

Our ref: AFX/TR/Q230100
Your ref: LU/72/25/OUT
Email: [REDACTED]
Date: 26 June 2025



Mr S Davies
Principal Planning Officer
Directorate of Growth
Arun District Council
Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

By email

Dear Simon,

**Land to the West of New Courtwick Lane, Wick BN17 7RZ
Planning Reference LU/72/25/OUT**

We write on behalf of our client, NCL Estates Limited ('the Applicant'), in respect of the above planning application, which was validated by Arun District Council ('ADC') on the 29th April 2025 (hereafter referred to as the 'New Courtwick Lane scheme').

Specifically, this provides a response to comments raised regarding the potential to assess the cumulative retail impact of the application proposals together with the recently submitted application for substantial retail development at Norway Lane / Worthing Road, Littlehampton (ref. LU/93/25/PL) – hereafter referred to as the 'BodyShop scheme'. This application was validated by ADC on the 28th May 2025.

This response also considers the suggestion that both planning applications should be determined at the same time.

1 The Proposals

In terms of the retail development proposed by the pending applications, the nature and scale of development is significantly different. This is summarised at Table 1 overleaf.



Table 1: Summary of the Competing Retail Schemes

Element	New Courtwick Lane (square metres)	The Bodyshop Scheme (square metres)		Difference (square metres) – up to
		Option 1	Option 2	
Foodstore (1)	1,912	2,906	2,906	+994
Non-food retail unit (1)	-	1,922	1,922	+1,922
Non-food retail unit (2)	-	929	929	+929
Foodstore (2)	-	2,066	2,066	+2,066
Non-food retail unit (3)	-	2,040	5,460	+5,460
Non-food retail unit (4)	-	1,027		
Non-food retail unit (5)	-	1,008		
Drive thru unit / Food & drink (1)	356	140	140	-216
Drive thru unit / Food & drink (2)	167	-		-167
Gym	-	507		+507
Total	2,435	12,545	13,423	+10,988

Source: Retail evidence submitted in support of the respective planning application

In overall floorspace terms, the Bodyshop scheme, which provides two potential retail options, is more than five times larger (or almost 11,000 square metres) than the New Courtwick Lane scheme.

In terms of retail (Class E(a)) floorspace, the Bodyshop scheme extends to up to 13,283 square metres within seven retail units. By contrast, the New Courtwick Lane scheme extends to just 1,912 square metres and a single foodstore that is intended to meet a localised catchment; the Bodyshop scheme seeks to create a new out-of-centre retail park with a substantially wider catchment.

In turnover terms, the New Courtwick Lane scheme is identified to achieve a retail turnover of less than £18 million. This compares to the Bodyshop shop scheme achieving a turnover in excess of £64 million – although this could be even greater dependent upon the end-operators, which only confirms one of the potential retail tenants (Aldi).

In summary, the two retail schemes are not remotely comparable in terms of their scale and likely effects.



2 Cumulative Impact

Policy Context

In light of the submission of the planning application for the Bodyshop scheme, ADC has requested that a cumulative impact assessment is undertaken that considers the likely impact of both schemes.

Neither the National Planning Policy Framework ('NPPF') nor the supporting Planning Practice Guidance ('PPG') require a cumulative impact assessment to be undertaken in support of a planning application. Paragraph 95 of the NPPF states that:

"Where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the considerations in paragraph 94 it should be refused." (our emphasis)

The NPPF establishes that it is the 'application' that should be assessed as to whether the proposals will lead to a significant adverse impact – not applications.

The NPPF was first published in 2012 and has been revised on numerous occasions since, most recently in December 2024, and this position has not changed. Whilst consideration of cumulative impact was explicitly required under the predecessor to the NPPF¹, this is no longer the case.

Similarly, although the supporting PPG² refers to considering cumulative effects of recent developments, this is in the context of setting a local impact threshold not in assessing planning applications.

Local planning policy also makes no reference to the need to assess cumulative impact when considering retail impact. Policy RET DM1 simply states that a scheme must satisfy the impact tests of the NPPF.

In planning policy terms, there is no requirement to undertake a cumulative impact assessment to understand whether the application proposal is likely to lead to a significant adverse impact.

Assessment

For the reasons identified, we do not believe it is a policy requirement to assess cumulative impact of the two schemes for the Local Planning Authority to determine the New Courtwick Lane scheme. However, if such an assessment is undertaken, the identified impacts on defined centres resulting from the New Courtwick Lane scheme would be less than that identified in the submitted Retail Impact Assessment.

¹ Planning Policy Statement 4 (2009)

² Paragraph: 015 Reference ID: 2b-015-20190722



The reason for this is that if the Bodyshop scheme was delivered, the proposals will draw trade from this scheme (which includes two foodstores), thereby reducing the proportion of trade from retail destinations elsewhere, including defined centres.

If it a cautious estimate is assumed that 30% of the proposal's turnover is derived from the Bodyshop scheme, the trade diversion from facilities elsewhere would reduce on a *pro-rata* basis. This means that the impact of the application proposals at New Courtwick Lane would be lower than that set out in the submitted Retail Impact Assessment.

For example, based on allowing for trade diversion from the Bodyshop scheme, the identified impact on Littlehampton town centre reduces from -4.0%, as identified by the submitted Retail Impact Assessment, to -2.8% by 2030.

For these reasons the application proposals remain acceptable in retail policy terms.

3 Case Law

It is acknowledged that the consideration of alternative retail scheme could be a material consideration in the determination of planning applications – although this will be dependent on specific circumstances.

In considering this specific matter, correspondence from Officers at ADC³ refers to case law (namely the High Court judgment in East Lindsey⁴) and concludes that:

“...this judgment confirms that the appropriate and legally sound approach in the case of multiple applications, particularly where there is a potential choice to be made between the proposals, is for them to be determined at the same time.”

We are aware of this Judgment and other case law, but we do not accept that this means that both applications should be determined at the same time. Nor are we of the view that there is a potential choice to be made between the proposals, as the two are entirely different, as set out above.

In considering relevant case law, a key factor is an understanding as to whether an alternative scheme is material which is dependent on the circumstances of the specific case.

In the East Lindsey Judgment, the proposals were broadly the same development (out-of-centre foodstores of comparable size) where allowing both schemes would have the potential for a significant adverse impact on defined centres. The Judge took the position that *“the two stores are competing*

³ Email correspondence dated 20th June 2025

⁴ Lidl Great Britain Limited v East Lindsey District Council & Aldi Stores Limited [2024] EWHC 1641 (Admin)



for one planning permission". This is not the case when considering the two schemes in Wick / Littlehampton.

As outlined above, the two retail schemes in Wick / Littlehampton are simply not comparable and are not competing for the same planning permission.

In determining whether an alternative retail scheme was material in the determination of the application, the East Lindsey judgment (at Paragraph 93) identified that:

"The critical question therefore is whether this is a case where a comparison between the two schemes needed to be made."

Given the similarities of the two schemes in the East Lindsey judgment, it was entirely reasonable that both schemes should have been assessed together and would be a material consideration in determining the applications. The circumstances are not the same in Wick / Littlehampton.

Established case law, which is referred to in the East Lindsey judgment, has established that it will be a matter of planning judgment for the decision maker to assess the relevance of alternative schemes, and the facts of a case determine whether it is necessary to consider alternative schemes.

The position in Wick / Littlehampton does not share the same characteristics as the East Lindsey judgment. There is no justification or requirement for the two proposals to be determined at the same time – as being suggested by officers. They are not rival schemes. They are fundamentally different in terms of scale, offer and retail impacts.

Given this, as established by case law, there is no lawful requirement to determine both applications at the same time.

The sheer scale of the Bodyshop scheme raises wider planning issues that are not comparable to the New Courtwick Lane scheme. For example, National Highways⁵ have raised a number of issues and requested that further analysis is undertaken to support that application. As such, it has been requested by National Highways consider that this application should not be determined until after the 4th September 2025 at the earliest.

It is therefore unreasonable for a much smaller application to be delayed for an unknown period if all relevant planning matters have been addressed – particularly when the schemes are not directly comparable. To reiterate, the schemes are *not* 'rival' schemes. They represent two fundamentally different proposals, not competing for the same operators or the same scale / form of retail development – one being a standalone foodstore to meet a localised need and the other seeking the creation of a large-format retail park with an almost sub-regional draw. There is no justification to delay determination of the New Courtwick Lane scheme so that it is determined at the same time as

⁵ Correspondence dated 4th June 2025



the Bodyshop scheme. There is no requirement under law for the applications to be determined at the same time.

Nevertheless, case law supports determining an application prior to another retail scheme being determined, where the local planning authority has undertaken a comparative assessment of the two schemes.

A simple comparison between the two schemes demonstrates that the Bodyshop scheme is substantially larger than the New Courtwick Lane scheme. This will lead to greater impact in terms of transport effects and the retail impact on neighbouring centres – as acknowledged by the submitted retail evidence⁶.

4 Summary

For the reasons identified, there is no requirement to delay the determination of the New Courtwick Lane scheme in order for both applications to be considered at the same time – as is being suggested by officers. The two schemes are not directly comparable and the consideration of the Bodyshop scheme, an entirely different scale of development, should not delay the determination of the New Courtwick Lane scheme.

The quantum of retail floorspace proposed by the Bodyshop scheme is more than 11,000 square metres (or over 500%) greater than that to be provided by the New Courtwick Lane scheme, which comprises a single foodstore of less than 2,000 square metres.

Case law has established that it can be a material consideration to consider multiple applications at the same time, but this is where there is a clear need to do so (e.g. comparable schemes). This is not the case when considering the pending retail schemes in Wick / Littlehampton. They are not 'rival schemes'. A simple comparison between the two schemes clearly indicates that these are fundamentally different. In addition, the much larger Bodyshop scheme raises wider planning issues and greater levels of retail impact. It would be entirely unreasonable to delay the determination of the New Courtwick Lane scheme.

In retail planning policy terms, the Local Planning Authority has sufficient evidence before them to understand the likely trading effects of the retail floorspace proposed. As such, it is possible to determine the application ahead of the much larger Bodyshop scheme. To do so would not be an error in law.

⁶ Retail Assessment undertaken by Freeths



We trust that this additional information and clarification is of assistance in the local authority's determination of the application. However, should you have any queries or wish to discuss any matter further please do not hesitate to contact us.

Yours sincerely,



Tim Rainbird
Senior Director

cc. Morgan Properties