, the proposal was at best some considerable distance from any start, and there was a substantial risk that it might not go ahead under any circumstances.
200. The Hothamton site was an edge-of-centre site, outside the defined PSA (Plan in Doc. CD/E1e, App 5, Site 1). The contents of the development agreement were based on the BRMP, which expected a mixed use development including

residential use. While retail use was included in the expected mix of uses, there was no specific reference to a foodstore, and the development of a stand-alone foodstore would not be acceptable to the Council. St Modwen had mentioned the possibility of a foodstore in its public consultation exercise. The store it envisaged was of the order of 3,500 sq m gross, but there was no indication of who the retailer might be, and no proposal or scheme had been put forward for such a store.

201. The Hothamton site had been rejected by both Asda and Sainsbury's, on the grounds that a store there would not be of sufficient size to compete with Tesco effectively, and would have insufficient parking to provide for main food shopping. There was no other likely operator for a foodstore on the site. Tesco would not want a store there, which would primarily take trade from its existing outlet, Morrisons already had a store in the town on a long lease, and Bognor Regis did not fit the demographic profile for Waitrose.
202. Another consideration was that a foodstore on the Hothamton site would not compete successfully with the existing Tesco due to its limited size, and it would not serve to reduce the trips to Sainsbury's in Chichester to any significant extent. On the other hand, a foodstore on this site would impact significantly on Morrisons, and would undermine any further investment that company might make in its store. For that reason, there was no foreseeable prospect of achieving both the proposed redevelopment of the Morrisons store and the development of a foodstore on the Hothamton site.
203. For all those reasons, the likelihood of a foodstore being included in any development at Hothamton must at the very least be questionable. Insofar as it might be available for retail use, this site would serve the needs of the town centre better if developed as intended in the BRMP for larger shop units capable of attracting national multiple retailers. That would address the particular weakness of the existing town centre which lacked such units. However, retail development of any kind was unlikely to start on this site for some time, given that the development agreement had been extended until March 2012 in view of the economic downturn. It had to be concluded that this site was unsuitable for a stand-alone foodstore, and that a foodstore within a larger mixed use development was unlikely. In its objections to the called-in application, St Modwen had not gone so far as to say that the development of the Hothamton site would not go ahead if the Sainsbury's store were to be approved, and that company's comments should be treated as being purely speculative.
204. The Regis Centre site was identified in the BRMP predominantly for leisure/entertainment/cultural uses of a sufficient mass to make the seafront a vibrant location, and was part of the same development agreement as the Hothamton site (Plan in Doc. CD/E1e, App 5, Site 2). A foodstore development on this site had not been included in St Modwen's proposals to date, and would not meet the Council's objectives.
205. The only other site that was relevant was occupied by Covers builders' merchants (Plan in Doc. CD/E1e, App 5, Site 3). This was on the edge of the town centre, and at about 1.4ha was large enough for a foodstore. However, it was not suitable for that use because the routes between it and the PSA were indirect and uninviting, and there was significant doubt that the local road network could cope with the additional traffic at peak times. It would be undesirable to generate such traffic along some residential roads of restricted

width. A retail use would not accord with the identification of the site in the BRMP for high density residential development, and some office development. As the site had not come forward for development following publication of the BRMP, there was no basis on which to conclude that it was available for development.

206. The retail need which the proposal sought to meet was for a large free standing foodstore, capable of providing choice and competition for the Tesco store and of attracting back the shoppers who travelled to Chichester. The overall conclusion must be that there were no sites in or on the edge of the town centre that would be suitable for such a store. As a result, the application proposal met the requirements of the sequential test.

### *Impacts*

207. The Council's evidence with respect to impact had been amended during the inquiry following the submission by Morrisons of details of the actual turnover of its Bognor Regis store (Docs. LPA4 & LPA6). As Morrisons' turnover figure had excluded VAT, assumptions had needed to be made about what proportions were made up of comparison goods and those convenience goods on which VAT was payable. The turnover figure supplied had also needed to be converted to the same price date basis as the other data used at the inquiry. Based on the assumptions made, the turnover of the Morrisons store for the purposes of the impact assessment on 2007 prices had been taken to be £19.91m, including £15.52m from convenience goods.
208. The impact assessment undertaken in preparing the evidence prior to the inquiry had also been amended with respect to expenditure growth. This was to reflect the decline of 0.7% in convenience goods expenditure in 2007-08, and the Mapinfo forecasts of 0.5% per annum growth for 2008-14 (Doc. LPA4, App DAM11). No amendment had been made with respect to the percentage of turnover expected to be drawn from outside the study area, as the 10% figure used was considered to be reasonable and probably conservative for the location in this seaside town which attracted large numbers of visitors. The turnover of the proposed store had been marginally increased, in reflection of the change made by the applicants' consultants to the split of the net sales area between convenience and comparison goods (Doc LPA4, para. 5.1). The overall turnover of the store would still be of the order of £41million.
209. The impact assessment had been undertaken as required by PPS4 policy EC16. Much of the data had been agreed with the applicants' consultant, and was largely factual and from independent and reliable sources. Shopping patterns in the area had been assessed from the applicants' household survey. As the proposed store would be in a very similar location to the existing Tesco, and not dissimilar in size or function, it had been assumed that the trade draw of the proposed store would be similar to that of the Tesco store. However, allowances had also been made for likely clawback of trade currently leaking from the study area to the Sainsbury's store in Chichester, with differing assumptions as to the proportion of the leakage which would be captured depending on the relative proximity of the zones of the study area to the proposed store and to the Chichester store.
210. The results showed an impact of the proposal on the Tesco store's convenience trade of about 18.9%, and on that of the Morrisons store in the town centre of

about 17.9%. Although the turnover of the Tesco store was shown to reduce by about £10.6 million, it would still be trading at above the company average level. Morrisons store would lose about £2.9 million of convenience turnover, which would leave it trading at about 12% below the company average.

211. In assessing those figures, it needed to be borne in mind that foodstores could withstand considerable trade diversion. From his experience, the Council's retail witness knew of Co-operative stores which traded at 40% below their company benchmark. The effects could be off-set to some extent by reducing spending on stock replenishment and by having less staff, usually by non-replacement or by reducing the hours worked by part time staff. Given the concentration of grocery retailing in the 4 main retailers, and in local markets in 1 or 2 retailers, impacts of the level predicted in this case were inevitable. However, store closures rarely resulted. In this case, the evidence from the household survey and from observations was that the Morrisons store was trading well, and it was considered that its closure was most unlikely.
212. Based on his analysis, the Council's retail witness had concluded that the Sainsbury's store would draw about 7% of the overall town centre trade, taking account of both convenience and comparison goods. There would be no material loss of turnover from the town centre on comparison goods as a result of the proposal. The diminution in town centre convenience turnover and activity would be short term effects, because there would be future growth in population and retail expenditure. The reduction in town centre trade overall would represent only about 1%, allowing for the growth of expenditure that would arise between 2010 and 2015. The impacts on the Morrisons store and on the town centre would not be so great as to justify refusing permission.
213. There would not be a loss of linked trips to the town centre as a result of the proposal. While there would be some trade diversion from Morrisons, and that store no doubt led to linked trips, many of those trips would arise in any event due to the substantial retail offer in the town centre. There would also be likely to be some additional trips to the town centre arising from the people who would change their shopping habits to use the proposed store rather than the Sainsbury's at Chichester. That effect could not be quantified easily, and should not be over-estimated, because many people would still go to Chichester and other towns to buy their clothes and fashion goods. However, the reduction in trips out of the catchment area for food shopping would be a step in the right direction. Additionally, the town centre would benefit from the investment of contributions arising from the Section 106 agreement, and from the encouragement of linked trips by use of the proposed shuttle buses.
214. It had to be acknowledged that expert retail advice to the Council on the proposal had initially been provided by DTZ, but the Development Control Committee did not agree with that advice and were entitled to take a different view. The Committee considered that the proposal would not impact seriously on the vitality and viability of the town centre. The Council's retail witness at the inquiry supported that view, having looked at the proposal afresh and in the light of new policy guidance in PPS4, which had substantially changed the context in which planning applications for retail development were to be considered. His findings had been based on a new household survey which, whilst it was not perfect, was the only available evidence on where people spent their money. The Council's witness had been thorough in assessing the value of the evidence from the survey, for example in having driven the routes that

shoppers might take. He had concluded that the clawback which he had allowed for with respect to trade that was leaking to the Sainsbury's in Chichester was actually rather conservative.

215. It was felt that the DTZ advice had been based unduly on the quantitative assessment of need for the proposal. It had been assessed on a constant market share approach, and the limitations of that type of approach were referred to in the PPS4 practice guidance, including that this might perpetuate deficiencies in the retail network particularly in under-served markets such as existed at Bognor Regis. Significantly, DTZ's approach was not an impact assessment, and there had been no challenge on that point.
216. The adequacy of food shopping in Bognor Regis, and the real nature of the impact on the town centre, had not been sufficiently addressed by DTZ. The quality of the existing convenience goods offer, and whether that provision was appropriate for a town with a catchment population of 65,000, had not been assessed. No weight had been given to the reasons why expenditure was flowing out of the town. DTZ had not drawn the Council's attention to the fact that regeneration and social inclusion benefits were material considerations in the context of the guidance in PPS6, which was current at the time. Furthermore, DTZ's advice did not recognise that the needs test was to be replaced, despite that having been identified in the White Paper *Planning for a Sustainable Future* as long ago as May 2007.
217. The DTZ work was now of little significance in the light of the up to date evidence presented at the inquiry, and the changes in Government guidance with the issuing of PPS4, which stressed the importance of achieving sustainable economic growth and of retail and other town centre uses being seen in the wider economic context. Similarly, the advice which the Bognor Regis Task Force had obtained from Knight Frank in relation to the impact of the application scheme was now of little relevance. That had clearly not been a retail impact assessment, but only an exercise which went no further than to identify possible impacts, and to flag up matters which the Council should be mindful of.
218. With respect to the impacts referred to in PPS4 policy EC16.1, the application proposal would not have any significant effects. In relation to policy EC16.1a, it would not have an adverse effect on planned investment in the town centre, as the Morrisons redevelopment was unlikely to go ahead irrespective of the decision on the called-in application, and the St Modwen mixed use development at Hothampton was unlikely to take place for the next few years. St Modwen currently regarded that development as unviable, and a standalone foodstore would not be acceptable on that site. No other private sector investment would be affected. On the other hand, there would be substantial investment through the obligations in the Section 106 agreement, which would provide funding for initiatives to improve the town centre.
219. In terms of PPS4 policy EC16.1b, the proposal would not have a significant adverse impact on the vitality and viability of the town centre, or the range or quality of the retail offer. There would be some loss of footfall due to the impact on Morrisons, but the risk of that store closing was minimal. The 17 smaller convenience stores in the town centre included 7 national multiples. While 1 or 2 of the independent stores might close at any time, that was unlikely to be as a result of a single factor. Most had already been experiencing the impact of large food stores, as they had been trading alongside Morrisons

and Tesco for some time. On the other hand, the application scheme would significantly widen the choice of foodstores available locally. There would be a substantial benefit in meeting the need for more retail floorspace for food shopping in the town, which was a need expressed in the household surveys.

220. With respect to PPS4 policy EC16.1c, there were no sites allocated for retail uses outside the town centre, and so there would be no adverse impact on such sites. The proposal would be unlikely to affect a small local centre on the ADLP policy Site6 allocation at Felpham, as such a centre would not serve a main food shopping role. With reference to policy EC16.1d, the proposal would have only a minor adverse effect on town centre trade. With respect to policy EC16.1e, the proposal was not in or on the edge of the town centre, but it was of an appropriate scale for a town of the size and function of Bognor Regis, and for meeting the main food shopping requirements of the town. In relation to policy EC16.1f, the development plan did not identify any locally important impacts.
221. As the proposal would not have any significant adverse impacts on the vitality and viability of the town centre, by reference to PPS4 policy EC17.2 it should be determined taking account of the positive and negative impacts under policies EC10.1, EC10.2 and EC16.1. Policy EC10.1 advised local planning authorities to adopt a positive approach towards planning applications for economic development, and to treat applications that secured sustainable economic growth favourably. Policy EC10.2 then detailed the impact considerations to be used in assessing applications for economic development, which related to climate change (EC10.2a), accessibility (EC10.2b), high quality and inclusive design (EC10.2c), impact on economic and physical regeneration (EC10.2d), and impact on local employment (EC10.2e).
222. The called-in application passed all parts of policy EC10.2. With respect to EC10.2a, the scheme included a bio-mass boiler and natural light amplification devices. It would result in a reduction in the numbers of residents driving to Chichester and other distant destinations to shop, with consequent reductions in the overall mileage of car journeys. SEEDA considered that the proposal would assist in reducing carbon emissions. It was intended that the drainage would be by SUDS. With respect to EC10.2b, the County Council as LHA considered the site to be in a sustainable location. The proposal represented a high quality and inclusive design in the terms of PPS1, and complied in that respect with the requirements of EC10.2c. In terms of EC10.2d, the site would be taken out of its derelict state and would contribute significantly to the overall regeneration of Bognor Regis. With reference to EC10.2e, there would be a significant beneficial impact on local employment.

### *Regeneration Benefits*

223. Bognor Regis was facing a number of regeneration challenges, as was evidenced by the establishment of the Bognor Regis Regeneration Task Force ("BRRTF") and the Bognor Regis Regeneration Group ("BRRG"). It was necessary to raise lower than average wage levels, to improve poor and lower than average educational attainment, skills and qualification levels, to increase spending in the town, to promote new investment, to reduce levels of out-commuting, to encourage the retention and growth of businesses, and to address pockets of deprivation (Doc. LPA/PR2, Table on p.2 & 3).

224. Some 45% of the town's workforce travelled out to other areas to work, and Sainsbury's had indicated that 46% of the customers using their Chichester store had a Bognor Regis postcode. Insofar as the need to increase investment was concerned, Bognor Regis did not qualify for major Government-led regeneration funding and was reliant on partnerships with the private sector. With respect to increasing spending in the town, research had shown that visitors staying there spent over £10 less than the national resorts benchmark figure. It was realistic to anticipate that the proposal would clawback some of the trade which currently leaked out of Bognor Regis, keeping more spending within the town and improving its offer.
225. The regeneration needs were also indicated by the fact that Bognor Regis had 5 wards which were identified as LNIAs, out of a total of 23 established by the West Sussex Local Area Agreement ("LAA"). These covered much of the central and northern areas of the town including the application site (Doc. LPA10). They were the areas of greatest need, where action needed to be targeted to improve people's quality of life.
226. SDLL and the Council, through the BRRTF, had worked diligently to progress the development for a site which had been derelict and disused for a long time. The proposal would create a viable development that would assist in addressing the key regeneration issues. It would achieve comprehensive development of the former LEC site, as it was intended that the foodstore would provide sufficient funding to allow the whole of that site to be decontaminated. The retained land would be made suitable for an employment-led development.
227. With respect to contamination, at the time the application was considered by the Development Control Committee information had been provided based on an Environmental Desk Top Study submitted by the applicants (Doc. CD/E1g). This information showed that there was a high degree of contamination due to the previous uses (Doc. LPA/PR3, p.12 & 13). It had been estimated then that the cost of decontamination would be about £5.25m to £6m, and it was considered that only a retail use would generate the funds to meet that cost.
228. Although the latest evidence indicated that the costs involved in remediation of the contamination would be less than the applicant had first estimated, they would nevertheless be considerable. The proposed development would generate the value needed to undertake that remediation. Without the foodstore, comprehensive development and decontamination of the whole of the former LEC site would not be achievable, whereas the Section 106 agreement contained provisions to ensure that the whole site would be remediated for development. These were material considerations in favour of the proposal.
229. The scheme's regeneration benefits would include the provision of a mix of 400 full and part time jobs, and other jobs could be expected as a result of multiplier effects. Sainsbury's national programme of promoting local employment would be applied. Training would be provided, including apprenticeships and NVQ Level 2 qualification opportunities for all staff. That would facilitate the improvement of skills and qualifications in the area. Sainsbury's commitment had been confirmed through signing of the Bognor Regis Developer and Partner Charter, which was a mechanism by which developers and investment partners could commit to use their developments and/or operations to assist in addressing the key challenges facing the town. Although the quoted average wage levels expected at the store would not address the currently lower than

average wage levels, Sainsbury's training and development programme would assist aspirations towards higher paid work in the future.

230. Further jobs would be created and protected through the regeneration and development of the whole site. Apart from the foodstore, it was anticipated that the overall development would provide 2,000 sq m of new employment space and would contribute to enhanced business premises for local firms. Sainsbury's had committed to provide signage on the proposed store to mark the gateway location into Bognor Regis, incorporating the name of the town. That would help improve the image of the town, and could help to attract further investment.
231. It was recognised that there were issues regarding the out of centre location of the proposed store, but the development would provide sufficient funding to mitigate any potential adverse impacts and to assist the broader regeneration programme. The Section 106 agreement made provision for a town centre management and improvement programme, for which contributions of £500,000 had been agreed. There were no definite proposals for the spending of this money, but it would be put towards things such as actions and initiatives identified in the BRSS; support for locally promoted events and/or activities; co-ordinated public realm improvements; actions to assist with the delivery of the BRMP; and measures towards the creation of a new higher spending town centre economy based on cultural and creative industries. With respect to the latter, a vacant shops initiative had already been agreed by the Council in partnership with the University of Chichester and other relevant organisations (Doc. LPA14).
232. It was envisaged that the town centre mitigation programme would be determined and directed by a sub group of the Bognor Regis Regeneration Board, which was made up of representatives from the public and private sectors. That Board had agreed to take on this role. It was well placed to manage the programme of works facilitated by the Section 106 agreement, which was expected to last for 5 years and to bring long term benefits to the area.
233. The Section 106 agreement also incorporated contributions totalling £125,000 towards the delivery and promotion of business enterprise provision on or near the LEC site (Inspector's Note: The actual wording in the agreement is "in the vicinity of the Application Site"). This was intended to create starter or enterprise space for new and emerging businesses, and would operate alongside relevant activities of the University of Chichester in the areas of Business Leadership and Management and Entrepreneurial and Enterprise Development. Such provision would be important to the regeneration of Bognor Regis, taking into account that 86% of Arun businesses had 10 or fewer employees, and the importance attached to enabling these businesses to grow so as to provide sustainable employment opportunities. No specific details could yet be given as to how the contributions would be spent.
234. Further terms of the Section 106 agreement covered additional provision for cyclists, a contribution to improved bus services and the provision of a shuttle bus. The agreement complied with the tests for a planning obligation laid down in Circular 05/2005 and in Regulation 122 of the CIL Regulations 2010.

### *Flooding*

235. The site was in Flood Zone 3a for flooding from the sea. The lower part was in Flood Zone 3a with respect to flooding from rivers, with the higher part in Flood Zone 2. The advice in paragraph 4.38 of the PPS25 practice guidance was relevant. This stated that where redevelopment was on-going as part of an existing regeneration strategy in Flood Zones 2 or 3A, it had to be accepted that the redevelopment could not go anywhere else, as there were no other reasonably available sites. In those circumstances, applications were required to show that the 3 parts of the Exception Test in PPS25 were passed, although the practice guidance indicated that it was very likely that developments of sites which were part of a regeneration strategy would pass the first 2 tests, which were that the development was required for sustainability reasons and was on previously developed land.
236. The application passed all 3 tests. With respect to the first 2 tests, contained in sub paragraphs a and b of paragraph D9 of Annex D to PPS25, the site was brownfield land in a derelict state, and was highly contaminated. It was within the built up area and in a sustainable location, and its redevelopment would be of benefit to the local community in visual terms. With respect to the third test in sub paragraph c of the same part of PPS25, the development would not increase flooding elsewhere, and would in all probability reduce flood risk overall. Most significantly, the EA as the statutory authority with responsibility on this matter was satisfied that the proposals were acceptable.

### *Other Matters*

237. The County Council as LHA was consulted on the application and had no objections subject to certain conditions, and to the provision of contributions towards infrastructure improvements by way of Section 106 obligation. Planning permission had already been given for the access road as part of the outline permission for redevelopment of the retained land to the north.
238. The design of the development would enhance the appearance of the area and the approach to Bognor Regis. It was appropriate to a locality in which there was a mix of ages, styles and materials of buildings, and where there was no distinctive architectural theme. Local interest would be provided by the innovative signage and decorative art panels to be incorporated.
239. Morrisons had put forward a number of alternative uses for the site, particularly focussing on residential use. It was highly unlikely that this use would be permitted, having regard to the zoning of the site with respect to flood risk and the fact that residential was identified as a more vulnerable use in Table D2 of PPS25. Most importantly, no sequential test as set out in PPS25 had been undertaken. Although the Council's planning witness had conceded that there would be no objection to the principle of residential use, that did not invalidate the criticism that there was no evidence to show that the site would pass a PPS25 sequential assessment. The alternative suggestion that the site could be redeveloped in part for housing would result in the parts which would be more expensive to remediate remaining derelict in the long term. Furthermore, there was no suggestion that any regeneration benefits to Bognor Regis town centre would follow from residential development of the whole or part of the site, by contrast with the benefits that would result from the application scheme.

### *Support for the Proposed Development*

240. The site was originally the home of LEC refrigeration, founded by a notable local resident Charles Purley, and was as a result held with deep affection and regard by the Bognor Regis community. That was one of the reasons why there had been such enormous support for the proposal locally. More than 1,000 letters had been submitted and many people had attended the inquiry. Substantial weight should be attached to this support which was founded on considerable local knowledge of how Bognor Regis functioned. [Inspector's note: The Council in closing quoted from the oral submissions made by interested persons and organisations at the inquiry. These are summarised later in this report].

### *Conclusions*

241. Any outstanding concerns about the development could be dealt with by conditions, and a list of suggested conditions had been prepared (Doc. G5). In conclusion, the regeneration benefits of the proposal and its visual benefits for the area were extremely important, and there would be no significant adverse impact on the town centre. It was respectfully suggested that the Secretary of State should approve the application and grant planning permission.

### **Interested Persons and Organisations Supporting the Proposal**

(Reported in the order in which the statements were made at the inquiry)

242. **Mrs Jean Taylor** referred to the difficulties of getting into Bognor Regis town centre and to the parking problems there. The Tesco and Morrisons stores could not accommodate all the potential customers, including the people who would be coming to live in new development in the area. The new petrol filling station was needed as there were few such facilities. Questions arose as to where all the new residents would get their food and petrol if the proposed store was not built. The Tesco store was not easy to get into or out of, and the journey to use stores in Chichester took a considerable time. By saving journeys to Chichester, the store would reduce the use of petrol and help to keep the air clean. The store was desperately needed.
243. **Mr David Myers** spoke for **Bognor Regis Ltd**, an organisation with 20 members representing the business community (Doc. IP1). Its objective was to ensure a positive commercial and social environment to meet the growth aspirations of businesses in the area. The proposal would help to address the economic challenges facing the town, including the key one of encouraging the retention and growth of businesses. It would address issues of improving lower than average educational attainment, skills and qualification levels; reducing out-commuting; promoting new investment; and reducing levels of deprivation. The site was in a gateway location. It generated a poor image. The prospect of it remaining derelict was viewed very negatively by the business community, as it reflected on the local environment they operated in and on their businesses.
244. The application was supported for many reasons. There had been extensive consultation, resulting in a development brief supported by the local community. The proposal would remediate contamination. It would be visually beneficial, and would greatly improve the perception of the town and the local environment. Retaining the Widdowson Building would benefit existing tenants with 25 employees. A new B1 unit on the retained land would only be viable with the applicants' commitment to remediate the whole LEC site. The

development would provide jobs, and SSL was committed to programmes to enhance skills and qualifications, ensuring a wider trained local workforce. A valuable contribution would be made for local enterprise provision, offering small spaces for new and emerging businesses. The proposal would reduce out-commuting and journeys to Chichester for shopping. There would be benefits from the proposed financial contributions to facilitate the broader regeneration programme and to mitigate the potential impact on the town centre. Public transport would be improved. The proposal was of paramount importance to the regeneration of Bognor Regis. If the site remained derelict, the directly created jobs would be lost and future job creation prospects would be harmed.

245. **Councillor Brian Green** spoke on behalf of **Bersted Parish Council** (Doc. IP2). Bognor Regis sorely needed regeneration, and the District Council had strategic plans for that regeneration. Investments had already been made, including by Butlins and Chichester University. As regeneration was just beginning, Bognor Regis could not afford to have the LEC site remain as a neglected eyesore and target for vandals. The town needed regeneration and economic support with the context of indicators of its disadvantaged position.
246. The proposal had numerous advantages. The site was unattractive and added to the economic gloom in the town. It needed major investment just to clear it, and the District Council did not have the resources. Groundwater quality and soil quality would be improved. Much needed employment and training opportunities would be created, reducing the need for local people to leave the area and encouraging new businesses. The investment was needed to reduce unemployment, improve skills and increase tourist numbers. The superstore would increase the chances of more competitive pricing. The proposal accorded with SEP policy RE3 which sought the retention of accessible and well-located industrial and commercial sites where there was a good prospect of employment use. There were no disadvantages. It was questioned whether the objections were by companies worried about the effect of competition on their profits, rather than having the well-being of the community in mind.
247. **Mr Stan Jonas** spoke on behalf of **BRighter Bognor**, which was a pro-regeneration community group and member of the Bognor Regis Regeneration Vision Group ("BRRVG") (Doc. IP3). The proposal was strongly supported. There were signs of regeneration beginning, with new hotels on the Butlins site, a new Community School, and expansion of the University campus, but there was a need for evidence of business confidence, and requirements for better shops and more jobs. With the postponement of the St Modwen development, the prospect of the proposed superstore was an important vote of confidence in the town. The site needed regeneration and redevelopment. The proposal was important as it was well-designed, involved the whole site, and would create jobs and provide training. It would improve the appearance of the area. It would be eco-friendly and would claw back local people who travelled to Chichester to shop. It would create choice and competition.
248. The alternative uses suggested had been considered and rejected as part of SDLL's consultation. The site was unsuitable for housing due to its location between business units, the A29 and a railway, and its isolation from the town centre. Residential development would be contrary to national planning policies. It would not enhance the wellbeing of communities, their environment or their amenities. The suggested need for affordable housing was inaccurate, as such housing was to be provided and was proposed elsewhere. The site was

in a high risk flood area and would not pass the sequential tests for housing use. The site was unsuitable for a restaurant or public house due to its location and separation from residential communities. There were 2 drive-in food outlets and a public house nearby which more than met local demand. Bognor Regis was well served by hotels. The mix of alternative uses suggested was unacceptable, unsuitable or unviable, and would create far less jobs. Partial redevelopment was not an acceptable option.

249. SDLL had undertaken meticulous and lengthy consultation. By contrast, it should be asked when had Morrisons consulted the public about the potentially disruptive proposals to redevelop its store. It ill behove Morrisons to belittle the efforts made by SDLL and consultees to try and get the best possible use of the application site for the benefit of the town.
250. Cross-reference was made to written representations in which Mr Jonas had detailed his surveys of queues at Morrisons' checkouts. That store continued to be overcrowded and to flourish despite its shortcomings. It was well-used and served mainly residents of the town centre and local workers, mostly arriving on foot, by taxi or by public transport, and taking away small shopping loads. The proposed out of town superstore would be likely to significantly affect the Tesco store, but would do little to disturb the trade at Morrisons. The viability of Morrisons would not be significantly harmed. While the Morrisons store was important and created custom for town centre businesses, Morrisons' case about the effect the proposal would have on its store and on the vitality and viability of the town centre was contested.
251. With his previous knowledge of VAT matters, Mr Jonas was surprised and suspicious about Morrisons' exclusion of VAT from the gross turnover figures provided at the inquiry. The firm should have been required to provide certified gross tax-inclusive annual turnover and profit figures for its store in order to allow a balanced judgement to be formed on this issue.
252. The proposal for redevelopment of the Morrisons store had merit, but future increases in population would allow that development to continue despite the called-in application proposal. The Council's concerns about loss of public parking in the town centre were shared, as discouraging motorists from the centre would threaten regeneration. There were also concerns about whether the Morrisons' proposal was deliverable, due to the need to acquire land. Morrisons' planning application was no more than an attempt to strengthen the objection to the SSL/SDLL proposal. Little or no weight should be given to the threat Morrisons had made of not proceeding with its development.
253. Quality retailers would be unlikely to be interested in a food store on the Hothampton site. A value retailer on that site, such as Aldi or Netto, would not serve to lift Bognor Regis out of its "value retail profile", and so would be unacceptable to the Council as landowner and planning authority.
254. With respect to contamination, the evidence on behalf of Morrisons was doubted. Local people who had worked at LEC refrigeration for many years had no doubt that remediation costs would be very high. It was unclear how the evidence in the Sirius report about likely costs of decontamination had been arrived at, given that the report indicated that site investigation so far had been inadequate. There were also concerns about the risk that could be created by flooding of the site if substantial remediation did not take place.

255. Morrisons' objections were contrary to the wishes of local residents. If that company succeeded in blocking the application, and then did not deliver its town centre expansion, Bognor Regis would gain nothing. The planning system existed to improve the well-being of the people of Bognor Regis, and should meet the overwhelming wishes of the public and the business community.
256. **Mr Tom Frears** spoke in support of the proposed development for the **Bognor Regis Regeneration Vision Group** (Doc. IP4). BRRVG provided a key independent voice for business, education and local voluntary interests in planning the town's regeneration.
257. SDLL had been exemplary in consulting the community. Neither BRRVG nor the Council would support the application if they thought it would pose any risk to the town centre regeneration. The views of BRighter Bognor, a member organisation of BRRVG, with respect to the inappropriateness of the suggested alternative uses of the site were supported.
258. The proposal met the objectives in PPS4. It would promote the vitality and viability of town and other centres as important places for communities. Residents of Bognor Regis were currently denied choice. Morrisons had a virtual monopoly, as did Tesco with respect to out of town trade. This was reflected in lengthy queues at checkouts and fully occupied car parks. Bognor Regis was disadvantaged relative to Chichester, which had 2 out of town supermarkets and a flourishing town centre, and some 46% of customers using Sainsbury's Chichester store originated from Bognor Regis post codes. To refuse the application would conflict with the PPS4 objectives seeking competition and enhanced consumer choice. The proposal would have benefits for the town centre in terms of the financial contribution that would be made for town centre improvements, and the potential for persons shopping at the Sainsbury's store to also go into the town centre and to the seafront.
259. The St Modwen proposals for the Regis Centre and Hothampton sites would not be affected. Those sites were not intended for a food store. The Regis Centre site was to be used for leisure and residential uses. The major source of profit for St Modwen from the Hothampton site would be the residential element, and that was unlikely to be given up just because of the absence of a food store. In sequential terms, BRRVG agreed that there was no alternative site in the town available and of sufficient size to provide the degree of choice needed.
260. The application met the requirements of the SEP, which included a key objective for Coastal West Sussex to proactively pursue and promote sustainable economic growth to help bring economic performance up to the South East average. For the coastal belt, the SEP gave priority to delivering economic development, including by protecting sites for industrial and commercial use where there was a good prospect of employment use. SEP policy SCT3 included an emphasis on delivery mechanisms to unlock important sites, including those such as the application site that had persistently remained undeveloped. The application scheme would do precisely that. Although it related to new land allocations, the aims of SEP policy SCT4 were also relevant, in giving priority to employment rather than other uses in those locations most conducive to business and industry, to ensure that delivery of employment was supported in a comparatively weak economy. That should preclude the use of the application site for housing.

261. The scheme's benefits would include the jobs created, the refurbishment of the outdated Widdowson Building increasing the prospect of retaining its tenants, and the provision of a B1 unit for research and development, office or light industrial use. The latter would fit well with Chichester University's plans to offer courses on business management and start-ups. The proposal would meet the requirements of SEP policy CC2 by reducing the need to travel to Chichester for shopping, and policy RE4, by assisting in skills provision.
262. The proposal would not have a major adverse effect on Morrisons' store in the town centre. Reasons for that included the population growth that would result from the requirement to build 11,000 new homes in Arun by 2026, with about 1,400 in the course of construction in Bognor Regis. Low car ownership rates, the high proportion of people over 65, and the large number of bed-sits in the town centre, meant that Morrisons would probably continue to be the food retailer of choice for many. It was also believed that the Morrisons store was overtrading. The application scheme would not disadvantage the town centre. It had the whole-hearted support of the residents of Bognor Regis.
263. **Mr Frears** read a statement from **Bognor Regis District Chamber of Commerce** (Doc. IP5). This referred to the advantages in creating employment, attracting other businesses, and benefiting the local road network by reducing journeys to Littlehampton and Chichester for shopping.
264. **Mr Beckerson** represented **Bognor Regis Town Council** (Docs. IP6 & IP7). The proposal would bring people into the town who would otherwise head to Chichester and Littlehampton for their shopping, and would reclaim the derelict site. It accorded with planning policies, including PPS4 policy EC15.1, SEP policy SCT3, and ADLP policy DEV27. In relation to those policies, the site was an employment site which should be protected, and part of an industrial estate that should be upgraded. It was also accessible by highway, public transport, cycle and on foot, and the proposal would not adversely affect the principal or local shopping areas.
265. The proposal would provide needed infrastructure for the town, and would reduce out-commuting. That would serve the aims of PPS1, including by reducing greenhouse gas emissions. PPS1 also stated that one of the principles of sustainable development was to involve the community in developing the vision for its area. That principle had been followed through the consultation process the applicants had undertaken.
266. The Town Council was a full participant in the Regeneration Partnership. It was to be involved in deciding how the Section 106 contributions associated with the proposal would be spent. The proposal would benefit the town centre, and would not harm Morrisons' store which served a different customer base.
267. **Mrs Coles** had been a resident of Bognor Regis for 15 years, and detailed her voluntary roles (Doc. IP8). She referred to the queues that occurred at the Morrisons store. There was a need for more choice of both supermarkets and small quality shops in the town. The application scheme would be beneficial in bringing visiting shoppers to the town, in attracting more residents of greater Bognor Regis to shop in the town, and by attracting more small shops through the raised spending power that would result. Approval of the proposal would not alter the shopping habits of a large proportion of Morrisons' customers, who lived in the town centre and would still walk, cycle or use taxis to shop there.

268. **Councillor Mrs Ann Sme**e spoke as the District Council Ward Councillor for Bersted (Doc. IP9). The majority of her electorate opposed the decision to call-in the application. The Council's resolution to give planning permission should be upheld. The site was in a gateway position and had become a contaminated, run-down eyesore in an area of extreme deprivation. With high unemployment the potential to create at least 400 new jobs was critical. This would represent the first steps to true regeneration, encouraging residents to support the local supermarkets and economy instead of travelling to Chichester or Rustington, giving consumer choice and retaining spending in the area.
269. The proposed store would be close to many people, including a large elderly and disabled population, with a trebling of the local population when the caravan sites were open. Local industrial site employees would have easy access. The Shripney Road area was the only commercial/retail centre of Bognor Regis but it needed strengthening. More competition and choice was needed in the light of Tesco's monopoly as a food retailer in this area. Chichester, as an example, had a smaller population but more out of town commercial/retail areas, with both Tesco and Sainsbury's stores. [Inspector's Note: Information provided by the applicants, which was not disputed, was that the urban area of Bognor had a population of about 65,000, compared to that of Chichester of about 26,000]
270. The proposal would not affect trading in the town centre, which would still attract the largely older population on fixed incomes and in high density and rented housing within walking distance of Morrisons. There were also thousands of local shoppers as a result of the high percentage of disadvantaged groups, growing numbers of students and tourist visitors. Residents in the town centre had lower than average car ownership. The very substantial trading possibilities in the town centre had been recognised by Wilkinsons in taking over the former Woolworth store in 2009, when job vacancies were greatly oversubscribed. The proposal would encourage more visitors to the town centre, would be a huge boost to regeneration, and would encourage new industry.

### **Written Representations Supporting the Proposal**

271. **Nick Gibb MP** (MP for Bognor Regis and Littlehampton) was disappointed that the application had been called in and very strongly supported the proposal. It had widespread support and would have benefits in the context of the severe social and economic challenges facing Bognor Regis. The site owners had worked closely with the BRRTF to explore how the site might be developed so as to assist in regeneration. There were circumstances unique to Bognor Regis that justified an alternative approach to that of the policies which generally directed new shops to town centres, particularly given the mitigation of any impact that would be secured through legal agreements. Bognor Regis needed to compete with the significant out-commuting to Chichester, and required new jobs and retail facilities to do that. The bulk of retained grocery shopping took place at the Tesco store, and the town would benefit from increased choice and competition from a rival store with a similar retail offer and ease of access. Without the development, expenditure would continue to be drawn away from the town, which would continue to suffer from competition from Chichester. The proposal was much more than the provision of a supermarket. It would redevelop a vacant, derelict and contaminated site and be an important catalyst for future investment.

272. **Bognor Regis 21 Town Partnership Board** (“BR21”) was originally formed to serve as an appraisal and steering body and contributor with respect to a Single Regeneration Budget Challenge Fund bid, and had continued to focus work in the disadvantaged Wards in Bognor Regis through Outcome 22 of the LAA and the LNIA funding of the second LAA. It included 18 nominated organisations from the business, statutory, voluntary and community sectors, and representatives of the Council and the County Council. The objectives of the application scheme in supporting new businesses and increasing employment were in line with what BR21 was trying to achieve. The current LAA LNIA priorities related to education and financial inclusion, and the opportunities the proposed development presented would enhance the key targets of increasing skills, extending the range of employment and improving economic well being.
273. Some 1,047 other letters of support for the proposal were received (Doc. IP13). These raised many of the same points mentioned by those who spoke at the inquiry in support of the development. The main points included:
- the need for an additional foodstore due to congestion in the existing stores and their car parks, and to cater for the increasing population;
  - the need for more choice and competition to the existing stores such as Tesco and Morrisons;
  - the advantages of having an additional petrol filling station, including in encouraging more competitive pricing;
  - expressed preferences for shopping at Sainsbury's, which currently required a journey to Chichester or Rustington - some representations which made this point referred to the existing bus service run by Sainsbury's to its Chichester store;
  - the reduction in the need to travel to Chichester to do shopping and to work, and the consequent savings in carbon dioxide and other emissions;
  - the potential to attract more shoppers back to Bognor Regis town centre;
  - the consequent reduction in car journeys and in congestion on roads, including the A29, A259 and A27;
  - the provision of an economically beneficial use on an unused site;
  - the visual benefits of improving the site's appearance, and removing an existing derelict eyesore which detracts from the town and its approaches;
  - the benefits of securing decontamination of the land which would otherwise be unlikely to be achieved;
  - the increase in employment opportunities, including the need to provide more jobs for the growing population and to address deprivation;
  - the potential to attract further investment to the town, and to encourage new business activity;
  - the benefits to the town of the contributions to provision for business start-ups and mitigation by town centre and public transport improvements;
  - the contribution that would be made to the regeneration of Bognor Regis.

## **The Case for Wm Morrison Supermarkets PLC**

The materials points were:

### *Introduction and Background*

274. The application proposed major retail development in an out of centre location. As such, it clearly raised issues of impact upon the town centre and whether the sequential approach had been satisfied. Morrisons operated an existing store which was within the PSA and the town centre (Plan in Doc. CD/G1). Due to concerns about the likely impact of the proposal on that store, the company had submitted objections to the application (Doc. MOR/PR3A Apps 1, 2 & 3).
275. Although PPS4 had replaced PPS6, it was common ground between the main parties that this had not weakened Government policy with respect to the promotion and protection of town centres. It was also agreed that paragraph 10 of PPS4 set out the Government's objective of promoting the vitality and viability of town centres, which was where the Government wanted economic growth to be focussed and where enhanced competition and consumer choice were to be achieved. It was further agreed that the proposal was for a form of development which should be focussed in town centres.
276. PPS4 did not include a needs test in the consideration of applications for retail development but it advocated a plan-led approach, and policy EC4.1 expected local planning authorities to be proactive in planning to promote town centres. PPS4 policy EC5.1 indicated that in so doing they were to base their approach on identified need. The level of need had been established in the Coastal Districts Retail Study by DTZ in 2005 (Doc. CD/C6), and no alternative assessment of need had been produced at the inquiry. The need identified in the DTZ study was for much less floorspace than was proposed in the application, being assessed as between 960 sq m and 1,920 sq m in 2009, rising to 1,470-2,940 sq m in 2013, for the whole of the Council's area. The study had also advised that any new foodstore developments should be located in or on the edge of the main centres, and should have strong links to the prime shopping area. That advice accorded with national and local policy. The application proposal was not in accordance with those policy objectives.

### *Bognor Regis Masterplan*

277. With that context, witnesses for the Council and the applicants had agreed that the Council had considered what development was needed in Bognor Regis and had been actively promoting the town centre. The Council had produced the BRMP in 2004. This pre-dated the current development plan system, but it had been subject to significant consultation. The Council had accepted that it was founded on proper research, remained in line with current Council thinking, and that there had been no material change in circumstances to affect the weight to be given to it. It was a document to which considerable weight could be given.
278. One of the principles behind the BRMP was to encourage a better shopping experience. It stated that Bognor Regis should seek to retain and improve its retail role, and that this could be achieved through means including creating a framework for improvements to the retail environment and expanding the retail floorspace. It referred to creating opportunities for additional retail development to absorb anticipated increases in capacity and demand over the

next 20 years, and to improve the quality and range of the retail offer. In that regard, the Morrisons site (then a Safeway store) was specifically identified as providing potential for increased retail development. The site was in the defined Retail Quarter which was seen as the heart of the town. Safeway was mentioned as a valued retailer within the town centre, although stated as not making optimum use of this “pivotal site”. This site was clearly considered to be particularly important in the BRMP, which sought its redevelopment whilst recognising that it would be difficult to develop due to constraints.

279. The Hothamton and Regis Centre sites were also identified in the BRMP for redevelopment, which the Council had been actively promoting. Following an extensive tendering and consultation exercise, the Council had entered into a development agreement with St Modwen. The Hothamton site was important as an opportunity to provide additional retail space which was needed in the town centre, and the Regis Centre site was important to address the weakness of the link between the town centre and the seafront. St Modwen was an experienced developer, and had identified the importance of providing for convenience retail development on the Hothamton site in order to bring forward the redevelopment of both sites.

#### *Core Strategy Options for Growth*

280. The approach in the BRMP had been reiterated in the CSOG (Doc. CD/C5). It identified that Bognor Regis currently lacked a wide range of shopping facilities, and so struggled to compete with neighbouring centres. However, it referred to the town centre as offering major opportunities that were starting to be unlocked through regeneration programmes that were underway, and which would involve bringing forward key development sites and promoting a mix of activities, including shopping, to bring a new vitality to the town centre. This was clearly a reference to the key Morrisons and Hothamton sites.
281. These themes were advanced in the CSOG's vision for Bognor Regis, which made reference to a revitalised town centre fulfilling its potential for shopping, and in Strategic Objective 6, which was to be addressed by measures including positive planning to revitalise Bognor Regis town centre, incorporating provision of a wider range of shopping. The CSOG concluded that considerable investment was already focussed in the town centre and that the aim was to take advantage of key development opportunities to provide a wider range of retail facilities. These conclusions referred back to the DTZ study, and adopted the recommendation that new retail development should be focussed in the town centre whilst looking to restrict further out of centre development.
282. Although the CSOG was only a consultation document, it represented the Council's most up to date thinking and it continued the approach in the BRMP. It was in accordance with national and local policy, and so weight could be attached to it. The application proposal in an out of centre location was contrary to this emerging part of the LDF.

#### *Vitality and Viability of Bognor Regis Town Centre*

283. Although the diversity of the uses in the town centre appeared to be relatively stable, vacancies were on the increase. There had been an increase from 2% to 4% in vacant floorspace from August 2004 to November 2009, and a rise from 5% to 6% in the number of vacant units. There had been a further net increase of one vacant unit from November 2009 to February 2010, representing an

increase to 7% of the total number of units. Some units that were on the market were likely to remain vacant in the long term.

284. The town centre did not have a significant amount of office development. This reflected the fact that only a small proportion of the labour market was employed in the finance and business sectors compared to the regional position. However, there was ample capacity for retail and other growth in the town centre through new or more intensive forms of development, including in particular on the Morrisons and Hothamton sites.
285. In terms of retailer representation, the town centre did not have a department store. Littlewoods and Woolworths had left the town since 2005, albeit not for reasons related to local circumstances. Their units had been reoccupied by New Look and Wilkinsons. Those retailers were indicative of the profile of the national retailers present in the town, which tended to be discount operators taking advantage of low rents (Details of other national retailers are in Doc. MOR/PR1, paras. 5.17-18). New Look had acquired its store as part of a package of Littlewoods stores on new sub leases, and it would be wrong to suggest that the firm had singled Bognor Regis out as a target location. Wilkinsons had taken the opportunity to take prime premises at a low rent, with the transaction in that case showing a marked drop in the tone of rents.
286. There was very little interest from retailers who were not represented in the town centre, with few outstanding requirements for premises (Doc. MOR/PR1C, para. 3.7). There were only 4 active requirements, of which 2 were charity shops. It was disputed that TJ Hughes and TK Maxx were interested in locating in the centre. Those companies had no firm interest in locating in Bognor Regis, which was not a high priority for them. Marks and Spencer had left in 1990, and the absence of that firm underlined the town's weakness. The evidence of the applicants' household survey suggested an underlying weakness in the town centre by comparison with Chichester and Worthing. That was highlighted by the indication that Bognor Regis was only the third most popular destination after those towns for clothes, footwear and other fashion goods, although it was more popular for non-town centre, bulky goods.
287. Retail rents in the town centre were low, and had not improved in the last 20 years. If recent transactions were included (Doc. MOR/PR1C, paras. 3.10-12) the actual drop in rents could have been as much as 21.8% from 1992 levels. This was a marked contrast with the higher rent levels in neighbouring centres such as Chichester and Worthing, where graphs showed that rents had grown by 45% and 15% respectively (Doc. MOR/PR1C, paras. 3.14 & 6.9 & App 8). It was difficult to draw any meaningful conclusions from commercial yields, due to the limited number of transactions. However, 62 High Street had been sold in October 2009, and let at a yield of 8.2%. That was high compared to national average prime high street yields of around 6% in May 2009. There was no transactional evidence from which meaningful conclusions could be drawn about land values in the town centre.
288. The general appearance of the centre was somewhat tired. Although the main shopping area was relatively busy, there was a need for investment and regeneration in the secondary and tertiary areas on the fringes. Those areas included the Hothamton site and the adjacent Queensway, which were somewhat neglected.

289. The town centre measured up well on the health check indicator of accessibility. [Inspector's note: the details given of accessibility by various modes of transport were essentially the same as were made with respect to the Morrisons store – see paragraphs 339-340 – and so these are not repeated here].
290. In its present state, the town centre was relatively stable. However, it was sensitive to outside influences. With the lack of significant retailer demand, the centre would be vulnerable to any changes in retail expenditure, and to any further closures as a result of wider economic circumstances of retail chains already in the town.
291. The Morrisons and St Modwen (Hothampton) proposals had the potential to significantly improve the offer of the town centre, and so the implications of the called-in application scheme for those proposals were important considerations.

### *Impacts*

292. The evidence clearly showed that the proposal would be likely to have a significant adverse impact on planned private investment in Bognor Regis town centre. The first relevant matter in this respect was the impact it would have on the Morrisons store, and on intended investment there.
293. The applicants had agreed that the continuing health of the Morrisons store was very important to the continued well-being of the town centre. It was a key town centre facility. It was the only supermarket and acted as the anchor foodstore. The next largest convenience store was Iceland in High Street, which had a net retail floorspace of only 618 sq m. The applicants had agreed that the store was the most significant trader in terms of turnover in the town centre. It accounted for about 19% of the centre's total turnover, and no other store approached that importance in percentage of turnover terms.
294. The Morrisons store generated strong pedestrian flows to and from London Road, and the applicants' household survey showed that there were many linked trips between it and other town centre facilities. On the basis of un-weighted data, only 39.2% of Morrisons' shoppers did not combine trips with other activities. The figure for the Tesco store was 61.7%. Significantly, 41.1% of Morrisons shoppers combined a food shopping trip with non-food shopping, but only 26.2% of Tesco shoppers did so. People shopping at Morrisons also visited the town centre for shopping and services more often than those who shopped at Tesco (Doc. A/PR1A, vol.2, Qu.21, p.101). It was unfortunate that the household survey had not asked a question about the locations with which the respective linkages were made, although Morrisons' had asked that such a question be included. As a result, it could not be ascertained from the survey the extent of linked trips from the respective stores to the town centre.
295. Notwithstanding its existing performance and importance in those respects, there were deficiencies in the size and design of the store, which had been taken over from other operators. It had been a Presto and then a Safeway store, and it did not fit the Morrisons format (Deficiencies are detailed in Doc. MOR/PR3, para. 3.06, and the improvements that redevelopment would bring in the same Doc. para. 5.22). It was an aim of policy that best use should be made of sites such as this, and it was accepted that optimum use was not being made of the site at present. With that context, it was intended to develop a new store on the site. A planning application had been made. There would be

2 speculative shop units in the scheme, as well as a new supermarket (Doc. MOR/PR3, paras. 3.09-10).

296. Morrisons' proposal would be a significant investment in the town centre of £10m or more. It would deliver the Council's policy objectives for the site, including those of the BRMP, and would be an important boost to the town centre's vitality and viability. It was precisely the type of development which national policy sought to foster. The Council had welcomed the proposal and wished to encourage it, and was concerned only about car parking provision. Morrisons' highway witness did not consider that more parking was necessary, as the provision proposed was consistent with local maximum parking standards and other policies for the town centre, and was commensurate with predicted demand in this highly sustainable and accessible location. However, the concerns about parking should not be regarded as an impediment to the redevelopment. An extra deck of parking could be added, and the Council had accepted that the sketches provided showing such an amendment would be recommended for approval if a new application were to be made on that basis.
297. The Council did not share the concerns the applicants had raised about the planning merits of Morrisons' proposal, and it was not appropriate to respond to those concerns as the inquiry was not into the Morrisons scheme. Whilst the applicants had queried whether the Morrisons proposal was viable or genuine, Morrisons had made its commitment to the scheme clear in letters and a company statement (Docs. MOR/PR3A, App 3, MOR/PR1A, App 10, & MOR/PR1C, App 5). The company's commitment had been demonstrated by the work undertaken on the planning application, and the Council had produced draft heads of terms to further the development. The fact that another application had not been made to deal with the Council's concerns about parking did not indicate a lack of commitment. Morrisons did not wish to expend substantial sums on progressing its proposal until the called-in application was determined, because the Morrisons redevelopment would not be viable and would not proceed if the called-in application were to be approved.
298. The applicants had also suggested that Morrisons could not be genuine in their proposal because the redevelopment scheme was not viable on the basis of a standard development appraisal. However, retailers such as Morrisons did not base their investment decisions on the type of development appraisal which had been provided in the applicants' evidence. Such decisions were made instead on the basis of the potential sales achievable from a site, the potential loss of sales if no action were taken, and the desire to protect and enhance market share. This had been confirmed in a letter (Doc. MOR/PR1C, App 5), and the applicants' retail property witness had conceded that standard development appraisals would not be the determining factor in a retailer's decision whether or not to invest.
299. In any event, there were flaws in the appraisals undertaken by the applicants, relating to matters including the treatment of acquisition and construction costs. Morrisons would not attribute a value to the acquisition of the premises it already owned. As a result, the acquisition costs to be taken into account in any appraisal should have been limited to the costs of acquiring the freehold interests in the multi-storey car park and in Nos. 60, 62 and 64 High Street, which were needed as part of the development site. With an allowance for contingencies, this meant the acquisition costs would be about £3.5m, and the

figure in the applicants' original appraisal was as a result some £8m too high. That alone would turn the loss of £6m identified in that appraisal into a profit.

300. Even if a value were to be attributed to Morrisons' leasehold interest, this would only be about £6.3m, not the higher figure the appellants had used. However, it would then also be necessary to take into account the consequences for the value of that interest of not undertaking the redevelopment. That would result in a substantial reduction in the value. The applicants' own evidence showed that if Morrisons were to close, any re-let for other purposes would be likely to be at about a third of the supermarket use. That would reduce the value of the leasehold interest to about £2.1m. As Morrisons operated the car park on a free basis for their customers, it was not appropriate to allow for a current use value for that facility, as had been done in the applicants' appraisal.
301. With respect to construction costs, a feasibility study had been undertaken by the firm that Morrisons had used as its principal quantity surveyors for 40 years (Doc. MOR/PR1C, App 6). This study indicated total construction costs of £17.1m, net of shop fitting, and so the construction costs in the applicants' appraisal were about £6m too high. If appropriate acquisition and construction costs were to be used, that appraisal would have shown a profit of over £8.5m. As a further consideration, these figures made no allowance for the trade which Morrisons could be expected to lose if it did not act. A phasing programme had been prepared which showed that the new store could be constructed alongside the existing store whilst that store remained open (Doc. MOR/PR1C, App 7).
302. It was a relevant consideration that town centre proposals such as the Morrisons scheme were always more difficult to deliver than development out of centre. This was recognised in policy, which made clear that such proposals should be given time to come forward. Notwithstanding their deficiencies, the appraisals that had been undertaken confirmed that the redevelopment of Morrisons was not as straightforward as a free-standing out of centre proposal, such as that proposed in the called-in application.
303. Having regard to all these matters, Morrisons had repeatedly made clear that if the proposed Sainsbury's store were to be permitted, the redevelopment of its own store would not be viable and would not proceed. The same view had been shared by the independent consultants DTZ, who had advised the Council at stages prior to the preparation of evidence for the inquiry. They were longstanding retail consultants, and were still advising the Council in relation to its LDF. They had advised that there was no quantitative or qualitative need for the proposed superstore, and that it would have a substantial adverse impact on Bognor Regis town centre, including because it would be highly likely to prevent or seriously delay proposed large scale new private sector investment in the town centre (Doc. MOR/PR3A, App 3 p.18 & App 4 p.36).
304. Knight Frank, who had over 10 years experience of advising on the regeneration of Bognor Regis, had also advised that that the prospect of any significant investment from Morrisons would be greatly diminished. They had stated that the potential for the Morrisons store to provide a catalyst for further town centre regeneration would be lost and the prospect for continued decline of this key part of the centre would be increased (Doc. CD/E2, Divider A).
305. In that light, the evidence clearly established that the Sainsbury's store in the called-in application scheme would be likely to have a significant adverse impact

on planned private investment in Bognor Regis town centre by preventing the proposed redevelopment of the Morrisons store.

306. That was not the only planned investment that would be threatened. The Regis Centre and Hothamton sites were also of concern, and amounted to a total investment value of £100m (Doc. CD/I4, 2<sup>nd</sup> page). After the signing of the development agreement, there had been further consultation on a masterplan for their redevelopment (Doc. CD/I5). This identified that a foodstore would possibly be needed at Hothamton in order to bring that site forward, and that development at the Regis Centre was in turn dependent on development of the Hothamton site. The evidence was clear that it would not be easy to achieve redevelopment of these sites, and the possibility of a foodstore at Hothamton would be an important factor for viability. There was no evidence to support the applicants' contention that there was demand for units on the Hothamton site from non-food retailers as an alternative to the inclusion of a foodstore in that development. Morrisons would not consider relocating to that site as their existing store was in a preferable location. Even if they were to relocate, there was no retailer demand to provide for reoccupation of their existing store.
307. St Modwen had warned the Council that the Sainsbury's proposal would have a severe detrimental impact on the town centre, and could well be severely detrimental to the successful and viable regeneration of the Hothamton and Regis Centre sites (Doc. CD/E3). The concern was such that St Modwen had written to the Planning Inspectorate to reiterate those views (Doc. Gen8), explaining that the proposed Sainsbury's store would cause substantial detrimental impact on the vitality and viability of the town centre, and could seriously prejudice the viability, and likelihood of implementation, of the regeneration proposals for sites in the centre including the Regis Centre and Hothamton. St Modwen had confirmed in March 2009 that its views in those respects had not changed (Doc. MOR/PR1A, App 16), and had stated on the basis of its experience that any further challenges to viability would only serve to make it more difficult to bring about regeneration of the sites.
308. Both DTZ and Knight Frank had the same view as St Modwen on this matter. Knight Frank had stated that implementation of the Sainsbury's proposal would significantly reduce the attraction of the Hothamton site to other supermarket operators, and would be likely to result in the loss of any operator interest in that site. It was also stated that any alternative uses to a foodstore would not make the same contribution to viability or integrate as well with other uses on the site, and that this would delay or prevent development of the Hothamton site and have a direct impact on the Regis Centre site and on the overall regeneration proposals for the town centre (Doc. CD/E2, Divider A). Significantly, the Council's planning witness had stated at the inquiry that the planning officers shared those views and continued to do so.
309. Insofar as the applicants had argued that Hothamton would not be a suitable site for foodstore operators such as Sainsbury's and Asda, it was clear that those companies had looked at the site despite promoting out of centre proposals. Given the acceptance that a development of the Hothamton site would not be able to compete with the proposed Sainsbury's store on the LEC site, one could not expect operators to show any further interest in Hothamton whilst there remained a possibility of that store being permitted. It could be expected that operators would review the situation if the called-in application were to be refused. That was precisely what policy sought to do, in directing

development to town centres by resisting out of centre developments. It was not accepted that a foodstore on the Hothamton site would have a significantly greater impact on the Morrisons store than the application proposal, and there was no evidence to support that suggestion by the applicant.

310. With respect to the St Modwen proposals, the evidence again established clearly that the proposed Sainsbury's store would be likely to have a significant adverse impact on planned private investment in Bognor Regis town centre. It would make it much less likely that development of the Hothamton and Regis Centre sites would take place. Having regard to the impact on the planned investment on those sites and on the Morrisons site, the application was clearly in conflict with PPS4 policies EC16.1a and EC17.1b. The latter indicated that applications for development of main town centre uses not in a centre, and not in accordance with an up to date development plan, should be refused where there was clear evidence, as here, that the proposal was likely to lead to significant adverse impacts in terms of any one of the impacts set out in PPS4 policies EC10.2 and 16.1.
311. On reviewing the earlier retail impact assessments prepared on behalf of the applicants, the Council's then consultants DTZ concluded that there would be an impact averaging 21.8% on existing shops and stores in the catchment area, with higher impacts expected to fall on the Tesco at Shripney Road and on Morrisons. They advised that there would be a severe adverse impact on Bognor Regis town centre (Doc. MOR/PR3A, App 4 p.18). DTZ later advised that Morrisons would have great difficulty in competing successfully against the 2 out of centre superstores comprising the existing Tesco and the proposed Sainsbury's, and that they could not rule out the impact being high enough to cause the store to close. Similarly, Knight Frank stated that a risk of closure could not be ruled out (Doc. CD/E2, Divider A, 5<sup>th</sup> page). This view was shared by the Council's officers, and the planning witness for the Council had confirmed that it was still his view.
312. The Council's Rule 6 statement had proceeded on the basis that the proposed development on its own would have an adverse impact on the vitality and viability of the town centre. It had later been suggested that this was a mistake, and that the members had not agreed with the professional advice they had received. The Committee minutes did not establish that as a matter of fact, as they merely referred to views expressed by members, but with no recording of how many members held those views (Doc. CD/E4). Importantly, the minutes conveyed that members had proposed an extra condition to limit the floorspace of the proposal, and the reason given for that condition was to avoid "even further harm to the vitality and viability of the town centre". The only sensible interpretation of that reason was that the members had concluded that there would be harm to the vitality and viability of the town centre.
313. Even if the members had concluded that the proposal would not unduly harm the town centre, it was clear from the minutes that this was on the basis of the housing developments on ADLP policy Site6 being completed. The evidence was that this was not realistically expected before 2020. As the proposed store was expected to open by 2013, it was clearly wrong to seek to rely on development many years later to support it or to negate the harm to the town centre.
314. The applicants no longer relied on the earlier retail assessments which had been criticised. Their assessment at the inquiry was based on the 2010 household

survey, which confirmed that the major food shopping stores in the relevant catchment were Tesco in Shripney Road and the town centre Morrisons, but the survey had grossly overestimated the turnover of the latter. It suggested a turnover in excess of £26.2m. The actual turnover of the store was in the region of £15.6m (Docs. A32 & A33), which was only 58% of what the survey predicted. This called into question the robustness and reliability of the survey, and of the retail assessments undertaken by the retail witnesses for the applicants and the Council. They had proceeded on the erroneous basis that Morrisons was significantly overtrading, and that it would still be trading well above benchmark even after opening of the proposed superstore. The error with respect to the turnover of Morrisons also called into question the other figures that were derived from the household survey. For example, if the trade draw from the catchment area to the Sainsbury's store in Chichester had been overestimated, there would be less trade to clawback to the proposed store.

315. The amendments made to the impact assessments to incorporate the lower turnover figure for Morrisons were surprising and questionable. Although the applicants' retail witness had acknowledged that a problem with household surveys was that they could overestimate the turnover of the largest stores, on finding that the survey had done precisely that with respect to Morrisons' turnover he had proceeded to redistribute the turnover not going to Morrisons amongst the other stores, including the larger stores. The Council's witness had done a similar exercise. The resultant consequence was that the impact upon Morrisons was reduced, which was unlikely to be the true position.
316. It was generally agreed that stores impact most on similar stores, or in other words like stores impact most on other like stores. It was also generally agreed that like stores closest to other like stores impact on each other the most. The application proposal would be a main/bulk foodstore primarily serving zones 1 to 6 in the household survey area (Plan of the zones in Doc. A/PR1A, App A). The survey showed that the Tesco and Morrisons stores were fulfilling similar functions and were drawing trade from the same catchment, and so they were the closest like stores.
317. The applicants had suggested that Morrisons was not a like for like store because it served a walk-in trade, with small purchases being made. That was in reality a false distinction. The fact that Morrisons was in a location which encouraged the use of sustainable means of transport, did not mean that it was not serving a main shopping function. Although Morrisons facilitated shoppers who walked in and bought in smaller individual amounts, it also provided ample parking and catered for the bulk food shopper. Deficiencies in the present relationship between the store and its car park were to be addressed in the proposed redevelopment.
318. The retail witnesses for the Council and the applicants had failed to treat Morrisons appropriately. They had down-graded the significance of the store as a main/bulk food shopping destination. This had resulted in underestimation of the impact of the proposed Sainsbury's store on Morrisons. That could be clearly illustrated by reference to the table which compared the relationships between the current market share of the stores from the various zones of the catchment area, and the individual consultants' assessments of where the proposed store's trade would be drawn from (Doc. MOR3). There was a clear discrepancy between the approaches taken to Morrisons by the Council's and the applicants' witnesses and the approach they had taken to the other stores.

That could be seen from comparing the scale of the percentage existing market share figures with the percentage of trade draw figures in that table.

319. Even on the basis of the mistaken approach taken, the applicants' retail witness concluded that £2.54m would be drawn from Morrisons, leaving it at 91% of its company benchmark turnover (Doc. A33). The Council's witness predicted a higher diversion of £2.9m. These diversions were significant, but they underestimated the likely diversion and resultant impact. A more appropriate assessment was that the convenience goods trade diversion from Morrisons would be of the order of £4.1m, and the total trade diversion including comparison goods would be £4.68m, with a resultant turnover only some 82.5% of the company benchmark.
320. The Morrisons store would not automatically close if it began trading below benchmark, but the likely levels of diversion were a considerable cause for concern, and supported the concerns that had been raised by DTZ, Knight Frank and the Council's officers. If the Sainsbury's store were to be built, Morrisons would have to review the viability of its own store after allowing a couple of years for trading patterns to establish themselves.
321. It was common ground that if the Morrisons store were to close there would be a significant adverse impact on the town centre. In that regard the advice in paragraph D.37 of Appendix D of the PPS4 practice guidance was relevant in indicating that impact on key anchor tenants could have a disproportionate effect on the overall vitality and viability of a centre. Closure of Morrisons would impact particularly on shoppers who would still need to use the town centre because they did not own cars. It would leave the Iceland store and a small Tesco Express on Station Street as the only alternatives in the centre. Those stores did not cater for main food shopping. It would reduce the number of customers using other shops and services in the town centre, and could cause other businesses to close. Even if Morrisons did not close, the trade diversion would still be a significant impact on the town centre, bearing in mind the importance to it of a strong Morrisons and of the associated linked trips.
322. PPS4 policy EC10.2e required that the proposal be assessed against the impact on local employment. The Sainsbury's store would generate about 400 jobs, but development of the site with policy compliant uses would be capable of producing a similar number of jobs. The Council's retail planning witness had accepted that there could be some effect on the existing Morrisons and Tesco stores, for example in terms of reducing working hours for part time staff. The employment benefits of the proposal would in practice be neutral. By contrast, if the Morrisons town centre redevelopment did not take place, the creation of about 170 jobs would be prevented. If the Morrisons store were to close, the existing 173 jobs would be lost.
323. In conclusion on impact, there was clear evidence that the proposal was likely to lead to a significant adverse impact on town centre vitality and viability, consumer choice and the range and quality of the retail offer in the centre of Bognor Regis. There would be likely to be a consequent loss of investor confidence, which would impact on the prospects for future investment in the town centre. As there were very limited levels of demand from retailers not currently represented in Bognor Regis, there was no significant non-food retail demand to underpin any town centre development.

324. Therefore, the proposal was contrary to the intentions of the BRMP and of the CSOG. It was also clearly in conflict with PPS4. Policies in PPS4 with which there would be conflict included policy EC16.1a with respect to investment in the town centre, policy EC16.1b with respect to impact on town centre vitality and viability, and policy EC16.1d with respect to in-centre trade and turnover.
325. As the proposal was in an out of centre location unrelated to the town centre, was out of scale with the identified retail need, and could lead to a greater imbalance between in centre and out of centre convenience floorspace than already existed, the scheme was not of an appropriate scale and was in conflict with PPS4 policy EC16.1e. With respect to the last of those points, the proposal would result in a ratio of 27:73 between the net convenience goods sales area in the town centre and that in out of centre locations, a ratio that would increase to 16.5:83.5 if Morrisons were to close. All those adverse impacts brought the proposal into conflict with PPS4 policy EC17.1b.

### *Sequential approach*

326. There was no dispute that the application site was in an out of centre location. In considering the issue of sequential sites, it was important to consider the scale of the development needed, in accordance with the advice in paragraph 6.52 of the PPS4 practice guidance. The applicants and the Council had not approached this matter properly. They had adopted an unnecessarily large scale requirement, unsupported by any proper needs assessment, as a way of circumventing the sequential approach. No needs assessment had been produced at the inquiry to support the scale of the proposal.
327. Insofar as the applicants had produced earlier assessments of need, they had been found wanting by DTZ who were then advising the Council. That had been the case with both the original retail assessment in December 2008, and with respect to the further assessment submitted in May 2009. Those assessments of need had not been relied on at the inquiry. DTZ had consistently concluded that there was no quantitative need for the size of development proposed in the application. With respect to qualitative need, DTZ had concluded that although the existing Tesco was well used and overcrowded at peak periods, the qualitative need did not require a new out of centre supermarket of similar size.
328. The applicants' argument was merely that Sainsbury's wished to build a large store, which would cater for car borne shoppers. That did not establish a need. It represented a failure to demonstrate any flexibility in undertaking the sequential assessment, including with respect to scale. That was in conflict with the expectations of PPS4 policy EC15.1d, which conveyed that developers and operators should demonstrate flexibility in terms of scale and other matters. The PPS4 practice guidance also specifically provided that proposals for large foodstores needed to demonstrate flexibility in terms of scale and format, parking and the scope for disaggregation. It further advised that the decision of a retailer to promote a business model that could not be accommodated in an existing centre would not justify discounting more central sites where they were available, suitable and viable. The applicants had not considered alternative store formats, or any variation in the level of floorspace to allow for use of a more central site, or any innovative forms of design such as a store on stilts.
329. DTZ had advised the Council on 2 occasions that the identified retail need could more properly be accommodated on the Morrisons and Hothampton sites (Doc.

MOR PR/3A, App 4 p.19 & App 5 p.36). Those sites were sequentially preferable, as the former was in the town centre, while the latter was directly adjacent to the PSA and so was an edge of centre site. The applicants had argued that those sites were unsuitable for the size of store they were proposing. That was not a proper application of the sequential assessment. Moreover, DTZ had concluded that the applicants' retail consultants were wrong to disregard the Morrisons site as sequentially preferable by virtue of the fact that it did not have a valid planning permission for redevelopment. That too was not a proper application of the sequential assessment, as the Council would be expected to work with the private sector to overcome any problems so as to bring forward a development of appropriate scale to meet the forecast need.

330. In the light of Morrisons' confirmation of its intentions to bring forward its redevelopment, the site should be treated as being available. The only real issue which the applicants had been taken with respect to the Morrisons and Hothamton sites was one of viability. Morrisons' evidence had clearly demonstrated that the company was satisfied that its redevelopment was viable. There was no suggestion that if CPO action were to be necessary to assemble the site that it would not meet the requirements of CPO powers.
331. Whilst there were currently issues with respect to the viability of the Hothamton scheme, Knight Frank had advised that the position was improving (Doc. CD/E2, Divider A, 5<sup>th</sup> page). Problems of viability were a reflection of current national economic difficulties, and there were no reasons to believe that as conditions improved the Hothamton site would not become viable. However, future viability could be jeopardised if the called-in application were to be approved. The Hothamton site was suitable for a foodstore, in the light of the public consultation exercise that had been undertaken which had showed how a foodstore could be delivered on the site in conjunction with other uses. As the site was being promoted by the development agreement, it was evident that it was available. The current reluctance of foodstore operators to develop on that site was probably due to the spectre of the out of centre Sainsbury's proposal. That position might well alter if the called-in application were to be refused.
332. Therefore, it was clear that there were 2 sequentially preferable sites. The applicants had not demonstrated compliance with the requirements of the sequential approach and had failed to satisfy PPS4 policies EC15 and EC17.1a.

#### *Accessibility and Sustainable Transport*

333. The applicants had candidly acknowledged that the proposal was designed for car borne shoppers. The location of the application site was such that it would not encourage many trips by other modes of transport. In that regard the applicants' household survey had revealed that 75% of customers at the Tesco store on Shripney Road were car drivers, while only 37% of customers of the Morrisons store were. That level of car usage was likely to be at least replicated at the Sainsbury's store, given the similarity of its location, although it would in fact be even less well located for sustainable travel than the Tesco store.
334. The appropriate measures for gauging accessibility on foot were the standards in the Institution of Highways and Transportation's ("IHT") Guidelines for Providing for Journeys on Foot. There was no justification for using the greater distances relied on in the applicants' evidence. Using the IHT Guidelines, there were just 103 households within the 400m desirable minimum walking distance

of the application site, and only 249 households within the 800m acceptable maximum walking distance.

335. The location of the proposed store would not promote walking trips. The routes to it from residential areas would not attract people to walk, as they would involve walking alongside roads carrying traffic at relatively high speeds, and in an environment of mainly industrial and commercial uses. The presence of Tesco some 400m closer to the residential areas to the west and south would further discourage walking trips. The applicants had accepted that people were unlikely to cycle to the store, and that was evident from the low number of cycle trips which had been observed at the Tesco store. In a p.m. peak hour survey on a Friday, just 15 customers had arrived and departed by cycle, with 60 customers arriving and departing on foot. A total of 1,081 vehicles had arrived and departed the Tesco store during same period (Doc. MOR/PR2, App DB1).
336. There was currently only 1 bus service past the site, the 66/66A, with less than an hourly frequency in each direction from 07:10 to 17:40 on Mondays to Saturdays. There was no service on Sundays or public holidays (Doc. A31). Observation had shown that typically 5-7 customers per hour arrived and departed the Tesco store by bus. That store was better served by buses, as it benefited not only from 66/66A service but was also served by the separate 67 service, which ran hourly on Mondays to Fridays.
337. There were no grounds for supposing that numbers of customers using buses to access the proposed store would be any different to those observed at the Tesco store. The existing buses only served a limited catchment of the town centre and the housing areas of eastern Bognor Regis and Felpham. Customers from other areas had to change buses in the town centre. The increases in the frequency of the existing bus service to be funded from Section 106 contributions, and the provision of the shuttle bus service provided for in the same agreement, would only be secured for limited periods of time. The indicative timetables for the shuttle buses indicated that they would run for only a short period of the day. There was no guarantee that the extra bus provision would continue into the future. Indeed, based on observations of patronage, there must be serious doubts about the viability of the services and about their sustainability in the longer term.
338. The site was more than 800m from Bognor Regis railway station, which was the IHT guideline distance that people were willing to walk from such a station. It was unlikely that rail would be used as a mode of travel to the proposed store.
339. By contrast with the application site, the town centre location of the Morrisons store made it highly accessible by a choice of means of transport. The household survey showed that its location encouraged large numbers of trips on foot and by bus. As well as car parking adjacent to the store (175 spaces) and above it (372 spaces), there were bus stops within 50m on High Street, served by 13 buses per hour in each direction to and from a wide catchment. There were 2 buses per hour on Sundays. The railway station was within 400m of the proposed entrance to the Morrisons store, as it was to be redeveloped, well within the recommended maximum walking distance of 800m.
340. The main pedestrianised shopping area of London Road was 40m from the Morrisons store entrance. The whole of the main shopping area was within 400m, as were some 829 households. There were 2,462 households within

800m. The store was also an attractive and genuinely accessible destination for cyclists. The entire population of Bognor Regis was within the 5km distance for which PPG13 advised cycling had the potential to substitute for short car trips. Similar accessibility advantages applied to the Hothamton site.

341. A comparison of the application proposal with the Morrisons store on accessibility indicators showed that the existing and proposed Morrisons stores were fully consistent with local and national transport policies promoting sustainable travel (Doc. MOR/PR2, Table DB6 p.26). The application proposal was not, and there was clear evidence that it was likely to lead to significant adverse impacts in terms of the accessibility of the proposal by a choice of means of transport. In those respects the proposal did not accord with PPS4 policies EC10.2b and EC17.1b.
342. The intention to provide 602 parking spaces for the proposed store was in excess of the likely maximum parking demand of 340 spaces on a Saturday. Although that parking provision was consistent with local maximum parking policy standards, this would not discourage travel by car. Given that the application site was in an even poorer location than the Tesco store in terms of sustainability, the proposed store would be likely to generate fewer trips by sustainable modes of transport, and so would increase the need to travel by car, contrary to the objectives of PPG13.
343. The applicants had claimed that the proposal could lead to substantial journey length savings, but their witness had accepted that this was not an exact science. Little weight should be attached to his calculation. The extent of journey savings was dependent on the trade draw assumptions made, and the applicants had underestimated the draw from the Morrisons store. Pass-by and diverted trips had not been properly accounted for, and the assumptions made about trip distribution from the proposed store were flawed. For example, it had been assumed that the proportion of customers travelling from the south, and returning in that direction, would be 90%. That was contradicted by the peak hour traffic flows from the traffic surveys in the applicants' evidence, and no other traffic flow information had been provided to support the 90% assumption. As a result, the extent of journey savings arising from customers diverting to the proposed store from Tesco would be less than had been claimed. The assessment also took no account of persons who went to the Morrisons store by sustainable transport modes who might change to using cars to go to the proposed store.
344. Rather than the 4.4m km per annum of journey savings claimed by the applicants, a more realistic figure was 0.7m km. That figure was arrived at on the basis of the assessment Morrisons had made of likely trade draw, and also on a division of the trips to and from the store into those that would be single purpose trips, from home to the store and vice versa, and those that would be pass-by or diverted trips, being those which would already be on the highway network.
345. If the Morrisons store were to close, there would be a significant further impact on customer journey lengths. That would not only cancel out the potential journey savings, but could also increase journey lengths, contrary to the objectives of sustainable transport policy. Even if Morrisons did not close, the extent of journey savings would not merit the applicants' claim that this was a

matter of extreme significance. The journeys savings did not weigh strongly in favour of the application proposal.

#### *Contamination and Alternative Uses of the Site*

346. The main consideration advanced as potentially outweighing the policy conflicts was remediation of the site. This was the basis on which the Council's officers had recommended approval. Given the importance placed on this matter, it was surprising how little information had been provided about it. Given the limited information available, it was not possible to draw robust conclusions about the extent of contamination, or about the likely remediation strategy that would be needed, or about the end result in terms of decontamination.
347. The limited information had been considered by Morrisons' consultants Sirius in their reports (Docs. MOR/PR1A, App 2 & MOR/PR1C, Apps 2 & 4). Sirius had advised that the extent of site investigation, risk assessment and definition of remediation options to date was inadequate to allow robust assessment of the potential risks posed by the site to controlled receptors, or to permit the development of a reliable remediation strategy or an accurate estimation of remediation costs. It was concluded that remediation was very unlikely to be required in the foreseeable future to protect human health or controlled water receptors if the site were to stay in its current condition. That was also the conclusion if the buildings were to be demolished and the land put to a low intensity purpose. Sirius had also observed that the remediation strategy and objectives had not been defined for the proposed development, and that the evidence in support of the approach was inadequate.
348. Therefore, there was no pressing need for remediation of the site at present. That had been accepted by the applicants in their note relating to regulatory remediation requirements (Doc. A21). If a need for remediation should arise, there were clear statutory provisions which would require the remediation of the site without recourse to inappropriate and harmful development.
349. When the application was submitted and initially considered the applicants had been suggesting that remediation costs would be of the order of £5.25m-£6m. The basis for that costing was unclear, and the Council had confirmed that no investigation had been carried out into how the estimated cost had been arrived at (Doc. MOR/PR1A, App 1). Nevertheless, those figures had been used as justification for the need for a high value end use, and great weight had been placed on them by the Council's officers in recommending that permission be granted despite the harm to the town centre and the evident conflict with retail policy. This approach had been repeated in the Council's Rule 6 statement.
350. After pressure from Morrisons, the applicants had revealed that the remediation costs were now estimated at only about £1m (Doc. MOR/PR1C, App 1). This was largely due to a much reduced specification, which highlighted the inadequacies in the evidence as to extent of contamination and the strategy needed for remediation. These deficiencies were not answered by the proposed conditions or the Section 106 obligation. On the basis of present information it was not possible to conclude what would happen to the site or what remediation would actually mean in practice. It was foreseeable that the contamination would remain on site, and that all that would happen would be that enough would be done to enable the development to be carried out. That was very different from the impression being created by the development brief and the

application. The Council had not reconsidered the proposal in the light of the reduced estimate of remediation costs.

351. On the basis of more realistic but conservative costings, Morrisons' retail property witness had been able to conclude in her original evidence that other forms of development would be viable on the site. On the basis of the latest information on remediation costs, this witness had concluded that most forms of development for which there was market demand now, or for which there was likely to be market demand in the future, would be viable on the site.
352. The extent of contamination appeared to vary over the site. It was less severe in the northern area, of about 2.44ha, than in the southern area, of about 1.65ha (Plan in Doc. MOR/PR1A, App 3). At an earlier stage of consideration it had been felt that this offered the potential to redevelop the northern part, whilst clearing the southern part to remove the negative visual impact, and leaving that part to be developed at a future date. However, such an approach no longer seemed to be necessary in the light of the lower overall remediation costs now estimated.
353. The development brief had addressed viable uses for the site (Doc. CD/D1). That was clear from the fact that the development objectives that were set included that the uses were financially viable. With that context, the brief clearly considered that residential development was a viable end use. The conclusions on the viability of residential development had been supported by reports including the Goadsby Supplemental Demand Study in 2007, which revealed interest from house-builders for the whole site (Doc. MOR/PR1A, App 5). Although land values had fallen since those assessments, there was no convincing evidence to show that residential development would not be viable now. Morrisons' witness with expertise on this matter considered that there still remained a demand for residential development on the site as a whole, despite the market having been affected by the economic recession. In that regard, it was noted that the actual net increase in dwellings between 2006-09 in Arun, of 486 dwellings per annum, had been below the SEP target of 565 (Doc. MOR/PR1A, App 6).
354. Residential development of the site would reflect advice in PPS3 which gave priority to development of previously developed land. The site would be suitable for housing in planning policy terms, and its development for that purpose would serve to restrict the amount of greenfield land that would need to be developed. There was no evidence that SDLL had approached any house builders since finalisation of the development brief, and so it could not be stated categorically that there was no current interest in the site for that purpose. The development brief itself had identified residential development as possibly assisting the viability of redevelopment, and as a possible early opportunity for the construction of low-cost housing for which there was a need.
355. As well as general housing, there was a potential for the site to be used in part for sheltered housing. McCarthy and Stone had confirmed that they might consider a further site in Bognor Regis in the future, and other operators might be interested in such a scheme as part of a larger residential solution for the site. As values for sites for sheltered housing tended to be higher than open market housing, that could improve the value to be generated from the site.

356. By comparison with the proposed retail use, a residential use of the site would better promote sustainable access and reduce reliance on journeys by car. In relation to IHT guidelines for desirable and acceptable walking distances for commuting purposes, of 500m and 1,000m, there were various retail and employment uses within distances of 90m-600m of the site, and the Bognor Regis War Memorial Hospital was within 900m (Doc MOR/PR2, Table DB5 p.20).
357. The applicants had suggested that the need to provide affordable housing would be an impediment to residential use of the site, but policies allowed for viability to be taken into account in assessing whether an affordable housing contribution should be made. If viability were to be an issue, development without affordable housing would not be in conflict with policy. Furthermore, in circumstances where the case for redevelopment and remediation had been considered to be strong enough to warrant development that would be harmful to the town centre and in conflict with retail policy, it must equally be of sufficient weight to outweigh any concerns with respect to affordable housing. It was notable that the applicants' planning witness had abandoned his concerns with respect to affordable housing during cross-examination.
358. The other point put by the applicants against residential redevelopment was flood risk. That was surprising given the indications in the development brief that the site was suitable for housing. Whilst it had been suggested that the site would not pass the sequential test for flood risk, no such sequential assessment had been undertaken. The appeal decision on which the applicants relied in arguing that the application site would not pass the PPS25 sequential test was not directly comparable. The case subject of that decision had not involved the bringing back into use of contaminated land as a consideration. It had not been established by evidence that the called-in application site would fail the sequential test.
359. The sequential assessment would have to be undertaken having established the criteria by which sites would be judged as part of the sequential analysis. It was noteworthy that the need for regeneration/remediation was one of the criteria that had been adopted in undertaking the sequential assessment relating to flood risk for the proposed retail development. Once this criterion has been adopted, it inevitably led to the site meeting the sequential assessment, because the criterion could not be met on other sites. However, if that criterion was appropriate in the assessment of the retail development, it must apply equally in the case of residential development. This approach to the matter clearly accorded with the advice in paragraph 4.38 of the PPS25 practice guidance. It also accorded with commonsense, as the alternative would involve a conclusion that sites would not be redeveloped to assist regeneration in cases where there was a flood risk issue. The Council's planning witness had confirmed that he was happy that the site was suitable for residential use taking flood risk into account, and that if an application were to be made for such development he would recommend that it should be approved.
360. Although they would be the preferred uses in planning policy terms, some uses such as industry and offices had been discounted due to the provision made in the ADLP for those uses at Oldlands Farm and the limited market demand. However, there were some other potential uses of the site for which there was demand and which would be viable. There was agreed to be a demand for about 6,000 sq m of non-food retail development, including internal and external space for a DIY operator, which could occupy about half the site (Doc.

MOR/PR1C, paras. 4.7-4.9). If that retail development were restricted to non-food bulky goods, it could be complementary to the town centre rather than competing directly with it, and so would be less damaging in policy terms. That type of retail development should be considered first. However, even unrestricted non-food retailing would be likely to have a lesser impact on the town centre than the combined convenience and comparison retailing in the application proposal.

361. There was also scope for other forms of commercial development. Budget hotel operators were not represented in the town. Currently their demand was for town centre or seafront sites only, but there had been interest in the site in the past, and demand was likely to improve with the economic climate. Although there was no demand for leisure uses such as cinemas, bowling or bingo, there were some pub/restaurant requirements that could sit beside a residential, hotel or non-food retail scheme on part of the site. Marstons had a requirement for a pub/restaurant in an out of town location, and Mitchells and Butlers had a requirement for a Harvester pub next to a retail park or residential scheme.
362. Although PPS4 identified hotels and pubs as town centre uses, such facilities were often found in non-central roadside locations, particularly where catering for the business market. Whilst such uses would not be entirely policy compliant, they could be considered appropriate subject to the mix of uses proposed on the site and the relationship between the uses, and to compliance with the sequential approach to site selection and impact tests on the town centre. These other uses could be undertaken in combination with or alongside housing development of part of the site. In the light of these other potential uses, it had not been established that remediation could, or would, only be secured by allowing the proposal in the called-in application.

### *Regeneration*

363. It had been suggested that there was a more general regeneration case for permitting the proposal, but the site was not identified in the development plan as needing physical regeneration. Based on the Index of Multiple Deprivation, and on LSOA data, the site was in an average area in terms of deprivation. By contrast, the town centre was in the most deprived 16.5% of LSOAs. Therefore, the need for regeneration was not in the north of Bognor Regis where the site was located, and that any regeneration should be directed to the town centre.
364. Whilst there would be benefit in improving the site's appearance, that benefit should not be exaggerated. The site was not the key gateway that had been suggested by those supporting the proposal. Similarly, whilst there was always an element of benefit flowing from any economic development, there was no overriding regeneration case for redevelopment in this location. There was a greater need for regeneration in the town centre, which would be harmed by the proposal. It had not been established that redevelopment of the site and any associated regeneration benefits could only be secured by allowing this proposal. Even if that were the case, it would not provide justification for the development given the harm that would result.
365. Insofar as it had been argued that the proposal would facilitate the development of a Class B1 unit on the retained land, the applicants had not provided any evidence as to when that unit might be provided. That part of the argument in

favour of the proposal appeared to be at odds with the applicants' evidence that there would be no demand for industrial development on the application site.

### *Development Plan*

366. The most important development plan policy was ADLP policy DEV27. This predated PPS4 and so had additional requirements beyond those set out in that PPS. Nevertheless, there was much in the policy that was fully in accordance with PPS4. In particular, it had similar impact, sequential assessment and accessibility requirements. The proposal was in conflict with those requirements for the same reasons which had been detailed with respect to conflicts with PPS4. The proposal was contrary to the development plan, and considerable weight could and should be given to that conflict.
367. With respect to accessibility and sustainable transport considerations, the proposal was in conflict with SEP policy CC2, and ADLP policies GEN4, GEN7 and DEV27, for the same reasons that had led to the conclusions of conflict with PPS4 and PPG13 on those matters.

### *Section 106 Agreement*

368. The fact that a Section 106 agreement had been offered to mitigate the harm caused by the proposal, and the suggestion that weight should be placed upon it, entailed an acceptance that harm would be caused which would warrant refusal of planning permission. The Council's planning witness had accepted that the Section 106 contribution to town centre management and initiatives could only be justified because there would be harm to the town centre. When properly analysed the various elements of the proffered obligation clearly did not remove or outweigh the identified harm.
369. The obligation provided for the payment of various sums for a variety of purposes. The largest was £500,000 for "town centre management and initiatives". Whilst there was some general indication of how this money would be used, there was no clarity on that point. The Council's regeneration witness had been unable to detail any specific schemes or items on which the contribution would be spent. None of the generally indicated uses for the money could be said to directly address, or even mitigate, the impacts on the town centre. Some of the suggestions did not even relate to the town centre. For example, any contribution towards the BRSS would address areas outside of the defined town centre. If used for that purpose, the contribution involved could not be regarded as directly related to the proposed development, and it would not relate to the impact on the town centre which this part of the agreement was seeking to address.
370. It was also immediately apparent that even if the sum involved were to be spent entirely on the town centre, it would be a minor proportion of the investment in the form of the Morrisons and St Modwen proposals which would be put at risk. The sum also represented only a minor proportion of the trade that would be lost to the town centre. The applicants' evidence predicted a diversion of £2.54 million of convenience trade from Morrisons in the first year of opening alone, and the sum offered was only some 13% of the total trade lost to the town centre in that first year. Therefore, this contribution could not be said to compensate for the lost trade and income to the town centre.

371. When considered in relation to the costings in the BRSS, it was clear that £500,000 would not make much impression on the identified needs. In that regard, although he had referred to other sources of finance including contributions from Butlins and from a seafront developer, and the possibility of leveraging other funding, the Council's regeneration witness had conceded that this amount viewed in isolation would be a "drop in the ocean" in relation to the items detailed in the Action Plan section of the BRSS (Doc. CD/C4, p.59 et seq).
372. A second element of the Section 106 agreement was the payment of £125,000 for enterprise provision. There were again no clear plans as to what this money would be spent on, and the applicants had been unable to give any details of the likely timescale for real provision to be made. The Council had been able to give only general indications about how the contribution would be spent. The only example which the Council had been able to give in evidence was of possible use of the contribution as capital to fund alterations and enhancements of existing Council owned buildings near the site for 6-9 units, also using funds from Coastal West Sussex. That demonstrated how limited in practice the benefits derivable from this contribution would be. It was also clear that this contribution would not address the impacts on the town centre.
373. Another element of the obligation was the contribution towards enhancing the public bus service, up to a maximum of £200,000, and the provision of a shuttle bus service for a period of 5 years. With respect to the £200,000, the obligation included provision for clawback of the contribution during any period during which the service was profitable. This contribution was to be provided because the proposal was not in an accessible location. Whilst it would provide some improvement, it would not address all of the inadequacies in that respect. Importantly, there was no security that the improvements would be permanent.
374. The proffered agreement did not make the proposal acceptable. It did not address the impacts adequately, and the benefits offered were not comparable in scale or kind with the harm that would be caused. Some elements could not even be said to relate directly to the impacts of the proposal.

#### *Other Material Considerations*

375. The applicants sought to have significant weight attached to the development brief, but this was an informal document which had been prepared on behalf of the site owners not by the Council. Although it had been endorsed by the Council's Cabinet, it had not been approved by its relevant Committee for planning matters. It had been subject to consultation, but it had not been through the full and thorough processes that were required for a SPD. The brief also seemed to undermine prevailing national and development plan policy with respect to retail development. It should attract limited weight at most.
376. In any event, whatever weight were given to the brief, it did not address the impacts upon the town centre which were central to the consideration of the application. Consequently, the brief did not provide any ground for allowing the proposal in the face of the harm it would cause to the town centre and its conflict with retail policy. Furthermore, the brief itself established that the site could be put to other uses, including residential development.
377. The BRSS was a non-statutory document, and was not included in the LDS. It was a material consideration to which limited weight should be attached. Although some of the Section 106 money could be put towards items in the

BRSS, the direct impact of the application proposal on the town centre would undermine the strategic objectives of this document and would outweigh any benefits that might arise from the contributions made.

### *Conclusions*

378. The applicants had suggested that Morrisons were taking a simplistic retail policy approach. It was implicit in that suggestion that the proposal was in clear conflict with retail policy. Whilst other factors had been advanced in support of the proposal, the starting point for determining the application, and the consideration to which most weight must be given, was the conflict with retail policy. It had not been established that the development was necessary in order to secure remediation of the site. Even if it had been, that could not outweigh the policy conflict and other reasons for rejecting the application. With respect to the qualitative need that existed for improved convenience retail provision within the area, the proposed Morrisons redevelopment would meet that need without conflict with retail policy. Therefore, the Secretary of State was invited to refuse the application.

### **Written Representations Objecting to the Proposal**

379. **St Modwen Developments Ltd** wrote as the Council's development partner for the Hothamton and Regis Centre sites. There was a strong retail planning case against the proposed superstore due to the substantial detrimental impact it would have on the town centre and, more particularly, on the evolving regeneration proposals for the centre through redevelopment of the Hothamton and Regis Centre sites. The proposal could seriously prejudice the viability and potential success of St Modwen's proposals for those sites. These views had been confirmed by the Council's own retail planning consultant at the time of consideration of the application.
380. Some 26 further written representations were received which were phrased as objecting to, or not supporting, the proposed development (24 of these are listed on Doc. A18 – 2 more were received after submission of that document – from JS Shaw & Mrs P Branford – all the representations are in Doc. IP15). Two of the representations should be discounted, as they gave neither a name nor an address.
381. The grounds for objection included: there was no need for the superstore in general; the existing stores gave sufficient provision, including Tesco, Morrisons and Lidl; there was no need for a Sainsbury's store as that company's existing store in Chichester was a short distance away, and buses ran to that store from Bognor Regis. Mentions were made of the proposed Asda store which had been refused at Oldlands Farm, with a number of comments expressing a preference for an Asda store over Sainsbury's, and one preferring a Waitrose or Marks and Spencer store. One letter mentioned concerns about increased traffic, and another felt that harm would be caused to the town. One letter stated that the site should only be used for industry, and referred to job losses that had followed after SDLL took over the LEC site.

### **Section 106 Agreement**

382. The Section 106 agreement is dated 25 May 2010, and was entered into by SSDL, SSL, the Council and the County Council (Doc. Gen6). The matters

provided for in the agreement are detailed in the following paragraphs in the order that they appear in the agreement.

383. Part 5 provides that the development would not open for trading until the SDLL land has been cleared and remediated for development, with all services laid and with the access road and footway constructed and ready for use. The SDLL land is denoted to include both the application site and the retained land.
384. Part 6 provides for transport contributions and facilities. These include £200,000, in 2 equal phased stages, towards the provision and operation of new bus services, with a rider that the subsidy involved would be returned for any month during which the services were profitable. Provision is made for payment of £10,000 for improvements to, and maintenance of, the bus stop on the northbound side of the A29, and of £50,000 in 2 equal phased stages for improvements to footways and cycleways on Shripney Road. In addition, there are provisions to ensure that a shuttle bus service would be run for a minimum of 5 years from the store opening, with the level and frequency of this service to be submitted to and approved by the 2 Councils prior to opening of the store.
385. Part 7 provides for £500,000 to be paid, in 2 stages of £250,000, for the implementation of measures set out in the BRSS and for town centre management and town centre initiatives. A list is given of what this may include (Doc. Gen 6, para. 7.2, p.8).
386. Part 8 provides for £125,000 to be paid, in 2 stages of £62,500, towards the delivery and promotion of business enterprise in the vicinity of the application site under the Council's economic development powers. Part 9 requires the submission, implementation and maintenance of a SUDS management scheme. Part 10 requires the provision of training and skills development at the store for at least 5 years from opening, including references to NVQ Level 2 and to apprenticeships. Part 11 is an agreement by SDLL and SSL to sign the Bognor Regis Developer Charter (Doc. LPA7).
387. The following paragraphs detail the gist of the discussion of the Section 106 agreement, which was conducted in a round table manner.
388. With respect to Part 5 (remediation), the applicants argued that the remediation provisions would be effective, and that they met the tests in CIL Regulation 122. They were necessary to make the development acceptable in planning terms, and were fairly and reasonably related to it in scale and kind. That was so even though some of the land to be remediated was outside the application site. All the land was clearly related, there was an evident aspiration for it all to be remediated, and the B1 development of the retained land would be facilitated. It could not be assumed on current knowledge that remediation of just the application site alone would be feasible. If the test of necessity were to be interpreted very strictly to relate to development of the application site in isolation, that would make many reasonable Section 106 requirements impossible to achieve. The agreement was clear as to what had to be done. The land had to be "cleared and remediated in readiness for development".
389. The Council agreed with the applicants that the tests of Regulation 122 were met, having regard to the fact that the contamination affected both the application site and the retained land owned by SDLL.

390. Morrisons argued that the agreement did not convey what was to be provided in terms of remediation, as no definition or specification was included. As a result, it was hard to see how the relevant tests were met. It was questionable whether the remediation requirement had been shown to be necessary.
391. With respect to Part 6 (transport), the applicants stated that all the transport provisions were necessary to achieve the required level of accessibility, and that the other tests were met. The wording gave a level of certainty regarding the form of bus provision, with sufficient flexibility because it was not possible to pin down the exact details given the timescale until the development would open. The Council had no comments on this part of the agreement.
392. Morrisons had no issue regarding the principle of transport improvements being needed, but questioned whether the agreement would deliver what was necessary. The terms did not relate to bus services to the site as drafted, so that the contributions could be used for bus services anywhere, and that would not meet the tests. It was also not made clear that the bus services, other than the shuttle service, would need to be provided from the date of store opening. It was queried what certainty there would be that the bus services other than the shuttle bus would run for more than 2 years, given that the applicants had indicated in their evidence that 2 years was the period which the contributions would finance if there proved to be no income from the service. As the agreement required the subsidy to be repaid in any month when the services were profitable, that indicated that the bus service improvements could be limited to a 2 year period. Clause 6.6 referred to the shuttle bus service in the singular, which was at odds with the applicants' case that there would be 2 separate routes. Part 6 of the agreement was vague and unsatisfactory. What was provided contractually was the core of whether the agreement met the requirements of the CIL Regulations.
393. The applicants responded that Morrisons' concerns related to contractual enforceability, not to the tests in CIL Regulation 122. The parties to the agreement were clear as to the intentions and believed that it was an enforceable contract, and that was not a matter for the Secretary of State or Morrisons. There was a need to have flexibility in the provisions of the agreement, which had to be read with an element of trust. However, if the Secretary of State were to be concerned about these matters, he could issue a "minded to grant" letter seeking amendment to the agreement.
394. With respect to Part 7 (town centre management and initiatives), the applicants stated that as it was accepted that the site was out of centre, it was appropriate under the CIL Regulations to make a contribution to reinforce the town centre. If that was not accepted, and a tougher approach were to be taken to the tests of necessity and relationship to the development, that would be a change to a well-established approach. The agreement gave a level of flexibility as to how the contributions to town centre management and initiatives would be spent. That was right because the people of the town should choose how the money was spent, and it was a matter for the Council how it wanted the funds to be allocated. The Council adopted the applicants' points on this part of the agreement, and stated that much depended on the definition of the word "necessary" in the tests. There was a need for flexibility in how the contributions would be spent, so that regard could be had to the needs and concerns that existed at the times that the money became available.

395. Morrisons argued that the contributions did not meet the tests. The purposes to which the contributions could be put included items that had nothing to do with the town centre, for example with respect to the BRSS. The contributions were not fairly and reasonably related to the proposed development, because they were not nearly large enough to address the harm that would be caused to the town centre. For the same reason, the contributions would not make the development acceptable in planning terms.
396. The applicants responded by stating that Morrisons' point about the adequacy of the contributions was a substantive point about the planning merits and had nothing to do with the CIL Regulations. A major theme of the BRSS was directly related to the town centre and was relevant.
397. With respect to Part 8 (enterprise provision), the applicants argued that increasing employment opportunities was an important part of the regeneration case in support of the proposal, and had been a key factor in the Council's resolution to support the proposal. As such the enterprise provision was a relevant matter. It had been considered by the Council to be necessary to make the development acceptable in planning terms. The application site had last been used as an employment site, and the proposal was not for an employment use per se. That was part of the justification for making enterprise provision. This was just a small part of the Section 106 provisions. If it was not felt to be necessary, the Secretary of State would be able to say so.
398. The Council reiterated that the regeneration aspects of the proposal, including the enterprise provision, were key parts of the Council's case. However, the Council would still support the proposal if the Secretary of State were to take the view that this part of the agreement failed the tests in the CIL Regulations.
399. Morrisons pointed out that the enterprise provision contribution could be spent off site, and that there was no clear idea as to how it would be spent. Therefore, it was not clear how it could be said to relate to the development proposed, or how it could be regarded as being necessary.
400. With respect to Part 9 (SUDS), there were no material comments about this part of the agreement in relation to the relevant tests. The Council stated that Southern Water, as the relevant statutory authority, had requested this provision. That was indicative that SUDS was a feasible way of draining the site. It was appropriate for this to be a provision of the Section 106 agreement because the maintenance requirement could not be dealt with by condition.
401. With respect to Part 10 (skills and training), the applicants stated that this clearly met the tests as it was an element of the regeneration benefits of the scheme, which were central to the planning benefits, and regeneration was evidently a material planning consideration. It was a necessary requirement in the context that Bognor Regis was a deprived area with a low skills base. The Council highlighted the relationship of this requirement to SEP policy RE4, which expected local authorities to work jointly with business sectors and education and training providers to deliver improvements in skills to meet business requirements. Morrisons had no comments on this part of the agreement.
402. With respect to Part 11 (Developer Charter), the applicants confirmed that this had already been signed, but that it was of value only as a public statement and had no contractual enforceability. It probably did not meet the tests in the CIL Regulations, but that did not bring the whole of the Section 106 agreement

down. The Council did not disagree with those points, and indicated that this matter was a statement of SSL's commitment. Morrisons had no comments on this part of the agreement.

## **Conditions**

403. The tripartite SOCG (Doc. SOCG1) stated that the applicants and the Council agreed on the conditions set out in the officer's report to the Development Control Committee, and to an additional condition to restrict the floor areas of the superstore which were to be used for convenience goods and for comparison goods. Those conditions were included in the proof of evidence of one of the Council's witnesses (Doc. LPA/PR3, Section 6.0), although it should be noted that part of the wording of condition 18 was omitted (Full wording is in the Committee report in Doc. CD/E4).
404. Further lists of conditions were submitted following an initial discussion of the original list at the inquiry (Docs. Gen 4 & 5). It should be noted that there was no condition no. 24 in either of those lists. That does not indicate that a suggested condition was missing. A second discussion session regarding conditions was held immediately before the closing submissions. The following material matters arose from that discussion (the numbers of the conditions used here are those used on the list of suggested conditions in Doc. Gen 5):
- Condition 2 included a requirement for landscaping on land outside the application site, specifically on the central reservation of the A29 which was highway land.
  - The reference in Condition 3 to "lighting standards" sought to deal with levels of luminance. As well as the reason given relating to visual amenity, this was intended to avoid adverse effects on the A29. It was agreed that the duplication of references to "the retail store" were unnecessary.
  - In the reason given for Condition 5, the reference to SEP policy NRM5 was in error. The correct policy number was NRM4.
  - With respect to Condition 8, relating to unsuspected contamination, it was agreed that this needed an implementation clause to require completion of any necessary works prior to the opening of the proposed store.
  - Condition 10, relating to installation of underground tanks, was intended to relate to the petrol filling station. It was agreed that this condition required an implementation clause, and that the requirements should be completed before the petrol filling station opened.
  - Condition 23, requiring an archaeological assessment, had been requested by the County Council, but might not be justified by the evidence. It was accepted that if the condition was considered to be necessary, it could be worded more clearly, and would need an implementation clause requiring its provisions to be complied with prior to development commencing. The word "a" on the second line of the suggested condition was superfluous.
  - With respect to Condition 25, Morrisons drew attention to the fact that the floor areas specified were greater than those used in the evidence. The applicants clarified that the figures in the evidence had been based on the Competition Commission definition, which excluded the areas occupied by checkouts and lobbies, whereas the figures in the condition had been arrived at on a more conventional basis of "netting down" from the gross

floorspace. It was agreed that the figures in the condition should be 3,570 sq m for convenience goods and 1,640 sq m for comparison goods in order to be consistent with the evidence at the inquiry.

- Condition 27 required an implementation clause, which should require the erection of the proposed art panels before the opening of the store.
- Condition 28, which listed the plans that would be approved in the event of that decision being made, included the number of the Proposed Master Plan drawing in its amended form as it had been submitted at the inquiry. This included the bio-mass boiler and chip store. If the view were to be taken that the amended drawing could not be approved, because it had not featured in the consultation undertaken on the application, this drawing number would need to be changed to Revision B as opposed to Revision C.

405. The final list of suggested conditions omitted some conditions included on the original list, and amalgamated others, for example where there would have been duplication of controls over drainage. The Council confirmed that where the changes related to conditions recommended by the EA or by the LHA, those organisations were content with the omissions and/or amendments.

## Conclusions

(Numbered references in brackets [] refer to paragraphs in preceding sections of the report from which relevant information is drawn).

### Introduction

406. The application relates to a proposed development which includes as its main element a Class A1 superstore of 9,163 sq m, of which 5,210 sq m would be sales area based on the relevant Competition Commission definition. The application site was agreed by all parties to be in an out of centre location in terms of the definitions in Annex B of PPS4. It is about 1 mile outside the town centre of Bognor Regis. [10,24,87,231,274]
407. With that fact in mind, and having regard to the matters that the Secretary of State has identified as those on which he wished to be informed, I believe the main considerations in this case are as follows:
- (i) whether compliance with the sequential approach to site selection detailed in policies EC14.2 and EC15 of PPS4 has been demonstrated;
  - (ii) whether, and to what extent, the application scheme would be likely to lead to adverse impacts in terms of the impact considerations in PPS4 policies EC10.2 and EC16.1;
  - (iii) whether there are any other material considerations that are relevant to the consideration of the application;
  - (iv) whether the proposal is in accordance with the development plan, comprising the South East Plan ("SEP") and the Arun District Local Plan ("ADLP");
  - (v) whether the proposed development is in accordance with emerging Development Plan Documents ("DPDs");
  - (vi) whether the balance of considerations in applying PPS4 policy EC17 weighs in favour or against the proposed development;
  - (vii) the form that any necessary conditions might take in the event of planning permission being granted;
  - (viii) whether the provisions of the submitted Section 106 agreement are satisfactory and meet the tests in Circular 05/2005 and in the Community Infrastructure Levy Regulations 2010 ("the CIL Regulations").
408. In ordering those considerations, I am aware that the starting point in determining a planning application is the development plan, by virtue of Section 38(6) of the Planning and Compulsory Purchase Act 2004. The main policy considerations in this case relate to retail planning, and the development plan policy relevant to such matters is ADLP policy DEV27. The ADLP was adopted in April 2003. As a result, policy DEV27 does not reflect the latest Government guidance in PPS4 which was published in 2009, and it is at odds with this PPS in 2 important respects. [31,65,180,366]

409. Firstly, it requires applicants to demonstrate that there is a need for additional facilities. Unlike previous advice in PPS6, PPS4 does not require need to be shown at application stage. Secondly, in stating that retail development proposals outside the Principal Shopping Areas ("PSA") will be permitted, policy DEV27 has provisos, including that the proposal does not adversely affect the vitality and viability of the PSAs and local shopping areas either individually or in cumulative terms. That is not wholly consistent with PPS4 policies EC16.1b and EC17.1b. They provide that applications for development of main town centre uses not in a centre, and not in accordance with an up to date development plan, should be refused where there is clear evidence that the proposal is likely to lead to "significant" adverse impacts, including with respect to impact on town centre vitality and viability. The test of "significant" adverse impact in PPS4 seems to set a less exacting requirement than that which is contained in ADLP policy DEV27. As the ADLP is not fully in line with latest Government guidance, it is appropriate for me to begin by considering whether the proposal is in accordance with the policies in PPS4. In doing so, I will also refer to those parts of ADLP policy DEV27 which remain consistent with PPS4. [65,180,276]
410. There are two other matters which I consider need to be dealt with at the outset. The first concerns the development brief for the LEC Refrigeration site dated July 2008. This brief was prepared by consultants acting for the site owners, Sime Darby London Ltd ("SDLL"). Although its preparation involved substantial public consultation, and it was largely endorsed by the Council, the fact that it was not prepared by the local planning authority, and was not progressed through statutory planning processes, greatly limit the weight that can be given to it. I do not consider that any significant weight should be attached in determining the application to the fact that the proposal is in accordance with the acknowledgment in the brief that retail would be a suitable use for the site. [46,60,182,375]
411. The second matter relates to the stress which Morrisons, as objectors to the proposal, placed on the advice given to Arun District Council ("the Council") at the time of its original consideration of the application by DTZ, who were then acting as the Council's advisers on retail planning matters. In the light of the criticisms made of the basis of that advice in the evidence of the applicants and the Council to the inquiry, I have not found it to be a reliable source in considering the potential impacts of the proposed development. I have formulated my conclusions primarily having regard to the up-to-date retail impact evidence presented by the main parties, including by the advisers now employed by the Council on retail planning matters with respect to this application. [39,93,214-217,276,303,311,327]

#### Sequential Approach to Site Selection

412. PPS4 policy EC14.3 requires a sequential assessment in the case of applications for main town centre uses that are not in an existing centre and not in accordance with an up to date development plan. ADLP policy DEV27 includes a similar requirement. The application site is not only out of centre, but it is not allocated for retail purposes in the ADLP, and so a sequential assessment is necessary. The main parties agreed that the only centre which needed to be examined was Bognor Regis town centre. Bearing in mind that the retail assessments of all the main parties concentrated on the population and expenditure in a retail catchment focussed on Bognor Regis, and in the absence

of evidence to the contrary, I find no reason to take a different view about the geographical scope of the necessary assessment. [31,42,143,196]

413. PPS4 policy EC15 provides details of what is required for this assessment. The requirement is to ensure that it has been demonstrated, first, that there are no town centre sites to accommodate the development, and second, that there are no edge of centre locations available which are well connected to the centre by means of easy pedestrian access. The provisions of ADLP policy DEV27 have the same effect. In undertaking this process, regard is to be had to the availability, suitability and viability of sites. [31,143,184,196]
414. There are 4 sites to be considered. Two of these were not pursued by the objector at the inquiry, but for completeness I will deal with them. The first is the Covers site. This is outside the PSA defined in the ADLP, but it is quite close to that area, such as to be within easy walking distance. In terms of the definitions in PPS4 it is an edge of centre site. In the absence of any detailed evidence to show that the local road system could not cater for the traffic generation of a retail use, or to show why the existence of a shared car park with the railway station would preclude such a use, I am not convinced that this site would be unsuitable for a foodstore. [147,153,205]
415. Although the Covers site is envisaged for use mainly for high density housing in the Bognor Regis Masterplan ("BRMP"), that would not in my view preclude its use for retail purposes, given that the BRMP is a somewhat dated and non-statutory document. More significant is the fact that the site is in a beneficial use by a firm of builders merchants, and there is no evidence that the current users have any desire or intention to vacate it. Although no evidence has been provided regarding viability, the Covers site cannot reasonably be regarded as being available for retail development in the foreseeable future. [35,153,205]
416. The second site is the Regis Centre, which is subject of a development agreement between the Council and St Modwen Developments Ltd ("St Modwen"). It is an edge of centre site as it is adjacent to the PSA, with quite good connections to that area which is within easy walking distance. The development agreement is indicative that the site is available, but it is seen as an important opportunity for mixed use development, with an emphasis on leisure, entertainment and cultural uses due to its seafront location. Such intentions were included in the BRMP, in the marketing brief and invitation to tender document, and in St Modwen's submission and consultation proposals. As a result, it would not be appropriate for this site to be taken up by a foodstore, which would then block the potential for future development for purposes that would be more beneficial and appropriate to Bognor Regis' role as a tourist and visitor destination. On the available evidence, a foodstore on this site would be unlikely to receive backing from the Council or to receive planning permission. There is no detailed viability evidence, but for those reasons I have found the Regis Centre site to be unsuitable and unavailable for foodstore development. [47-48,153,192,204,279,306]
417. The next site to be considered is the Hothampton site, which is covered by the same development agreement. The agreement again indicates that this site is available for development, although in present circumstances St Modwen regard its development as unviable. A foodstore would not accord with the intentions for the site in the BRMP, which were for a mixed use scheme including retail. Although St Modwen included reference to a "possible" foodstore in its

consultation proposals, the evidence is that the Council would not find a free-standing foodstore acceptable. More significantly, the site has already been rejected by Asda and Sainsbury's, and there are no other obvious foodstore operators who would be likely to be interested in the site. Most telling is the fact that Sainsbury's appraised the site in 2008, and found that its viability for a foodstore would fall short of required target levels by a substantial amount. There is no evidence of substance to support the suggestion that foodstore operators might look again at this site if the called-in application were to be refused. [35,48,107-110,134,152,192,197,200-203,218,279,309]

418. As well as those matters, the evidence is compelling that the Hothamton site offers the only currently available opportunity to provide the kind of larger units for comparison goods retailers which the town centre lacks and needs. Even if there were any reasonable prospect of this site being taken up for a foodstore, which on the evidence there is not, its use for that purpose would remove the chance to potentially provide this type of larger unit. Taking all these points into account, I have concluded that although the Hothamton site is available, it is neither suitable nor viable for the provision of a foodstore. [47,114,203]
419. The other site to be considered is that of the Morrisons store in Bedford Street. The site that needs to be assessed is larger than that occupied by the existing store and its associated surface level car park, as a planning application has been submitted for a redevelopment which incorporates some adjacent properties not in Morrisons' ownership or control. Both the existing store site, and the wider site of the redevelopment proposal, are within the PSA and so they comprise an in centre site for the purposes of PPS4. [45,50,274]
420. The fact that this site is not available to the intended operators of the store in the called-in application scheme does not provide a reason to rule it out as a sequentially preferable site. In terms of its availability for foodstore development in general, it is clear that the parts of the site owned by Morrisons and the Council would be available. The submission of the planning application, and the company's stated intention to undertake the redevelopment, are indicative that its land would be available. The issuing of heads of terms by the Council indicates that its land would be available, even though no further progress has been made with respect to those terms. [45,52,198,297]
421. The doubt that exists about availability concerns the fact that land in other ownerships is required. No evidence has been provided to show that the other owners are willing to bring their land forward for the redevelopment, and no detailed evidence was given by Morrisons regarding the state of any relevant negotiations. The only available evidence in that regard consisted of the recounting by the consultants who appeared for Morrisons of what they had been told by the company, to the effect that negotiations with the other owners had begun. Although the possibility of a Compulsory Purchase Order was referred to, if this proved to be necessary, there is no basis in the available evidence on which to assess whether such action would be appropriate, or whether it would be likely to be either pursued or successful. As a result of the uncertainties concerning the land that would be required, but which is not controlled by Morrisons or by the Council, I find that there are considerable doubts about the availability of the Morrisons' redevelopment site as a whole. There is no suggestion in the evidence that redevelopment of the Morrisons' store would be possible without this additional land. [45,52,105,147,199,329]

422. With regards to suitability, there is at present no planning permission for the Morrisons' redevelopment, but the Council's Development Control Committee resolved to support the scheme, subject to an issue relating to loss of public car parking being addressed. In the light of the evidence that this could be dealt with by the addition of a deck of parking to the scheme, and the evidence suggesting that the request for more parking might not be justified, it is reasonable to assume that planning permission would be achievable in due course. In that respect, the site must be regarded in general terms as being suitable for the development of a foodstore with a larger retail sales area than that of the existing store. [45,147-148,198,296-297]
423. The crux of the matter of suitability lies in the view that is taken with respect to the applicants' case that the need which they seek to provide for is a specific local need for a large foodstore with substantial car parking provision. In that regard, it is relevant that food shopping within Bognor Regis is at present dominated by an out of centre Tesco store, with a large surface level car park. It is also relevant that a significant amount of convenience goods expenditure is currently leaking from the town to stores in other locations, most notably to the out of centre Sainsbury's store at Chichester, which also has a large surface level car park. [79-80, 84-85,144-46,149,185,195,206,224,326,328]
424. If Morrisons' redevelopment proposals are taken as indicative of what could be achieved on that site, the store that could be provided there would have a number of relative disadvantages compared to what is proposed in the called-in application scheme. Most significantly, it would be a store with retail provision on the first floor, rather than with at grade access, and its parking facilities would be split between the ground floor and a deck at first floor level, with the possibility of another deck being required. Access to the retail floorspace would be by travelator, stairs and lift. The retail floor area would be materially smaller than that which is proposed in the called-in scheme. [24,52,103,199]
425. In planning terms, no weight can be attached to the fact that redevelopment of the Morrisons' site by that company would not provide for those shoppers who wish to use a Sainsbury's store, and so currently choose to travel to Chichester. Preference for one retailer over another is not in my view material to the determination of the called-in planning application. However, having regard to the disadvantages detailed above, it is my view that there is considerable merit in the applicants' arguments that the extended Morrisons' site would not be able to provide for a store which would be capable of attracting the customers who presently choose to travel out of Bognor Regis for their main/bulk food shopping, and that it would not be able to compete with the Tesco store, and so provide local residents with greater choice within the town. Consequently, the substantial benefits that would result from reducing the flows of convenience goods expenditure out of the town, and from providing greater competition and choice, would be unlikely to be achievable by a redevelopment on the enlarged Morrisons' site. [57,146,148-150,173,187,206,219,247,258,267,269,271,273]
426. Therefore, it is my conclusion that, with respect to the particular local need which exists for a store which would be able to both provide choice and competition with the Tesco store, and to encourage shoppers who travel to Chichester to instead shop in Bognor Regis, the enlarged Morrisons' site does not constitute a sequentially preferable site to the called-in application site in terms of suitability. It is unsuitable to accommodate the particular local need which the proposal before the inquiry was seeking to address.

427. In coming to that conclusion, I have taken into account that PPS4 policy EC15.1d seeks to ensure that developers and operators have demonstrated flexibility in terms of scale, format, site layout and store configuration, parking provision and the scope for disaggregation. There is some evidence that Sainsbury's has considered alternatives, for example in appraising the potential of the Hothampton site. Moreover, I am convinced on the evidence that employing such flexibility, with specific reference to the more limited floorspace and restricted car parking provision achievable on the Morrisons' site in a store with a multi-storey configuration, would not allow the specific local retail need to be met. [143,152,199,201,328]
428. There is conflicting evidence about the viability of redevelopment of the enlarged Morrisons' site. Based on general development appraisal methods, the redevelopment seems to be unviable. However, Morrisons suggested that such an appraisal was an inappropriate basis for the assessment of the viability of its scheme. It was suggested instead that other considerations would be taken into account, such as potential sales achievable, potential loss of sales resulting from inaction, desire to protect and enhance market share, and the need to guard against the loss of value of its existing interests. Morrisons also argued that the applicants' appraisals had overestimated important costs such as those of construction. Assessed in those terms, it seems that the redevelopment scheme might have a greater chance of proving economically beneficial to the company. [99-101,103,298-301]
429. However, there is a dilemma which arises if Morrisons' arguments in those respects were to be accepted. This relates to the fact that the basis on which it has been argued that the redevelopment scheme would be viable would only seem to apply so long as the threat of the called-in application scheme remained an active one. At the point at which the called-in application was refused, if that were to be the decision made, the economic benefits arising from the desire to protect market share and to avoid the consequences of the called-in application proposal would no longer apply. Therefore, it seems to me that at that time Morrisons would be more likely to make its decision as to whether to proceed with the redevelopment on a different basis, probably involving a rational consideration of the viability of the scheme by comparison with continuing with the status quo. In my assessment, that would be likely to result in an exercise similar to the development appraisals that have been undertaken by the applicants. [102,106,255]
430. I also share the concerns of the applicants about Morrisons' stated position that it would not take the value of its existing assets into account in assessing the viability of the redevelopment. That would be likely to be at odds with what shareholders would expect a public company to do in terms of making prudent use of its resources, and also with what would be required of such a company having regard to standard accounting practices. I find it to be significant also that there is no evidence to show that the Board of Wm Morrison Supermarkets PLC has considered the redevelopment proposal for its Bognor Regis store, or to show that the Board has endorsed the approach to appraisal of its viability suggested in the evidence before the inquiry. In addition, there is no detailed evidence to back up the company's contention that its proposed redevelopment would be viable assessed on the different basis put forward. For example, if the company has actually undertaken a formal appraisal of the viability of its

proposal on that different basis, no detailed evidence derived from that appraisal was provided to the inquiry. [99,102,104,299-300]

431. I have concluded that it has not been established by evidence that the Morrisons' site would provide a viable alternative to meet the specific local need which the called-in application seeks to address. Furthermore, the Morrisons' redevelopment site cannot be regarded as being available in its entirety, and it is unlikely to be either suitable or viable as a practical alternative to the called-in application site.
432. With respect to the sequential assessment, it is my overall conclusion that there are no sequentially preferable sites in Bognor Regis town centre, or on the edge of that centre, which are available, suitable and viable as alternatives to the application site for the development of a foodstore of the requisite size. Therefore, in the terms of PPS4 policy EC17.1a, I find that the applicants have demonstrated compliance with the requirements of the sequential approach detailed in policy EC15. For the same reasons, the sequential approach to site selection in ADLP policy DEV27 has been complied with.

### Impact Considerations

433. The provisions of PPS4 policy EC17.1b require consideration of a range of potential impacts. I shall first consider the impacts set out in policy EC16.1, which relate to impact assessment for planning applications for main town centre uses that are not in a centre and are not in accordance with an up to date development plan. I shall then move on to consider the impacts in policy EC10.2, which relate more generally to the determination of applications for economic development. [66,184,310]

### *Impact on Public and Private Investment*

434. With respect to PPS4 policy EC16.1a, which refers to the impact on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal, there was no suggestion in the evidence that any centres apart from Bognor Regis town centre needed to be considered. There are 4 relevant matters. Three of these concern the effects on potential investment on the Hothamton and Regis Centre sites, on the existing investment comprised in the Morrisons store, and on potential investment in the redevelopment of that store. The final matter concerns the investment in the town centre which could result from contributions to be made by the applicants through the provisions of the Section 106 agreement.
435. In the case of Hothamton and the Regis Centre, the Council's development partners St Modwen have objected to the called-in application on the basis that it could seriously prejudice the viability of regeneration proposals for those sites, and the likelihood of such proposals being implemented. However, St Modwen did not appear at the inquiry, and its written representations were not accompanied by any detailed evidence in support of its claims, save for reference to advice provided by the consultants DTZ who were acting for the Council at the time of initial consideration of the planning application. [379]
436. The current position is that the redevelopment proposals for the Hothamton and Regis Centre sites have stalled. At present, they are not regarded as viable. That has led to the development agreement having to be extended until March 2012, and there appears to be no imminent prospect of development beginning

on either of those sites even if the called-in application were to be refused. No detailed development proposals have been formulated, and no planning applications have been submitted. Notwithstanding the existence of the development agreement, there is no evidence to indicate that there is a formal commitment in terms such as a contractual obligation to undertake development of the sites. [134,152,203,218]

437. It is difficult on the limited evidence available to reach a definitive conclusion about whether approval of the proposed superstore would have a significant impact on the likelihood of investment being made on the Hothamton and Regis Centre sites. However, there are considerations which tend to indicate that the impact would not be significant. Having regard to my earlier conclusions about the sequential assessment, it seems most unlikely that any redevelopment proposals which might be finalised for these 2 sites would include a foodstore. Therefore, there would be no direct impact from approval of the application scheme in terms of taking up of potentially available convenience goods expenditure which might otherwise have encouraged the building of a foodstore at either Hothamton or the Regis Centre. [107-110,200-203]
438. In addition to that matter, the mix of uses which the BRMP envisaged should be included in a development of the Regis Centre site, with an emphasis on entertainment/leisure/cultural uses, does not involve uses that would be overtly challenged by the proposed superstore. Similarly, the suggestion in the applicants' evidence that the retail element of the proposed development on the Hothamton site would be more appropriately directed at providing larger retail units for the sale of comparison goods is indicative of a type of retailing which would not be competed with directly by the superstore. Bearing in mind also the conclusions that I reach below concerning the relatively healthy state of Bognor Regis town centre, and the limited impact that the application proposal would have in terms of diversion of trade from that centre, I do not consider that it has been established that the called-in application scheme would have any significant implications for the likelihood of investment being made on the Hothamton and Regis Centre sites. [48,114,204,259]
439. Turning to the Morrisons store, the applicants have not disputed that the proposed superstore would result in a diversion of trade away from that store. The extent of the predicted impact varies between the evidence of the 3 main parties, and this resulted in different estimates of the extent to which the Morrisons store would trade below the average turnover for that company's stores represented by the benchmark. The applicants' analysis suggested that the Morrisons store would trade at 91% of benchmark after the opening of the proposed superstore, and the Council's equivalent figure was 88%. Morrisons on the other hand, predicted that the store would have a turnover of only 82.5% of the company benchmark. [82,88-89,210,319]
440. In my assessment, it is likely that the turnover of Morrisons after opening of the proposed superstore would be somewhat higher than Morrisons' own prediction. That is because the trade diversion assumptions used in Morrisons' evidence were based on a view that the superstore would be similar to the Morrisons store in its trading characteristics. That resulted in a relatively high diversion of trade being predicted on the basis that the greatest impact from a new store usually falls on similar stores trading on a like for like basis. That is likely to have resulted in an over-estimate of trade diversion from Morrisons, as the evidence indicates that it is a quite different store in terms of its trading

patterns than the existing out of centre Tesco. It is the latter store which is most similar in its characteristics to the proposed store. In particular, the evidence is that the people who shop at Morrisons typically do so more frequently, buying smaller amounts of goods on each visit, and many of them travel by means other than the car. That is likely to limit the extent to which Morrisons customers would divert to shop in the proposed store. As a result, I consider that more weight should be given to the more realistic trade draw assumptions applied by the applicants and by the Council. [84,86-87,209,250,267,270,316-318]

441. With respect to consideration of whether the proposal would result in closure of the Morrisons store, it is significant that Morrisons stated that the store would not automatically close, and put the matter in the terms that it would monitor the trading position over about a 2 year period following opening of the proposed superstore to ascertain whether its store remained profitable. It is also relevant that although Morrisons gave evidence of its assessment of the extent to which its store would trade below the company benchmark level, it provided no evidence as to what level below benchmark trading was likely to lead to closure of the store. Bearing in mind also that the benchmark is an average, which therefore involves stores trading both above and below that figure, together with the Council's evidence that another store operator would still trade at 40% below its benchmark, it cannot be concluded on the available evidence that the Morrisons store would be likely to close as a result of the proposed development. Consequently, I find it unlikely that the existing investment in the town centre comprised in the Morrisons store would be lost or substantially devalued if the proposed superstore were to be approved. No evidence was given which establishes that there would be any other adverse impacts on existing investment in the town centre. [89-90,210,320]
442. With respect to the potential investment in redevelopment of the Morrisons store, neither the applicants nor the Council disputed Morrisons' contention that this investment would not be made if the called-in application were to be approved. However, the matter of whether this investment would take place even if the application were to be refused was a matter of dispute. Morrisons stated that its investment in the redevelopment would be of the order of £10m. However, drawing on the section of my conclusions above with respect to the sequential assessment, it has not been shown by evidence that Morrisons' redevelopment scheme would be viable even in a scenario where the proposed Sainsbury's superstore would not be built. In the terms of PPS4 policy EC16.1a, the potential investment in that scheme cannot be regarded as "committed" in the absence of evidence to show that the Board or any other decision making body of the company has reached a decision to make the investment in the event that the called-in application is refused. [104,106,296,303-305]
443. I have taken into account the extent to which the submission of a planning application for the redevelopment is indicative of Morrisons' intentions for its store. However, there is evidence to indicate that the application may have been submitted as what the applicants referred to as a "spoiler". Evidence which casts doubt on the company's intentions includes the timing of the application, the failure to undertake any public consultation in advance of its submission, the lack of any substantive action to progress the application after the Council's resolution to support it subject to changes to the parking provision, and the absence of evidence that any substantial steps have been

taken towards acquisition of some of the land required for the scheme. [105-106,297]

444. Bringing all these matters together, I have concluded that the called-in application scheme would not be likely to have any material impact on the potential investment in redevelopment of the Morrisons store. That is because the balance of the evidence supports the applicants' contention that the redevelopment would be unlikely to take place even if the called-in application is refused. [106]
445. The Section 106 agreement provides, amongst other matters, for contributions totalling £500,000 towards implementation of measures set out in the Bognor Regis Seafront Strategy ("BRSS") and for town centre management and town centre initiatives. The investment provided by those contributions, which could potentially benefit the town centre, would clearly be lost if the called-in application were to be refused. However, given that there is a lack of clarity about how the contributions would actually be spent, I consider that no significant weight should be attached to the potential benefits of this investment in arriving at the overall decision on the called-in application. My view in that respect is added to by the relatively limited size of the contributions, for example by comparison with the levels of trade diversion which even the applicants accept would arise from the opening of the proposed superstore. [88,369-371,385,395]
446. Therefore, with respect to PPS4 policy EC16.1a, I have concluded that the proposed superstore would not have any significant adverse impacts on existing, committed or planned investment in Bognor Regis town centre. Nor, on the other hand, would the proposal have any significant positive benefits in terms of investment in the town centre.

#### *Impact on Town Centre Vitality and Viability*

447. The evidence indicates that Bognor Regis town centre is at present relatively healthy in terms of its vitality and viability. It has a low level of vacant retail properties, a reasonable representation of national multiple retailers, and a good mix of traders of that type and of independent retailers. There are agreed to be high levels of pedestrian footfall. Although rents are relatively low compared to nearby centres, and have not risen in the same way, that appears to be indicative of the fact that Bognor Regis is a lower order centre than Chichester and Worthing, rather than of any inherent weakness in the centre itself. The same reason is likely to account for the relatively high yields in the centre, although there is a difficulty in drawing conclusions with respect to yields because of the limited number of transactions. [68-75,77,189-194, 283-285,287,290]
448. There was some dispute at the inquiry about the level of requirements that existed for the town centre from retailers who were not presently represented there. For example, whilst the applicants attempted to show that there were requirements from TK Maxx and TJ Hughes, I find the evidence presented to be at a level of generality which is far from conclusive that those retailers have a definite requirement for Bognor Regis. Nevertheless, and more significant in my view, the evidence is that most retail units that become vacant quite quickly find new occupiers, as is indicated by the large number of new retailers who have set up in the town centre. [70-71,76,286]

449. With that background of relative strength on many of the relevant indicators, I find that the town centre is well placed to withstand the level of retail impact that is likely to arise from the opening of the proposed superstore. In that regard, it is relevant that the town centre is more orientated to trading in comparison goods than to convenience goods. In my assessment, the predicted impacts on the town centre's trade as a whole, of 4% in the case of the applicants' assessment and of 7% on the Council's assessment, would not be so great as to constitute a significant adverse impact in the terms of PPS4. That is particularly so bearing in mind the Council's evidence that the town centre's trade overall would only be reduced by about 1% from its current levels by 2015, allowing for the growth of expenditure that would arise up to that date. [88,190,212]
450. My conclusion in that regard would be different if it had been established by evidence that the Morrisons store would close if the proposed superstore were to open. Bearing in mind Morrisons' evidence that its store accounts for some 19% of the town centre's total turnover, such a closure would very evidently have a serious impact. In addition, it would harm pedestrian flows in the town centre, given the importance of Morrisons in generating such flows. It would also reduce consumer choice and the range and quality of the town centre's retail offer, as the only other convenience goods stores of any significance would be the Iceland store and a Tesco Express store, which would not provide adequately for main food shopping. However, in the light of my earlier conclusions concerning the likelihood of closure of the Morrisons store, I consider that the potential harm to the town centre of such a closure should be discounted. [75,293-294,321]
451. Therefore, with respect to PPS4 policy EC16.1b I have concluded that the proposed superstore would be unlikely to have any significant adverse impact on the vitality and viability of Bognor Regis town centre, including with regard to consumer choice and the range and quality of the retail offer.

*Impact on In-Centre Trade/Turnover and on Trade in the Wider Area*

452. PPS4 policy EC16.1d includes reference to impact on in-centre trade/turnover and on trade in the wider area, taking account of current and future consumer expenditure capacity in the catchment area up to 5 years from the time the application is made.
453. In dealing with the effect on the town centre's vitality and viability above, I have already referred to the levels of impact on the town centre's trade as a whole which have been assessed in the retail analyses by the Council and the applicants. Based on the evidence which indicates that the town centre is relatively healthy, this is not in my view the type of centre where the indicators of vitality and viability suggest that significant adverse effects would arise from what are predicted to be quite modest levels of trade diversion. [88,212]
454. Insofar as the proposal would be likely to have impacts on trade in the wider area, those impacts are likely to be beneficial by encouraging greater levels of retention within Bognor Regis of retail expenditure by residents of the town. I shall return to those benefits, and particularly to the possible savings in journey lengths to undertake food shopping, later in these conclusions. [85,185]

455. With respect to PPS4 policy EC16.1d, I have concluded that the proposed superstore would not have any significant adverse impact on in-centre trade/turnover or on trade in the wider area.

*Whether the Proposal is of an Appropriate Scale*

456. PPS4 policy EC16.1e raises the matter of whether the proposal is of an appropriate scale (in gross floorspace) in relation to the size of the centre and its role in the hierarchy of centres. Bognor Regis is designated as a Secondary Regional Centre in the SEP, and in that respect the town is at the same level of the shopping hierarchy as Chichester, although the population of Bognor Regis is considerably more than that of Chichester. [68,269]
457. By comparison with Bognor Regis, Chichester has 2 out of town superstores with greater floorspace areas in both gross and net terms than the store proposed in the called-in application. The proposed store would be slightly larger than the Tesco store on Shripney Road, but those 2 stores together with the existing Morrisons store in the town centre would give broadly comparable foodstore provision in Bognor Regis to that which exists in and around Chichester. There was no suggestion in the evidence presented at the inquiry that the proposed development would be of such a significant size as to cause a change in the position of Bognor Regis in the shopping hierarchy. It would not, for example, lead to any challenge to the role of Worthing as the closest Primary Regional Centre in terms of the roles defined in the SEP. [50,68,110]
458. Morrisons drew attention to the fact that the proposal would result in a ratio of 27:73 of net convenience goods sales area in the town centre to that in out of centre locations, a ratio that would increase to 16.5:83.5 if Morrisons closed. However, given the absence of sequentially preferable sites for the proposed development in the town centre or on its edge, and having regard to the justification that exists for the proposed size of the store in order to clawback trade that is currently leaking to stores in Chichester, I do not consider that those ratios should be regarded as indicating that the proposed store would be inappropriate in scale for the size of centre. [325]
459. Bearing all these matters in mind, I have concluded with respect to PPS4 policy EC16.1e that the proposed superstore would be of an appropriate scale in relation to the size of Bognor Regis as a centre and to its role as a Secondary Regional Centre.

*Other Impacts in PPS4 Policy EC16.1*

460. PPS4 policy EC16.1c refers to the impact on allocated sites outside town centres being developed in accordance with the development plan. That consideration does not arise in this case, as there are no such allocated sites in the ADLP. PPS4 policy EC16.1f requires assessment of any important local impact on centres under policy EC3.1. The latter policy relates to the setting out by regional planning bodies and local planning authorities of strategies for the management and growth of their centres. There are no relevant local impacts of that kind which needed to be assessed in this case. [220]

*Carbon Dioxide Emissions and Climate Change*

461. The first of the impacts in PPS4 policy EC10.2 is specified in part a. as being whether the development has been planned over its lifetime to limit carbon

dioxide emissions, and to minimise vulnerability and provide resilience to climate change. The proposal would comply with that requirement, through the incorporation into the design and operation of the store of measures to reduce the amount of energy used, and of specific design components. These would include a bio-mass boiler, which would generate 31% of the store's energy requirements from a renewable source, solar pipes to reduce the need for electric lighting, and an air source heat pump. [3,116,222]

462. As well as those matters, the evidence is convincing that the proposed development would lead to substantial savings in the overall length of journeys to undertake main food shopping, mainly due to the reduction in journeys for shopping purposes to Chichester and to Rustington/Littlehampton. There was dispute about the extent of these savings, which Morrisons assessed at only 0.7m km per annum, while the applicants' initial assessment was 4.4m km per annum. As I have found the trade diversion assumptions used by the applicants to be more reliable than those employed by Morrisons, I consider that the latter's estimate of journey savings is likely to be an underestimate. However, it is my view that the applicants initial assessment did not make sufficient allowance for the journeys to Chichester and other shopping destinations which would still be made after opening of the proposed superstore, for example because they were journeys to and from work which also involved a shopping trip. [118-119,343-344]
463. As the applicants accepted that calculation of journey savings was not an exact science, and because there is no empirical evidence to support the assumption in the appellants' later note that there would be an 80:20 split between trips that were solely for shopping and those that were linked to another purpose, I consider that it would be unwise to assume that total journey savings would be as much as the 3.3m km per annum, or 5.1m km per annum assessed on a different basis, claimed in the applicants' revised assessment. However, on balance the evidence is indicative that journey savings of somewhere between 1.3 m and 3.3m km per annum would be achievable. The lower end of that range would be secured on the basis of Morrisons' trade draw assumptions if the deduction for diverted and pass by trips is discounted, as I believe it should be in the light of the evidence that there are trips of that kind at present that roughly replicate the same types of journey that would be associated with the proposed store. In the light of my earlier conclusions with respect to the likelihood of the Morrisons store closing, little weight should be attached to Morrisons' argument that any journey savings could be cancelled out, or journey lengths could increase, if such a closure were to take place. [118-119,343-345]
464. In terms of resilience to climate change, the site is in Flood Zone 3a for flooding from the sea, and partly in Flood Zone 3a and partly in Flood Zone 2 for fluvial flooding. However, the scheme incorporates raised levels and an increase in flood storage capacity, and the Environment Agency ("EA") is apparently satisfied that the scheme complies with its requirements with respect to resilience to flooding. It would represent a net benefit in terms of flooding compared with the present state of the site. [120,176,235-236]
465. It is intended that the development would be drained by way of a sustainable urban drainage system ("SUDS"), and there is a clause in the Section 106 agreement to ensure the provision and maintenance of such a system. The scheme incorporates other measures such as rainwater recycling. [116,178,222, 386,400]

466. Taking account of all these matters, in the terms of PPS4 policy EC10.2a the development has been planned over its lifetime to limit carbon emissions, and to minimise vulnerability and provide resilience to climate change.

### *Accessibility*

467. PPS4 policy EC10.2b details an impact consideration relating to accessibility by a choice of means of transport including walking, cycling, public transport and the car, and the effect on local traffic levels and congestion after public transport and traffic management measures have been secured.
468. The application site is in the midst of an area of industrial, retail and commercial uses, and there is very limited residential development nearby vicinity. There would be quite a small number of households living within the minimum and maximum walking distances detailed in the Institution of Highways and Transportation's Guidelines for Providing for Journeys on Foot, which I regard as being the appropriate basis to consider this matter. The applicants accepted that there would be little walk in trade to the proposed store, and the evidence also indicates that few customers would be likely to arrive by means of cycling, although the site offers the potential for large numbers of people to cycle to it if they chose to do so. It would also offer significant opportunities for staff to travel by cycle. That, and the use by staff of other sustainable modes of travel, would be encouraged by implementation of the submitted travel plan. [11-15, 38,117,122-123,334-335]
469. At present the site is served by a relatively infrequent bus service, and no buses pass the site in the evenings or on Sundays or Bank Holidays. It is intended that the service would be improved by virtue of provisions in the Section 106 agreement. These aim to achieve an increased frequency on the current bus service. Whilst Morrisons suggested that there could be no certainty that the specific bus service would benefit, because the terms of the Section 106 agreement did not specify the particular bus service, as the contribution would be paid to a public body in the form of West Sussex County Council ("the County Council") I consider that it can be reasonably anticipated that it would be used for the intended purpose. More certainty can be attached to the part of the Section 106 agreement which would result in the provision of a shuttle bus service to the proposed store. Although the Section 106 agreement requires the submission of a schedule of the level and frequency of this service for the joint approval of the Council and the County Council, the stated intention is that the shuttle buses would run on 2 routes serving large parts of the residential areas of Bognor Regis. The service would run 7 days a week, but only during off peak periods during the morning and the afternoon. [124,336-337,373,384,392]
470. A large number of people would live within a 400m walk of a bus stop on either the service bus route or the shuttle bus routes, and it is intended to improve the bus stops in the vicinity of the site. However, although the applicants claimed that the proposal would comply with the intentions of Government advice in PPG13 by ensuring that people had a choice of mode of transport other than the car, I have some remaining concerns about the accessibility of the proposed store by bus. For example, the intentions for improvements of the accessibility by bus would still leave the store inaccessible by that means in the evenings. At such times, there would be no alternative to use of the car to reach the store,

except for those people who would be within easy walking distance, and those who would be willing to cycle. [122,124,336]

471. The extent to which that should be regarded as a significant adverse impact of the proposal needs to be assessed having regard to whether the overall provision of foodstores which are accessible to persons without a car would be improved or made worse by the proposal. In the light of my conclusion that the Morrisons store would be unlikely to close, the main existing provision in Bognor Regis which is available to people not travelling by car would be likely to remain available. Furthermore, there would be an improvement of provision for people who are unable to travel by car subject to them being able to undertake their shopping at times when the proposed bus services would be running. In that regard, the increased frequency of the service bus past the site would enhance the accessibility of the Tesco store, as well as serving the proposed store, and that would represent a further enhancement of customer choice. Insofar as the proposed superstore would create an alternative to travelling to stores at Chichester and other distant destinations, it would not disadvantage those without a car, because they do not have ready access at all times to those stores in any event.
472. The other relevant matter about which concern was expressed by Morrisons was the fact that the Section 106 provisions for transport are time limited. The agreement requires the shuttle bus service to be run for 5 years, and it was stated for the applicants that the contributions towards improvement of the frequency of the service buses would be sufficient for 2 years if the service failed to produce any income. In practice, I find it to be unlikely that a company of the standing of Sainsbury's would discontinue a shuttle bus which it advocated at the inquiry as a means of making its store accessible to those without a car. I have noted in that regard that Sainsbury's run a service at present to its store in Chichester. In addition, some reassurance that the service bus frequency would be likely to be maintained into the future can be taken from the fact that other contributions towards bus services have been required in Section 106 agreements relating to sites where housing development has commenced. [124,273,337,384,392]
473. With respect to local traffic levels and congestion, the proposal would be served by a new traffic light controlled junction from the A29 which passes the site as a dual carriageway. The County Council as local highway authority had no concerns about the proposal, and the submitted Transport Assessment showed that the development would have no adverse impact on traffic levels or congestion. The site is quite distant from the nearest trunk road, and the Highways Agency raised no objections having regard to the potential effect on the trunk road network. [26,126,237]
474. Bringing these matters together I have concluded that, with the improvements that would be made to bus services pursuant to the Section 106 agreement, the site would be made reasonably accessible by means of transport other than the car. Although the site would be easily accessible by walking to only relatively few people, it would be readily accessible by cycle and by car, and at certain times of day by bus. With respect to PPS4 policy EC10.2b, I have concluded that on balance the proposal would not have a significant adverse impact in terms of its accessibility or its effect on traffic levels and congestion.

475. For the same reasons that have led me to that conclusion, I also consider that the proposal is consistent with Government objectives for transport in PPG13, which include promoting more sustainable transport choices, promoting accessibility to shopping by public transport, walking and cycling, and reducing the need to travel, especially by car. That conclusion is reached as a matter of balance, in which the potential to reduce journeys out of Bognor Regis for main food shopping carries substantial weight. In my view, the potential in that respect overrides the fact that the application site is relatively less accessible than the town centre, in circumstances where I have found there to be no suitable, available and viable site for the proposed development in or on the edge of the town centre. [122,324]
476. My consideration of accessibility also leads me to conclude that the proposal would meet the provisos in ADLP policy DEV27 which indicate that, to be permitted, proposals for food retail outside the PSAs should be easily accessible by the highway network and public transport, and should include provision for access by cycle and on foot. With respect to the latter, notwithstanding the applicants' acceptance that there would be little walk-in trade and use of cycles by customers, provision would be made for access by those modes in terms of provision of crossings and the facilitation of improvements to footways and cycleways through the terms of the Section 106 agreement. [21,26,384]

### *Design*

477. The impact consideration in PPS4 policy EC10.2c relates to whether the proposal secures a high quality and inclusive design which takes the opportunities available for improving the character and quality of the area.
478. The context for the assessment of this matter is that the site is currently occupied by run-down and unsightly buildings, which are widely recognised as blighting the visual appearance on the important approach to the town along the A29. The proposed development would very significantly improve the appearance of the area by securing the demolition of the existing buildings and the erection of a new building, and by bringing the site into a beneficial use. [17,19,59,132,222,364]
479. There is no particular design theme in the immediate area with which the proposal needs to accord, since the nearby buildings are mainly industrial or warehouse shed-type structures. Nevertheless, the modern lines of the proposed building, with elevations composed of attractive glazing and cladding components, would represent a high quality of design in this context. The extensively glazed main elevation, affording views into the building to link the activities within to those outside, would generate visual interest. That would be enhanced by the raised elements of the building, with their wave-form roofs, and the intention to incorporate signage welcoming visitors to the town. Landscaping would be incorporated into the scheme to break up the visual impact of the parking areas. [12,25,129-132,222]
480. The evidence indicates that design of the superstore was arrived at having regard to CABE's advice on inclusive design so as to ensure accessibility by all. In addition, it would comply with Part M of the Building Regulations, and had taken account of the Disability Discrimination Act 2006. [129]
481. Taking all those design features into account, I have concluded that the proposal would constitute a high quality and inclusive design, and that it would

take the opportunities that exist for improving the character and quality of the area to a very substantial degree. There would be a considerable benefit with respect to the impact consideration in PPS4 policy EC10.2c. In providing a high quality and inclusive design, the proposal would comply with the expectations of PPS1. It would also meet the expectation in ADLP policy DEV27 that provision should be made to enable access for people with disabilities. [129,222]

*Economic and Physical Regeneration and Local Employment*

482. The impact considerations in PPS4 policy EC10.2d and e relate to economic and physical regeneration and local employment. Those matters are inextricably linked in this case.
483. The proposal would have positive benefits for physical regeneration which would include the visual enhancements already referred to that would arise from the removal of the unsightly, semi-derelict buildings from the site and their replacement by a modern development of high quality design and appearance. Those benefits would extend beyond the application site, as the buildings on the “retained land” to the north of the site would also be demolished save for the Widdowson Building which remains in active use. The Section 106 agreement would ensure that the site and the retained land would be cleared. [23,62,134, 155,226,244,383,388]
484. The same provisions of that agreement would also secure remediation of both the application site and the retained land to deal with contamination. The full extent of contamination is not presently known, as full investigations have not been completed, and the anticipated costs of the work have fallen dramatically since the application was considered by the Council. Nevertheless, the balance of the evidence is indicative that there is a substantial degree of contamination, which on present estimates would cost of the order of £1m to treat, plus the costs of demolition and asbestos removal. On the evidence available, there are no mechanisms whereby SDLL as the site’s owners could be required to undertake decontamination in the absence of a development proposal. Therefore, the remediation to be undertaken would be a substantial regeneration benefit of the application scheme. [134,155-157, 227-28,254,346-350,383,388]
485. In reaching that view, I have taken account of Morrisons’ arguments that there are other potential uses of the land that would generate the necessary value to allow decontamination and the achievement of regeneration benefits. However, there is no substantial evidence of any current demand for the site for housing development, which on the evidence would have to make up all or a substantial part of any alternative development proposals. There is an absence of such evidence with respect to both general market housing and sheltered housing. In addition, the industrial/ commercial environment that surrounds the site, and the fact that housing developments are underway in the area on inherently more attractive sites, appears to severely limit the likelihood of interest in the site from house building companies. There is also no evidence to show that the levels of outstanding and possible requirements for development for retail warehousing and other uses, such as hotels, pubs and restaurants, would be likely to be translated into active demand for the land if the called-in application were to be refused. The points made in this paragraph in my view also indicate that there is little likelihood of the site being developed for a mix of housing with the commercial uses referred to. [162-167,169-170, 353-357,360-362]

486. In the case of residential use there is another substantial hurdle that would have to be crossed in order to obtain planning permission. This relates to the sequential assessment that would be necessary pursuant to PPS25, by virtue of the site's location in Zone 3a for flooding from the sea, and in Zones 2 and 3a for fluvial flooding. Although no sequential assessment for flooding has been undertaken with respect to residential use, there are indicators which suggest that such an assessment could not be passed. These include that a planning appeal relating to a nearby site was dismissed on the basis that alternative sequentially preferable sites would be available, and the fact that substantial housing development sites are allocated in the ADLP. Morrisons' suggestion that the sequential assessment could be set aside on the basis that the site required regeneration/remediation, cannot in my view be justified. To accept that argument would potentially place residents at risk from flooding, which would be contrary to the intentions which underlie policy in PPS25. I also find no basis to accept that the inclusion of housing in the development brief is indicative that it would be an acceptable use having regard to flood risk considerations. The brief acknowledged that the site was in a designated flood plain, but there is no evidence to indicate that a sequential assessment was applied in preparing the brief, or that the Environment Agency agreed at the time of its preparation that the site was suitable for residential development with respect to flood risk. [159-161,239,358-359]
487. Bringing these matters together, I find the evidence to be convincing that regeneration and remediation of the application site land would be unlikely to be secured in the foreseeable future unless the development of the proposed superstore is allowed to take place. [170]
488. Some weight should also be attached to the regeneration benefit which would arise from the fact that the retained land would be opened up for potential reuse by the proposed development of the application site, as that land would be remediated and serviced, including by provision of the access road which would be shared with the superstore. However, the weight that should be attached to this benefit is limited by the fact that no potential developer or occupier has yet been found for the proposed Class B1 unit for which outline permission has been granted. In the light of the applicants' evidence indicating that there would be no demand for the wider site for industrial purposes, no degree of certainty can be attached to a developer and/or occupier being found in the foreseeable future for a Class B1 unit on the retained land. The most that can be said in relation to this matter is that the possibility of such a developer or occupier being attracted would be enhanced by the remediation and provision of services to that land. [23,62,134,168,365]
489. The proposed superstore would provide about 400 jobs, with full and part time positions equating to 266 full time equivalents. There could also be some further employment benefits through multiplier effects and during the demolition, remediation and construction phases. Although there could be some loss of employment elsewhere, there would be likely to be a net benefit in increasing the overall number of jobs in the area. Although the extent of these benefits would be reduced if Morrisons store were to close, I have concluded earlier that such a closure is unlikely to happen. With the context of relatively high levels of unemployment and of deprivation in the area, the creation of jobs would be a substantial regeneration benefit of the application scheme. Although Morrisons suggested that a similar number of jobs could be produced by

development for other uses on the site, in the light of my earlier conclusions about the suggested alternative uses put forward, there is no evidence of substance to show that any jobs would be likely to be forthcoming from any other form of development. [135-138,229,268,322]

490. As well as the basic provision of more jobs, Sainsbury's have committed through the Section 106 agreement to provide training opportunities for the staff who would be employed. Such training would include opportunities to acquire NVQ qualifications and the provision of apprenticeships in relevant skilled trades. Against a background of lower than average levels of educational achievement, skills and qualifications, the contribution which the proposal would make in terms of staff training would be a considerable regeneration benefit arising from the development. [135,139,229,246, 247,386]
491. The Section 106 agreement also makes provision for a contribution towards business enterprise provision in the vicinity of the site under the Council's economic development powers. However, there is no clear evidence as to what this would secure in terms of actual provision. More fundamentally, the contribution seems to be extraneous to the proposed development. In my view, it does not meet the tests for a planning obligation in Circular 05/2005 and in Regulation 122 of the CIL Regulations. It has not been shown by evidence to be needed to make the development acceptable in planning terms, or to be directly related to the development, or to be fairly and reasonably related in scale and kind to the development. Therefore, the obligation to provide this contribution cannot constitute a reason for granting planning permission, and I do not consider that any significant weight can be attached to it as a regeneration benefit of the application scheme. [140,233,386]
492. For the reasons I have already given in paragraph 445, I do not consider that significant weight should be attached as a potential regeneration benefit to the contributions provided for in the Section 106 agreement towards implementation of measures in the BRSS and for town centre management and town centre initiatives. There is too much uncertainty attached to how those contributions would be spent, to allow for any proper assessment of the benefit that might ensue.
493. Nevertheless, it is my assessment that the other regeneration benefits to which I have referred, when added together, would have considerable positive impacts on the economic and physical regeneration of Bognor Regis, and on local employment. Those benefits provide an important consideration in favour of the application proposal in the context that the town has been shown to be a deprived area requiring regeneration. They constitute beneficial impacts with respect to the terms of PPS4 policy EC10.2d and e.
494. In arriving at those conclusions, I have had regard to Morrisons' arguments suggesting that negative impacts for regeneration would arise from the diversion of trade from the town centre, and in terms of deterring investment in development schemes in the town centre. In the light of my earlier conclusions with respect to those matters, I have found the potential positive impacts for regeneration and employment to significantly outweigh any limited negative effects that would arise in those respects.
495. I have also taken account of the suggestions made that the proposal could serve to encourage other investment in Bognor Regis, including by attracting

new businesses to come to the town. Although that view was expressed in general terms at the inquiry, including by representatives of the business community, there is no detailed evidence to show that any other investment would necessarily flow from the application scheme. Therefore, little weight should be given to that matter. [134,230,243,263,271,273]

### Development Plan

496. With respect to the development plan policy which was agreed to be of greatest relevance, ADLP policy DEV27, I have already concluded that the proposal would accord with that policy in terms of both the sequential approach to site selection and accessibility. It follows from my earlier conclusions regarding the impact considerations in PPS4 that, in relation to the first proviso in policy DEV27, the proposal would not have a significant adverse effect on the vitality and viability of the PSA. No evidence has been presented to suggest that the proposal would adversely affect any local shopping areas. The only such area referred to in the evidence was a small local centre proposed on the ADLP Site6 allocation at Felpham. As that centre is not expected to serve a main food shopping role, I concur with the Council's assessment that it would not be affected by the proposed development. [220]
497. In the light of the evidence relating to impact given by the applicants at the inquiry, the proposal complies with the requirement in policy DEV27 that applications for major development need to be accompanied by a full assessment of the potential impact on town centres and nearby centres, Bognor Regis town centre having been accepted to be the only relevant centre. Therefore, setting aside the needs test within this policy, which is not compliant with current Government guidance in PPS4, I have concluded that the application proposal is in accordance with ADLP policy DEV27. [31,42,180]
498. The only other development plan policies which it was suggested the proposal would be in conflict with were those relating to climate change, accessibility and sustainable transport, specifically SEP policy CC2 and ADLP policies GEN4 and GEN7. For the same reasons as I have given in paragraphs 461-466 with respect to PPS4 policy EC10.2a, I find that the application proposal would comply with the objectives of SEP policy CC2 relating to mitigation and adaptation to the effects of climate change and the targeted reduction of carbon dioxide emissions. Again for similar reasons to those I have given in paragraphs 461-466, the proposal would provide for the effective use and conservation of energy in the terms of ADLP policy GEN7. [32-33,176,261,367]
499. Within the constraints that apply by virtue of the absence of a sequentially preferable site in a more central location, and taking into account the benefits of the proposal in helping to reduce journey lengths and the measures to improve the accessibility of the site by bus, I consider that the proposal would meet the expectation of ADLP policy GEN4 that development should be located so as to minimise the demand for travel, and the requirement in ADLP policy GEN7 which seeks to reduce the need to travel particularly by car. The proposal would also meet another requirement of ADLP policy GEN4 that new development should not add to existing road congestion and air pollution. The evidence in fact indicates both that the local road network could cater for the traffic likely to be generated, and that the reduction in the need to travel to more distant locations for food shopping would help to reduce congestion and air pollution. [118-119,124-126,222,242,265,273,343-345]

500. With respect to the provision of ADLP policy GEN7 which relates to vehicle parking, I have taken account of Morrisons' suggestion that the parking provision in the scheme would be in excess of the maximum demand, and that as a consequence travel by car would not be discouraged. However, it is clear from the evidence that the number of spaces proposed would be below the maximum indicated by Appendix D to PPG13, and well below the maximum suggested by applying the standard in the ADLP. Therefore, the proposal would not be in conflict with that aspect of ADLP policy GEN7. [127,342]
501. In the absence of objections suggesting that there would be any conflicts with any other development plan policies, I find no reason to differ with the assessments made in the note agreed between the applicants and the Council that the proposal would be in accordance with the other policies of the SEP and of the ADLP which have been cited. [64,158,174-180,260-261,264]
502. I have reached the overall conclusion with respect to the SEP and the ADLP that the proposal is in accordance with the relevant policies in both these component parts which make up the development plan.

#### Emerging Development Plan Documents ("DPDs")

503. The Council has reached only a very early stage in preparing its Core Strategy, and there are no other relevant DPDs. The only document referred to in the evidence was the "Core Strategy – Options for Growth" ("CSOG"). Morrisons drew attention to references in that document to the bringing forward of key development sites and the promotion of a mix of activities, including shopping, to bring a new vitality to the town centre. The fact that the vision for Bognor Regis in CSOG made specific mention of a revitalised town centre was also stressed, as was the indication that one of the Strategic Objectives for the Core Strategy was to be addressed by means including positive planning to revitalise Bognor Regis town centre. [34,181,280-282]
504. However, those aspects of the CSOG are not matters to which significant weight should be attached, given the early stage which the document represents in the statutory procedures towards preparation of the Core Strategy. As the Foreword to the document states, the Council does not yet have a preferred strategy. In any event, the matters in the CSOG that were highlighted do not alter the considerations on which the decision on this application should turn, and in particular those relating to the sequential approach to site selection and the impact considerations which derive from PPS4, which I have dealt with in paragraphs 412-495 of these conclusions.

#### Other Material Considerations

505. PPS23 "Planning and Pollution Control" and PPG24 "Planning and Noise" were included in the list of Government policy documents that were agreed by the main parties to be relevant. However, whilst some details of the provisions in those documents were included in the evidence, no detailed assessment of proposal against those provisions was made. In my assessment, the guidance in PPG24 has no bearing on the determination of the application. In general terms, the proposal would seem to accord with the Government's objectives for contaminated land in PPS23, with particular reference to the objective which seeks to bring damaged land back into beneficial use. [28]

506. All other material planning matters have been considered above in examining the range of impact considerations under PPS4 policies EC10.2 and EC16.1. The only other matter to which attention should be drawn is the stress which the applicants placed upon the overwhelming support that exists for the application proposal from organisations and individual residents in Bognor Regis. In that regard, the applicants argued that to ignore those wishes of the local community would be contrary to the Government's indication that it would give local people more power to shape the places in which they lived. In that regard, references in PPS1 concerning the involvement of communities in drawing up the vision for their areas are of some relevance, although those references primarily relate to plan making rather than the determination of planning applications. Nevertheless, the public support for the proposal is a matter which adds some weight in favour of the proposed development. [56,240,242-273]

#### The Balance of Considerations – PPS4 policy EC17

507. With respect to PPS4 policy EC17.1a, and in the light of my earlier conclusion in paragraph 432 regarding the sequential approach to site selection, this is not a case where refusal of planning permission is indicated by virtue of a failure to demonstrate compliance with the sequential approach in PPS4 policy EC15. Nor, having regard to my earlier conclusions in paragraphs 434-495 regarding the various impacts of the proposal, is it a case where planning permission should be refused because there is clear evidence that the proposal would lead to significant adverse impacts in terms of any one of the impact considerations set out in policies EC10.2 and EC16.1.

508. Policies EC17.1b and EC17.2b also require account to be taken of the likely cumulative effect of recent permissions, developments under construction and completed developments. Mention was made at the inquiry of 2 planning applications in Chichester which propose additional convenience goods sales floorspace. Those applications were undetermined at the time of the inquiry, but there is no evidence to suggest that they would have any significant cumulative impacts in combination with the called-in application scheme, even if they were to be permitted. There are no other permissions or developments which are of relevance in terms of potential cumulative effects. [55,78]

509. Consequently, this is an application that falls to be considered in accordance with the terms of PPS4 policy EC17.2a. This requires the application to be determined by taking account of the positive and negative impacts of the proposal in terms of PPS4 policies EC10.2 and EC16.1. In the light of my consideration of those impacts in paragraphs 434-495, although there would be a limited reduction in the trade and turnover of Bognor Regis town centre, I have identified no significant adverse effects arising from the proposed development. There would be positive effects in terms of limiting carbon emissions and achieving resilience to climate change, in improving the character and quality of the area, in providing employment and training opportunities, in achieving physical and economic regeneration on the site which would have wider benefits in terms of addressing deprivation in the town, and in improving competition and choice in the food retailing sector for local residents. Therefore, the balance of considerations required by PPS4 policy EC17.2a weighs in favour of approval of the application.

### Conditions

510. If the application is to be approved, conditions will be needed. The suggested conditions were amended during the course of the inquiry, such that most of those which would not be necessary were deleted from the final list. With one exception, I find that the remaining suggested conditions are necessary and reasonable for the reasons given on that list, although the reason given for condition 5 should refer to SEP policy NRM4 rather than policy NRM5. The exception involves suggested condition 23 on the final list. This would require an archaeological assessment, but there is no substantial evidence to demonstrate that such a condition is necessary. [404]
511. The conditions which I recommend should be attached if permission is granted are included in the Annex at the end of this report. Some minor changes from the wordings on the final list would be required. These include renumbering, both because the final list of suggested conditions did not have a condition 24, and due to the removal of the suggested archaeological assessment condition. I consider that all the conditions listed in the Annex are not only necessary, but they also meet the other tests for conditions laid down in Circular 11/95.
512. Suggested condition 2 would require landscaping not only within the application site, but also on the central reservation of the A29 between the Rowan Way and Orchard Way roundabouts. As that involves land outside the applicants' control, albeit that it is highway land, and as it has not been demonstrated that such a requirement would be relevant to the development being permitted, I have amended the wording of condition 2 in the Annex to remove that requirement with respect to the central reservation. I have also removed the reference in the suggested condition to maintenance of the hard landscaping, which would conflict with the advice in paragraph 82 of Circular 11/95. I have altered the wording of suggested condition 3 to replace the words "any lighting standards" with reference to "levels of luminance", in order to provide greater clarity and precision. I have amended the wording of suggested condition 4 to remove the unnecessary duplication of including 2 references to the "car dealership", and to improve the sense by replacing the words "shall be submitted to" with "have been submitted to". I have made a similar change with reference to that last point to suggested condition 6. [404]
513. I have removed the words "unless otherwise approved in writing by the Local Planning Authority" from condition 5, as that wording would fail the test of precision. I have also amended the wording of final element 4 of that condition to correct a grammatical error. I have changed the suggested wording of condition 8 to improve the sense, to remove the imprecise wording "unless otherwise approved in writing by the Local Planning Authority", and to include an implementation clause that was agreed to be necessary. I have also amended condition 10 to include an implementation clause that was agreed to be necessary. I have removed the suggested wording relating to maintenance of the tanks, as it is not clear that this would serve a planning purpose, and it would conflict with the advice in paragraph 82 of Circular 11/95. I have amended condition 15 because the suggested wording referred to "approved plan SSLBOGNOR3.1/SK38A", but that is not one of the application drawings. Instead, I have worded this condition to require the closure of the existing site accesses in accordance with a scheme to be submitted to and approved by the local planning authority. [404]

514. I have altered the floor areas for the sale of convenience and comparison goods specified in suggested condition 25 (condition 23 on the list in the Annex). That is necessary to accord with floor areas based on the Competition Commission's definition that were used in the evidence. With respect to suggested condition 26 (condition 24 on the list in the Annex), I have added to the wording to encompass details of the chip store as well as of the bio-mass boiler, which is necessary to ensure that both those elements of the development would have a satisfactory appearance. This change was canvassed in post inquiry correspondence from the Planning Inspectorate to the applicants' agent and the Council. [404]
515. I have added the full number of the PFS elevation drawing to suggested condition 28 (condition 26 on the list in the Annex), which gave only an abbreviated number for that drawing. I have also amended the introductory line of that condition, to reflect the fact that the list in the condition included not only plans but also the Design and Access Statement. The Drawing No. for the proposed Master Plan included in this condition relates to the version that was submitted at the inquiry which includes the positions of the bio-mass boiler and chip store. This drawing was not part of the scheme on which the Council undertook its consultations. Given that these facilities would be located within the proposed service yard, which is adjoined only by the railway line and the Aldingbourne Rife watercourse, I do not consider that anyone's interests would be prejudiced if the application is determined on that basis. [3,11,24,404]

#### Section 106 Agreement

516. I am not qualified to give any views on the Section 106 agreement with respect to points of law. My informal comments are as follows.
517. The obligation in Part 5 of the agreement, relating to clearance and remediation of the land, extends beyond the application site to include adjacent land also owned by SDLL known as "the retained land". However, the evidence indicates that the development of the application site and the facilitation of development of the retained land would need to proceed hand-in-hand, including due to the intention to have shared access. In addition, it seems that the contamination of the whole of the former LEC site would need to be remediated on a comprehensive basis, and there is no evidence to show that this could take place on the application site in isolation. In those circumstances, I consider that this part of the obligation would meet the relevant tests in Circular 05/2005 and in Regulation 122 of the CIL Regulations. The details of the remediation would be a matter for conditions 6-8 on the list in the Annex. [12,23,62-63,132,383, 388-390]
518. The obligation in Part 6 of the agreement relating to transport contributions and facilities which would evidently be necessary to make the proposed development acceptable in planning terms, having regard to sustainable transport considerations. Therefore, I consider that this obligation meets the relevant tests in Circular 05/2005 and the CIL Regulations. Whilst it would have been desirable for the obligation to make more specific reference to the fact that the bus service improvements were to be related to services linking to the application site, I concur with the applicants' view that it would be difficult to make more specific provisions at this stage and that the agreement should be read with an element of trust. In that regard, it can reasonably be expected that the County Council as the recipient of the contributions in this part of the

agreement would, as a public body, apply them in the intended manner. [373, 384,391-393]

519. The obligation in Part 7 of the agreement relates to the making of contributions to the implementation of measures set out in the Bognor Regis Seafront Strategy ("BRSS") and for town centre management and initiatives. I have already indicated in paragraph 445 that I have some concerns about the fact that there is no clear indication as to how these contributions would be spent. In addition, the reference to the BRSS could potentially lead to them being spent outside the town centre. It is understandable that some flexibility should be allowed with respect to spending of these contributions, so as to permit consideration of the particular needs that might exist when the funding became available. However, I am of the view that the uncertainty that exists as to how this money would be spent, including whether it would definitely be applied within the town centre, constitutes a failure to meet the tests in Circular 05/2005 and Regulation 122 of the CIL Regulations. In particular, without more detailed information the uncertainty means that it has not been established that the contributions are fairly and reasonably related in scale and kind to the development. Therefore, having regard to Regulation 122 of the CIL Regulations, it is my view that the contributions in Part 7 should not constitute a reason for granting planning permission. [369-371,385,394-396]
520. Part 8 of the agreement provides for contributions to be made to the delivery and promotion of business enterprise in the vicinity of the site. On this matter, I concur with the view of Morrisons that there is no clear link between the proposed development of the superstore and any demonstrated need for the enterprise provision which the contribution might fund. Although there are no available details as to exactly how the contributions would be spent, and what they would achieve, that is a subordinate consideration to the lack of any evident linkage between the proposed development and the need for any enterprise provision. As I have already indicated in paragraph 491, it is my view that these contributions do not meet the tests in Circular 05/2005, and in the CIL Regulations. Pursuant to Regulation 122 of those Regulations, it is my view that this obligation in the Section 106 agreement should not form a reason for granting planning permission. [372, 386,397-399]
521. Part 9 of the agreement, relating to the employment and management of sustainable urban drainage ("SUDS") of the site, would be necessary as the maintenance of SUDS cannot be dealt with effectively by condition. That obligation would meet the tests in Circular 05/2005 and in the CIL Regulations. With the context of the "Human Resource Development" provisions of SEP policy RE4, I consider that Part 10 of the agreement, requiring the provision of training and skills development at the proposed superstore, would also meet those tests. [177-178,222,229,386,400,401]
522. With respect to Part 11 of the agreement, concerning the signing of the Bognor Regis Developer Charter, I find no reason to disagree with the applicants' indication that this probably does not meet the tests in Circular 05/2005 and in the CIL Regulations. In practice, this obligation is no longer of significance, as the applicants have already signed the Charter. [386,402]
523. I have no basis on which to doubt the applicants' submissions to the effect that if an individual obligation within the Section 106 agreement was considered to fail the relevant tests, that did not mean that the remainder of the agreement

could not be taken into account. On that basis, I do not consider that the apparent failure of Parts 7, 8 and 11 of the agreement to meet the requirements in Circular 05/2005 and in Regulation 122 of the CIL Regulations should be regarded as providing an impediment to the application being approved. [172]

#### Overall Conclusion

524. Taking account of all of the matters detailed in these conclusions, and the balance of considerations in paragraphs 507-509 in particular, my overall conclusion is that the application should be approved.

#### **Recommendation**

525. I recommend that the application be approved and that planning permission be granted subject to the conditions contained in the Annex to this report.

*Stephen Amos*

Inspector

## APPEARANCES

### FOR THE APPLICANT:

|                                                      |                                             |
|------------------------------------------------------|---------------------------------------------|
| Ms Nathalie Lievan QC                                | Instructed by Denton Wilde Sapte LLP        |
| She called                                           |                                             |
| Mr John Whittaker MA<br>DipTP MRTPI                  | Managing Director, WYG Planning and Design  |
| Mr Timothy Hitchcock<br>MRICS MCIArb                 | Director, Grant Mills Wood                  |
| Mr Graham Chase Dip<br>Est Man FRICS FSA<br>FInstCPD | Chairman & Senior Partner, Chase & Partners |
| Mr Gary Morris BSc<br>(Hons) DipTP MRTPI             | Town Planner, WYG Planning and Design       |
| Mr Anthony Brown BA<br>MCILT MHIT                    | Director, Mayer Brown Limited               |

### FOR THE LOCAL PLANNING AUTHORITY:

|                                             |                                                                            |
|---------------------------------------------|----------------------------------------------------------------------------|
| Ms Anne Williams                            | Of Counsel, Instructed by the District Solicitor,<br>Arun District Council |
| She called                                  |                                                                            |
| Mr Duncan McCallum BA<br>(Hons) MPhil MRTPI | Regional Director, DPDS Consulting Group                                   |
| Mr Richard McMann                           | Bognor Regis Task Force Coordinator, Arun<br>District Council              |
| Mr Keith Wheway HNC<br>(Planning)           | Strategic Development Planner, Arun District<br>Council                    |

### FOR WM MORRISON SUPERMARKETS PLC:

|                              |                                                                                     |
|------------------------------|-------------------------------------------------------------------------------------|
| Mr Vincent Fraser QC         | Instructed by Hammonds LLP                                                          |
| He called                    |                                                                                     |
| Ms Rachel Saint MRICS        | Partner, Rapleys LLP                                                                |
| Mr David Bell MEng MIHT      | Associate, Bryan G Hall, Consulting, Civil and<br>Transportation Planning Engineers |
| Mr S Buckley BA BPI<br>MRTPI | Associate, Peacock & Smith Ltd                                                      |

### INTERESTED PERSONS (in order of appearance):

|                         |                                                                                                  |
|-------------------------|--------------------------------------------------------------------------------------------------|
| Mrs Jean Taylor         | Local resident                                                                                   |
| Mr David Myers CIMA     | On behalf of Bognor Regis Ltd                                                                    |
| Councillor Brian Green  | On behalf of Bersted Parish Council                                                              |
| Mr Stan Jonas           | Chairman of BRighter Bognor                                                                      |
| Mr Tom Frears           | Chairman of Bognor Regis Regeneration Vision<br>Group                                            |
| Mr Paul Beckerson       | Projects & IT Officer, Bognor Regis Town Council                                                 |
| Mrs Jean Coles CBE      | Local resident, Chair of Governors Bognor Regis<br>Nursery School & Secretary of BRighter Bognor |
| Councillor Mrs Ann Smee | Ward Councillor for Bersted, Arun District Council                                               |

## **DOCUMENTS**

### **Core Documents**

#### **A. Government Guidance**

|       |                                                                                    |
|-------|------------------------------------------------------------------------------------|
| CD/A1 | PPS1 – Delivering Sustainable Development                                          |
| CD/A2 | PPS4 – Planning for Sustainable Economic Growth and associated Good Practice Guide |
| CD/A3 | PPG13 – Transport                                                                  |
| CD/A4 | PPG23 – Planning and Pollution Control                                             |
| CD/A5 | PPS24 – Planning and Noise                                                         |
| CD/A6 | PPS25 – Development and Flood Risk and associated Good Practice Guide              |
| CD/A7 | PPS6 – Planning for Town Centres                                                   |

#### **B. Regional Guidance**

|       |                                         |
|-------|-----------------------------------------|
| CD/B1 | The South East Plan May 2009            |
| CD/B2 | Regional Economic Strategy – SEEDA 2006 |

#### **C. Development Plan and Other Arun Council Documents**

|       |                                                     |
|-------|-----------------------------------------------------|
| CD/C1 | West Sussex Structure Plan 2001-2016 (October 2004) |
| CD/C2 | Arun District Local Plan 2003                       |
| CD/C3 | Bognor Regis Masterplan                             |
| CD/C4 | Bognor Regis Seafront Strategy                      |
| CD/C5 | Arun LDF – Core Strategy: Options for Growth        |
| CD/C6 | DTZ Coastal Districts Retail Study 2005             |

#### **D. LEC Refrigeration Development Brief**

|       |                                                 |
|-------|-------------------------------------------------|
| CD/D1 | LEC Refrigeration Development Brief – July 2008 |
| CD/D2 | Cabinet agenda 7 July 2008                      |
| CD/D3 | Cabinet Minutes 7 July 2008                     |
| CD/D4 | Decision notices from Cabinet 7 July 2008       |

#### **E. The Called-In Application Documents (Ref: BE/122/08)**

|       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CD/E1 | a) Covering letter dated 12.12.2008<br>b) Application form<br>c) Plans<br>d) Design and Access Statement<br>e) Retail Assessment<br>f) Transport Assessment<br>g) Environmental Desk Top Study<br>h) Flood Risk Assessment<br>i) Ecological Assessment<br>j) Energy Efficiency and Carbon Management Assessment<br>k) Statement of Employment Aspects<br>l) Report on Community Involvement<br>m) Illustrative sketch of site from A29<br>n) Travel Plan December 2008<br>o) Travel Plan May 2009<br>p) Regeneration Statement – June 2009<br>q) Addendum to Flood Risk Assessment |
| CD/E2 | Consultation responses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| CD/E3 | Representations                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| CD/E4 | Development Committee Report and Minutes dated 7 October 2009                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

- CD/E5 DTZ Review of Retail Impact Assessment 13 February 2009
- CD/E6 WYG response to CD/E5 & schedule 27 May 2009
- CD/E7 DTZ response to CD/E6 19 June 2009
- CD/E8 WYG response to CD/E7 31 July 2009

**G. Documents relating to the Application on the Retained Land (Ref: E/121/08)**

- CD/F1 Development Control Committee report in respect of application BE/121/08 f– 7 October 2009 (related minutes are in CD/E4)
- CD/F2 Decision notice dated 7 October 2009
- CD/F3 Plan accompanying application showing retained land

**H. Documents relating to the Application by Wm Morrisons Supermarkets plc – 30 Bedford Street, Bognor Regis (Ref: BR/88/09)**

- CD/G1 The application and accompanying documents
- CD/G2 Development Control Committee report – 7 October 2009

**I. Documents relating to the Application by Asda Stores Ltd – Oldlands Farm Business Park, Bognor Regis (Ref: BE/1/08)**

- CD/H1 The application and accompanying documents
- CD/H2 Development Control Committee report and minutes – 18 December 2008
- CD/H3 Refusal notice dated 19 December 2008

**J. Documents relating to the Proposals by St Modwen Developments Ltd – Regis Centre and Hothampton Sites, Bognor Regis**

- CD/I1 Marketing Brief and Invitation to Tender – Arun DC – November 2005
- CD/I2 Tender for selection – St Modwen – April 2006
- CD/I3 Leisure Heart Proposal – Land Use Breakdown – St Modwen – April 2006
- CD/I4 Development Agreement Q & As – St Modwen and Arun DC – December 2007
- CD/I5 Consultation Presentation to Bognor Regis Sub-Committee – St Modwen – January 2008
- CD/I6 Initial consultation response from Council – Arun DC – February 2008
- CD/I7 Consultation Feedback Report – St Modwen – April 2008
- CD/I8 Consideration of Economic Climate Report – Arun DC – September 2008
- CD/I9 St Modwen Bognor Regis Updated Commercial Property Report – October 2009
- CD/I10 Agenda of Bognor Regis Sub-Committee – 8 September 2008
- CD/I11 Minutes of the Meeting of the Council – 15 April 2009

**Statements of Common Ground**

- SOCG1 Statement of Common Ground between the Applicants (Sainsbury's Supermarkets Ltd & Sime Darby London Ltd), Wm Morrison Supermarkets PLC & Arun District Council

|       |                                                                                                                                                                              |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SOCG2 | Statement of Common Ground between Arun District Council & the Applicants (Sainsbury's Supermarkets Ltd & Sime Darby London Ltd) on Retail Issues                            |
| SOCG3 | Statement of Common Ground between Arun District Council & the Applicants (Sainsbury's Supermarkets Ltd & Sime Darby London Ltd) on General Planning                         |
| SOCG4 | Statement of Common Ground between the Applicants (Sainsbury's Supermarkets Ltd & Sime Darby London Limited) and West Sussex County Council on Highway and Transport Matters |

### **Proofs of Evidence and Related Documents – for the Applicants**

|        |                                                                |
|--------|----------------------------------------------------------------|
| A/PR1  | Proof of Evidence of Mr Whittaker                              |
| A/PR1A | Appendices to proof of Evidence of Mr Whittaker (in 2 volumes) |
| A/PR1B | Summary Evidence of Mr Whittaker                               |
| A/PR1C | Rebuttal Evidence of Mr Whittaker                              |
| A/PR1D | Errata slip to Proof of Evidence Mr Whittaker                  |
| A/PR2  | Proof of Evidence of Mr Morris                                 |
| A/PR2A | Summary Evidence of Mr Morris                                  |
| A/PR2B | Appendices to Proof of Evidence of Mr Morris                   |
| A/PR2C | Rebuttal Evidence of Mr Morris                                 |
| A/PR3  | Proof of Evidence of Mr Brown                                  |
| A/PR3A | Appendices to Proof of Evidence of Mr Brown                    |
| A/PR3B | Summary Evidence of Mr Brown                                   |
| A/PR3C | Rebuttal Evidence of Mr Brown                                  |
| A/PR4  | Proof of Evidence of Mr Chase                                  |
| A/PR4A | Appendices of Mr Chase                                         |
| A/PR4B | Summary Evidence of Mr Chase                                   |
| A/PR4C | Rebuttal Evidence of Mr Chase                                  |
| A/PR4D | Errata slip to Proof of Evidence of Mr Chase                   |
| A/PR5  | Proof of Evidence of Mr Hitchcock with attached Appendix       |
| A/PR5A | Rebuttal Evidence of Mr Hitchcock                              |

### **Proofs of Evidence and Related Documents – for Arun District Council**

|          |                                                |
|----------|------------------------------------------------|
| LPA/PR1  | Proof of Evidence of Mr McCallum               |
| LPA/PR1A | Appendices to Proof of Evidence of Mr McCallum |
| LPA/PR1B | Summary Proof of Evidence of Mr McCallum       |
| LPA/PR2  | Proof of Evidence of Mr McCann                 |
| LPA/PR3  | Proof of Evidence of Mr Wheway                 |
| LPA/PR3A | Summary Proof of Evidence of Mr Wheway         |

### **Proofs of Evidence and Related Documents – for Wm Morrison Supermarkets PLC**

|          |                                                                                                       |
|----------|-------------------------------------------------------------------------------------------------------|
| MOR/PR1  | Proof of Evidence of Ms Saint                                                                         |
| MOR/PR1A | Appendices to Proof of Evidence of Ms Saint                                                           |
| MOR/PR1B | Summary Proof of Evidence of Ms Saint                                                                 |
| MOR/PR1C | Supplementary Proof of Evidence and Appendices of Ms Saint                                            |
| MOR/PR1D | Errata Sheet to Proof of Evidence of Ms Saint (renumbered from Doc. MOR6 in list used at the inquiry) |
| MOR/PR2  | Proof of Evidence and Appendices of Mr Bell                                                           |

|          |                                                                                                    |
|----------|----------------------------------------------------------------------------------------------------|
| MOR/PR2A | Summary Proof of Evidence of Mr Bell                                                               |
| MOR/PR2B | Note on Journey Length Savings from Mr Bell                                                        |
| MOR/PR3  | Proof of Evidence of Mr Buckley                                                                    |
| MOR/PR3A | Appendices to Proof of Evidence of Mr Buckley                                                      |
| MOR/PR3B | Summary Proof of Evidence of Mr Buckley                                                            |
| MOR/PR3C | Supplementary Proof of Evidence of Mr Buckley                                                      |
| MOR/PR3D | Enlarged versions of Tables SB1-SB17 in Appendix 3 of Mr Buckley's Supplementary Proof of Evidence |

### **Other Documents submitted on behalf of the Applicants**

|       |                                                                                                                                                                                        |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A1-A5 | These numbers were given to the applicants' proofs of evidence, but for the purposes of the report these have been renumbered into the A/PR sequence detailed above                    |
| A6    | Opening speech on behalf of the applicants                                                                                                                                             |
| A7    | List of appearances on behalf of Sainsbury's Supermarkets Ltd & Sime Darby London Ltd                                                                                                  |
| A8    | Predicted Inquiry Timetable                                                                                                                                                            |
| A9    | Substitute tables for those in Appendix H of Mr Whittaker's evidence                                                                                                                   |
| A10   | Table comparing trade draw and trade diversion figures of Mr Whittaker, Mr McCallum & Mr Buckley                                                                                       |
| A11   | Table 7 from Retail Impact Assessment by WYG Planning & Design, May 2009 (enlarged version of the same table in Document CD/E6)                                                        |
| A12   | Mr Chase's appraisal for the proposed redevelopment of Morrisons' Bognor Regis store – utilising the construction costs employed in Ms Saint's evidence                                |
| A13   | Mr Chase's appraisal for the proposed redevelopment of Morrisons' Bognor Regis store – utilising the construction costs estimated by quantity surveyors used by Sainsbury's Stores Ltd |
| A14   | Extract from Morrisons Annual Report and Financial Statements, 2010                                                                                                                    |
| A15   | Email to Mr Mark Paynter of Chase & Partners from Mr Richard Foggin re T J Hughes requirements in Bognor Regis, 26 April 2010                                                          |
| A16   | Document produced by St Modwen for an exhibition in 2008 concerning proposals for the Hothampton and Regis Centre sites                                                                |
| A17   | Revision of one of the application drawings – Proposed Masterplan – Drawing No. CHQ.08.8157 – 002 C – with the bio-mass boiler and chip store added                                    |
| A18   | List of letters of objection to the proposed development as at 11 May 2010                                                                                                             |
| A19   | Mr Whittaker Summary Proof of Evidence incorporating tracked changes to the figures given                                                                                              |
| A20   | Draft Section 106 agreement                                                                                                                                                            |
| A21   | Legal note relating to regulatory remediation requirements with respect to contaminated land                                                                                           |
| A22   | Feasibility Study of Remediation Options for the Southern Site, Shripney Road, Bognor Regis, by Environ UK Ltd, July 2008                                                              |

|     |                                                                                                                                                                                                             |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A23 | Goad Plans for Bognor Regis Town Centre                                                                                                                                                                     |
| A24 | Proposed Masterplan – Drawing No. CHQ.08.8157 – 002 B – being the version considered by the Council without the addition of the bio-mass boiler and chip store                                              |
| A25 | Note from GKA Ltd (Sainsbury's Stores Ltd's public affairs representatives) detailing the exercise carried out in seeking support for the proposal from local people                                        |
| A26 | Report to the Secretary of State for Communities and Local Government - proposed mixed use development including a supermarket at 224 Portswood Road, Southampton (APP/D1780/V/07/1200876 & 1201579)        |
| A27 | Emails between Mr Mark Paynter of Chase & Partners and Mr Richard Foggin re T J Hughes requirements in Bognor Regis, 17 May 2010                                                                            |
| A28 | Email from Mr M Wakeman of Parsons Son & Basley to Mr Chase re 6-8 London Road, Bognor Regis, 18 May 2010                                                                                                   |
| A29 | Note on value and costs of new Morrisons store from Mr Chase                                                                                                                                                |
| A30 | Note on Journey Savings from Mr Brown                                                                                                                                                                       |
| A31 | Bognor Regis Bus Timetables                                                                                                                                                                                 |
| A32 | Tables 19a and 19b – Turnover of Morrisons store based on quoted turnover for 2009-10 adjusted for 2007 price base and inclusion of VAT (at 17.5% in Table 19a & at 15% in Table 19b).                      |
| A33 | Table 20 Trading Effects for Convenience Goods, utilising quoted turnover of Morrisons store for 2009-10 as adjusted in Table 19a in Document A32                                                           |
| A34 | Schedule of Store Sizes                                                                                                                                                                                     |
| A35 | Note on the consultation processes in the preparation of the LEC Refrigeration Site Development Brief                                                                                                       |
| A36 | Note giving details of the Planning Obligations attached to planning permissions for residential development of Site 6 from the Arun District Local Plan, and copies of the relevant Section 106 Agreements |
| A37 | Note on the interpretation of development plan policies agreed between Arun District Council and the Applicants                                                                                             |
| A38 | Closing submissions of the Applicants                                                                                                                                                                       |

**Documents submitted on behalf of Arun District Council**

|      |                                                                                            |
|------|--------------------------------------------------------------------------------------------|
| LPA1 | Letter of notification of the inquiry & list of those notified                             |
| LPA2 | Opening speech on behalf of the Council                                                    |
| LPA3 | Email from Ian Gledhill of West Sussex County Council to the District Council, 13 May 2010 |
| LPA4 | Addendum to Mr McCallum's proof of evidence                                                |
| LPA5 | Revised tables to Mr McCallum's evidence (replacing Appendix 8 of Doc. LPA/PR1A            |
| LPA6 | Section 6.0 of Mr McCallum's evidence with tracked changes                                 |
| LPA7 | Bognor Regis Regeneration: Developer and Partner Charter                                   |
| LPA8 | Policies from the Arun District Local Plan                                                 |
| LPA9 | Policies from the South East Plan                                                          |

|       |                                                                                                                              |
|-------|------------------------------------------------------------------------------------------------------------------------------|
| LPA10 | Plan showing Wards of Bognor Regis which are Local Neighbourhood Improvement Areas (LNIA)                                    |
| LPA11 | Details of current planning applications for retail development in Chichester                                                |
| LPA12 | Details of planning permissions for major housing developments in and around Bognor Regis                                    |
| LPA13 | Closing speech on behalf of the Council                                                                                      |
| LPA14 | Report to Bognor Regis Sub-Committee relating to progress on the Bognor Regis Regeneration Programme Vacant Shops Initiative |

#### **Documents submitted on behalf of Wm Morrison Supermarkets PLC**

|      |                                                                                                          |
|------|----------------------------------------------------------------------------------------------------------|
| MOR1 | List of appearances on behalf of Wm Morrison Supermarkets PLC                                            |
| MOR2 | Local Development Framework – Statement of Community Involvement – Arun District Council                 |
| MOR3 | Table comparing trade draw and percentage of turnover figures of Mr Whittaker, Mr McCallum & Mr Buckley  |
| MOR4 | Company Statement by Justin Fletcher BSc(Hons) MRICS, May 2010                                           |
| MOR5 | Letter of 12 May 2010 from Morrisons to Mr Buckley detailing turnover figures for the Bognor Regis store |
| MOR6 | Enlarged version of Table SB15 to Mr Buckley's evidence                                                  |
| MOR7 | Updated version of Table SB17 to Mr Buckley's evidence                                                   |
| MOR8 | Closing submissions on behalf of Wm Morrison Supermarkets PLC                                            |

#### **Documents submitted by Interested Persons/Organisations**

|      |                                                                                                                |
|------|----------------------------------------------------------------------------------------------------------------|
| IP1  | Statement of Mr David Myers (Bognor Regis Ltd) and related written representation                              |
| IP2  | Statement of Councillor Brain Green, Bersted Parish Council                                                    |
| IP3  | Statement of Mr Stan Jonas (BRighter Bognor) and related written representations                               |
| IP4  | Statement of Mr Frears (Bognor Regis Regeneration Vision Group) and related written representations            |
| IP5  | Statement of Mr Stuart-Nicolson (Bognor Regis District Chamber of Commerce) (read at the inquiry by Mr Frears) |
| IP6  | Letter from Ruth Hambleton, Committee Clerk, Bognor Regis Town Council                                         |
| IP7  | Notes used by Mr Beckerson (Bognor Regis Town Council) in addressing the inquiry                               |
| IP8  | Statement of Mrs Jean Coles CBE                                                                                |
| IP9  | Statement of Councillor Mrs Ann Smee                                                                           |
| IP10 | Note of questions which Mrs Coles wished to have asked of Mr Buckley                                           |
| IP11 | Written representations of Nick Gibb MP                                                                        |
| IP12 | Written representations of the Bognor Regis 21 Town Partnership Board                                          |
| IP13 | Bundles of other written representations in support of the proposal (2 folders)                                |
| IP14 | Written representations of St Modwen Developments Ltd                                                          |

IP15 Bundle of written representations objecting to the proposal

**General Documents**

Gen1 Early version of Draft Section 106 agreement  
Gen2 Extract from South East Plan (page 162) including Diagram TC1 "Strategic Network of Town Centres"  
Gen3 Extract from Planning Policy Statement 25 practice guidance - "Applying the Sequential Test to areas requiring redevelopment or regeneration"  
Gen4 Original list of suggested conditions as agreed between Arun District Council and the Applicants  
Gen5 Final list of suggested conditions as amended following initial discussion at the inquiry  
Gen6 Copy of final signed version of Section 106 agreement

## **ANNEX**

### List of recommended conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. No development shall take place until a scheme of hard and soft landscaping for the site has been submitted to, and approved in writing by, the Local Planning Authority. The approved details of the soft landscaping shall be carried out in the first planting and seeding season following the occupation of the retail store and any trees or plants which, within a period of five years from occupation of the retail store, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation. The approved details of the hard landscaping scheme shall be implemented before the retail store is opened to the public.
3. No development of the retail store element of the development shall take place until details of any external lighting/floodlighting for the retail store, including details of levels of luminance, have been submitted to, and approved in writing, by the Local Planning Authority. The approved details shall be implemented and operational, before the retail store is opened to the public.
4. No development of the car dealership element of the development shall take place until details of any external lighting/floodlighting, visitor car parking spaces and boundary treatment in relation to that part of the development have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and operational, before the car dealership is opened to the public.
5. The development shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) and Addendum (document ref HA/2008/105829/02-L01) and in particular, the following mitigation measures as detailed within the FRA:
  1. Limiting the surface water run-off generated by the critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off site.
  2. Provision of compensatory flood storage on the site.
  3. Identification and provision of safe route(s) into and out of the site to an appropriate safe haven.
  4. Setting of finished floor levels no lower than 2.20 m above Ordnance Datum (AOD).
6. No development shall take place until the following components of a scheme to deal with the risk associated with contamination of the site, to include an implementation programme, have each been submitted to and approved in writing by the Local Planning Authority :
  1. A site investigation scheme, based on the Desk Top Study and historical site investigations to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.

2. Based on the results and the detailed risk assessment referred to in 1 above, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
3. A Verification Plan providing details of the data that will be collected in order to demonstrate that the works set out in 2 above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
7. A Verification Report demonstrating completion of the works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to and approved in writing by the Local Planning Authority before the retail store is occupied. The Report shall include results of sampling and monitoring carried out in accordance with the approved Verification Plan to demonstrate that the site remediation criteria have been met.
8. If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until an amendment to the remediation strategy detailing how this unsuspected contamination will be dealt with has been submitted to and approved in writing by the Local Planning Authority, and the measures included in the amended strategy shall be carried out in accordance with the details approved by the Local Planning Authority prior to the opening of the retail store.
9. No development shall take place until details of piling or other foundation designs using penetrative methods have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
10. No development shall take place until a scheme to install the underground tank(s) for the petrol filling station has been submitted to and approved in writing by the Local Planning Authority. The installation of the tanks shall be carried out in accordance with the approved scheme prior to the opening of the petrol filling station. The scheme shall include the full structural details of the installation, including details of: excavation, the tank(s), tank surround, associated pipe work and monitoring system.
11. No development shall take place until a scheme for the disposal of foul & surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the retail store is occupied.
12. The retail store shall not be opened for trade until the approved A29, Shripney Road/site access road signalised junction has been provided in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.
13. The retail store shall not be opened for trade until the approved signalised toucan crossing has been provided across the A29, Shripney Road, in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.
14. The retail store shall not be opened for trade until the bus lay-by and bus shelter with seating, lighting and bus information timetables has been provided on the A29, Shripney Road, site frontage in accordance with a scheme to be submitted to, and approved in writing by the Local Planning Authority.

15. The retail store shall not be opened for trade until the existing site accesses have been physically closed in accordance with a scheme to be submitted to and approved in writing by the local planning authority.
16. The retail store shall not be opened for trade until the site access road and its associated footways have been provided in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.
17. The retail store shall not be opened for trade until the car park circulatory aisles, the car parking spaces, the disabled spaces and the parent and child spaces have been provided, surfaced and marked out in accordance with the approved master plan drawing No. CHQ.08.8157-002 C. These vehicle parking spaces shall thereafter be retained at all times for their designated users.
18. The retail store shall not be opened for trade until the motorcycle parking area within the store car park has been provided, surfaced and marked out in accordance with the approved master plan drawing No. CHQ.08.8157-002 C. This motor cycle parking area shall thereafter be retained at all times for its designated use.
19. The retail store shall not be opened for trade until the customer and staff cycle parking spaces have been provided within the site in accordance with the approved master plan drawing No. CHQ.08.8157-002 C. These cycle parking spaces shall thereafter be retained at all times for their designated use.
20. The retail store shall not be opened for trade until the store service road and its associated service yard have been provided in accordance with the approved master plan drawing No. CHQ.08.8157-002 C.
21. The Travel Plan (May 2009) hereby approved shall be implemented in accordance with the details therein on first occupation of the retail store.
22. The retail store shall not be commenced until a temporary site construction access has been provided in accordance with a plan and details to be submitted to and approved in writing by the Local Planning Authority.
23. In the retail store no more than 3,570 sq. m of the floor space shall be used for the sale of convenience goods and no more than 1,640 sq. m for the sale of comparison goods.
24. Details of the bio-mass boiler, to include details of all emissions and its physical form, and details of the associated chip store, to include details of the elevations of this building, shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of the development. The boiler and the chip store shall be provided in accordance with the approved details before the retail store opens for trading.
25. Within 6 months of the commencement of development, details of the art panels to be included on the Shripney Road elevation of the retail store shall be submitted to and approved in writing by the Local Planning Authority. The approved art panels shall be erected as part of the store construction.
26. This planning permission relates to the following plans and statement:
  - Site Location Plan (Red Line) – No. CHQ.08.8157-001
  - Proposed Master Plan – No. CHQ.08.8157-002 C
  - Proposed ground floor Plan – No. CHQ.08.8157-003 A

- Proposed first floor plan – No. CHQ.08.8157-004 A
- Proposed elevations – No. CHQ.08.8157-005
- Proposed rendered elevations No. CHQ.08.8157-006
- Proposed PFS elevation No. CHQ.08.8157-007 A
- Proposed car dealership plans and elevations – No. CHQ.08.8157-008 A
- Topographical Survey – No. CHQ.08.8157.009
- Design and Access Statement (January 2009)