



Department for  
Communities and  
Local Government

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LONDON  
EC4M 7WS

Our Ref: APP/G2815/V/12/2190175  
Your Ref: MFXB/95642.00002

11 June 2014

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77  
APPLICATION BY LXB RP (RUSHDEN) LIMITED  
LAND ADJACENT SKEW BRIDGE SKI SLOPE, NORTHAMPTON ROAD,  
RUSHDEN  
APPLICATION REF: EN/12/00010/FUL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Harold Stephens BA MPhil Dip TP MRTPI FRSA, who held a public local inquiry on 25-28 June, 2-5 July and 9-12 July 2013 into your client's hybrid planning application comprising: a full application for the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants, boathouse, together with proposals for access and an outline application for the erection of a hotel, crèche and leisure club with some matters reserved (appearance); plus removal of ski slope and associated levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop (application Ref. EN/12/00010/FUL dated 20 December 2011).
2. On 7 January 2013, the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, East Northamptonshire District Council ("the Council").

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that planning permission should be granted subject to conditions. For the reasons given below, the Secretary of State agrees with the Inspector's recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to the IR.

### **Procedural matters**

4. For the reasons set out in IR1.5, the Secretary of State agrees with the Inspector that no procedural unfairness arose as a consequence of the submission on the last day of the inquiry of a Unilateral Planning Obligation concerning the provision of an improved bus service (IR1.4-1.5).
5. The Secretary of State has had regard to correspondence submitted too late to be considered by the Inspector, as set out in Annex B to this letter. He has carefully considered these representations but, as they do not raise new matters that would affect his decision, he has not considered it necessary to circulate them to all parties. Furthermore, the Secretary of State wrote to the main inquiry parties on 10 March 2014, inviting comment on the Planning Guidance which was published on 6 March and on any material change in circumstances, fact or policy, which may have arisen since the close of the inquiry which the parties considered relevant. The responses received were circulated for further comment on 7 April. A list of the representations received is set out in Annex C to this letter. The Secretary of State has carefully considered these but is satisfied that they do not raise any new material considerations sufficient to affect the decision in this case. Copies of the representations listed in Annexes B and C can be made available on written request to the address at the foot of the first page of this letter.
6. The Secretary of State notes (IR1.12 and 8.2) that planning permission for a business park was granted in 2002 on the whole of the previously developed land, and that this permission, along with succeeding permissions which remain extant, include a pedestrian and cycle bridge across the A45 and a condition requiring an Access and Management Plan for the ski lake and its immediate environs.
7. The Secretary of State agrees with the Inspector that the Environmental Statement, in conjunction with the supplementary environmental information (as set out in IR1.22), meets the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and provides the data and information required to adequately assess the impacts on the environment of the proposed development (IR1.23).

### **Policy considerations**

8. In determining these applications, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004, which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the North Northamptonshire Core Spatial Strategy 2008 (NNJCS) and the saved policies of the East Northampton Local Plan (1996) (LP). The Secretary of State considers that the development plan policies most relevant to this case are those set out at IR1.26-1.31. He notes that the Minerals and Waste Core Strategy DPD identifies the application site as a "Sand and gravel safeguarding area" (Policy CS10); but agrees with the Inspector that, given that the principle of development on the site is already established through earlier consents, the site's current designation as a

Minerals Safeguarding Area under Policy CS10 is less relevant in this case (IR1.33).

9. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework); the associated Planning Guidance; and the Nene Valley Strategic Plan.
10. In determining this application, the Secretary of State has also had regard to the Emerging Draft North Northamptonshire Joint Core Strategy 2011-2031, which he notes envisages an enhanced role for Rushden (IR1.34), and the emerging Four Towns Plan (IR1.35). However, for the reasons given in IR8.6, he agrees with the Inspector that little weight can be afforded to these plans.

## **Main issues**

### **Development plan and sustainable development**

11. For the reasons in IR8.8-8.9, the Secretary of State agrees with the Inspector that the application is not in accordance with the NNJCS spatial strategy, particularly Policies 1 and 12 (IR8.9 and 8.13-8.14). However, he also agrees with the Inspector that there are other parts of the NNJCS with which the application is wholly in accordance, including The Vision for North Northamptonshire (IR8.10). He agrees with the Inspector that the development would assist in meeting the vision by delivering jobs for which there is a step-change requirement; delivering investment in services and facilities which would assist in making North Northamptonshire a “*more self-sufficient area*” and better able to meet the needs of the growing population in the south of that area; regenerating Rushden; and enhancing the environment of Rushden Lakes and the Nene Valley (IR8.10). He also agrees that the proposals accord with most of the objectives for realising the vision in the NNJCS, notably 1, 2, 3, 5, 6, 7, 8 and 9; and that the proposals are also in broad compliance with Policies 5, 8 and 13 (IR8.12).
12. The Secretary of State agrees with the Inspector that a founding principle of the NNJCS is to increase the self sufficiency of North Northamptonshire (IR8.11); and he notes that paragraph 3.11 of the NNJCS and Policy 12 expressly provide for applications to be considered on their merits against tests which recognise the importance of retaining expenditure there (IR8.11). The Secretary of State also agrees with the Inspector (IR8.15) that, for the reasons in IR8.16-8.29, Policies 1 and 2 of the NNJCS are out of date; and, for the reasons in IR8.22-8.28, that Policy 12 of the NNJCS is also out of date (IR8.22). The Secretary of State also agrees with the Inspector that the NNJCS has failed to deliver the growth necessary to enhance the self sufficiency of the area (IR8.30); and that, in so far as the adopted LP contains/relies on the allocation of the application site as an employment commitment, it is also not up-to-date. The Secretary of State also notes that the North Northamptonshire Joint Planning Unit (NNJPU) has not been able to agree a retail strategy for the emerging NNJCS (IR8.32-8.33).

### ***Conclusion on development plan***

13. For the reasons set out above and in IR8.34, the Secretary of State agrees with the Inspector that, while the proposal would accord with a number of

development plan policies and objectives, it would not wholly accord with the NNJCS spatial strategy and therefore would not be in accordance with the development plan as a whole. However, he also agrees with the Inspector that the key policies and provisions in the adopted development plan are out-of-date; and that, applying paragraphs 18 to 219 of the Framework as a whole, the proposal amounts to sustainable development which, as local people have themselves indicated, would achieve positive improvements in the quality of the built and natural environment and in their quality of life.

### **Vitality of town centres**

14. For the reasons given in IR8.37-8.42, the Secretary of State agrees with the Inspector's conclusions on the need and scale tests.

### *Sequential test*

15. The Secretary of State agrees with the Inspector that the application site is out of centre and that the sequential test would be satisfied if "suitable [in or edge of centre] sites are not available", albeit that that involves consideration of the question of "flexibility" (IR8.43). Furthermore, having regard to the arguments put forward by the Inspector at IR8.44-8.48, the Secretary of State agrees with his conclusion at IR8.48 that the sequential test relates entirely to the application proposal and whether it can be accommodated on an actual alternative site (eg a town centre site). The Secretary of State agrees with the Inspector's conclusions on the sequential test in IR8.48. He notes that the Framework requires developers to demonstrate flexibility on issues such as format and scale (IR8.49); and that the new Planning Guidance asks decision-makers to consider whether there is scope for flexibility in the format and/or scale of a proposal, making it clear that it is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
16. Having regard to this, and for the reasons in IR8.50, the Secretary of State agrees with the Inspector that the applicant has demonstrated flexibility on format and scale and that the whole scheme could not realistically be moved to another location. He agrees with the Inspector that there is no requirement to disaggregate (IR8.47 and 8.51) and, for the reasons in IR8.51, he also agrees that it would be inappropriate for a significant part of the Rushden Lakes scheme to be located in Northampton (8.51).
17. For the reasons in IR8.52-8.53, the Secretary of State agrees with the Inspector (IR8.54) that it is sensible to identify an area of search for sequentially superior sites encompassing zones 9-11; and, for the reasons in IR8.55-8.57, he agrees (IR8.58) that there is no suitable and available sequentially superior site.

### *Impact test*

18. The Secretary of State agrees with the Inspector's conclusions in IR8.59 with regard to the impact test.

*(i) Existing, committed and planned public and private investment*

19. For the reasons in IR8.61, the Secretary of State agrees with the Inspector that there is no evidence that any planned investment in Wellingborough is being actively progressed, that any plans have reached further than embryonic stage, or that any developer is committed. The Secretary of State has had regard to GL Hearn's letter of 28 March on behalf of Kennedy Wilson, the owners of the Swansgate Shopping Centre in Wellingborough (as listed at Annex C), but he does not consider this suggests the situation regarding planned investment in Wellingborough has changed since the close of the inquiry. He also notes that Wellingborough Chamber of Commerce and Wellingborough Borough Council fully support the Rushden Lakes proposal (IR8.61).
20. With regard to Northampton, having carefully considered the Inspector's reasoning and conclusions regarding the Grosvenor Centre in IR8.62-8.65, the Secretary of State agrees with his conclusion in IR8.66 and, like the Inspector, is not persuaded that a grant of planning permission at Rushden Lakes would preclude future investment at the Grosvenor Centre on the grounds of viability (IR8.66).
21. For the reasons in IR8.67, and having regard to Corby Borough Council's letter of 25 March (as listed in Annex C), the Secretary of State agrees with the Inspector that there is no compelling evidence of any significant adverse effect on planned investment in Corby; and he notes that all the retail impact analysis demonstrates that the measured effect on Corby is very small. For the reasons given at IR8.68, and having regard to Maples Teesdale's letters of 31 March and 14 April 2014 on behalf of PR Kettering Ltd (as listed in Annex C), the Secretary of State also agrees with the Inspector that, although there is some policy support for improvements in Kettering, there is no evidence of any scheme being progressed for comprehensive redevelopment as set out in the Area Action Plan or that the situation regarding planned investment there has changed significantly since the close of the inquiry.

*(ii) Impact on town centre vitality and viability*

22. For the reasons in IR8.70, the Secretary of State agrees with the Inspector that it is unlikely that substantial numbers of people living in Northampton and beyond would be drawn to Rushden Lakes. He also agrees (IR8.71) that, at present, there is significant leakage of comparison goods expenditure from Rushden, its home zone and all the other zones in North Northamptonshire; that Rushden and the other towns in North Northamptonshire are failing to provide sufficient choice and quality in their comparison goods offer; and that their residents travel further afield for comparison goods shopping counter to the fundamental strategic objective of the NNJCS to retain more of such expenditure within North Northamptonshire. The Secretary of State also agrees with the Inspector that, for the reasons given in IR8.72, this outflow of expenditure results in an overall disbenefit to the local community.
23. The Secretary of State also agrees with the Inspector (IR8.73) that it is relevant to note that, over half way through the NNJCS period, the growth earmarked for Wellingborough has not been achieved and that, in the context for considering the retail impact of Rushden Lakes, Terraces B and C are no

larger than the amount of floorspace that the NNJCS allocates to Wellingborough to increase retention of trade within North Northamptonshire.

24. For the reasons in IR8.74-8.79, the Secretary of State agrees with the Inspector that the Local Authority Consortium's estimated turnover is too high to be realistic (IR8.79); and that its judgement is based on disproportionate differentials between town centres and out of centre retail parks (IR8.82). The Secretary of State also agrees with the Inspector that, for the reasons given at IR 8.86, the effect on Corby, Kettering and Northampton town centres would not be significant (IR8.86), and that, although the effect on Wellingborough is more finely balanced, Wellingborough Borough Council has not withheld its support for Rushden Lakes on the grounds of adverse retail impact.

*Conclusion on vitality of town centres*

25. For the reasons set out above, the Secretary of State agrees with the Inspector's conclusion at IR8.87 that consideration of the terms of the Framework and the Planning Guidance does not indicate that planning permission should be refused in this case (IR8.87).

**Sustainable transport and accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car**

26. For the reasons in IR8.88–8.92, the Secretary of State agrees with the Inspector that, in terms of paragraph 34 of the Framework, the decision maker should look to what is practicable in the particular circumstances of the site and its location (IR8.90); that the sequential test in paragraph 24 of the Framework contains a preference for well-connected sites, not an absolute requirement (IR8.91); and that there is a very full Statement of Common Ground reflecting extensive agreement on transport matters (IR8.92).
27. The Secretary of State agrees with the Inspector that the new footbridge would reconnect the town with the Lakes, joining together the employment, residential and retail uses and that the appellant's 2km walking catchment area is reasonable (IR8.93). He also notes that the Ramblers Association has welcomed the improved pedestrian and cyclist access (IR8.95); and he agrees that cycling use would increase with improved connections planned not just by the appellant but also in conjunction with the WEAST development at Wellingborough and the continuing improvements planned along the Nene Valley (IR8.96).
28. On the basis of the evidence before him, and for the reasons in IR8.99, the Secretary of State agrees with the Inspector that the application site is not as accessible as might be expected for a development of its size and type, although the enhancements to bus provision proposed by the appellant would significantly improve accessibility (IR8.99). He agrees with the Inspector that it is necessary to provide a new half hourly bus service seven days a week as provided in the Unilateral Planning Obligation as this is more likely to activate modal shift from cars to public transport (IR8.99). He notes that Northamptonshire County Council expects the new bus service to continue long term and to be self-funding; and he agrees with the Inspector that, with the new bus service provision in place, there would be a strong linkage both to the

town centre and to a significant number of towns within the local area - providing an appropriate and sustainable alternative to the use of the private car in accordance with the aspirations of national planning policy (IR8.100).

29. The Secretary of State agrees with the Inspector that the proposed improvements to the Skew Bridge Roundabout would be beneficial for users of the road network (IR8.101).
30. For the reasons in IR8.102, the Secretary of State agrees with the Inspector that the proposals would bring significant benefits in terms of trip reduction and carbon saving (IR8.102).
31. For the reasons set out above, the Secretary of State agrees with the Inspector (IR8.103) that the proposals would be consistent with Government policy for promoting more sustainable transport, as set out in the Framework.

### **Protected species and biodiversity**

32. For the reasons in IR8.105-8.111, and having particular regard to the views of Natural England, the Secretary of State agrees with the Inspector that the proposed development would bring significant nature conservation benefits.

### **Other benefits**

33. The Secretary of State agrees with the Inspector (IR8.112) that the proposal would result in significant tourism and recreation benefits (IR8.113-8.114); and would also create a significant number of jobs (IR8.115-8.116). He also notes (IR8.117) that there is considerable public support for the proposals (IR8.117); and he agrees with the Inspector that the proposed layout of the development would maximise the enjoyment of the Lakes.

### **The planning balance**

34. Having carefully considered the Inspector's analysis and comments, the Secretary of State agrees that a number of benefits would result from the proposed development, including the creation of jobs and the provision of the boathouse and recreational access to the Lakes (IR8.130). He agrees with the Inspector that these are important community benefits and that the boathouse would contribute to the development of tourism in the Nene Valley (IR8.130). He notes that the Wildlife Trust has confirmed that its involvement would secure improved opportunities for bird-watching, walking, angling and boating, and that access would be managed and provided through the land it manages to link up with the greenways of the wider Nene Valley (IR8.130). He agrees with the Inspector that this would all accord with Policy 5 of the NNJCS and the Nene Valley Strategic Plan (IR8.130).
35. The Secretary of State agrees with the Inspector that the other benefits of the proposed development include: the regeneration of the previously developed site to the benefit of the self-sufficiency of the town and surrounding areas; the provision of jobs and benefit to the local economy; the enhancement of the environment and ecological benefit; the provision of leisure and recreation facilities; enhanced tourist facilities; connection of the town with the countryside via the new pedestrian and cycle links, including the provision of a bridge over

the A45; considerable vehicle mileage savings by access to a quality local shopping destination in circumstances where currently long journeys are needed, thereby minimising the need to travel; and improved public transport provision (IR8.132). However, he also agrees with the Inspector that the application site is not as accessible as might be expected for a development of its size and type, while also agreeing that the proposed enhancements to bus provision would significantly improve accessibility (IR8.99).

36. The Secretary of State agrees with the Inspector that the applicant has demonstrated flexibility on format and scale (IR8.50); that the whole scheme could not realistically be moved to another location (IR8.50); and that there is no suitable and available sequentially superior site (IR8.58). He also agrees that at present there is significant leakage of comparison goods expenditure from Rushden, its home zone and all the other zones in North Northamptonshire; that Rushden and the other towns in North Northamptonshire are failing to provide sufficient choice and quality in their comparison goods offer, whether in centre or edge/out of centre (IR8.71). He also agrees that, for most of the town centres, the impact of the proposed development on their vitality and viability would not be significant, although in the case of Wellingborough the effect would be more finely balanced (IR8.86). For the reasons set out in IR8.131, he agrees with the Inspector that the proposal is sustainable development and, like the Inspector, he ascribes significant weight to this in the planning balance.
37. While the proposal would accord with a number of development plan policies and objectives, the Secretary of State agrees that it would not wholly accord with the NNJCS spatial strategy, particularly Policies 1 and 12, and therefore would not be in accordance with the development plan as a whole (IR8.34). However, he agrees with the Inspector that the key policies and provisions in the adopted development plan are out-of-date (IR8.34); and that the proposal would ensure a better life for the people of Rushden and North Northamptonshire (IR8.34). He is satisfied that the failure to accord with the development plan as a whole would not significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework taken as a whole.

### **Conditions and planning obligations**

38. The Secretary of State has considered the annex of conditions attached to the IR and the reasons for the suggested conditions set out at IR8.118-8-120. He is satisfied that the proposed conditions are reasonable and necessary and meet the tests of paragraph 206 of the Framework.
39. The Secretary of State agrees with the Inspector's reasoning and conclusions on the Planning Obligation Agreement and the Unilateral Planning Obligation in IR8.121-8.129. For the reasons set out in IR8.129, he agrees with the Inspector that it is necessary to provide a new half hourly bus service seven days a week as provided in the Unilateral Planning Obligation. Overall, he agrees with the Inspector that the provisions in the Planning Obligation Agreement and the Unilateral Planning obligation are necessary and meet the tests of Regulation 122 of the CIL Regulations 2010 and paragraph 204 of the Framework (IR8.129).

## **Overall conclusions**

40. The Secretary of State concludes that while the proposal would accord with a number of development plan policies and objectives it would not wholly accord with the NNJCS spatial strategy, particularly Policies 1 and 12, and therefore would not be in accordance with the development plan as a whole. However, he considers that the key policies and provisions in the adopted development plan are out-of-date. He also concludes that the benefits of the proposed development are not clearly outweighed by adverse impacts, and that there are no other material considerations which indicate that planning permission should be refused.

## **Formal Decision**

41. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants full planning permission for: the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants, boathouse, together with proposals for access and outline planning permission for the erection of a hotel, crèche and leisure club with some matters reserved (appearance); plus removal of ski slope and associated levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop (application Ref. EN/12/00010/FUL dated 20 December 2011) subject to the conditions listed at Annex A to this letter.
42. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.
43. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

## **Right to challenge the decision**

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
45. A copy of this letter has been sent to East Northamptonshire District Council, Northampton Borough Council, Kettering Borough Council, Corby Borough Council, Wellingborough Council, Deloittes, Peter Bone MP, Derek Clark MEP, Philip Hollobone MP, Andy Sawford MP, Michael Ellis MP, and Brian Binley MP. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

**Jean Nowak**

Authorised by Secretary of State to sign in that behalf

## **Annex A**

### **CONDITIONS**

#### **Time limits**

- 1) Application for approval of details of the appearance (hereinafter called “the reserved matters”) in relation to the part of the site edged yellow on Drawing 2654-70 Rev A , (hereinafter called “the outline development”) must be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 2) The outline development shall be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development of the site (other than the outline development) for which detailed permission is hereby granted shall be begun before the expiration of three years from the date of this permission.
- 4) The application for the approval of the reserved matters shall be submitted to the Local Planning Authority before the expiry of 3 years from the date of this permission.

#### **Plans, Drawings and Documents**

- 5) The development hereby permitted shall not be carried out except in accordance with the following approved drawings and plans:

Plan 1 (Rev A) Site Plan 1:5000; Plan 2: Blue Land Site Location Plan 1:12500; Plan 3: General Location 1:2500; 10714-C106-D5 Levels Strategy Plan (FRA); 10714-C120-D2 Existing Levels (FRA); 2654-50 Rev B Proposed site plan; 2654-51 Garden Centre Elevations; 2654-52 Garden Centre Section; 2654-53 Retail Terrace A Elevations; 2654-54 Retail Terrace B Elevations; 2654-55 Retail Terrace C Elevations; 2654-56 Retail Detail Elevations; 2654-57 Anchor Store Typical Section; 2654-58 Retail Terrace Typical Section; 2654-59 Retail Terrace C Elevation in context; 2654-60 Restaurant Plan, Elevations, Section; 2654-61 Drive-thru Plan, Elevations, Section; 2654-62 Visitor Centre Floor Plan; 2654-63 Visitor Centre Elevations; 2654-64 Rev A Boathouse Floor Plan; 2654-65 Boathouse Elevations; 2654-66 Gatehouse Building Floor Plan; 2654-67 Gatehouse Building Elevations; 2654-70 Rev A Parts subject to Outline Application; 2654-71 Garden Centre Plan; 2654-72 Retail Terrace A Plans; 2654-73 Retail Terrace B Plans; 2654-74 Retail Terrace C Plans;

- 6) All reserved matters and other schemes and details that are required to be submitted pursuant to the conditions attached to this planning permission shall accord substantially with: the submitted Environment Statement [dated 20.12.11]; Environment Statement Addendum (June 2012); Flood Risk Assessment [version F4] [dated May 2012]; Transport Assessment [dated Dec 2011]; Addendum to TA - Highways Agency (March 2012); Addendum

to TA – NCC (March 2012); Design and Access Statement (amended) with Addendum; Waste Management Strategy and Waste Audit.

- 7) Development shall not commence until a delivery strategy and phasing plan have been submitted to and approved in writing by the Local Planning Authority for the development. The development shall be carried out in accordance with the approved delivery strategy and phasing plan.
- 8) The development floorspace shall not exceed:
  - (a) 43,289 square metres gross internal floorspace (inclusive of the external sales and display space associated with the garden centre) within Use Class A1 of the Town and Country Planning Use Classes Order
  - (b) 26,747 square metres net sales area (of which no more than 929 sqm shall be used for the sale of convenience goods)
  - (c) a 112 bed hotel, a creche (181 square metres gross internal floorspace) and a Leisure Club (1,456 square metres gross internal floorspace)
  - (d) two lakeside restaurants (each being 464 square metres gross internal floorspace) and a drive-thru restaurant/coffee shop (186 square metres gross internal floorspace)
  - (e) a lakeside visitor centre and a boathouse (each being 289 square metres gross internal floorspace).
  - (f) 12 metres in height from finished floor level to parapet level (and 14m including rooftop plant enclosure).

### **Archaeology**

- 9) Development shall not take place on any phase approved under condition 7 of this permission until a scheme for the implementation of a programme of archaeological recording has been submitted to and approved in writing by the Local Planning Authority for that phase. The recording must be carried out by an appropriately qualified and experienced archaeological consultant or organisation. The scheme shall be implemented before construction commences at the site on any phase approved by condition 7 of this permission.

### **Drainage**

- 10) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No building shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.

- 11) No infiltration of surface water into the ground shall be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
- 12) Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water from parking areas and vehicle manoeuvring areas shall be passed through an oil separator designed and constructed to have a capacity and details compatible with the site being drained or other approved pollution prevention device, e.g. porous paving. Roof water shall not pass through the interceptor(s).
- 13) No development shall take place until a detailed surface water drainage scheme for the site, including phasing, based on the submitted drainage strategy has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 1% critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. Any attenuation required shall include an allowance for climate change. The scheme shall subsequently be implemented for each phase of the site in accordance with the approved details and accompanying phasing plan. The scheme shall also include:
  - (a) Demonstration that the NPPF and CIRIA hierarchy of drainage has been followed
  - (b) Detailed surface water design drawings and supporting calculations
  - (c) Consideration of overland flood flows
  - (d) Overland floodwater should be routed away from vulnerable areas.
- 14) No development shall take place in any phase of the development under condition 7 until a detailed scheme for the ownership and maintenance of the surface water drainage assets, for the lifetime of the development, relating to that phase has been submitted to and approved in writing by the Local Planning Authority and the maintenance plan shall be carried out in full thereafter.

## **Highways**

- 15) No development hereby permitted shall take place until details of the following schemes have been submitted to and approved in writing by the Local Planning Authority in consultation with Northamptonshire County Council (acting as Local Highway Authority) and the Highways Agency:
  - (a) details of the form of the junctions/links at:
    - (i) the eastern end of the link road (which links Crown Way and Northampton Road) at its junction with Northampton Road;

- (ii) the Northampton Road/Brindley Close junction; and
  - (iii) the Northampton Road exit from the A45 Skewbridge roundabout
- (b) details of a publicly adoptable pedestrian/cycle bridge over the A45 dual carriageway connecting the A5001 Northampton Road, Rushden with the new adoptable site access road as shown on drawing 110277/SK/46 Rev A
- (c) details of the improvements to the A45/Northampton Road/Crown Way junction (Skew bridge) as shown on drawing 110277/SK/46 Rev A
- (d) details of improvements to the footways of the A5001 Northampton Road and the U35247 Crown Way, Rushden to form a shared use footway/cycle track with appropriate dropped crossings between the proposed Toucan crossing on Northampton Road and the East Northamptonshire Greenway access off Crown Way, Rushden

and no part of the development hereby permitted shall be brought into use until the schemes listed at (a) to (d) have been completed in accordance with the approved plans. The works shall be retained as approved thereafter.

### **Travel Plans**

- 16) The development hereby permitted shall be operated at all times in accordance with the submitted Draft Framework Travel Plan forming part of the Transportation Assessment.
- 17) No unit shall be occupied until a Travel Plan for that unit has been submitted to and approved in writing by the Local Planning Authority in accordance with the Draft Framework Travel Plan forming part of the Transportation Assessment. The unit shall thereafter be operated in accordance with the approved travel plan and agreed actions under condition 19.
- 18) The development shall not be occupied until the expiry of 3 months from the date on which notice has been given in writing to the Local Planning Authority and Northamptonshire County Council (as Local Highway Authority) of the appointment of a Travel Plan Manager.
- 19) An annual Travel Plan review, identifying performance against the objectives of the Draft Framework Travel Plan and Travel Plans approved under condition 17, shall be submitted in writing to the Local Planning Authority every year for 5 years, beginning 12 months from first retail occupation, to be approved in writing. Any agreed actions shall be implemented by the Travel Plan Manager.

- 20) If the last Travel Plan review under condition 19 identifies that the targets in the approved Draft Framework Travel Plan are not being achieved, the Travel Plan review period under condition 19 shall be extended by a further 12 months, during which the Travel Plan Manager will work with the Local Planning Authority to agree measures that will secure improved performance against those targets and the timescale for implementing and monitoring them. The agreed measures shall be implemented by the Travel Plan Manager thereafter.

### **Landscaping**

- 21) No development shall take place until a landscaping scheme for the site (including boundary treatment) has been submitted to and approved in writing by the Local Planning Authority. This landscaping scheme shall be implemented in accordance with the approved details in the first planting season following the occupation of the development. Any trees or plants which within a period of five years of planting die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species (or as otherwise agreed in writing by the Local Planning Authority). The submitted landscaping scheme shall include details of how the landscaping will be phased to reflect the phasing of development under condition 7).

### **Miscellaneous**

- 22) No development shall take place until full details of the repair works to the "Bailey Bridge" and the programming of such works shall be submitted to and approved by the Local Planning Authority in writing. The repair works shall be completed before any part of the development hereby permitted is brought into use.
- 23) An easement of 3 metres should be provided either side of the pipeline as shown on the Gas Main Survey Drawing 17469 dated August 2012. At no time shall any non demountable buildings or structures be erected within this corridor.
- 24) No development shall take place until a scheme and timetable for the provision of 12 fire hydrants has been submitted to and approved in writing by the Local Planning Authority. The provision of fire hydrants shall be made in accordance with the approved scheme and timetable and retained thereafter.

### **Biodiversity**

- 25) No ground clearance works, tree felling, or vegetation removal shall take place during the main bird breeding season (April – June inclusive). If any such works are scheduled for March, July or August, a suitably qualified ecologist must carry out a comprehensive search of the affected area for nesting birds before the works commence. If active nests are found, ground clearance, tree felling or vegetation clearance around the nest (including a buffer area determined by the ecologist), shall not be permitted until the

breeding attempt has ended as confirmed by the ecologist in writing to the Local Planning Authority.

- 26) No ground clearance works shall be undertaken within 100 metres of the heronry in the SSSI shown on plan GIS034A Ecological Constraints Drawing between the period January – June each year. If any such works are scheduled for July and August a suitably qualified ecologist must carry out a comprehensive search of the affected area for nesting herons before the works commence. If active nests are found, ground clearance, tree felling or vegetation clearance within 100 metres of the heronry shall not be permitted until the breeding attempt has ended as confirmed by the ecologist in writing.
- 27) The Skew Bridge Lake contained in the application site shall not be used by motorised craft at anytime except for safety boats. Within the Skew Bridge Lake, boating shall be limited to the area shaded green shown on plan GIS034A Ecological Constraints Drawing between the 1st November and 31st March in any year.
- 28) No watercraft shall be permitted in a 30 metre watercraft exclusion zone around the western island on Skew Bridge Lake shown on plan GIS034A Ecological Constraints Drawing either during the construction phase or the ongoing operational phase of the development, to avoid disturbance to places of rest and shelter used by otters. No boating activity shall be permitted on Delta Lake, to avoid disturbance of the bird interest of the SSSI/SPA/Ramsar site.
- 29) No development shall take place until a detailed Access and Habitat Management Plan related to Skew Bridge Lake and Delta Pit Lake, (based on the submitted outline access and habitat management plan) including access to the land around these lakes, has been submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The approved Plan shall be implemented before any part of the development becomes operational and implemented and maintained thereafter in accordance with the approved details.
- 30) No development shall take place until a detailed plan of the measures to be taken to avoid harm to reptiles during the development and to provide appropriate mitigation measures shall be submitted to and approved in writing by the Local Planning Authority.
- 31) A clerk of works with appropriate ecological qualifications and experience (as agreed with the Local Planning Authority) shall be appointed to ensure development is undertaken in compliance with the Construction and Environment Management Plan and Access and Habitat Management Plan. The clerk of works shall be in attendance at the site during all working hours during which construction is being carried out.
- 32) No development shall take place until a list of construction operations that could cause disturbance to the wintering bird interest of the SSSI/SPA/Ramsar site has been provided to and approved in writing by the

Local Planning Authority in consultation with Natural England. Such construction operations shall not be undertaken during the October to March (inclusive) period without prior agreement in writing by the Local Planning Authority (in consultation with Natural England) of suitable methodologies and mitigation to minimise disturbance to the wintering bird interest of the SSSI/SPA/Ramsar site and the subsequent implementation of agreed measures.

- 33) From the commencement of development there will be an annual monitoring survey in the area covered by the Access and Habitat Management Plan for reptiles, bats, otters, wintering and breeding birds which will continue on an annual basis until 5 years after the completion of all the development hereby permitted. The results of the monitoring survey shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Natural England. Should the monitoring survey show any significant decline in the populations on any of the above species due to the development then an additional management action plan to rectify the position shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The approved additional management action plan shall be implemented in full from the date of approval.

### **Lighting**

- 34) Before the commencement of development a scheme for the external lighting of the development (both for the construction and operational phases) shall be submitted to and approved in writing by the Local Planning Authority, to include a layout plan with beam orientation and schedule of equipment in the design (luminaire type; mounting height; aiming angles, luminaire profiles, a lighting contour map, and details of the timer controls including proposed hours of use) on the basis that:
- (a) all external lighting shall be of a type, fixed in a location and directed in a manner that avoids glare being directed towards the designated areas of wildlife especially to the SSSI and SPA/Ramsar Site;
  - (b) light trespass shall not exceed a level of 5 Lux beyond 5 metres from the boundary of the site;
  - (c) the means of illumination of the subject of this consent shall not be of a flashing or intermittent nature.

The approved scheme shall be installed, maintained and operated in accordance with the approved details. There shall be no other external lighting at the development other than as so approved.

### **Contamination**

- 35) Development shall not commence on any phase approved under condition 7 of this permission until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the

development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.

- 36) No development shall take place until a detailed scheme has been submitted to and approved in writing by the Local Planning Authority specifying the provisions to be made to protect the site from landfill gas arising from the development. No part of the development shall be brought into use until the approved scheme has been implemented and it shall be maintained thereafter.

### **Waste Management**

- 37) No occupation shall take place until a waste management strategy for the development has been submitted to and approved in writing by the Local Planning Authority. The strategy shall provide details (including accompanying layout and design plans) of the following:
- (a) responsible person (including contact details);
  - (b) description of the development (proposed buildings, site area, curtilage, future use, and occupancy);
  - (c) estimation of the type and quantity of wastes anticipated to be produced during occupation of the development;
  - (d) identification of appropriate neighbourhood waste management design features (internal and /or external) and facilities;
  - (e) how adequate space and access provisions for waste management features and facilities will be provided and maintained;
  - (f) neighbourhood waste management facility capacity;
  - (g) how the provision of facilities and design features
    - (i) complement and contribute towards existing waste management infrastructure network and sustainable waste management, and

- (ii) the provision made for ongoing facility management and maintenance, including the collection and use of recycled and composted materials.

The development shall be carried out in accordance with the approved strategy.

### **Flood Risk**

- 38) The development hereby permitted permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (dated May 2012, Rev F4) undertaken by Campbell Reith, including the following mitigation measures detailed within the FRA:
  - (a) Provision of compensatory flood storage as set out on Drawing No. C102 (Rev D9) and Drawing No. C103 (Rev D8);
  - (b) Finished floor levels are set no lower than 40.20 m above Ordnance Datum (AOD).

The mitigation measures for each phase of the development under condition 7 shall be fully implemented prior to occupation of such phase, and subsequently operated and maintained in accordance with the phasing arrangements set out within the FRA, or within any other period as may subsequently be approved, in writing, by the Local Planning Authority.

- 39) No development shall be carried out in the area of the site identified as pre-development flood zones 2 and 3 as shown in the approved FRA until a scheme for the phasing of the floodplain compensation has been submitted to and approved in writing by the Local Planning Authority. The floodplain compensation scheme as shown on the FRA Drawing No. C102 (Rev D9) and Drawing No. C103 (Rev D8) shall be carried out in accordance with the approved phasing plan.
- 40) No development shall take place in each phase of the development under condition 7 until a detailed scheme for the maintenance of the areas of floodplain compensation, for the lifetime of the development, relating to that phase has been submitted to and approved in writing by the Local Planning Authority. The floodplain compensation shall be maintained in accordance with the approved details thereafter.

### **Construction and Environment Management**

- 41) No development shall take place on any phase approved under condition 7 of this permission until a Construction and Environment Management Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction phase on any phase approved under condition 7 of this permission. The statement shall provide for:

- (a) The overall strategy for managing environmental impacts which are likely to arise during the construction phase
- (b) The parking of site operatives and visitors vehicles
- (c) Loading and unloading of plant and materials
- (d) Management of construction traffic and access/haul routes
- (e) Condition surveys and maintenance of all access/haul routes
- (f) Storage of plant and materials used in constructing the development
- (g) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
- (h) Wheel cleaning facilities
- (i) Measures to control the emission of water pollution, sediment, dust and dirt during construction
- (j) A scheme for recycling/disposing of waste from demolition and construction works
- (k) A signage strategy for construction traffic.

#### **Unit size, subdivision and mezzanines**

- 42) The anchor unit 'B8' in Terrace B as identified on Plan 2654-50 Rev B shall not exceed a maximum floor area of 5,574 sqm gross internal area (including mezzanine floor area).
- 43) The anchor unit 'C1' in Terrace C as identified on Plan 2654-50 Rev B shall not exceed a maximum floor area of 5,574sqm gross internal area (including mezzanine floor area).
- 44) None of the units shown within Terraces A, B or C or the Garden Centre identified on Plan 2654-50 Rev B shall be amalgamated with other units (or subdivided to form separate units).
- 45) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no mezzanine or other form of internal floor to create a first floor level shall be constructed in Terrace A or the Garden Centre as shown on Plan 2654-50 Rev B.

## **Range of goods**

- 46) Excluding Unit B8 and Unit C1 in Terrace B and Terrace C as identified on Plan 2654-50 Rev B:
- (a) no more than 4,183 sqm gross internal ground floor area shall be occupied by retailers whose operation is predominantly the sale of clothing and footwear (but not so as to restrict the sale of sports clothing and footwear)
  - (b) prior to the occupation of any retail unit notice must be given to the Local Planning Authority in writing identifying the retailer and the predominant nature of the goods proposed to be sold, and the total internal ground floor area which will, upon occupation, then be occupied by retailers whose operation is predominantly the sale of clothing and footwear (not including sports clothing and footwear)
- 47) Notwithstanding the provisions of the Town and County Planning (Use Classes) Order 1987 (as amended), or any Order revoking and re-enacting that Order, the following shall apply
- (a) The use of the Garden Centre and Retail Terrace A hereby approved shown on Plan No. 2654-50 rev B shall not be used for the sale of goods and services other than the following:  
  
Core Garden Centre Goods and Services including:
    - (i) Good and services related to gardens and gardening;
    - (ii) Horticultural products, trees, plants, shrubs, house plants and flowers of any type;
    - (iii) Garden equipment, tools and accessories;
    - (iv) Barbeques and their accessories;
    - (v) Outdoor garden furniture;
    - (vi) Sheds, garden buildings and outdoor garden play equipment;
    - (vii) Fencing, trellis and landscaping materials;
    - (viii) Conservatories;
    - (ix) Conservatory furniture, furnishing and accessories;
    - (x) Swimming pools and associated equipment;
    - (xi) Aquatics, water garden equipment and their accessories;

(xii) Books – including gardening, leisure, hobby, travel, sports and coffee table books and other literature other than fiction;

(xiii) Soft furnishings;

(xiv) Restaurant, coffee shop and children's play area

Non-Core Garden Centre Goods and Services including:

(xv) Pictures, frames and prints;

(xvi) Pets, pet accessories, pet care and advice;

(xvii) Hobbies, toys and crafts;

(xviii) Baskets, wicker work and country crafts;

(xix) Christmas decorations, trees and gifts;

(xx) China, glass and gifts;

(xxi) Home table top items and kitchen accessories;

(xxii) Outdoor and country pursuits and equipment e.g. fishing, equestrian, hiking, climbing etc;

(xxiii) Camping equipment and supplies;

(xxiv) Outdoor clothing and footwear;

(b) Within the Garden Centre hereby approved shown hatched in green on Plan No. 2654-50 rev B, the areas identified as 'Outside Plant Area' and 'Covered Plan Sales' shall not be used other than as the plant and external sales and display area for the Garden Centre. No more than 50% of the internal sales floorspace of the Garden Centre building shall be used for the sale of Non-Core Garden Centre Goods and Services.

## **Sustainability**

48) No building works shall start on any building until a scheme detailing measures to be incorporated into that building so as to achieve at least the Building Research Establishment (BREEAM) rating "very good" as set out in the Sustainable Design and Energy Statement December 2011 shall be submitted to and approved by the Local Planning Authority in writing. A post construction BREEAM assessment/report shall be submitted to and approved in writing by the Local Planning Authority, no later than 6 months after first occupation of each building, as constructed, to confirm the performance of that building against the BREEAM "very good" rating (including any necessary measures to ensure that each building secures

BREEAM "very good" rating). The buildings shall be operated in accordance with the approved details thereafter.

- 49) No development shall take place until a Low Zero Carbon (LZC) Implementation Strategy has been submitted to and approved in writing by the Local Planning Authority. The submitted strategy shall be prepared by an independent energy specialist to demonstrate a combination of LZC energy sources for the development in accordance with the Energy Statement dated Nov 2011, in order to achieve a target of meeting at least 30% of the demand for energy on site. Reasons for excluding potential technologies should be given including technical and economic viability assessments supporting actual target if less than 30%. The development shall be implemented and operated in accordance with the approved strategy.

## Annex B

**Correspondence submitted after the close of the inquiry or too late to be considered by the Inspector**

<b>Correspondent</b>	<b>Date</b>
Alison Reeves	8 July 2013
Graham Dilley	13 July 2013
Mike Lee	17 July 2013
Allan Thomas	18 July 2013
Steven Tuttle	18 July 2013
Vicki Kempson	19 July 2013
Julie Millington	19 July 2013
Kate Ilott	21 July 2013
Brian Capell	23 July 2013
Zoe Withnall	24 July 2013
Richard Poluter – Shrink Polymer Systems UK	29 July 2013
Margaret Gudz	29 July 2013
Peter Bone MP (on behalf of Brian Capell)	7 August 2013
Helen Danzig – Yes2Rushden lakes	five undated letters - received 27 September, 21 November, and (two) 26 November 2013
Timothy Collier	Undated – received 15 October 2013
Alan Piggot - Wellingtonborough Chamber of Commerce	26 November 2013
Peter Bone MP and Andy Sawyer MP	29 November 2013
David Jenney – Rushden Sea Cadets, Chele Heights – Nene Valley Scouts, and Maurice Weight – Marine Volunteer Service Rushden	29 November 2013
Rushden Town Council (Sarah Peacock) and Irthlingborough Town Council	Undated letter and letter dated November - received 2 December 2013
Higham Ferrers Town Council, Chelveston-cum Caldecott Parish Council, Irchester Parish Council, Irsham Parish Council and Little Harrowden Parish Council	2 December 2013
Lloyd Cattell	4 December 2013
David Oliver, and Councillor Steven North - East Northamptonshire Council	6 December 2013
Lorna Wiltshire - Rushden Town Centre Partnership and	7 December 2013

Adrian House - Rushden Chamber of Commerce	
Raunds Town Council, Swanwick Parish Council and Thrapston Town Council	10 December 2013
Brian Binley MP, Michael Ellis MP and Cllr David Mackintosh - Northampton Borough Council	10 January 2014
Roy Pinnock - Dentons	21 January 2014
John Adams - Deloitte	7 February 2014
S P Boyes Northampton Borough Council	10 February 2014
Roy Pinnock - Dentons	13 February 2014
Vanetta Peck	14 February 2014
Jayne Clayton	14 February 2014
John Percival	24 February 2014
John Adams - Deloitte	25 February 2014
Sue Bridge – Northampton Borough Council	27 February 2014
Kevin Steel	27 February 2014
Ursula Hanzlik	5 March 2014
Richard Howlett	12 March 2014
Mark Jones – Wellingborough Traders Group	14 March 2014
R J Reynolds	16 March 2014
Brenda Sowden	20 March, and 8 and 22 April 2014
John Percival	24 March 2014
Simon Moore	24 March 2014
Avril Chick	25 March 2014
Eileen Maddison	25 March 2014
G M Harris	11 April 2014
Anne Woodcock	23 April 2014
John Markham – Northamptonshire Enterprise Partnership	25 April 2014

## Annex C

**Correspondence submitted on the Planning Guidance published 6 March 2014 and any material change in circumstances arising since the close of the inquiry**

<b>Correspondent</b>	<b>Date</b>
Douglas Ford	19 March 2014
Terry Begley – Corby Borough Council	25 March 2014
Roy Pinnock - Dentons	26 March 2014
David Oliver - East Northamptonshire Council	27 March 2014
S Mitcham – Higham Ferrers Town Council	27 March 2014
David Brown – GL Hearn	28 March 2014
David Mackintosh – Northampton Borough Council	28 March 2014
Sue Bridge - Northampton Borough Council	28 March 2014
Rob Harbour – Kettering Borough Council	31 March 2014
John Adam - Deloitte	31 March 2014
Michael Ellis MP	31 March 2014
Chad Sutton – Maples Teesdale	31 March 2014
Sharn Matthews & Steven North - East Northamptonshire Council	11 April 2014
Chad Sutton – Maples Teesdale	14 April 2014
John Adams - Deloitte	14 April 2014
Roy Pinnock - Dentons	14 April 2014



The Planning  
Inspectorate

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

**by Harold Stephens BA MPhil Dip TP MRTPI FRSA**

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

**Date: 14 November 2013**

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**Town and Country Planning Act 1990**

**Application by LXB RP (Rushden) Limited**

**Local Planning Authority: East Northamptonshire Council**

Inquiry held on 25 -28 June, 2-5 and 9-12 July 2013

Land adjacent Skew Bridge ski slope, Northampton Road, Rushden NN10 6AP

File Ref: APP/G2815/V/12/2190175

## Inspector's Report

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**File Ref: APP/G2815/V/12/2190175**

**Land adjacent Skew Bridge ski slope, Northampton Road, Rushden NN10 6AP**

- 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 20 December 2012.
- The application is made by LXB RP (Rushden) Limited to East Northamptonshire Council.
- The application Ref EN/12/00010/FUL is dated 20 December 2011.
- The development proposed is a hybrid planning application comprising a full application for the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants, boathouse, together with proposals for access and an outline application for the erection of a hotel, creche and leisure club with some matters reserved (appearance) plus removal of ski slope and associated levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop.
- The reason given for making the direction was that the Secretary of State considers that the proposals may conflict with national policies on important matters.

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

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**1. BACKGROUND AND PROCEDURAL MATTERS**

1.1 I held an Inquiry at the Council Offices, Cedar Drive, Thrapston, into an application by LXB RP (Rushden) Limited on 25-28 June, 2-5 and 9-12 July 2013. I held an evening session of the Inquiry at Huxlow Science College, Finedon Road, Irthlingborough on 9 July 2013. This was very well attended with some 200 people present and 28 interested persons gave their views about the proposal. I made accompanied site visits on the 9 July 2013 to the application site and to alternative sites which were suggested as sequentially superior to the application site. I also visited a number of other sites on an unaccompanied basis on 30 and 31 July 2013. I held a Pre Inquiry Meeting in connection with this Inquiry to discuss procedural and administrative arrangements. The Pre Inquiry Meeting was held at the Council Offices on 1 March 2013.<sup>1</sup>

1.2 On the information available at the time of making the direction, the statements of case and the evidence submitted to the Inquiry, the following are the matters on which the SoS needs to be informed for the purpose of his consideration of the application:

- (a) *the extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development;*

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<sup>1</sup> INQ4

- (b) *the extent to which the proposed development accords with the National Policy Framework (NPPF), in particular Section 2, which relates to ensuring the vitality of town centres;*
- (c) *the extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (Section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car;*
- (d) *the extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF);*
- (e) *whether any permission should be subject to any conditions and, if so, the form these should take; and*
- (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.*

1.3 At the Inquiry, a library of Core Documents was provided jointly by the Applicant, East Northamptonshire Council (ENC) and other parties. The SoS has been supplied with all of these documents. They include details of the application, local plan policies, local strategies and guidance together with specific technical information. There is a Statement of Common Ground, (SoCG),<sup>2</sup> a Section 106 Planning Obligation Agreement,<sup>3</sup> a Section 106 Unilateral Planning Obligation<sup>4</sup> and a List of Suggested Conditions.<sup>5</sup> The Applicant, the Council and other parties have also provided a separate list of documents which each submitted to the Inquiry. Copies of all the proofs of evidence, appendices and summaries have been supplied to the SoS. The library of Core Documents and the other document lists are set out at the end of this report.

1.4 The SoS should be aware that there was a concern expressed about procedural fairness in the closing submissions made on behalf of Legal and General, a Rule 6 party.<sup>6</sup> Throughout the Inquiry the transport proposals and in particular the delivery of these proposals were considered at length. The Applicant's proposed the No 49 bus route would be extended so as to serve the site. In addition, it was originally proposed that the site would also be served by a new bus service linking the town centres of Wellingborough, Rushden and Higham Ferrers running between 0700 hours and 1900 hours Monday to Saturday. Following suggestions that the bus service ought to run

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<sup>2</sup> INQ3

<sup>3</sup> INQ5

<sup>4</sup> INQ6

<sup>5</sup> ENC15

<sup>6</sup> LG16 paragraphs 5.17-5.29

7 days a week and more frequently on weekdays a unilateral planning obligation was submitted which secured an hourly Sunday bus service (0900 hours to 1700 hours) as well. Legal & General complained that this new transport evidence was advanced by the Applicant on the last day of the Inquiry just before closing submissions were made, claiming that they could not test the viability of the Sunday service which is secured only for 3 years.

- 1.5 I took the view that the Applicant in submitting the Unilateral Planning Obligation was responding to criticism of the transport case which it had put forward and that I (and the SoS) must consider the overall package of proposals put forward before the Inquiry closed. Legal & General accepted my ruling. Moreover, I did offer to adjourn the Inquiry to allow Legal & General the opportunity to recall its highway witness to deal with the new transport evidence but this was declined. Whilst the arrangements were not ideal I am satisfied that Legal & General was given a fair and reasonable opportunity to recall its highway witness to address the issue but chose not to do so. As a result I consider no procedural unfairness arose. I said I would draw the matter to the SoS's attention in my Report. Legal & General said it was content with that.

## **The Site and Surroundings**

- 1.6 The site lies to the west of Rushden within the River Nene valley, with the river and the gravel pit lakes at its northern boundary and the A45 as the southern boundary. It is a site of some 30 ha including the former Skew Bridge ski lake and Delta Pit lake as well as the land surrounding the lakes. The developable area of the site covers 12.5 ha which sits between the A45 and Skew Bridge ski lake. It is accessed from the A45 roundabout known as Skew Bridge Roundabout. The site is currently vacant and is characterised by open ground, a considerable amount of which is cleared with the remaining being covered with scrub and the hardstanding of previously demolished buildings. The former ski slope is still on the site, although it is overgrown.
- 1.7 The part of the site required for operational development for the proposals is previously developed land in poor condition. It has been subject to trespass for several years – for quad biking and motor bike use – which have degraded the character, appearance and nature conservation qualities of the land. Parts of the site fall within the Upper Nene Valley Gravel Pits Site of Special Scientific Interest (SSSI)<sup>7</sup> and Skew Bridge Lakes Local Wildlife Site.<sup>8</sup> The SSSI is also designated as a wetland of international importance under the Ramsar Convention and a Special Protection Area (SPA) as a site of European importance for bird conservation under the EC Birds Directive. The wider SPA remains a key area for the environment, tourism, housing and recreational development within Northamptonshire.

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<sup>7</sup> INQ3 Annex D Figure 2

<sup>8</sup> INQ3 Annex D Figure 3

- 1.8 There are no archaeological sites of interest identified within the site. The site has previously been subject to open cast mining which is likely to have removed any traces of archaeological remains. There are also no notable heritage assets in close proximity to the site. The site does not currently offer any public rights of way and the site and the A45 act as physical barriers between Rushden town centre and the Nene Valley river corridor.
- 1.9 The site also lies within the recently designated Nene Valley Improvement Area (NIA), which covers approximately 41,000 ha running through the heart of Northamptonshire to the eastern fringes of Peterborough. It includes the River Nene and its tributaries, gravel pits, reservoirs and much of the floodplain within the valley itself. The NIA is intended by DEFRA, as designating body, to deliver a step change in nature conservation, where local organisations have come together with a shared vision for the natural environment. This partnership will plan and deliver significant improvements for wildlife and people through the sustainable use of natural resources, restoring and creating wildlife habitats, connecting local sites and joining up local action.

### **Planning History**

- 1.10 The site has a relatively long planning history. Details of the planning applications for planning permission which have been submitted on the application site prior to the submission of the current application are set out in the SoCG.<sup>9</sup> A brief summary of the planning history is provided in the following two paragraphs.
- 1.11 From the 1950's the ground at Skew Bridge was excavated for sand and gravel and the abandoned workings flooded to form the current lakes. In the 1960s a ski club was set up at the site and a 60.96m (200ft) - long dry ski slope was later added. The site became a well-known leisure destination locally. The ski/country club continued to be used by the community until the club building was destroyed by fire in 1988. The site has not been in productive use since then. Through the 1960s and 1970s permissions were granted for offices and weighbridge, plant and vehicle storage and workshops and garages associated with the extraction of sand and gravel. During the 1970s permissions were granted for the siting of seasonal caravans and permissions for a petrol service station, cafeteria, workshop and overnight accommodation for commercial vehicles were granted in the 1980s. Applications for the same development but including a retail store were refused. Permissions were also granted in the 1990s for leisure facilities, go korting and concrete manufacture.
- 1.12 Planning permission on the whole of the previously developed land, was first granted in 2002 for a business park (51,000 sq metres of business use, 3,600

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<sup>9</sup> INQ3 Section 7

sq metres of commercial and leisure use with some ancillary retail, a 175 bed hotel plus a 100 boat marina and lock/weir). This, and succeeding permissions, included a pedestrian and cycle bridge across the A45, and a condition requiring an Access and Management Plan for the ski lake and its immediate environs. This permission remains extant, following the approval of an extension of time application in 2012.

## The Proposals

- 1.13 This is a hybrid application for a mixed retail and leisure scheme at Rushden Lakes. The application seeks (a) detailed approval for the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants and boat house, together with proposals for access; removal of ski slope and associated site levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop; and (b) outline approval for a hotel, crèche and leisure club (with appearance reserved).
- 1.14 The floorspace areas for which permission is sought, and have been subject to assessment, are set out in the SoCG.<sup>10</sup> In summary, the detailed scheme is for a 6,886 sq m Home and Garden Centre (with a 1,716 sq m heated planting area and 3,185 sq m uncovered planting area), 31,502 sq m of retail units in 3 retail "terraces", drive-thru restaurant, gatehouse, lakeside visitor centre, restaurants and boat house, together with proposals for access. The 3 retail terraces comprise a 4,546 sq m garden centre related terrace, a 13,935 sq m terrace for national multiple, lifestyle, home, sports, clothing stores and a 13,021 sq m terrace for national clothing/general merchandise. There are two lakeside restaurants of 464 sq m each, a visitor centre of 289 sq m, a boathouse of 289 sq m, a drive thru restaurant of 186 sq m, a 112 bed hotel (4,987 sq m), a 1,465 sq m leisure/health club and a 181 sq m crèche.
- 1.15 The Design and Access Statement (DAS) accompanying the application contains a thorough analysis of the site and the access arrangements together with the proposed layout of the development. The supporting Architects's Design Statement outlines the alternative options which have been considered and explains the evolution of the scheme proposals and how this works with the site topography and landscape features. These documents are contained within the Supporting Documents folder.
- 1.16 In addition to the proposed buildings details above, 1,300 car parking spaces would be created with hard and soft landscaping. Enhanced access to the two lakes within the application area is facilitated and the provision of links to the wider footpath and cycle network along the Nene Valley and the adjoining urban areas including a pedestrian/cycle bridge across the A45. Coach and

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<sup>10</sup> INQ3 paragraph 3.1.2

bus stop facilities are integrated into the design to allow ease of access. Details of the parking and bus infrastructure are set out in further detail in the Transport Assessment submitted with the application.

- 1.17 The proposed concept for the layout of the development revolves around the sensitive integration of lifestyle and leisure in a lakeland setting. The siting of the proposed buildings has been designed to minimise visual impact and integrate sensitively into their context and landscape. The garden centre is located to the west of the site with the retail terraces A and B aligned perpendicular to this forming a boundary with the A45 making the best use of the change in levels and natural screening. Retail terrace C is located opposite terrace B diagonally facing Skew Bridge ski lake maximising the opportunity for unobstructed views of the lake and SSSI.
- 1.18 The Visual Impact Assessment and accompanying Landscape Design Strategy explain how the proposals have been informed by the existing landscape character and setting. The lake edge would be extended into the site both physically and visually and the restaurants, visitor centre and boathouse, forming the main leisure elements of the scheme, would take advantage of this by their location on the lake side. The main car parking area would be framed within the main terraces and would provide a significant landscape opportunity but has also been informed by the flood mitigation strategy. The hotel and leisure club and crèche would be set back from the site entrance to reduce their visual and physical impact. The massing and scale of the buildings have been designed to minimise their visual impact. The buildings would not exceed 2 storeys with the exception of the hotel which would be 3 storeys.
- 1.19 There is an existing access road into the site (Claudius Way). It is proposed that the eastern end of this road would be upgraded to form the main access into the site. It is proposed to improve Skew Bridge roundabout in order to enhance the capacity and cater for traffic growth in the area as well as the development proposals.
- 1.20 A full list of the plans submitted with the application and on which the decision should be based is to be found in document APP25 and copies of these plans are to be found in the folder entitled Plans and Drawings. The reader's attention in particular is drawn to the proposed site plan 2654-50 Rev B, the illustrative Context Plan 1033-ICP-002 Rev A and the Illustrative Master Plan 1033-IMP-001 Rev B.
- 1.21 Several documents were submitted in support of the proposals<sup>11</sup> including a DAS (amended) with Addendum; a Planning Statement (amended) and Supplementary Planning Statement; a Sustainable Design and Energy

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<sup>11</sup>APP26

Statement; a Rushden Lakes Consultation assessment; an Economic Benefits Study; a Landscape Design Statement and Addendum; a PPS4 Assessment; a Transport Assessment with Addendum; a Flood Risk Assessment and a Waste Management Strategy and Waste Audit. Copies of all of these documents are enclosed in the Supporting Documents folder.

## **Environmental Impact Assessment (EIA)**

1.22 Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2011, the Rushden Lakes proposals are Schedule 2 development (under category 10 of Schedule 2 (2) being an 'urban development project'). The site area exceeds the relevant threshold (0.5 ha) and both the Applicant and the LPA are agreed that the proposals would have significant environmental effects. No Screening Opinion was issued by the LPA. An Environmental Statement (ES) was prepared by JR Consulting and comprises the following:

- A Non Technical Summary (NTS) (December 2011);
- Environmental Statement main text and accompanying figures and appendices December 2011
- Addendum to the ES (March 2012) – to reflect the Applicant's decision to amend the description of the development (in respect of site access and removal of a lock and a marina, with the latter being replaced by a slipway and visitor centre). An updated NTS was also included, together with relevant amended appendices and figures.
- Addendum to the ES (June 2012) – to reflect the Applicant's decision to amend the description of the development (in respect of the proposed quantity of retail floorspace). An additional chapter on community effects and an updated NTS were also included, together with relevant amended appendices and figures.

1.23 The ES explains that the scope of the EIA is based on that agreed in respect of earlier submissions and planning approvals, updated to take account of material changes to the nature and overall scale/layout of the proposals, together with changes to any parts of the site (including the existing SSSI/SPA being designated as a Ramsar site) and to other relevant material considerations. The scope of the ES was also informed through ongoing discussions with all statutory consultees, the LPA and other interested parties. The conditions which secure, among other things, the mitigation envisaged by the ES and recommended by the statutory consultees in light of it, are at ENC15. Overall I consider that the ES, in conjunction with the supplementary information, meets the requirements of the EIA Regulations and provides the data and information required to adequately assess the impacts on the environment of the proposed development.

## Planning Policy and Guidance

- 1.24 The planning policies which are relevant in this case are agreed between the main parties and are set out at Appendix 3 of the SoCG.<sup>12</sup>
- 1.25 The statutory development plan includes the North Northamptonshire Core Spatial Strategy 2008 (NNJCS), which largely sets strategic - rather than development management - policies for the North Northamptonshire Area. The East Northampton Local Plan (1996) (LP) is the most recent site-specific development plan document for the application site and policies were saved by a Direction made by the SoS on 21 September 2007.

### ***North Northamptonshire Core Spatial Strategy (2008) (NNJCS)***

- 1.26 The following NNJCS policies are relevant to the proposed development:
- Policy 1: Strengthening the Network of Settlements
  - Policy 5: Green Infrastructure
  - Policy 8: Delivering Economic Prosperity
  - Policy 11: Distribution of Jobs
  - Policy 12: Distribution of Retail Development
  - Policy 13: General Sustainable Development Principles
- 1.27 Policy 1 of the NNJCS indicates that smaller towns such as Rushden will provide secondary focal points for development within the urban core of the 3 growth towns of Corby, Kettering and Wellingborough. It states the emphasis for development will be on the regeneration of the town centres *"in order to provide jobs and services, deliver economic prosperity and support the self sufficiency of the network of centres"*.
- 1.28 Policy 5 of the NNJCS indicates that a net gain in green infrastructure will be sought through the protection and enhancement of assets and the creation of new multi functional areas of green space that promote recreation and tourism, public access, green education, biodiversity, water management, the protection and enhancement of the local landscape and historic assets and mitigation of climate change, along with green economic uses and sustainable land management. Proposals affecting the Upper Nene Valley Gravel Pits proposed Special Protection Area will need to satisfy the tests of the Habitats Regulations in order to determine site specific impacts of development and to be able to identify and avoid or mitigate against impacts where identified.
- 1.29 Policy 8 of the NNJCS establishes a target of 47,400 net jobs to be created during the plan period and Policy 11 allocates the need for sites within East Northamptonshire to accommodate 5,220 net jobs across all sectors. Policy 9

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<sup>12</sup> INQ3

establishes that development will be distributed to strengthen the network of settlements set out in Policy 1. Development in the open countryside will be strictly controlled and priority will be given to the reuse of suitable previously developed land and buildings.

- 1.30 Policy 12 focuses on the distribution of retail development and supports the strengthening of Corby, Kettering and Wellingborough town centres setting minimum net increases in comparison shopping floorspace. It also states:

*“Development of an appropriate scale that enhances the retail offer of Rushden town centre will be supported. Where retail development, for which there is an identified need, cannot be accommodated within the defined town centre areas, a sequential approach will be followed with preference first to well-connected edge of town-centre locations followed by district and local centres including those in sustainable urban extensions, and then existing retail areas that are well served by a choice of means of transport”*

- 1.31 Policy 13 sets out a checklist of key issues that need to be considered in relation to all development proposals in order to create more sustainable communities in North Northamptonshire. Many of these issues are addressed in more recent guidance and so it is not necessary to elaborate on these.

#### ***East Northamptonshire Local Plan (LP) (1996) (Saved Policies 2007)***

- 1.32 The LP was adopted in 1996 and is an old style development plan. The majority of the LP policies are now superseded, replaced by policies in the NNJCS. No relevant policies in respect of the Rushden Lakes site have been saved, although the adopted Proposals Map identifies much of the site as existing commitments (permissions). It identifies the majority of the developable part of the site as having extant commitments for industrial and commercial uses (1.3ha, east of the former ski slope) and recreation and leisure uses (5.5 ha, west of the former ski slope), including bowling alley, sports hall, multi-screen cinema and fast food outlet.

#### ***Northamptonshire Minerals and Waste Development Framework Document – Core Strategy Development Plan Document (2010)***

- 1.33 The Minerals and Waste Core Strategy DPD identifies the application site as a “Sand and gravel safeguarding area” (Policy CS10). This requires that development of a significant nature will have to demonstrate that the sterilisation of proven mineral resources of economic importance will not occur as a result of the development, and that the development would not pose a serious hindrance to future extraction in the vicinity. However, given that the principle of development on the site is already established through earlier consents, the site’s current designation as a Minerals Safeguarding Area under Policy CS10 is less relevant in this case.

### **Emerging Joint Core Strategy (Emerging Draft NNJCS) (2012)**

- 1.34 The NNJCS has been under review since 2009. An initial “options and issues” consultation on the Emerging Draft NNJCS 2011-2031<sup>13</sup> was undertaken in the Summer 2012 and responses to this initial consultation are being considered by the 4 participating LPAs. The final options have not been agreed by the LPAs and there is no date set for formal statutory consultation on the plan. However, it is noteworthy that the Emerging Draft NNJCS while silent on the matter of town centre policy does envisage an enhanced role for Rushden, designating this as a Growth Town which would provide a focus for major co-ordinated regeneration and growth in employment, housing, comparison retail development and higher order facilities serving one or more districts.
- 1.35 The Four Towns Plan<sup>14</sup> will become the new site specific Development Plan Document covering the Rushden area. However, this is at an early stage of preparation and is expected to progress closely behind the Emerging Draft NNJCS 2011-31.

### **National Planning Policy Framework (NPPF) (2012)**

- 1.36 The NPPF was published in March 2012. The NPPF [7] identifies three dimensions to sustainable development – economic, social and environmental. NPPF [14] outlines the presumption in favour of sustainable development. NPPF [24] states that LPAs should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Further, NPPF [26] states:

*“When assessing applications for retail, leisure and office development outside of town centres which are not in accordance with an up to date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set threshold. This should include an assessment of:*

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

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<sup>13</sup> CDA7.11

<sup>14</sup> CDA6.8

- 1.37 NPPF [27] states that applications should be refused where they fail to satisfy the sequential test or are likely to have significant adverse impact on one or more of the above factors. Section 4 is relevant and deals with promoting sustainable transport. Section 11 of the NPPF is also relevant in that it deals with conserving and enhancing the natural environment.

***Planning for Town Centres – Practice guidance on need, impact and the sequential approach (2009) (PG)***

- 1.38 Planning for Town Centres: Practice guidance on need, impact and the sequential approach was published in support of Planning Policy Statement 4 (PPS4) in December 2009. Whilst PPS4 has been replaced by the NPPF the PG has not and therefore remains relevant. Guidance relating to sequential site assessments is contained in part 6 and assessing impact is contained in part 7.

**THE CASE FOR THE APPLICANT - LXB RP (RUSHDEN) LIMITED**

**INTRODUCTION**

- 2.1 It is important at the outset to be clear what *the proposed scheme* is and what it is not. The scheme is not simply a retail proposal. The Applicant's evidence has made clear the mixed use composition of the proposals and it is apparent from the evening session of the Inquiry that the public wholly understands, buys-into and supports the unique range of uses that are proposed. This is so much more than a retail park. That said, our opponents have focussed on the retail elements of the scheme. A refrain throughout this Inquiry has been that Rushden Lakes would be "half the size of Northampton". But that seriously misconstrues the proposed development. In terms of floorspace, Terraces A, B & C would be only 21% of the *comparison* goods floorspace of "greater Northampton" i.e. the town centre and, in terms of turnover the more popular out of centre retail parks.<sup>15</sup> Of course, if *convenience* goods floorspace is considered then Rushden Lakes would become even smaller by way of comparing it to Northampton. No sensible person could characterise Rushden Lakes as "half the size of" what is after all the county town.<sup>16</sup>
- 2.2 The largest single element of the scheme is the garden centre. As Mr Burnett explained the significant garden centre component, which accounts for 27% of the overall size of the scheme, means that Rushden Lakes is nothing like

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<sup>15</sup> Mr Burnett, EiC, Day 2.

<sup>16</sup> Whilst Rushden Lakes provides other facilities, it does not of course compare to the scale, range or attraction of a regional centre like Northampton. Mr Burnett's table 2.7 and Mr Goddard's Appendix 14 show that Northampton has 588 shops and a total retail floorspace of 136,295 sqm, in addition to its civic, employment, cultural and other attractions.

Northampton in terms of either scale or character.<sup>17</sup> Mr Chase, who has extensive experience of garden centre developments considered the garden centre to be an important element of the proposal.<sup>18</sup> The garden centre which anchors Terrace A would differentiate it from other schemes and destinations. As Mr Denness confirmed the garden centre is not a use that would locate in a town centre.<sup>19</sup> This seems obvious and had already been explained to the Inquiry by Mr Chase.<sup>20</sup>

- 2.3 Terraces B & C would contain 2 anchors, which are “*medium sized units*” not large “*flagship*” stores, and 11 other shops. As was seen in the cross examination of Mr Denness, the anchor which it is anticipated would be occupied by Marks & Spencer is half, or even less, than the size of a “flagship” store from which Marks & Spencer would be able to display and retail their entire catalogue of goods; although Rushden Lakes would retail fashion, it would be unlikely to include furniture. In similar vein, were Debenhams to take the other anchor – not that there is any actual evidence that they would – they would be able to accommodate a department store literally at the lowest end of the range of store size that they look for, in other words the smallest department store size. Mr Chase was clear that Terraces B & C cannot properly be described as completely open A1.<sup>21</sup> It is proposed that they be subject to restrictions both in terms of user and size. As Mr Burnett explained, the restrictions would mean that almost half (47%) of the floorspace in Terraces B & C could not be used to sell clothing or footwear.
- 2.4 Similar points can be made in response to assertions about the size of Rushden Lakes in comparison to either Corby - which appears in any event to be irrelevant to the determination of the application - or Kettering or Wellingborough. All three are towns with a far wider range of functions and services when compared to the application proposal which makes their scale completely different to Rushden Lakes. *The “hierarchy” of towns is not based on simply the amount of comparison goods floorspace they contain.* Kettering, and to a lesser extent Corby, has had significant out of centre retail development as well.<sup>22</sup> The focus should be on the likely performance and effects of Rushden Lakes.
- 2.5 The Inquiry has been skewed towards the interests of Northampton. Local residents who have attended sessions of the Inquiry must have been mystified – and it is clear from the evening session of the Inquiry that the

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<sup>17</sup> EiC, Day 2.

<sup>18</sup> c/ex, Day 2.

<sup>19</sup> EiC, Day 9.

<sup>20</sup> EiC, Day 2.

<sup>21</sup> c/ex, Day 2.

<sup>22</sup> For details see Mr Burnett Table 2.7 and Mr Goddard Appendix 14.

public is utterly bewildered - as to why its proceedings have been dominated by Northampton. Two of the Consortium's witnesses together with much of the evidence of Mr Goddard, and Legal & General's witnesses were focussed on Northampton, leaving one witness - Miss Garbutt - multi-tasking on behalf of Kettering and Corby. Their fundamental argument is that Northampton has an overriding claim on the retail development that LXB wishes to build at Rushden Lakes. It should be built in Northampton instead, to the exclusion of Rushden.

- 2.6 Even assuming that the market would be remotely interested in this, all that would be achieved is a continuation and significant worsening of the already unsustainable outflows of expenditure and with it, people and their cars, whether from Rushden and the rest of Zone 10 or more widely from across North Northamptonshire and the towns of Wellingborough, Kettering and Corby. In reality we have heard too much from the Northampton lobby because Mr Goddard's figures have so obviously but so illogically loaded impact onto the town centre, and because LXB is a convenient scapegoat for Legal & General, someone to blame for their failure to progress the redevelopment of the Grosvenor Centre or even to invest significantly in the existing centre over very many years, long before Rushden Lakes came along.

***Issue (a): The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development.***

- 2.7 The development plan comprises the North Northampton Core Spatial Strategy (NNJCS). The Applicant's case is that the application proposals are consistent with the development plan but that relevant policies of the development plan, and in particular Policy 12, are out of date and consequently the application falls to be determined against the terms of the NPPF.
- 2.8 At the outset it is important to recognise that despite the reliance placed by the Consortium on Policy 12 of the NNJCS, Mr Goddard rightly conceded in cross examination that Policy 12 does not and cannot impose an additional hurdle for LXB over and above the sequential and impact tests in the NPPF.<sup>23</sup> He agreed that if you conclude that the sequential and impact tests are passed, then in retail terms the proposal is acceptable and planning permission should be granted.
- 2.9 Mr Rhodes explained that whilst the proposals were not anticipated by the Development Plan, they are consistent with its strategic objectives and with the tests that it sets for retail planning applications. His evidence is set out at paragraphs 5.20- 5.26 of his main proof and section 3 of his rebuttal, as well

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<sup>23</sup> c/ex, Day 7.

as his EiC in relation to paragraph 3.11 of the NNJCS.<sup>24</sup> There is no dispute that a founding principle of the NNJCS is to increase the self sufficiency of North Northamptonshire. This is clear from the NNJCS at page 19 (vision), page 20 (objectives 3, 4 and 7), page 25 (Policy 1), page 23 (key spatial themes) and paragraphs 2.5, 3.2, 3.6, 3.18 as well as Policy 12 itself. The NNJCS Inspector endorsed and understood the importance of these objectives but recognised in his report at paragraph 23 a risk that the preferred strategy of the plan may not achieve them – hence the addition of paragraph 3.11 to the NNJCS in order for it to be found sound. That paragraph, and Policy 12 itself, expressly provide for other applications, such as Rushden Lakes to be considered on their merits against tests which recognise the importance of retaining expenditure in North Northamptonshire.

- 2.10 Miss Garbutt agreed that the key spatial themes of the NNJCS were to retain local spending, to encourage greater self-sufficiency and to meet needs as locally as possible.<sup>25</sup> She also agreed that the objective of the NNJCS in planning for significant new floorspace in Corby, Kettering and Wellingborough fitted with the strategy of retaining expenditure in North Northamptonshire. Plainly, the NNJCS allocations themselves would inevitably result in a step change and the retention of expenditure currently flowing to Northampton. Miss Garbutt therefore agreed that the spatial strategy of the NNJCS involved taking expenditure away from Northampton or, the other side of the same coin, retaining it in North Northamptonshire. The fact that one effect of Rushden Lakes would be a contribution to that objective should not be a criticism of Rushden Lakes but a recognition that it contributes to meeting a key objective of the NNJCS.
- 2.11 Before turning to summarise the case that Policy 12 of the NNJCS is out of date, it is the Applicant's case that Policy 12 is met nonetheless. This can be explained in a straightforward manner. The policy contains four paragraphs. The first of these sets out a minimum net increase in comparison floorspace for the three growth towns (Kettering, Corby and Wellingborough) and so does not set out a decision-taking test for a proposal such as the LXB one (out of centre at Rushden). The second paragraph supports retail development in Rushden town centre and so it too does not set out a decision-taking test for a proposal such as the LXB one. The third paragraph sets out some form of sequential approach but this does not include out of centre sites; the paragraph does not say that out of centre sites should be refused - it is silent on the matter and so it too does not set out a decision-taking test for a proposal such as the LXB one.
- 2.12 The fourth paragraph begins with a statement that: *"The scale of retail development should be appropriate to the role and function of the centre where it is to be located."* But LXB's proposal is not for development in a

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<sup>24</sup> Day 4.

<sup>25</sup> c/ex, Day 6.

centre and so this sentence cannot set a decision-taking test for a proposal such as the LXB one. In any event the last sentence of the policy appears to be the sentence that actually sets the decision-taking test – it begins with the word: “*Accordingly*” – which should mean, that a proposal which meets its tests is accordingly consistent with the terms of the Policy. Those terms are two-fold: (i) a retail impact test, which the Applicant contends is met, and (ii) that there should not be harm to “*the ability of North Northamptonshire to retain expenditure.*”

2.13 Rushden Lakes undoubtedly complies with this test, indeed the essence of the case made by the Consortium and Legal & General is that LXB comply with this too well as the proposal would retain expenditure currently flowing out of North Northamptonshire to Northampton. Other aspects of the NNJCS which relate to the issues other than retail e.g. nature conservation, leisure and recreation, are all complied with as explained in Section 3 of Mr Rhodes’ proof. There is no tenable argument to the contrary.

2.14 Policy 12 of the development plan is, nevertheless, out of date. Mr Burnett explained clearly why the NNJCS is out of date in this regard and both Mr Nutter and Mr Rhodes expressly agreed with his evidence:<sup>26</sup>

- (1) Unlike Policy 12, the NPPF [23] – 6<sup>th</sup> bullet states that “*it is important that needs for retail [and other main town centre uses] are met in full and not compromised by limited site availability*”;
- (2) Policy 12 refers to “*retail development, for which there is an identified need*” and this is inconsistent with the NPPF because the latter does not require Applicants to show a need for retail development. Miss Garbutt said that need was relevant, but eventually conceded that need was not actually a test in the NPPF;<sup>27</sup> this disjunction has arisen because Policy 12 was written on the basis of the 2005 PPS6 (see NNJCS 3.100 and Footnote 16) when there was a need test.
- (3) Policy 12 refers to: “*Development of an appropriate scale*” and that: “*The scale of development should be appropriate....*” but as Miss Garbutt accepted there is not a scale test in the NPPF;<sup>28</sup> there was such a test in PPS6 (2005) which was continued through into PPS4 (Policy EC16 – see the 5<sup>th</sup> bullet point as quoted in 7.16 on page 52 of the 2009 PG) but the NPPF has dropped it. The single test of such matters now is simply whether the proposal would cause significant

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<sup>26</sup> r/ex, Day 3. Mr Rhodes explained the reasons in full in his main proof at paragraphs. 5.8 -12 and his rebuttal at Section 2.

<sup>27</sup> c/ex, Day 6.

<sup>28</sup> c/ex, Day 6.

retail impact: NPPF [26] and [27]. If it is concluded that the proposal would not, there is no freestanding, additional, test of scale as well.

- (4) The sequential test in Policy 12 does not acknowledge that planning permission can be granted for out of centre sites whereas the NPPF [24] does (provided that the sequential test is satisfied); the sequence and type of locations in Policy 12 is also out of step with the NPPF.
- (5) The impact test in NPPF [27] asks whether there are likely to be “*significant*” adverse impacts. Policy 12 is not consistent with the NPPF because it sets a lower threshold and merely focuses upon adverse impact per se. Miss Garbutt’s answer in cross examination that Policy 12 was “*slightly more stringent*” than the NPPF and that it was for the Inspector to decide which to apply underscored the Consortium’s flawed approach.<sup>29</sup> Policy 12 is to be given weight according to its degree of consistency with the NPPF (see NPPF [215]) and it is obvious that the NPPF should prevail in the case of conflict.<sup>30</sup>
- (6) The NNJCS does not contain and is not based on a presumption in favour of sustainable development; the plan-making part of the presumption NPPF [14] is that “*Local Plans should meet objectively assessed needs with sufficient flexibility to adapt to rapid change, unless ....*”; the 3<sup>rd</sup> core planning principle in the NPPF [17] is that: “*Every effort should be made objectively to identify and then meet the ....development needs of an area, and respond positively to wider opportunities for growth*” and, as mentioned already, the NPPF [23 – 6<sup>th</sup> bullet], does not allow “*limited site availability*” as an excuse for failing to meet retail needs “in full”. All these, and much else besides, are wholly new statements of national policy for plan-making which simply did not exist at the time, years ago, when the NNJCS was drawn up. Of course the NNJCS was found to be “sound” by the Inspector who examined it but it was found to be sound on the basis of a very different set of national policy imperatives from those newly-stated in the NPPF. As Mr Rhodes explained, this is more than a technicality. The NPPF calls for a different, positive approach to plan making, setting out to identify and then meet needs. Plans prepared without this mind-set are not going to be consistent with the NPPF.
- (7) The North Northamptonshire Joint Planning Unit (JPU) has “self-certified” that Policy 12 and the NNJCS are up to date. However, in the light of the above, that conclusion is not only superficial and self-serving, but plainly wrong.

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<sup>29</sup> c/ex, Day 6.

<sup>30</sup> Miss Garbutt herself applied the NPPF test rather than Policy 12 to a proposal for out of centre retailing in Kettering in May of this year: see Mr Rhodes’s Appendix 6, paragraph 7.30.

(8) As Mr Rhodes points out,<sup>31</sup> the joint authorities have been promulgating a review of the NNJCS since 2009 which is inconsistent with any claim that it is up to date. He explains also that its housing strategy does not meet the requirements of the NPPF<sup>32</sup> and that the NNJCS is not based upon evidence of deliverability, which is a key requirement of the NPPF.<sup>33</sup> In addition, and importantly, the NNJCS is based upon 3 Growth Towns but the joint authorities now consider that Rushden should also be a Growth Town.<sup>34</sup> Whatever this means in detail it is plainly a significant change in the principles which underpin the strategy. The NNJCS Review is at an early stage but that is not the point. Instead the point is that the joint authorities recognise that a major plank of the NNJCS no longer fits the reality of the situation on the ground.

2.15 Additionally, Mr Rhodes considered that the NNJCS was out of date not merely because its wording is inconsistent with the NPPF, but also because the strategy of Policy 12 and in wider terms the NNJCS as a whole has failed to deliver the growth necessary to enhance the self-sufficiency of the area. Mr Burnett explained in chief (see also APP32) that over half way through the NNJCS period (2004 to 2021) no town centre floorspace had been built in any of the three growth towns as against the "minimum" net increases set out in Policy 12 and paragraph 3.101 of the NNJCS to achieve a "*step-change*" (paragraph 3.101) "*in order to increase trade retention in North Northamptonshire*" (paragraph 3.102). In fact what has happened is that all additional floorspace has been out of centre especially at Kettering, and to a lesser extent, Corby. The nearest of the three growth towns to Rushden Lakes, Wellingborough, has had no additional floorspace whether in, edge or out of centre.

2.16 As Mr Rhodes explained,<sup>35</sup> an interpretation of the NNJCS based only on an assertion that retail development must be focussed in the Growth Towns, would mean that the NNJCS was not only a plan with no resilience, but also that it is a plan which has failed. Whilst the NNJCS allocated 51,500 sqm net comparison retail floorspace to the 3 Growth Towns in order to meet retail needs of the area and to reduce the outflow of spending from the North Northamptonshire catchment area, virtually none of that floorspace has been developed. Whilst the Plan was only adopted 5 years ago, the strategy of encouraging and supporting retail development in the 3 Growth Towns has been in place since at least the MKSRS in 2005 and failed to deliver through the period of economic boom. More importantly, the evidence has not

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<sup>31</sup> See paragraph 2.2(1) in Mr Rhodes's Rebuttal

<sup>32</sup> See paragraph 2.2 (3) in Mr Rhodes's Rebuttal

<sup>33</sup> See paragraph 2.2 (4) in Mr Rhodes's Rebuttal

<sup>34</sup> See paragraph 2.2 (5) in Mr Rhodes's Rebuttal

paragraph

<sup>35</sup> Proof paragraph 5.26

demonstrated any real expectation that any significant town centre development is about to be delivered or is being *actively* progressed.

- 2.17 Mr Rhodes drew attention to the last sentence of NNJCS paragraph 3.11: *"The town centres are, however, constrained and while emphasis will be on their regeneration, other complementary sites may be required either edge of town or out of town to fulfil the growth strategy and meet the need for early investment."* Mr Rhodes' point is that the Inspector realised that the NNJCS is ambitious and that there needed to be recognition that it could well prove unachievable either in terms of principle or timing, and hence the Inspector recommended that this sentence be added. Mr Goddard argued originally that the sentence was meant to and does relate only to office development but this is untenable especially once one has read paragraph 23 of the Inspector's report<sup>36</sup> in full including its reference to what is now paragraph 3.101 of the NNJCS, and most tellingly the sentence appears at the end of a paragraph in the NNJCS paragraph 3.11 which explicitly deals with "leisure, retail, and employment uses." Mr Goddard rightly conceded in cross examination that the whole paragraph applies to these types of development, including retail.<sup>37</sup>
- 2.18 Accordingly, not only does Policy 12 expressly allow other developments to be tested and accepted if they meet those tests, this appears to be a deliberate mechanism to ensure that the NNJCS was able to deliver on its growth and self-containment objectives, rather than simply stalling and failing. If the Inspector and the SoS find that the (two) tests set by Policy 12 are met, the application can be approved as being consistent with the development plan.
- 2.19 There is no room in this case for a prematurity argument. In response to Mr Katkowski's questions about what to do "betwixt and between", Miss Garbutt agreed that if Policy 12 is found to be out of date then NPPF [14] tells decision-makers to grant planning permission, if the presumption is not displaced, and not to wait for a new plan.<sup>38</sup> The "decision-taking" part of NPPF [14] states in terms that the "presumption in favour of sustainable development" "means" "where ....relevant policies [in the development plan] are out-of-date, granting permission unless..."
- 2.20 Additionally, in response to the Mr Richard's cross examination, she acknowledged that the NNJPU had not been able to agree a retail strategy for the emerging NNJCS and that an impasse had been reached.<sup>39</sup> When it was suggested that the NNJPU had decided that the SoS needed to arbitrate, informed by the Inspector's report, Miss Garbutt replied *"that's where we've got to, the application has forced the issue to be decided in this arena"*. There

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<sup>36</sup> CD7.4

<sup>37</sup> Day 7.

<sup>38</sup> c/ex, Day 6.

<sup>39</sup> c/ex, Day 6.

is simply no possibility of these strategic issues being resolved via an Examination of a plan because there is a fundamental stumbling block – the constituent authorities of the NNJPU cannot even agree on the contents of a plan to submit for Examination. This means that it is foolish to contend that the issue of whether Rushden Lakes should proceed is one that can and should and (per Mr Jones) must only be determined as part of the plan-making process. Two of the four constituent authorities (ENC and Wellingborough) favour the idea while the other two (Kettering and Corby) do not. It falls to the SoS to break the deadlock and once he has then the new NNJCS can be progressed taking on board his decision. There is no other option.

***Issue (b): The extent to which the proposed development accords with the National Policy Framework (NPPF), in particular Section 2, which relates to ensuring the vitality of town centres.***

## INTRODUCTION

2.21 The application meets the retail policy tests set out in Section 2 of the NPPF.

### **(i) Relevant policy**

2.22 The NPPF [24, 26 and 27] sets out the tests which apply to making the decision whether to permit Rushden Lakes. They are well-known and comprise the sequential test and the retail impact test. The whole of NPPF [23] (all eleven bullet points) deals explicitly and exclusively with “*planning policies*” and what should happen: “*In drawing up Local Plans...*” Although highly relevant to determining whether the NNJCS is up to date, the NPPF [23] does not purport to, and does not, set any tests for decision-taking. The paragraph stresses the “town centres first” approach to plan-making and that is all well and good *but* when it comes to making a decision on a planning application then one has to turn to NPPF [24, 26 and 27] which deal explicitly with assessing applications. These paragraphs embody how to apply the town centres first approach when taking a decision, literally so in the sequential test which of course starts with town centres and the whole point of the retail impact test is to protect town centres from significant adverse impacts. In other words, if a proposal meets these tests then necessarily it is consistent with the town centres first approach. Therefore, if one wants to know how to go about making a Local Plan one turns to NPPF [23] and if one wants to know how to go about making a decision, one turns to NPPF [24, 26 and 27]. It’s as simple as that.

2.23 One cannot, and as a matter of law must not, read across from the plan-making paragraph 23 some form of additional test for decision-taking that a proposal must honour the hierarchy of town centres (the notion of a hierarchy is referred to in the 2<sup>nd</sup> bullet point of NPPF [23]) still less some form of test of “appropriate scale” which is not mentioned anywhere in NPPF [23]. As explained in relation to Policy 12, if the tests are passed, an

application will be consistent with the NPPF. It is assumed that the authors of the NPPF drew the tests precisely so that they would enable decision making consistent with the objectives of the NPPF.

- 2.24 The PPS4 Practice Guidance (PG) is not, and never has been, policy. To the extent that it gives advice in relation to matters no longer part of national planning policy in the NPPF, the PG is irrelevant. Prime examples of this are (1) disaggregation, and (2) scale. Both of which are discussed at length in the PG because both were then part of national policy. But neither exists any longer and so what the PG has to say about them is of no current relevance whatever. In any event, the PG is not to be read as if it was a legal treatise. It was only ever intended to be “how to” guidance and must not be read as if it sets mandatory “you must and can only” rules. In this regard it is important to have in mind the recent decision in the *Telford* case.<sup>40</sup> In short, the frequent and many references to the PG at this Inquiry must be approached with caution.
- 2.25 Furthermore, the PG is shortly to be replaced and so quite why so much time has been taken up at the Inquiry debating its terms when they are set to disappear is mystifying. Mr Goddard’s answer to Mr Katkowski’s in cross examination that the PG “will continue to be good practice for practitioners”<sup>41</sup> (later echoed by Mr Jones) was ingenious but plain wrong. SoS will soon publish replacement guidance, at least in draft, after which the PG will be cancelled. Mr Goddard might wish to promote its virtues as a consultant and as its lead author but the Government will have decided not to. It’s as simple as that. Indeed, the first stage of the Taylor Review concluded that none of the existing guidance is fully fit for purpose.<sup>42</sup> We will have to wait and see what the new guidance will say but whatever it says it cannot amount to a statement of national policy – that is for the NPPF and the NPPF alone.
- 2.26 Although Mr Goddard accepted that Policy 12 of the NNJCS does not (and cannot) impose additional retail tests over and above the sequential and impact tests in the NPPF, he sought to introduce additional tests by the backdoor arguing that the strategy of the NNJCS was critical to the

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<sup>40</sup> *Telford and Wrekin Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 1638 (Admin), especially [17], *per* Turner J: “This Framework succeeded and replaced earlier national policy set out in PPS4 which also contained a sequential test but one which was expressed in different terms than those now to be found in the Framework. Curiously, however, notwithstanding that PPS4 has been superseded, the Practice Guidance which related to it remains extant, applicable and unaltered. It follows that the Practice Guidance is drafted so as to be particularly apt in its application to policy wording which has since been replaced. Nevertheless, this is not to say that the Practice Guidance should be disregarded. After all, the broad policy objectives underlying the sequential test remain even if the wording is different. However, any decision maker would be entitled (and indeed well advised) to use the Practice Guidance conscious of the fact that, in some parts of its detail, it is directed towards a differently formulated policy test.”

<sup>41</sup> *c/ex*, Day 7.

<sup>42</sup> See Mr Rhodes’ rebuttal, paragraph 5.3.

application of the sequential and impact tests.<sup>43</sup> His approach is wrong and it distorts national retail policy.

- 2.27 First, the wording of national policy is clear and it does not contain the additional test of scale that the Consortium's witnesses sought to read into it. The NPPF imposes 2 tests for retail development – the sequential test and the impact test. If those tests are met, then the proposal is acceptable in retail terms. It is that straightforward. Indeed, it is hard to see any logic in refusing a planning permission on the grounds of a proposal's scale when it is clear that the proposal meets the sequential test and would not have significant adverse impacts. Scale in itself is not relevant. Its only relevance is that a large scale development may potentially give rise to adverse retail impacts, but whether or not it does so still needs to be established by the evidence.
- 2.28 Similarly, the closely related notion of a hierarchy of town centres (which in turn founds the objectors' arguments about scale) does not feature in the sequential or retail impact tests. The odd thing about the hierarchy argument is that if for example Rushden Lakes was close to Northampton (the regional centre and county town) rather than Rushden it would inevitably have a greater impact on the vitality and viability of Northampton town centre. The arguments about scale and hierarchy are properly to be regarded as "false tests" which simply do not exist in the NPPF.
- 2.29 Secondly, as Mr Goddard accepted,<sup>44</sup> a plan cannot cater for all eventualities. Where an application is made that was not contemplated at the plan-making stage, the decision-maker should simply apply relevant policy to determine the application on its merits. That is precisely what Roger Tym recommended in their February 2011 report in relation to Rushden Lakes. It is also what LXB says Policy 12 of the NNJCS provides and what paragraph 3.11 of the supporting text intends.<sup>45</sup> So much one would have thought is obvious, first principles planning.
- 2.30 Finally, it is significant that in the emerging NNJCS, Rushden is given the status of a Growth Town in draft Policy 10. Miss Garbutt agreed that Growth Towns should be the focus of higher order facilities and major retail development.<sup>46</sup> She also agreed that the NNJPU Planning Manager who wrote the Joint Committee report of 31 January 2013<sup>47</sup> had considered the consultation comments and concluded that: *"there is a robust evidence base and rationale for the approach taken within the emerging NNJCS, which identifies Rushden as a Growth Town."*<sup>48</sup> *It is recommended that this approach*

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<sup>43</sup> c/ex, Day 7.

<sup>44</sup> c/ex, Day 7.

<sup>45</sup> CD7.6, page 93

<sup>46</sup> c/ex, Day 6.

<sup>47</sup> CD7.13

<sup>48</sup> For a detailed account see paragraphs. 4.35-4.45 of Mr Rhodes's proof

*is continued.*"(paragraph 3.16) This cannot be dismissed by arguing that as the new NNJCS is at an early stage it carries little weight. The important point is not the status of the emerging new NNJCS and the stage that it has reached but rather that the expert advice is, as just set out, that Rushden warrants recognition as a Growth Town – and the joint authorities agree with this. Further, Mr Lewin agreed that the Inspector can report to the SoS that Northampton Borough Council (NBC) has not objected to Rushden acquiring Growth Town status.<sup>49</sup> In short, with or without a new policy status, the evidence has identified that Rushden has and is programmed to achieve comparable levels of growth to the other Growth Towns.<sup>50</sup>

- 2.31 Mr Jones' thesis that if Rushden Lakes is permitted it would set a precedent that would spell the end of the plan-led system is without foundation. *If* the NNJCS is up to date and the application is not in accordance with relevant retail policies, NPPF [24] and [26] require decision-makers to consider the application against the sequential and impact tests. There is no precedent created, other than doing what the NPPF requires. Similarly, if relevant retail policies in the NNJCS are not up to date NPPF [14] would apply and the only precedent would be the proper application of the presumption in favour of sustainable development.
- 2.32 As to NPPF [14], Mr Jones accepted in cross examination that paragraph 8.6 of his proof misstates the presumption in NPPF [14].<sup>51</sup> This is an important and often misunderstood point: it is not necessary for an Applicant to show that any adverse effects of a proposal are outweighed by the benefits; NPPF [14] is straightforwardly a presumption in favour of granting permission *unless* it can be established that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. Mr Jones' answer that his wording reflected a "*normal balancing exercise*" that seemed "*reasonable*" to him misses the point – the presumption is as set out in NPPF [14] not as seems reasonable to Mr Jones.

## **(ii) Existing retention and outflow**

- 2.33 The existing retention rates for comparison goods expenditure show that Rushden ("home" zone 10) retains only 37.5% compared to Kettering's home zone which retains 76%, Corby (65%) and Wellingborough (53%)<sup>52</sup> (CDA7.6 Table 6.7 on page 44). Mr Burnett highlighted the important fact that out of centre retail parks account for a significant proportion of the expenditure retained by each of these zones – for example, Kettering has a retention rate of 76%, but only 44% of comparison goods expenditure is retained by the town centre: see 9.31 on page 81 of CDA7.6 from which it can be seen that

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<sup>49</sup> c/ex, Day 6.

<sup>50</sup> See Mr Rhodes' speaking note for full detail of the evidence on this point

<sup>51</sup> Day 9.

<sup>52</sup> Mr Burnett EiC, Day 2.

similar points arise with regards to Wellingborough town centre (36%) and Corby (42%).

- 2.34 Therefore at present, there is considerable leakage of comparison goods expenditure from Rushden, its home zone and all the other zones in North Northamptonshire. Rushden and the other towns in North Northamptonshire are presently failing to provide sufficient choice and quality in their comparison goods offer whether in centre or edge/out of centre and consequently their residents travel further afield for comparison goods shopping counter to the fundamental strategic objective of the NNJCS to retain more of such expenditure within North Northamptonshire. Wellingborough's poor performance means that the southern part of North Northamptonshire is particularly poorly served and that the strategy to enhance self containment must apply to even greater effect. (See the references in Mr Rhodes' Speaking Note (APP22) section e to various passages in the 2011 Study (CDA7.6) paragraphs 6.23, 6.30, 9.7, 9.9, 9.31, 9.32 and 9.67 which all relate to Wellingborough's very low market share.)
- 2.35 The outflow of expenditure has numerous adverse consequences – it means that residents regularly have to spend their time driving to Northampton (16 miles) or further – this not only wastes time, money and carbon, it adds to congestion and exports local job opportunities. It also means that the local area forgoes the opportunity to apply local expenditure to achieve a high quality of local development, such as Rushden Lakes. More importantly still, it means that the quality of local life is diminished. These themes came through very powerfully indeed in local residents' exceptionally well thought-through and moving presentations at the evening session of the Inquiry.

### **(iii) Progress made with NNJCS allocations**

- 2.36 Reference has already been made to Mr Burnett's evidence setting out how poor progress has been in terms of delivering the NNJCS allocations which Miss Garbutt considered to still be up to date<sup>53</sup> (and see APP32). The nearest of the 3 Growth Towns to Rushden Lakes is Wellingborough which was earmarked in the NNJCS for some 15,500 to 18,500 sqm net additional comparison retail floorspace but over half way through the NNJCS period nothing has been delivered.
- 2.37 This is the context in which Rushden Lakes needs to be seen. Terraces B and C would provide a total of 17,431 sqm of net comparison retail floorspace<sup>54</sup> which, as Mr Burnett explained, is within the (minimum) range that was allocated to Wellingborough. Wellingborough Borough Council (WBC) supports the proposals and in its letter of 20<sup>th</sup> June 2013 explains that: *"The size and type of retail units proposed would not be able to be accommodated in our*

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<sup>53</sup> EiC, Day 2 and c/ex, Day 6 respectively

<sup>54</sup> See Mr Burnett's proof APP 5 page 22 paragraph 2.99

*town centre.*" This was substantiated by the Wellingborough Councillors and the Wellingborough Chamber of Commerce who spoke so forcefully on the subject at the evening session of the Inquiry. The point is not that Rushden Lakes should be treated as if it is in or at Wellingborough. Instead the point is a more subtle (and better) one, namely that the NNJCS provides for substantial retail development in Wellingborough *which necessarily would retain trade "leaking" out of North Northamptonshire e.g. to Northampton and which necessarily would impact upon trade in Northampton town centre;* that development hasn't taken place to date and the responsible authority WBC and the Chamber of Commerce doesn't consider it likely.

- 2.38 In other words, the context for considering the retail impact of Rushden Lakes upon e.g. Northampton town centre is that the core retail terraces (B and C) are no larger than the amount of floorspace that the NNJCS allocates to Wellingborough *the retail impact of which is strategically acceptable indeed deliberately advocated (via increased retention of trade within North Northamptonshire) by the NNJCS.* If that degree of impact is acceptable (indeed a great deal more is planned for in the NNJCS by virtue of the minimum net increases put in for Kettering and Corby as well) if built at Wellingborough how could it be held to be unacceptable, in terms of its impact on Northampton or Kettering, if built some ten minutes-drive from Wellingborough at Rushden Lakes? It sets our impact into its proper context.

### **(iii) Turnover of Rushden Lakes**

- 2.39 The turnover figures for Rushden Lakes presented by Mr Burnett and Mr Nutter are very similar: £90 million per annum and £99.6 million per annum respectively.<sup>55</sup> Mr Burnett followed best practice in sense checking his turnover by constructing a series of hypothetical tenant line-ups. Besides making the obvious point that his line-ups were speculative (a point that in no way diminishes the validity of the exercise) the Consortium and Legal & General did not challenge his figures or his methodology.
- 2.40 In contrast, Mr Goddard's turnover figure (originally of £139.5 million per annum [see LAC 13] and then in his Appendix 16 a bit less at £135.8m) is implausible. It appears to have derived from a premature assumption that Rushden Lakes would trade at a benchmark level comparable to open A1 retail parks in more populous and strategically accessible locations, but that assumption does not withstand scrutiny. His work has all the air of having started with a high figure, then being unable to substantiate it but being unwilling to concede that he set the figure too high in the first place. The crashing error of including Argos at an obviously overstated turnover (in his Appendix 16) in a tenant line-up that was intended to substantiate his

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<sup>55</sup> The difference between them reflects the use of floorspace efficiency by Mr Nutter, which he has applied to show consistency with Rodger Tym and Partners, but which it is apparent from his proof he does not personally support: paragraph 6.64.

turnover for the scheme should have rung alarm bells for Mr Goddard about the reliability of his colleague's work, just as it did when the Applicant saw it.

- 2.41 First, Mr Goddard applies a figure of 1.8% per annum for floorspace efficiency from 2010. There was some confusion how he sought to justify this figure. In EiC, he appeared to be saying that the percentage uplift was actually a proxy for Rushden Lakes performing better than average. Then, in cross examination,<sup>56</sup> he said that his primary position was that the figure represented floorspace efficiency and that as a secondary position he said it reflected the fact that Rushden Lakes would trade above average. As to the first point, Mr Goddard's analysis is flawed because brand new floorspace will not increase in efficiency year on year (backdated to 2010). It will be as efficient as possible *when it is built*. As to the second point, even when pressed Mr Goddard refused to give specific figures to quantify the degree to which Rushden Lakes might trade above the average. Adding an arbitrary £15m per annum uplift to represent above average trading that Mr Goddard was unable to provide any meaningful justification for is unwarranted.
- 2.42 Secondly, Mr Goddard's sensitivity testing contains a number of inaccuracies. In his Appendix 16, he constructed a tenant line-up with a turnover for Rushden Lakes of £135.8m per annum (at 2018 i.e. £129.9m plus £5.9m for the garden centre). He has Argos trading from Terrace B with a turnover of £22.4m per annum. To put that figure in context, Mr Burnett's highest turnover for this unit in Terrace B is £5.1m. There is therefore a difference of +£17.3m simply by virtue of the inclusion of Argos in Mr Goddard's calculations. The trading density ascribed to Argos by Mr Goddard is a nonsense. Argos is obviously not a conventional retailer with a standard net to gross ratio of 80%, nor does it trade from mezzanine floors. Instead Argos more likely has a net to gross ratio of about 20% because of its very different mode of retailing, with huge storage and stock-holding areas, and typically has a turnover of £5-6m per outlet.<sup>57</sup> Mr Goddard readily acknowledged that the Argos turnover in his Appendix 16 was wrong. In addition and in any event, Argos is not active in the retail park market and stopped acquiring such units some two years ago.
- 2.43 So far then these two points (floorspace efficiency +£15.2m and Argos +£17.3m) account for £32.5m of the difference between Mr Goddard and Mr Burnett i.e. some 71% of the difference between Mr Goddard's figure of £135.8m and Mr Burnett's figure of £90m and if these adjustments were made Mr Goddard's turnover would come down to £103.3m.
- 2.44 Thirdly, Mr Goddard's tenant line-up has WH Smith trading from Unit A3, but he accepted that WH Smith would struggle to retail in line with the proposed

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<sup>56</sup> Day 7.

<sup>57</sup> APP27

conditions.<sup>58</sup> If WH Smith did not trade from the unit in question, Mr Burnett's tenant line up has the turnover of this unit at some £0.4m per annum less than Mr Goddard.

- 2.45 Fourthly, Mr Goddard's line-up includes Zara Home in Unit A11 with a turnover of £1.2m per annum – twice the turnover Mr Burnett expects from the unit (£0.6m). But he acknowledged in cross examination that Zara Home was not active in the retail park market and its top-end town centre customer base (e.g. Mayfair) does not fit the profile here at Rushden.<sup>59</sup> Zara Home is a "definite no" for Rushden Lakes.
- 2.46 These two adjustments (WH Smith and Zara Home) would take another £1m from Mr Goddard's turnover bringing it down to £102.3m. In addition, there is getting on for £1m [£0.9m] difference between Mr Goddard and Mr Burnett in relation to the turnover of Debenhams (Unit C1 in Mr Goddard's Appendix 16). Mr Goddard was asked to check this figure as he might have (erroneously) included the Danish stores in his turnover per square metre. Mr Goddard did not respond on that point.
- 2.47 Fifthly, the turnovers of supposedly comparable retail parks presented by Mr Goddard do not support his turnover figure. As Mr Nutter explained in EiC,<sup>60</sup> Mr Goddard's sales density figure for the Greyhound Retail Park (£12,863/sqm) is completely inaccurate and it should be closer to £3,400/sqm. The turnover was derived from household surveys that failed to differentiate between the 4 retail parks within walking distance of one another which the public refer to collectively as the Greyhound Retail Park. There is no evidence to substantiate that these "comparables" are correct.
- 2.48 Additionally, the methodology used in the telephone surveys is not suitable for estimating the turnover of particular stores and retail parks to the extent necessary to be able to predict the turnover of a new scheme in a robust and reliable manner. Such surveys tend to over represent older shoppers.
- 2.49 In summary, the inclusion of a wholly unrealistic turnover for Argos and an unjustifiable uplift for floorspace efficiency account for a very large part of the difference between Mr Goddard's turnover on the one hand and Mr Burnett on the other. The fact that Mr Goddard cannot produce a realistic and robust tenant line up to substantiate his predicted turnover for Rushden Lakes is a powerful sense check. His estimated turnover is too high to be realistic.
- 2.50 Whilst it is comforting that Mr Goddard clearly thinks that Rushden Lakes would be a run-away success, it is of course his case and that of the Consortium that there is not enough expenditure to justify or support

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<sup>58</sup> c/ex, Day 7.

<sup>59</sup> Day 7.

<sup>60</sup> Day 3.

Rushden Lakes. Mr Goddard actually considers that Rushden Lakes will draw less from its own catchment than Mr Burnett but relies instead on unrealistic assumptions about relocating expenditure from Northampton town centre in order to make his impact case. More realistic assumptions would demonstrate Rushden Lakes would not act as an alternative to Northampton town centre, which sits at the edge of its catchment area. The truth is that Rushden Lakes is a high quality development designed to meet the needs of East Northants; it would not be some sort of strategically located mega centre.

#### (iv) Trade draw of Rushden Lakes

- 2.51 First, there has been a great deal of criticism from those opposed to the proposal of Mr Burnett's judgment that some 69% of the turnover of the scheme would be drawn from zone 10. It was argued by Mr Goddard that Mr Burnett has attributed far too great a proportion of the scheme's turnover to the scheme's "home" or core zones, namely zones 10, 11, 9 and 7. In fact as can be seen from APP18 although there is a large difference between Mr Burnett (69% derived from zone 10) and Mr Goddard (35%) there is no substantial difference at all between them with regards to zones 11, 9 and 7; as shown on APP18 Mr Burnett puts these zones in at 28% of the scheme's turnover and Mr Goddard at 27%. In other words, the real difference is in relation to Zone 10. It is noteworthy that Mr Nutter derives 50% of the scheme's turnover from zone 10.
- 2.52 To put this into context, the other side of this coin is trade retention rates. It can be seen that despite the large difference between Mr Burnett and Mr Goddard concerning what proportion of the scheme's turnover would derive from zone 10, the resultant retention rates are not that far apart. Mr Burnett at a much criticised 70% but Mr Goddard at some 60% (57% in his sensitivity test) i.e. not so different. Mr Burnett's retention rate of 70% is a robust figure considering the scale of the proposal, the qualitative nature of the retail offering and the extremely low retention rate currently experienced in zone 10. It is certainly realistic having regard to the retention rates achieved and planned elsewhere in North Northamptonshire.
- 2.53 Mr Goddard's trade draw figures are not credible. His view (see tabulation at APP29) was that £57.76m or 41% of his £139.5m turnover per annum for Rushden Lakes, in his "primary" case, would be drawn from Northampton town centre. That contrasted with the mere £10.27m per annum or some 7% that he thought would be drawn to Rushden Lakes from out of centre retail parks in Northampton. On his analysis, as documented on APP29 whereas **without** Rushden Lakes 39% of expenditure from residents of zones 7, 9, 10 and 11 which "leaks" to Northampton would be spent in the town centre and 61% in the out of centre retail parks; **with** Rushden Lakes the position would change dramatically so as to reduce the amount of money spent by residents of these zones in Northampton town centre by a huge 96% and leave only

3% of the leaking money being spent in the town centre as against 97% in the out of centre retail parks.

- 2.54 The side by side analysis table (APP29) put to Mr Goddard in cross examination demonstrated the inconsistency of his assumptions and the obviously excessive loading of impact on the town centre. Things are not much better and certainly not more logical when one turns to Mr Goddard's "sensitivity" test; this is documented at a glance in APP32 from which it can be seen that although he now takes less from the town centre and more from the out of centre retail parks, there is still a huge disparity and an unjustifiably excessive degree of trade draw from the town centre when compared to the out of centre retail parks.
- 2.55 Something is very wrong here, not least when one remembers that Northampton Riverside Retail Park is trading extremely well (according to Mr Goddard's Appendix 15 at over £10,000 per sqm net - about double the turnover he has put in for the Rushden Lakes scheme); has the same or similar retailers to several of those anticipated to be interested in Rushden Lakes (agreed in cross examination by reference to APP31) and is well placed on the A45 considerably closer to Rushden than Northampton town centre (APP30). In Mr Burnett's view (and Mr Nutter's), it was not plausible for Mr Goddard to suggest that Rushden Lakes zone 10 residents would no longer have any need to go to Northampton town centre, but that there would be no significant change in their use of Northampton retail parks.<sup>61</sup> Especially, given that twice as much zone 10 comparison goods expenditure currently goes to Northampton retail parks compared to Northampton town centre.<sup>62</sup>
- 2.56 It is obvious, surely, that *to the extent that* Rushden Lakes would compete with stores in and around Northampton, it would compete with the out of centre retail parks - which are dominant in the area - far more than with the town centre. Indeed, *if* it is apt to characterise the town centre as weak (evidence of Mr Goddard & Mr Denness – the latter painted a picture of a damaged, failing centre) one has to wonder quite what it is in such a centre that Rushden Lakes would compete with. The reality is that Northampton town centre is so far removed from Rushden Lakes, and has such little attraction to residents of its core catchment that it is of little relevance to the determination of LXB's proposals. As is commonplace for catchment areas, the edges of Northampton's wider catchment and the wider catchment of Rushden Lakes would overlap but this does not mean that their core catchments would.
- 2.57 In truth, Northampton depends upon its own core catchment of zones including the town centre and those immediately encircling it (zones 5, 7, 4, 6 - see the table at APP44 by reference to the plan at page A1 in CDA 8.3)

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<sup>61</sup> Day 2, EiC.

<sup>62</sup> Day 2, Mr Burnett, EiC -£23.5m p/a and £12.837m p/a respectively.

but even residents of these zones spend more money in the out of centre retail parks than the town centre (APP45) and a lot of money goes to Milton Keynes. It is not suggested that money does not flow from e.g. North Northamptonshire zone 10 (Rushden) and North Northamptonshire more generally to Northampton town centre. That isn't the point at all. The evidence shows that there is such leakage of expenditure. The point instead is that Northampton town centre **does not rely or depend upon** money flowing to it e.g. from Rushden (North Northamptonshire zone 10) – it would be very surprising if it did but the key is that *nor should it given the NNJCS strategy of increasing the retention of expenditure within North Northamptonshire at the expense of outflows to Northampton.*

- 2.58 Legal & General sought to undermine the level of trade retention that Mr Burnett predicts for zone 10 through the evidence of Mr Hunter-Yeats that the retention rate would imply that every household that has access to a car would need to visit Rushden Lakes some 66 times per annum, which Mr Hunter-Yeats regarded as wholly absurd. Noting that the position isn't quite as portrayed (see APP15) as explained by Mr Bird because of the number of adults in the households in question, a good deal of which also have more than one car, the implied visitation rate becomes some 23 trips per annum to the Rushden Lakes per adult - not even once a fortnight. That trip frequency was realistic in Mr Bird's judgement.
- 2.59 In cross examination, Mr Hunter-Yeats took the point made by Mr Bird and accepted that his figure of 66 trips per annum would have to be reduced.<sup>63</sup> He maintained, however, that the figure of 66 trips per annum was "*so absurd that the reduction will only be to a level that is merely absurd*". When pressed for a trip frequency that would be reasonable, Mr Hunter-Yeats said "*I don't know, it's a retailer's question and I'm going to duck it*". He then speculated that about a 10<sup>th</sup> of his calculation i.e. some 6 or 7 trips per annum would be reasonable. It was then pointed out to him that Mr Goddard's assessment implies a visitation frequency of about once a fortnight. First, it is surprising that he felt able to offer a strong view as to the validity of Mr Bird's figure without being able to explain, even in the broadest possible terms, what would be a reasonable trip frequency.
- 2.60 Secondly, in any event, his rejection of Mr Bird's figure is inconsistent with his own clear view in re-examination that half of the zone 10 residents (in car owning households) visiting Rushden Lakes once a week would be a reasonable proposition.<sup>64</sup> Of course, half the residents in car owning households visiting Rushden Lakes once a week is the same as all of these residents going once a fortnight. That was exactly what Mr Bird concluded was reasonable. The "absurdity" in cross examination became Mr Hunter-Yeats's own evidence in re-examination. But all of this is a distraction from

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<sup>63</sup> Day 8

<sup>64</sup> Day 8

the real issue which is whether it is reasonable to imagine that Rushden Lakes would hit Northampton *town centre* hard in the way suggested by Mr Goddard, to which it is obvious surely that it would not.

## SEQUENTIAL TEST

- 2.61 The sequential test is set out in NPPF [24 and 27]. The meaning and effect of this planning policy, and all planning policies, is a matter of law (*Dundee*). Interestingly, the sequential test in NPPF [24] is said by it to apply in cases where an application is “not in accordance with an up-to-date Local Plan”. It is the objectors’ case that the proposals fit this description. If they are right then the sequential test applies. But what if the Applicant is right and relevant policies, and in particular Policy 12 of the NNJCS, are not up to date? In these circumstances the presumption in favour of sustainable development applies as set out in the 2<sup>nd</sup> bullet point in the “decision-taking” part of NPPF paragraph 14. Does that mean that the sequential test does not apply? In my submission it would mean that the answer to the application of the sequential test (e.g. if the objectors are right and the Applicant fails the test) would be fed into the weighing process mandated by NPPF [14].
- 2.62 There are differences of approach between the Applicant, as against the objectors in relation to the meaning of the concept of “suitable” sites in the sequential test – in essence, “suitable for what” is the question which arises; and related to this whether “flexibility” in the last sentence of NPPF [24] includes the concept of disaggregation (previously explicitly set out as a part of the sequential test in PPS4) such that when applying the sequential test one should look to see whether disaggregated *parts* of the scheme could feasibly be accommodated in e.g. Northampton town centre.
- 2.63 LXB’s case in relation to these issues is simple and straightforward: the Supreme Court has told us in *Dundee* what “suitable” means and it has expressly rejected the approach advocated by the Consortium and Legal & General that the concept relates to need and/or identified deficiencies in retail provision in the area in question; and it has expressly rejected the notion that “suitable” means that one should alter or reduce the proposal so as to fit onto an alternative site. The policy concerning the sequential approach as set out in the NPPF, and (to the extent that it is still relevant) the non-policy PG that accompanied PPS4, **must** be applied in a manner which complies with the legally binding case law on the meaning of the sequential approach. The case in question – *Dundee* in the Supreme Court – is of seminal importance.
- 2.64 In summary it establishes [a] that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach; and [b] that in terms of the size of the alternative site, provided that the Applicant has demonstrated flexibility with regards to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the

alternative site. It is stressed that these points although related are distinct. I should add that the Supreme Court's decision applies in England (the Supreme Court is the Supreme Court for England too) as the High Court ruled in terms in the N. Lincs case (CDA1.D) at [61] and [62] in which it was read across and applied to the English sequential test then found in PPS4 (see [17-22] of the judgment).

- 2.65 The Dundee case does not do away with the sequential test – instead it instructs us *what the sequential test means* as a matter of law. It might or it might not be fair comment to say that the case law has stated the meaning of the sequential test to be less exacting than was thought to be the case previously. Some might say “and rightly so” but whatever one's views are, they are beside the point as *the law is the law and must be applied*. It is emphasised that this is not a question of giving weight to what the Supreme Court has ruled, one doesn't give weight to legal rulings; they must be applied in their entirety.
- 2.66 In order to make good the legal submissions it is important to run through the key passages in *Dundee*. A copy is available at CDA1c with the passages in question highlighted. For the record the passages in question are: Dundee at Lord Reed [1, 3-6, 13, 14, 21, 24, 25, 27, 28 – 30] (it is important to note that “the recommended approach” referred to in [29, 2<sup>nd</sup> sentence] relates to the particular terms of the Scottish guidance set out in [6 at indent 13] which are not found in the NPPF) and [33, 36 – 38] Lord Hope.
- 2.67 It is submitted that this case establishes the propositions stated as [a] and [b] above. It is especially important to bear in mind that the sequential test as set out in NPPF [24] states: “They should require **applications** for main town centre uses to be located in town centres...” (and it then runs through the sequence, edge, out of centre). This makes good the very simple point that what the sequential test seeks is to see whether *the application* (i.e. what is proposed) can be accommodated on a town centre site. This is demonstrably so once one reads the paragraph in question in whole – NPPF [24] refers to “planning applications” in the 1<sup>st</sup> sentence; to “applications” in the 2<sup>nd</sup> sentence, and to “proposals” in the 3<sup>rd</sup> sentence. There is no suggestion here that the sequential test means to refer to anything other than the application proposals. So *Dundee* undoubtedly applies to the NPPF.
- 2.68 A related submission concerns the differences between national policy as now stated in the NPPF and as previously stated in PPS4. The last sentence of NPPF [24] states that: “*Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.*” This contrasts strikingly with what was said previously in PPS4 in then policy EC15.1 at (d) (iv) and 15.2 (conveniently recited at paragraph 19 of the Judgment in the *N. Lincs*. case (CDA1d) which contained an explicit requirement for disaggregation. There is no longer any such requirement stated in the NPPF. It is no answer to this to refer to the words “such as” in the last sentence of

NPPF [24]. These words cannot be read so as to imply that a major, and extremely controversial, part of previously stated national policy lives on by implication in the NPPF. Had the Government intended to retain disaggregation as a requirement it would and should have explicitly stated this in the NPPF. It is too large a point to rest on implication. If it had been intended to carry on with the requirement then all that would have been required is the addition of the word “disaggregation” at the end of NPPF [24].

- 2.69 The Applicant is entitled to rely on the omission of this word (and concept) as deliberate and meaningful. It was argued (e.g. by Mr Jones) that the NPPF is “streamlined”. If it is suggested that this implies that one can read back into the NPPF parts of national policy that previously existed but no longer do so, then that it is plain wrong as a matter of law. It was suggested by Mr Jones in re-examination that because the NPPF is streamlined then one can flesh it out with “good practice” and in particular the 2009 PG – this is just another (illegitimate) way of trying to get back into play guidance that is no longer relevant because the passages in national policy to which it relates have been ditched. Just to be clear, the “streamlined” nature of the NPPF was deliberate (see the last paragraph of the Ministerial Foreword) and the NPPF is a **complete** statement of national planning policies, save in respect of waste: see NPPF [1]. In short, if it is in the NPPF it is national planning policy and if it is not, then it is not. It is as simple as that.
- 2.70 In similar vein, there is nothing in the sequential test as set out in NPPF [24] that states that the concept of “suitable” sites means suitable in terms of the scale of the nearest centre to the site in question and/or its place in the “hierarchy” of centres. The sequential test relates entirely to the application proposal and whether it can be accommodated e.g. on a town centre site. It does not mean or imply that one should say to oneself, for argument’s sake, “this scheme looks large in relation to Rushden, it would be more appropriate for it to be half the size and therefore we should look for a smaller site when carrying out the sequential search” or “this scheme looks large in relation to Rushden, by virtue of its scale it should be located in Northampton”. It has already been submitted that the sequential test has nothing to do with “need” either.
- 2.71 It is important in this regard to remember that NPPF [23] is entirely related to plan-making, it has nothing to do with decision-taking. The decision-taking test is set out in NPPF [24, 27]. It would be wrong as a matter of law to treat NPPF [23] as if it applies to deciding a planning application when it is clear and states in terms that it relates to drawing up Local Plans.
- 2.72 In relation to flexibility (last sentence NPPF [24]) as Mr Burnett explained in cross examination the Applicant has demonstrated flexibility on format – a large part of the retail element of the scheme, namely the two anchors and the associated unit shops – anchors B8 and C1 and terraces B and C have full cover mezzanines thus reducing very significantly indeed the footprint of the

development. Mr Burnett also referred to flexibility in relation to “scale” and explained that the Applicant could readily have placed far more retail floorspace on the site than has been proposed – in this way the floorspace of the development is reduced. It is clear from the layout that he was right in this. A significant part of the scheme is taken up by the proposed hotel and leisure club and various lakeside buildings i.e. by non-retail uses.

- 2.73 Mr Burnett considered that the whole Rushden Lakes scheme could not realistically be moved to another location.<sup>65</sup> In his view, not that there is any requirement to disaggregate, there was also no realistic likelihood of even the M&S anchored Terrace being built in any of the town centres that have been referred to.<sup>66</sup> In any event, it would be inappropriate for a significant part of the Rushden Lakes scheme to be located in Northampton, which lies at the outer edge of the Rushden Lakes’ catchment, given the aspirations of self-containment for North Northamptonshire in terms of comparison goods choice and sustainability. Mr Goddard accepted in cross examination that in the real world the scheme must be “*suitable to do the job*”.<sup>67</sup> All that would happen were it feasible to imagine that the Rushden Lakes’ scheme (or even a significant part of it) could up sticks and migrate to Northampton is that this would simply consolidate and worsen the porous nature of North Northamptonshire.
- 2.74 The absurdity of breaking the scheme up was explored in the cross examination of Mr Whiteley by Mr Katkowski.<sup>68</sup> It is ridiculous and unreal to suggest, as Mr Whiteley did, that the scheme should be disaggregated into its constituent elements, all of which should be accommodated across a number of sites in Northampton. He went so far, and ludicrously, to suggest that the proposed restaurants and the hotel should be provided on sites in Northampton. This is unreal. Shoppers at Rushden Lakes would welcome somewhere to eat and drink as would those enjoying the nature walks, boating and visitor amenities. It defies logic to direct them to a faraway town for this. Similarly, it makes no sense to tell someone wishing to stay in the hotel at Rushden Lakes perhaps because of the Nene Valley tourism or business related trips that were discussed at the evening session of the Inquiry that they should stay in Northampton instead.
- 2.75 Mr Whiteley agreed that none of this made sense in the real world, but sought to argue things were different “*in policy terms*”.<sup>69</sup> That answer

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<sup>65</sup> The Practice Guidance which forms part of the objectors’ case, directly recognises that an important part of the need for retail development can be a locationally specific need – see PG [6.26] and [6.52] – in fact, this is the second point in the PG’s checklist for applying the sequential test.

<sup>66</sup> Day 2, EiC

<sup>67</sup> c/ex, Day 7

<sup>68</sup> Day 6

<sup>69</sup> c/ex, Day 6

demonstrates a lack of understanding of what the case law tells us the sequential test means but also should have rang an alarm bell in Mr Whiteley's mind – if you believe that a policy requires an unreal, an unrealistic, outcome that should tell you that the chances are that you have misunderstood the policy in question. The same goes for the evidence of Miss Garbutt who similarly advocated that the proposed restaurants should go to the "restaurant quarter" in Kettering. Whilst sure the restaurant quarter may have its own appeal and purpose but what is the relevance to a mixed use retail and leisure scheme at Rushden?

- 2.76 Legal & General's mantra that the application seeks to locate a higher order use near a lower order centre also misses the point. If part or all of the scheme were to be located in Northampton, not only (as already said) would this fail to address the aspiration for self-containment, it would also not be accessible to zone 10 (and the other "home" zones) residents in a sustainable way since they would not be able to walk or cycle and the bus service to Northampton from Rushden is poor and not feasible on Sundays. Mr Whiteley acknowledged that putting part of the scheme in Northampton town centre would increase the outflow of expenditure from zone 10 and that this would patently be contrary to the objective of the NNJCS and in particular the requirement of Policy 12 that new retail development should not adversely affect the ability of North Northamptonshire to retain expenditure.<sup>70</sup> In terms of the case put against Rushden Lakes, this approach does not meet the same function as the application proposals are intended to perform. Nor of course is there any location in any of the town centres that would even remotely resemble the lakeside ambience, and associated water-based recreation and leisure, that Rushden Lakes would provide.
- 2.77 In terms of availability, NPPF [24] simply asks whether town centre or edge of centre sites are "available". It does not ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years. That is unsurprising: NPPF [24] is concerned with planning applications, not plan-making; it is part of national policy which has at its heart an imperative to get the economy moving, for planning to facilitate and not frustrate - to deliver economic growth expeditiously. The ethos is to "look for solutions rather than problems" NPPF [187] but that seems an entirely alien notion to our opponents whose cases have been characterised by a lack of realism. Far from delivering economic growth all that would happen were they to prevail is that LXB's huge prospective investment with all the many tangible benefits that it would bring would disappear. And for what good reason? Dismissing this application would not energise Legal & General into delivering the scheme that they have promised for over a decade.

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<sup>70</sup> c/ex, Day 6.

- 2.78 Reverting to the meaning of the word “available” in NPPF [24], NBC has previously adopted the same interpretation of “available” as LXB do. Mr Lewin accepted that in the Committee report (24 July 2012) in relation to an application to redevelop the Royal Mail site at Barrack Road for a 5,000+ sqm Tesco superstore, the Council rejected Legal & General’s objection that availability should have been looked at over a longer time frame.<sup>71</sup> The site was not currently available and that was what was required by the sequential test. That Committee report (Mr Rhodes’ Appendix 5) established that there were no sequentially preferable sites in Northampton town centre for a development of a much smaller scale than Rushden Lakes, as recently as July 2012 – and there is no credible evidence that the position has changed.
- 2.79 LXB’s case in response to the sites put forward by our opponents is summarised in Mr Burnett’s evidence at section 4 of, and appendix 7 of, his proof. Many of the “sites” in question are tiny and a lot are individual vacant unit shops. Several cases in Corby are mentioned – why? Submissions have already been made on just how senseless it is to advocate such sites.
- 2.80 Mr Whiteley accepted that the sites put forward by the Consortium are critically dependent upon disaggregating the scheme.<sup>72</sup> I have already submitted that given that the NPPF does not contain a test of disaggregation, the Consortium’s suggested sites are not suitable in NPPF terms. In any event, none of the suggested sites withstands scrutiny for the reasons given by Mr Burnett.
- 2.81 Mr Goddard accepted in cross examination that the sites in Wellingborough and Kettering could not “do the job” but qualified his answers by saying that they were nevertheless important sites for the future of the town centres<sup>73</sup> – that may or may not be true but it is not the sequential test. Ultimately, there is no real substitute for the impressions that were formed at the site visit to the towns and sites in question. To the extent that sites in Wellingborough have been referred to the Applicant’s case is that none are suitable and/or available but it is also important to bear in mind that the responsible LPA – WBC – agrees with LXB (see WBC letter dated 20<sup>th</sup> June 2013) and as was explained in clear terms at the evening session of the Inquiry by Councillors Scarborough and Maguire.
- 2.82 Cllr. Scarborough explained that he has been a councillor for many years and this scheme represents the best opportunity that he has seen to kick start real growth in the area. Cllr. Maguire referred to the unanimous political support at WBC for the scheme; that Wellingborough aims to be a 21<sup>st</sup> century market town and that Rushden Lakes is a completely different, complementary, development. The point was put extremely well by Mr

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<sup>71</sup> c/ex, Day 6

<sup>72</sup> c/ex, Day 6

<sup>73</sup> Day 7

Piggott, the Chairman of the Wellingborough Chamber of Commerce. It is noteworthy that the Wellingborough Chamber of Commerce is fully committed to support the proposals. He explained that: *“Wellingborough town centre is very unlikely to have retail development for the foreseeable future. The town has stalled and the opportunity has now been lost. Rushden Lakes has our total vote.”* Doubtless it is touching that Northampton, Kettering and Corby Councils should concern themselves about Wellingborough but the important point is that they do not represent the views of WBC and the Chamber of Commerce. Their support for LXB’s proposals completes a full set of support from all of the towns nearest to Rushden Lakes and it speaks volumes.

- 2.83 Turning to Kettering, Miss Garbutt’s inconsistent approach in relation to sequentially preferable sites was demonstrated by her conclusion in her 7 May 2013 officer’s report in relation to an application for a small unit shop at Belgrave Retail Park.<sup>74</sup> The proposed shop would be about the same size as a single unit in Terrace C and it would house a store such as the 99p Store. Having examined 93 potential sites, she found that the proposal satisfied the sequential test. In cross examination she was unable to give any convincing explanation as to why two months ago she could not find a suitable and available site for the equivalent of one unit shop in one of the retail Terraces at Rushden Lakes, but now she was giving evidence that large chunks of Rushden Lakes could be accommodated in Kettering. She said more than once that Rushden Lakes is of a completely different scale – but that’s LXB’s point!
- 2.84 In similar vein, Mr Whiteley’s firm (see APP23) couldn’t find a sequentially preferable site in Northampton to accommodate the Next proposals at Riverside Retail Park. What is clear from these examples is the fundamentally inconsistent approaches taken by Miss Garbutt and Mr Whiteley’s firm in these reports when compared to that taken by them at this Inquiry. It exposes just how contrived the Consortium’s case is. In addition, the NBC report into the Barrack Road proposals should not be forgotten.

## IMPACT TEST

### (i) Existing, committed and planned investment

- 2.85 NPPF [26] requires an assessment of the impact (if any) of the proposal on “existing, committed and planned public and private investment” in a centre. That requirement is quite straightforward, only investment that has been made, has been committed or is planned warrants consideration. Legal & General appeared to suggest that its expenditure in relation to professional fees to date somehow constitutes “existing” investment deserving of consideration under the impact test. NPPF [26] refers only to *“investment in a*

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<sup>74</sup> Mr Rhodes’ rebuttal Appendix 6

*centre*", not to investment in the services of professional advisors who have collectively been unable to come up with a viable scheme for 13 years. As for "committed" investment, this is a much misused word by Legal & General who has asserted that it has a contractual commitment to invest by virtue of the 2009 Development Agreement (DA) with NBC. This is nonsense; the DA has a viability pre-condition and a continuing viability condition, the net effect of which is that unless Legal & General is satisfied that it makes sense to proceed then there is no "commitment" on Legal & General's behalf to do anything at all.

- 2.86 As for "planned" investment Mr Denness was absolutely clear in his answers in cross examination that Legal & General did not have any planned investment. That must be right: without a viable scheme, Legal & General cannot plan to invest – plainly it would not plan to invest in an unviable scheme. As Mr Denness agreed, the highest Legal & General can put its case is that it has "*intended investment*". But such inchoate aspirations do not fall within NPPF [26]. The rather desperate argument that Rushden Lakes would prejudice the public sector investment in the new, relocated, bus station which is an existing/committed investment is another bad point – the bus station has a whole series of worthwhile benefits in its own right and LXB is hardly responsible for huge amounts of taxpayers' money having being spent on a new bus station without NBC having secured a commitment from Legal & General to deliver its side of the bargain.
- 2.87 Mr Whiteley agreed that the Consortium's case on impact on investment rests upon two propositions: (a) the Grosvenor Centre would proceed if Rushden Lakes is refused planning permission; and (b) the Grosvenor Centre would not proceed if Rushden Lakes is granted planning permission.<sup>75</sup> When weighing the competing evidence on these issues between LXB and the Consortium, it is important to bear in mind that Mr Chase's retail property experience is broad and extensive. Mr Whiteley on the other hand has advised Next and B&Q.
- 2.88 In order for the Consortium's and Legal & General's cases to stand up to analysis one would need to be satisfied that there is a viable redevelopment/extension scheme for the Grosvenor Centre in the absence of Rushden Lakes, which would become unviable were Rushden Lakes to proceed. *Put shortly, there can be no objection under NPPF [26] to a proposal which makes an already unviable scheme even more unviable.* That's the key and in truth that's at most what we've got here.
- 2.89 The assertion that Legal & General will not proceed with the Grosvenor Centre extension if Rushden Lakes is granted planning permission should not be accepted uncritically, especially since Legal & General's intentions have

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<sup>75</sup> c/ex, Day 6

been expressed vicariously through external witnesses. The self-proclaimed unwillingness of Legal & General to proceed with the Grosvenor Centre extension if Rushden Lakes is permitted has not been the subject of any resolution by the Board as far as is known to the Inquiry. Moreover, Mr Denness was not aware whether there were any internal reports discussing the viability of the Grosvenor Centre extension in the Rushden Lakes/no-Rushden Lakes worlds. All we have is the bare assertion of Mr Barrie<sup>76</sup> who, like all of his Legal & General colleagues, has chosen to spectate rather than participate in this Inquiry.

- 2.90 The Consortium, does not seek to prove that the Grosvenor Centre extension would not come forward with Rushden Lakes. Instead it relies on Legal & General's evidence.<sup>77</sup>
- 2.91 Legal & General asserts that Rushden Lakes would make the Grosvenor Centre redevelopment/extension unviable and that it would therefore not proceed. That sounds definitive, until one actually looks at the evidence. There is nothing to support Legal & General's contention and plenty to refute it. First, Legal & General did not call a single witness able to give any firsthand evidence about the viability of the Grosvenor Centre redevelopment/extension. Mr Denness confirmed that he had worked with Legal & General in relation to various different design options for the Grosvenor Centre extension "*on an occasional basis*" from 1999 until last year. He had not, however, personally been involved in or examined the viability of any of the options.<sup>78</sup> Mr Jones' proof contains various assertions about viability, but he conceded in cross examination that he was simply setting out what someone at Legal & General had told him and that he had not actually seen or been party to any viability work.<sup>79</sup> He had not seen any evidence that the Grosvenor Centre extension would be deliverable without Rushden Lakes and not with it.
- 2.92 Secondly, Legal & General's self-imposed hiatus was the subject of conflicting evidence by its own witnesses. On proper analysis, Rushden Lakes is not the true cause. When asked by Mr Harris in re-examination how important Rushden Lakes was to the continued hiatus, Mr Denness unhesitatingly replied that it was "*the sole factor*".<sup>80</sup> Quite different to his answers in cross examination to Mr Katkowski. But, when Mr Katkowski's took Mr Jones in cross examination through the chronology he agreed that the hiatus was in actual fact prompted by two factors: the economy and development that had been permitted out of centre (the "noose" around Northampton town centre) that Legal & General has been protesting about in vain for many years.

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<sup>76</sup> Letter at Mr Jones' Appendix 13

<sup>77</sup> Mr Whiteley, c/ex, Day 6

<sup>78</sup> c/ex, Day 9

<sup>79</sup> Day 9

<sup>80</sup> Day 9

- 2.93 Rushden Lakes did not feature in Legal & General's hearing statement to the CAAP EiP<sup>81</sup> (which Mr Jones accepted was a truthful and accurate explanation as to why the scheme was not viable) because Legal & General had assumed that Rushden Lakes would be refused by the LPA. Therefore, in August 2012, irrespective of Rushden Lakes, the Grosvenor Centre extension was not viable. Mr Jones agreed that viability had not improved since then and that he was not saying that Legal & General now had a viable scheme or even a less unviable one. He confirmed in answer to Mr Dove's cross examination that even assuming Rushden Lakes is refused there would still not be a viable scheme. Consequently, the most that can be said is that by factoring Rushden Lakes into the equation Legal & General believes its own unviable scheme to be more unviable. As said, that simply cannot be a significant adverse impact in NPPF [27] terms.
- 2.94 It is no answer to argue as Mr Harris sought to do in re-examination that "*in principle*" a viable scheme could be devised. NPPF [27] does not protect mere in principle intentions, but rather safeguards actual plans to invest. Interestingly, the much-loved 2009 PG suggests that for an "impact on investment" test to be met, that investment must be "actively progressing"- see PG 7.17.<sup>82</sup> By definition, Legal & General's self-imposed hiatus is the opposite of active progression. Legal & General's record speaks for itself. For 13 years Legal & General has failed to bring forward a viable scheme as Mr Dove established in cross examination.<sup>83</sup>
- 2.95 Mr Goddard too accepted that Legal & General has owned the Grosvenor Centre throughout the biggest economic boom that we are likely to see in our lifetimes, but it had failed to bring forward a viable scheme.<sup>84</sup> In the absence of a known viable scheme, the opponents' cases simply do not get off the ground. "Prejudice" to an unviable scheme is nothing to the point. Indeed if one thinks about it, why should it be? The NPPF aims to deliver real economic growth; stopping investment in an undoubtedly viable scheme at Rushden Lakes in order to "protect" a known-to-be unviable "scheme" at the Grosvenor Centre would be folly, indeed surreal.
- 2.96 Neither this Inspector, nor the Inspector at the EiP of the CAAP have been shown the key parts of the 2009 DA. Without knowledge of the 9 pages of blacked out pre-conditions that LXB are aware of from the "close your eyes at midnight" redacted version that LXB has been provided with, it is impossible – literally impossible - to substantiate how many or more likely, few of these pre-conditions have been satisfied to date. Mr Whiteley and Mr Lewin had not seen the DA "in the raw", by which they meant – at all; they did not know

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<sup>81</sup> APP 34

<sup>82</sup> Mr Goddard acknowledged this in c/ex, Day 7 and in his proof at paragraph 4.13 where he confirms his view that this is the meaning in NPPF paragraph 26

<sup>83</sup> Day 10

<sup>84</sup> c/ex, Day 7

what pre-conditions there were, nor has either NBC or Legal & General been prepared to disclose even the headings of the DA by way of pre-conditions.<sup>85</sup> These witnesses should not have allowed themselves to be put in the position of claiming to be able to give evidence about the DA – they were, literally, unable to do so. Mr Whiteley did, however, accept that the DA was bound to contain viability pre-conditions and that viability would have to be assessed at various critical points.<sup>86</sup>

- 2.97 Other than the pre-conditions which are the responsibility of the public sector to discharge (e.g. relocating the bus station), none of the Consortium's witnesses had any idea whether Legal & General had actually discharged any of its pre-conditions. It is also clear that the DA is the type of "commitment" from which Legal & General can readily withdraw – hence its letter to this Inquiry and the evidence given by the Council to the AAP Inspector last year. Nor were Mr Jones or Mr Denness able to give any evidence at all about the nature of the pre-conditions and how many or few had been met – neither of them had seen the DA. It has to be said that it is remarkable, striking indeed, that even Legal & General's witnesses had been kept in the dark. But that is the fault of Legal & General who by doing so have made it literally impossible for any evidence to be given to substantiate its case.
- 2.98 The fact remains that there is no current scheme. Mr Harris has argued that the NPPF does not require there to be a "scheme." That misses the point. In the absence of a scheme, there cannot be a viable scheme and consequently there cannot be "planned" (let alone "committed") investment. At most there can be an *intention* to invest *if, as and when there ever is* a viable scheme but, as already submitted, that is not what the NPPF at [26] is aimed at. Mr Lewin alluded to the fact that there had been some 21 previous iterations of the Grosvenor Centre scheme, but he had not seen a worked up scheme and nor had Mr Whiteley.<sup>87</sup>
- 2.99 Mr Hunter-Yeats, who provides Legal & General with transport advice, had not seen a scheme for at least 18 months.<sup>88</sup> In answer to the Inspector's question, Mr Lewin thought that a scheme might be forthcoming by the end of the CAAP period, but that scheme would have to meet NBC's expectations and there "*may well be a way to go in terms of balancing the two interests [of Legal & General and Northampton Borough Council]*".<sup>89</sup> He was unable to give the Inspector a more precise date and simply said he agreed with whatever Mr Jones said. But when it came to Mr Jones, he was another witness who confirmed that there is no scheme for the redevelopment/extension of the Grosvenor Centre.

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<sup>85</sup> c/ex, Day 6

<sup>86</sup> c/ex, Day 6

<sup>87</sup> c/ex, Day 6

<sup>88</sup> c/ex, Day 8

<sup>89</sup> Inspector's Question, Day 6

- 2.100 Thirdly, in cross examination, Mr Harris suggested to Mr Nutter that Rushden Lakes and the Grosvenor Centre would compete for the same occupiers such that retailers would choose Rushden Lakes instead of the Grosvenor Centre.<sup>90</sup> This often repeated assertion is just that – an assertion. There is no evidence to substantiate it. LXB's evidence, via Mr Chase, is that the market would not see the two locations as competing the one to the exclusion of the other. When one stops to think about it, it is implausible that retailers would abandon or decide not to be represented in the county town (a regional centre) because of Rushden Lakes. Mr Whiteley's evidence [LAC 17] was that there were 28 retailer requirements for Northampton. When asked to compare the retailers with current requirements for Northampton with Mr Goddard's review of likely retailer demand for Rushden Lakes,<sup>91</sup> he revealed that the only comparison retailer common to both lists was Carphone Warehouse!<sup>92</sup>
- 2.101 Mr Goddard conceded<sup>93</sup> that there is no evidence that a single one of the retailers likely to occupy Rushden Lakes would be lost to any of the town centres, either by pulling out of the centre in question or choosing not to go there because of Rushden Lakes. As Mr Chase explained, retailers look to plug gaps in their market profile and seek opportunities for *additional* representation. Thus, just by way of example, there is no evidence to substantiate that M&S would not have stores at both Rushden Lakes and Northampton town centre. Many retailers have multi representation in town centres and out of centre. Next is a perfect example of this. Several retailers have distinct town centre and out of centre formats. And that is in relation to retailers being represented in a town centre and also outside the same town centre – here Rushden Lakes would be a long way away from Northampton town centre and would be seen as serving a different core catchment and therefore market opportunity.
- 2.102 Mr Denness confirmed that he did not have any first-hand knowledge that retailers, including potential anchors, hold the view that if Rushden Lakes is granted planning permission they would not be interested in having representation in the Grosvenor Centre.<sup>94</sup> He then repeated an argument, made by the objectors throughout this Inquiry that no retailer would object to out of centre development. That argument is not borne out by the evidence. House of Fraser showed no reluctance in objecting to the Sixfields Sainsbury's superstore in order to seek to protect the Grosvenor Centre.<sup>95</sup>

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<sup>90</sup> Day 4

<sup>91</sup> Mr Goddard's Appendix 9

<sup>92</sup> c/ex, Day 6

<sup>93</sup> c/ex, Day

<sup>94</sup> c/ex, Day

<sup>95</sup> APP 35

- 2.103 Additionally, as Mr Nutter explained,<sup>96</sup> the real issue is not whether Rushden Lakes and the Grosvenor Centre would have overlapping catchment areas, but rather whether they would be competing for the same *market opportunity*. Rushden Lakes and the Grosvenor Centre do not share the same primary catchment area. Mr Nutter's view was that Northampton "*would never*" sit in the primary catchment area for Rushden Lakes.<sup>97</sup> He explained (as did Mr Chase<sup>98</sup>) that sophisticated retailers would operate different format stores in town centres compared to retail parks. The two locations would not therefore be competing for the same market opportunity even if there were an overlap in their catchments. Once again, Next is a perfect example of this; witness their presence in Northampton town centre, and at Riverside Retail Park, and – as can be seen from Mr Denness' Appendix 7 – at Sixfields and St James Retail Park as well; the core catchment of all of these stores must overlap very substantially and yet the retailer is represented in these 4 locations, and is looking to expand in both the town centre and Riverside Retail Park.<sup>99</sup> They are also represented in Kettering and Corby.
- 2.104 Fourthly, a key plank of Mr Denness' argument that if Rushden Lakes is permitted and implemented Legal & General cannot bring forward the Grosvenor Centre extension was that "*the core catchment area for Northampton is concentrated to the east of the town*".<sup>100</sup> He didn't argue simply that money comes to Northampton town centre from the east, of course it does, that is well known; what he asserted is that the catchment is "concentrated" to the east. But he is wrong - the evidence simply does not support his assertion as seen from APP44 and APP45. In re-examination Mr Harris took Mr Denness to Mr Burnett's table BPD11 and suggested that there was some £98m inflow of expenditure to Northampton town centre from the east.
- 2.105 However, Mr Jones in cross examination agreed that the figure of some £98m did not refer to Northampton town centre exclusively; Mr Burnett's table assumed a 50:50 split between the town centre and retail parks. Therefore, the inflow would, at most, be some £49m. That however overstates the position as can be seen from Mr Burnett's rebuttal paragraph 4.9 and from APP29 and APP44, something like 2/3<sup>rd</sup>s of the inflow is to the out of centre retail parks and 1/3<sup>rd</sup> to the town centre meaning that the town centre would benefit from some £34m. This is hardly a "core" part of the town centre's trade and, as said earlier on, why should it be in circumstances where the NNJCS aims to reduce the export of money from North Northamptonshire to Northampton. Mr Jones accepted in cross examination that the zones immediately surrounding Northampton are "key", and that APP45 fairly

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<sup>96</sup> c/ex, Day 4

<sup>97</sup> r/ex, Day

<sup>98</sup> c/ex, Day 2

<sup>99</sup> See APP23

<sup>100</sup> See paragraph 5.1 of his proof and his EiC, Day 9

reflected that even from these zones expenditure was going south east to Milton Keynes and to the encircling retail parks. He also accepted, in answer to the Inspector's question that this was borne out by a "*further plank of evidence*" namely the position on the ground e.g. at Riverside Retail Park which is visibly trading well even on weekdays.<sup>101</sup>

- 2.106 It is also important to examine the consequences of Legal & General not proceeding. First, whilst it is recognised that the replacement of the bus station was connected to the aspiration to bring forward the Grosvenor Centre extension, the new bus station brings clear benefits in its own right as Mr Lewin accepted.<sup>102</sup> The modern, improved, better located bus station, with its necessary enhancement of capacity, would not be lost if the Grosvenor Centre extension does not come forward. It is also important to recognise that the public funding for the bus station was time-limited and the funding body itself was due to expire.<sup>103</sup> Permitting Rushden Lakes is not going to make a jot of difference to the use of the new bus station.
- 2.107 Secondly, it is likely that another partner would be found should Legal & General decide to pull out. That was the evidence that Mr Lewin himself gave to the Inspector at the CAAP EiP after the Inspector had specifically sought reassurance about what would happen should Legal & General withdraw. He was "*confident given the attractiveness of Northampton and the amount of floor space identified in the retail studies that there was a strong economic case for someone else to step into Legal & General's shoes*".<sup>104</sup> His evidence accords with the views of the Leader of NBC expressed in his letter of 26 June 2013.
- 2.108 Thirdly, if as Mr Whiteley asserted the whole CAAP would collapse without the investor confidence instilled by the Grosvenor Centre extension, it is implausible that the Council lacks a plan B. As Mr Katkowski's put it in cross examination, a strategy of "L&G or bust" would be foolhardy.<sup>105</sup> The real problem for Northampton is not Rushden Lakes. The Rushden Lakes proposal is a side show, a scapegoat – instead it is Legal & General's failure to deliver investment in the Grosvenor Centre despite many years of reassuring statements that is the real issue.
- 2.109 The spectre of a lack of investor confidence is very easy to raise, but much harder to substantiate. Legal & General and the Consortium have been unable to provide any evidence to support the generalised fears that they have voiced. Moreover, Mr Burnett and Mr Nutter both show that the scale of expenditure available to Northampton town centre is such that, even allowing

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<sup>101</sup> Inspector's Question, Day 9

<sup>102</sup> c/ex, Day 6

<sup>103</sup> Mr Whiteley, c/ex, Day 6

<sup>104</sup> c/ex, Day 6

<sup>105</sup> Day 6

for the impact of Rushden Lakes, the town centre turnover would continue to grow in real terms. LXB asks the Inspector not to be beguiled by unsubstantiated scare-mongering from opponents. It is substantiated and demonstrable evidence that counts and the simple fact of the matter is that not a single witness was called by the objectors to give any direct evidence on the subject – evidence that they could speak to of their own knowledge. Why the objectors have chosen to present their cases in this manner is for them but it's mystifying. Be all that as it may the important point is that their witnesses have substantiated nothing at all.

## **(ii) Impact on town centre vitality and viability**

- 2.110 The Consortium and Legal & General both rely entirely on the evidence of Mr Goddard to show an impact on the vitality and viability of Northampton town centre. For the reasons set out above, Mr Goddard's evidence on turnover and trade draw is not robust and should not be accepted. Notably, the Consortium's case on impact was "refined" during the course of the Inquiry. As Mr Goddard's figures were subjected to the "micro analysis" he so disapproved of in cross examination,<sup>106</sup> in other words once one actually tested his figures to see whether they made any sense, his case became less about actual impacts on actual shops and more about generalised notions of investor confidence. Nonetheless it is important to appreciate that there is no evidence at all that a single shop anywhere would close (and not be re-occupied) as a result of Rushden Lakes let alone that sufficient numbers would do so such as to amount to a significant impact. That is significant: as Mr Lewin agreed, the approach of NBC in relation to the Barrack Road Tesco application was that a 22% trade diversion which would cause Sainsbury's to trade at 81%-67% of its company average was not a significant impact in NPPF terms because the Sainsbury's store would not close as a result.<sup>107</sup>
- 2.111 At this point in these submissions we rely upon (without repeating) paragraphs 2.32-2.59 above to summarise our case that it has not been substantiated and demonstrated in evidence that Rushden Lakes would cause significant impacts on the vitality and viability of any of the town centres referred to by the objectors.
- 2.112 As for the health of Northampton town centre, if (as claimed) it isn't in good shape that is of course nothing at all to do with Rushden Lakes but rather is due to the many years of failure to bring forward town centre improvements to meet competition from Milton Keynes and Leicester as well as the ring of out-of-town retail parks surrounding the town centre. This will be worsened when, as Mr Denness agreed will be the case, the new bus station reduces footfall at the first floor level of the Grosvenor Centre which will deter

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<sup>106</sup> Day 7

<sup>107</sup> c/ex, Day 6

retailers from taking space there.<sup>108</sup> He was not aware of *any* refurbishment carried out to the Grosvenor Centre since Legal & General purchased it in 1999. The Inspector visited the Grosvenor Centre and will have seen how badly it needs a facelift. With the continuing consolidation of out of centre retail parks around the town centre and the dispiriting Grosvenor Centre it is little wonder that Northampton town centre is losing out. It is such a waste of time, effort and resources (much provided by local taxpayers) for the Consortium and Legal & General to fight against Rushden Lakes – their efforts would be much better directed at getting to grips with their own town centres.

- 2.113 Mr Goddard accepted that he was not concerned about the vitality and viability of Rushden town centre and that his concerns about Corby were “relatively insignificant”.<sup>109</sup> Mr Goddard’s assessment of impact upon Northampton town centre is not credible and of course, if he has significantly overstated the likely turnover of the scheme and then inappropriately skewed his figures, as LXB says he has, his whole assessment lacks credibility and should not be relied upon, thus rendering his assessment of impact on Kettering and Wellingborough unreliable as well.
- 2.114 Even with the impact of Rushden Lakes, Mr Burnett and Mr Nutter’s evidence is that town centres (Rushden, Wellingborough, Kettering, Corby and Northampton) will still experience real growth in the period to 2018, given the scale of forecast population and expenditure growth: see Mr Burnett’s proof, tables 3.2 and 3.3. Their evidence is much to be preferred to that of Mr Goddard’s.

***Issue (c) The extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car.***

#### **Relevant policy**

- 2.115 The key parts of section 4 of the NPPF relevant to making a decision on this application are paragraphs 32, 34 and 36. These are the decision-taking as opposed to the plan-making paragraphs.
- 2.116 Decision-makers are required by NPPF [32] 1<sup>st</sup> bullet to “*take account*” of *inter alia* whether “*the opportunities for sustainable transport modes have been taken up depending on the nature of the site, to reduce the need for major transport infrastructure*”. Mr Hunter-Yeats agreed that [32] must be applied in a context specific manner depending upon the nature and location

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<sup>108</sup> c/ex, Day .

<sup>109</sup> c/ex, Day 7

of the site, and that the rationale for promoting sustainable transport modes was to reduce the need for major infrastructure to serve the development.<sup>110</sup> The decision must be sensible and the opportunities for sustainable travel will necessarily vary according to the particular facts of each case. Mr Hunter-Yeats agreed that the 1<sup>st</sup> bullet of [32] does not mean that if the sequential test is passed then an application should be refused because it is inherently less sustainable in transport terms than a town centre site.<sup>111</sup>

- 2.117 In terms of the 2<sup>nd</sup> and 3<sup>rd</sup> bullet points of [32], Mr Hunter-Yeats agreed that the footbridge and the routes within the site would be safe and that he was not suggesting that additional highway works were necessary; he agreed that he does not contend that there would be "severe" impacts as referred to at the end of the paragraph. The principal transport issue is therefore whether the 1<sup>st</sup> bullet point of [32] has been satisfied.
- 2.118 In terms of NPPF [34], it provides that decisions should ensure that developments that generate significant movement are located "*where the need to travel will be minimised and the use of sustainable transport modes can be maximised*". But this is qualified by the need to "*take account of policies set out elsewhere in this Framework*". The paragraph does not set some form of overriding additional test e.g. that if the retail sequential test is met, permission should be refused unless one can have (for example) maximum bus services at the level that one might find in a town centre. The paragraph must and can only be looking to achieve the art of the possible, what is practicable in the particular circumstances of the site and its location.
- 2.119 In terms of NPPF [36], Travel Plan issues are dealt with both by conditions and the planning obligations.
- 2.120 Mr Hunter-Yeats also referred to NPPF [35] but this says in terms that it aims to achieve various aspects "*where practical*."
- 2.121 Mr Harris suggested to Mr Bird that [24] of the NPPF (the sequential test) required out of centre sites to be well connected to town centre. That is not what the policy says. As Mr Bird explained,<sup>112</sup> [24] contains a preference for well connected sites, not an absolute requirement. If the sequential test is passed that is the end of the matter and [24] does not provide the basis for a free-standing transport objection.
- 2.122 Finally, it is also important to note the strong adjuration in NPPF [187] that decision-makers should look for solutions rather than problems. In stark contrast to that imperative, Mr Hunter-Yeats assumed the role of critic with great alacrity. In his proof and EiC he did not offer any solutions to the

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<sup>110</sup> c/ex, Day 8

<sup>111</sup> c/ex, Day 8

<sup>112</sup> r/ex, Day 1

perceived problems that he had identified and, when pressed for his solutions in cross examination, it was apparent that he had not really thought about what LXB could/should additionally do in transport terms. In contrast, the highway authorities have followed the advice in NPPF [187] and there is a very full SoCG reflecting extensive agreement on transport matters. Mr Bird confirmed that Northamptonshire County Council (NCC) "*put us through our paces*" and did not give LXB "*an easy ride*" in relation to all the transport impacts of the proposal.<sup>113</sup> Mr Hunter-Yeats rightly accepted that significant weight can be placed on the agreement that has been reached.<sup>114</sup>

### *Walking*

- 2.123 Mr Bird explained that historically there was an important connection between Rushden Town Centre and Rushden Lakes.<sup>115</sup> The new footbridge would reconnect the town with the Lakes, joining together the employment, residential and retail uses. Mr Bird specifically rejected Legal & General's assertion in its Opening that the A45 would be a "physical barrier" or create "poor walking conditions". His clear view was that the "footbridge will change that landscape".
- 2.124 Mr Bird's 2km walking catchment area is reasonable and derives from policy and best practice. Some 11,000 people live within a 2km walk of the site – that is a significant proportion of the inhabitants of Rushden and Higham Ferrers.
- 2.125 There is a rather odd commentary by NCC in APP50 (page 2) which refers to people carrying "heavy shopping" over long distances. This reads like the sort of observation one sees about the weekly food shop and not for schemes of this nature. Be all that as it may, it must not be forgotten that this is a mixed use retail, leisure and recreation scheme and walking to and from the site would not simply be related to trips to shop – there is so much more to this scheme than that.
- 2.126 In terms of walking access to the application site, as opposed to within the site, Mr Hunter-Yeats' concerns are overstated. His fears of muggers lurking in the bushes along the Greenways and an intimidating environment created by the old railway cutting are evidently not shared by those who actually use the Greenways. *The clue is in the name*. At the evening session evidence was given about how safe these routes are regarded to be for children to use. The routes were seen at the site visit and it is hard to imagine that upon seeing them one recognised Mr Hunter-Yeats' characterisation of them.

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<sup>113</sup> EiC, Day 1.

<sup>114</sup> c/ex, Day 8.

<sup>115</sup> EiC, Day 1.

2.127 The Ramblers Association's response to the planning application (3 February 2012) stated that *"we welcome the inclusion in the application, for improved pedestrian and cyclist access with the provision of a pedestrian/cyclist bridge over the A45 from the development to Northampton Road and Crown Park. This will also provide a link from the Greenway to Rushden Lakes"*. In similar vein, the Higham Ferrers Footpath Group responded (3 September 2012) in support of the pedestrian and cycle provision, noting that linkages to the Greenways and former railway were *"especially valuable"*. Moreover, you will have heard and read the comments of the many members of the public who value the walking and cycle provision offered by the scheme.

2.128 When pressed by Mr Katkowski, Mr Hunter-Yeats was unable to say what more LXB could do in terms of walking provision for the site. The site cannot be moved and LXB does not control the Greenway routes leading to the site. The absence of any practical suggestions for improvements is a powerful indicator that full use has been made of sustainable transport opportunities in this regard.

#### *Cycling*

2.129 Mr Bird emphasised that the benefits of the proposal to walkers apply with equal force to cyclists. 79,000 people live within an 8km cycle ride, including a significant element of the population of Wellingborough. Mr Bird's evidence explained how this would increase with improved connections planned not just by LXB but also in conjunction with the eastern development at Wellingborough and the continuing improvements planned along the Nene Valley.

2.130 Mr Hunter-Yeats did not criticise cycling provision in his EiC and in cross examination he could not point to any improvements that LXB could make to the scheme in relation to cycle access. His concerns about the cycling experience on the road network (which are not accepted) are irrelevant: section 4 of the NPPF does not place responsibility on the Applicant for the quality of the entire length of routes to and from the application site.

#### *Buses*

2.131 As a result of the unilateral planning obligation (INQ6) the No.49 bus route would be extended so as to serve the site. In other words, there would be no longer reliance upon users of that service walking across the new bridge from Waitrose to the site. This means that the exaggerated criticisms of this walk and the claim that this bus service should not count are all beside the point.

2.132 In addition to the existing bus service, it was originally proposed that the site would also be served by a new bus service linking the town centres of Wellingborough, Rushden and Higham Ferrers running hourly between 0700 and 1900 hours Monday to Saturday. That level of service was agreed with the responsible public authorities and they were satisfied with it. NCC is

confident that it would increase to a half hourly service when WEAST comes forward.<sup>116</sup> Notwithstanding this it has, however, been suggested at this Inquiry that the bus service ought to run 7 days a week and more frequently on weekdays. LXB has considered these arguments and has secured in the unilateral planning obligation (INQ6) an hourly Sunday bus service (0900 to 1700 hours) as well. We consider that this package of public transport improvements is appropriate but if the SoS confirms in the decision letter that a half hourly bus service, seven days a week, is necessary and otherwise meets the requirements of Regulation 122 of the CIL Regulations 2010 then covenants in the unilateral planning obligation will come into effect by virtue of which the new bus service would be provided on a half hourly basis seven days a week.

- 2.133 Quite how it is that Legal & General has considered it appropriate to appoint itself as overseer of bus services to and from Rushden Lakes is mystifying. The reaction when LXB responded in a commendable and responsible manner to the evidence at the Inquiry and put forward the unilateral planning obligation spoke volumes. Legal & General is not in the least concerned to find solutions, it is not interested in Rushden residents using buses, after all the bus service to Northampton is very poor and on Sundays is useless.
- 2.134 Legal & General's criticism that the new bus is only secured for 3 years and thereafter its continuing viability is in doubt is plain wrong. As Mr Bird explained, the NCC fully expects the new bus service to continue in the long-term and to be self-funding.<sup>117</sup>
- 2.135 Legal & General's complaint that the viability of the proposed new bus services has not been tested or proven by LXB completely misses the point. LXB is procuring, not providing the bus services in question. It is Stagecoach who would be running the buses. In response to Mr Bird's email of 10 July 2013, following their detailed review of how in practice they would provide the services, Stagecoach replied unequivocally that:<sup>118</sup>
- (1) They expected the No.49 extension to be achievable at no extra cost *"thus in effect already commercial"*;
  - (2) The proposal to serve Rushden Lakes on Sunday *"represents the best opportunity that we can see, by far, of catalysing a long term commercially sustainable quality Sunday bus service for the Four Towns area"*; and
  - (3) *"we consider the Monday-Saturday package in the round will be sustainable commercially after the subsidy is removed"* and *"the*

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<sup>116</sup> See paragraphs 16.5.4 & 16.5.5 of SoCG.

<sup>117</sup> r/ex, Day 1

<sup>118</sup> APP46

*Sunday service looks credibly likely to become commercially sustainable".*

2.136 NCC agrees. This is confirmed on pages 2 and 3 of APP50.

2.137 Legal & General's claim in Opening that the bus service would be "derisory" is simply not borne out by the evidence. On any sensible reading and application of the relevant passages in the NPPF the proposals meet the aspirations of national planning policy.

*Highway improvements*

2.138 The proposed improvements to the Skew Bridge roundabout would be beneficial for users of the road network. Without these proposed improvements, already committed development would worsen conditions but there is no funding for the roundabout improvements. Rushden Lakes would fund the works and conditions for road users would improve.<sup>119</sup>

*Trip reduction & carbon saving*

2.139 The proposal would bring significant benefits in terms of trip reduction and carbon saving.<sup>120</sup> Even on the Consortium's retail draw figures, there would be a substantial saving amounting to some one quarter to one third of what Mr Bird predicts based on Mr Burnett's retail assessment.<sup>121</sup>

2.140 An argument arose at the Inquiry about whether the County Highway Authority positively disagreed with our position on this. The truth of the matter is that they did not *but* now in APP50 (pages 1 and 2) NCC has stated that it does not agree with 16.8 in the SoCG.

2.141 It stands to reason surely that because the proposed development would reduce the outflow of money (and thus trips by car) to Northampton town centre and retail parks and other distant locations, there is bound to be an overall reduction of trip lengths and consequent savings of carbon.

***Issue (d): The extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF).***

2.142 The application site is previously developed land as defined in Annex 2 of the NPPF and as such the NPPF encourages its effective use in [17]. The proposed development would bring very substantial environmental benefits to which

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<sup>119</sup> EiC, Day 1

<sup>120</sup> EiC, Day 1 and proof pages.15-16

<sup>121</sup> EiC, Day 1

significant weight should be attached. Additionally, the scheme would deliver tourism and leisure benefits. Mr Lewin therefore agreed that the scheme would be beneficial and that if you reject Mr Goddard's evidence on retail issues, planning permission should be granted.<sup>122</sup>

2.143 In terms of the environmental benefits, it is important to appreciate the significance of the application site and its surroundings. As Mr Rhodes explained,<sup>123</sup> the Nene Valley has the highest level of national and European nature conservation designations. It is also one of only 12 Nature Improvement Areas designated by Natural England in the country and, in its letter of 21 June 2013, the RSBP described the area as *"one of the most important wildlife sites in the UK"*.

2.144 The extensive environmental benefits of the proposals are set out in full in the written evidence. In summary, key benefits are:

- (1) stopping the heavy damage that has occurred through trespass and disturbance;
- (2) designing the scheme in a way which is sensitive to the site;
- (3) enhancement through investment in habitat improvements and management (see the draft Access and Habitat Management Plan at Annex D of the SoCG) – management which would be "joined up" and cover a large area of important habitat;
- (4) the Visitor Centre providing a base for the Wildlife Trust which together with the other physical and management measures would truly enable the public to access, enjoy and be inspired by the importance of the wildlife along the Nene Valley.

2.145 Natural England, the Government's statutory consultee on ecological matters, has signed up to the SoCG to record its view that the proposals would bring *"significant benefits"*, represent a *"unique opportunity to enhance the site's potential"* and that *"significant weight"* should be attached to the scheme's environmental benefits. The RSPB's letter of 21 June 2013 records its view that: *"the management proposals linked to the redevelopment will enable the linking up of various nature reserves in this area, including Wilson's pits, Ditchford Lakes and Meadows, Higham Ferrers Pits and Irthlingborough Lakes and Meadows. It will also link to the adjacent Stanwick Lakes site, producing a total area under nature conservation management of about 500 hectares – extremely significant in the context of a heavily developed, inland county like Northamptonshire."*

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<sup>122</sup> c/ex, Day 6

<sup>123</sup> EiC, Day 5

- 2.146 Miss Garbutt's lack of enthusiasm for the proposals was based on her reading the ES, nothing more.<sup>124</sup> Her judgment is at odds with that of the RSPB, the Wildlife Trust, Natural England and hundreds of letters of support which specifically highlight the environmental benefits of the scheme.
- 2.147 The courts have consistently held that the views of expert statutory consultees in the field of nature conservation are to be given weight by decision-makers and that cogent and compelling reasons are required for departing from such advice.<sup>125</sup> In this case Natural England's view is clear: the proposals would bring environmental benefits which are significant material considerations in favour of the application. There is no reason, let alone a cogent or compelling reason to disagree with Natural England's judgement. The Consortium's point was a bad one. It characterises the evidence of the objectors which is devalued by their reluctance to recognise even the most obvious benefits of the development.

#### *Other Benefits*

- 2.148 The proposals would also result in significant tourism and recreation benefits, as well as in the creation of a significant number of jobs.
- 2.149 Mr Rhodes highlighted the local policy aspirations for the Nene Valley which represents a resource of strategic importance to East Northants. In EiC he emphasised the following aspects of the Nene Valley Strategic Plan:<sup>126</sup>
- (1) The Nene Valley is the most significant natural asset in Northamptonshire by far, but it is under-recognised and under-used. The strategy seeks to change that and to make the most of the Nene Valley;
  - (2) The Nene Valley has potential to assist economic development strategies, particularly as it runs close to areas of deprivation (including Rushden);
  - (3) The objectives include investing in facilities and attractions, creating places that people will enjoy and strengthening the relationship between urban and rural;
  - (4) Use of the water for canoeing and boating is important, including because of its potential to generate business for campsites, over-night stays and visits to other attractions;

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<sup>124</sup> c/ex, Day 6

<sup>125</sup> **R (on the application of Hart DC) v Secretary of State for Communities and Local Government** [2008] EWHC 1204 (Admin) (2008) 2 P. & C.R. 16, [49] *per* Sullivan J; and **R (on the application of Akester) v Department for the Environment, Food and Rural Affairs** [2010] EWHC 232 (Admin) [2010] Env. L.R. 33, [112] *per* Owen J.

<sup>126</sup> EiC, Day 5, referring to CD A4

- (5) Rushden Lakes is specifically identified as a location suitable for waterways and waterside facilities;
- (6) Stronger links with Nene towns are encouraged, including Rushden, where access is encouraged through a network of footpaths and cycle ways so that the towns maximise the opportunity to connect with the valley corridor;
- (7) Visitor centre provision is encouraged, as are circular walks and new links to the principal route the Nene Way, which Rushden Lakes would achieve via the Bailey Bridge, whilst Sustrans also have proposals to enhance links between Wellingborough, Rushden and Higham Ferrers;
- (8) Waterside catering facilities are also important.

2.150 The Rushden Lakes scheme could hardly be more consistent with this. Mr Rhodes drew particular attention to the fact that:

- (1) The proposal would deliver 2 waterside restaurants, a coffee shop in the proposed visitor centre, a drive in restaurant and also catering could be expected in the garden centre;
- (2) The retail development would provide a particular waterside attraction differing in character from any other facility along the Nene;
- (3) The boathouse is to be constructed, fitted out and let to Canoe2 on a peppercorn, enabling them to provide an expected 2,500 canoe trips/breaks and attract hundreds of overnight stays every year;
- (4) Under the management agreement, the boathouse would be available to the Scouts and other community groups;
- (5) The Bailey Bridge is an important link. The site visit will have shown the amount of pedestrian activity on the other side of the river and the "frustrated" paths leading to the bridge. The reinstatement of the bridge would connect directly with the Nene Way and open up considerably enhanced connectivity;
- (6) The new bridge to Rushden is important, the nearest footbridge currently is in Higham Ferrers some 2km away.

2.151 It was evident from the site visit that there is no formal public access to the application site, which is in poor condition and functions as a barrier between the town of Rushden and the Nene Valley corridor. The boathouse, visitors centre, restaurants, hotel and retail facilities would add enormously to the attraction of the valley, complementing other gateways into the valley. The

benefits described by Mr Rhodes should be given significant weight, especially when considered against the backdrop of the current situation.

- 2.152 In addition to recreation and tourism benefits, Bridget Rosewell's evidence<sup>127</sup> is that a significant number of jobs (some 1,714 FTE) jobs would be created by the proposals. Her evidence also identifies the need for this type of employment locally, the fact that East Northamptonshire has a higher unemployment count than the rest of North Northamptonshire,<sup>128</sup> and the fact that in this respect (as in others) the Applicant has pursued an exemplary path by working with the appropriate stakeholders to commit to workforce training to maximise the benefits of these jobs.
- 2.153 The Consortium and Legal & General have sought to argue that jobs would be lost elsewhere and therefore there would be no net gain. That approach is wrong for the reasons given by Bridget Rosewell (in short because it ignores the growth in spending which would support net new retail jobs on a scale greater than the impact of the Rushden Lakes proposal), but it is also inconsistent with the way in which NBC considered the Barrack Road Tesco application. Mr Lewin accepted that in that case there was "no trace" of the Council looking at net job creation even though the application would result in a town centre anchor trading significantly below its benchmark.<sup>129</sup> He agreed with Mr Katkowski's characterisation of the analysis in the Barrack Road officer's report *"lots of jobs; we need them; that's compelling"*. The same approach applies equally, with greater effect, to the present case.
- 2.154 The evening session of the Inquiry demonstrated evocatively and forcefully just how significant these employment opportunities are to the local communities in question. Their importance should not be downplayed.
- 2.155 The wider benefits of the scheme have not gone unnoticed by the public. In answer to your question,<sup>130</sup> Mr Rhodes explained that the considerable public support for the proposals was significant not simply "in terms of the size of the postbag", but rather because the substance of the public representations squarely relate to material planning considerations. The considerable ecological, recreational and leisure benefits of the scheme are very clearly highlighted in the extensive local support. And they do so because there is a fundamental ring of authenticity in this case – there is a genuine recognition that Rushden Lakes has been very carefully developed in partnership with all relevant stakeholders to maximise its contribution to meeting multiple local needs and enhancing the way that people feel about their own town.

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<sup>127</sup> Mr Rhodes' rebuttal Appendix 7.

<sup>128</sup> A point confirmed by Mr Wilson in r/ex, Day 4 referring to pockets of deprivation in East Northants.

<sup>129</sup> c/ex, Day 6.

<sup>130</sup> Inspector's Question, Day 5.

- 2.156 The Ministerial foreword to the NPPF decries the fact that *"people have been put off from getting involved because planning policy itself has become so elaborate and forbidding – the preserve of specialists, rather than people in communities."* The NPPF sought to reverse that position *"By replacing over a thousand pages of national policy with around fifty, written simply and clearly, we are allowing people and communities back into planning"*. It appears to have worked. Apathy has given way, the local communities have understood the planning issues raised by this case, and they have made sensible, well-thought out representations engaging with the planning merits. The substance of what they said should be given significant weight. Every point and theme made at the evening session was a genuine and legitimate planning consideration.
- 2.157 Miss Garbutt's criticisms of the scheme are very hard to understand. She accepted that up until the submission of her proof of evidence the Consortium had not raised any design objection.<sup>131</sup> Such design objection as she did raise was no more than a statement of the obvious – the scheme would face and the Lakes rather than the A45. However, the Applicant's case is that the layout would maximise the enjoyment of the Lakes. In any event, she accepted that Policy 5 of the NNJCS was satisfied in relation to design so her point would not warrant refusal. This is a truly exceptional development that has a great deal to offer its local communities.
- 2.158 Miss Garbutt's criticisms seek to diminish, rather than to deny the benefits of the scheme, and Mr Lewin also admitted that the scheme would deliver benefits.<sup>132</sup> The Consortium's grudging acceptance of the scheme's benefits is in stark contrast to the celebration of the scheme by local people, local businesses and local conservation groups - they know a good thing when they see it. The benefits of the scheme are clear, they are real and they should be given significant weight in the determination of this application.

***Issue (d): Whether any permission should be subject to any conditions and, if so, the form these should take.***

- 2.159 Draft conditions have been discussed at the Inquiry.

***Issue (e): 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.***

- 2.160 There is a bilateral planning obligation and a unilateral planning obligation. They have been discussed at the Inquiry.

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<sup>131</sup> c/ex, Day 6.

<sup>132</sup> c/ex Day 6.

## OVERALL CONCLUSIONS

- 2.161 This is a once in a generation, most likely a once in several generations, opportunity for planning to do what it is surely meant to do – to improve the quality of life for local communities, to make things better, to give local people pride in where they live, to give them hope for themselves and their children and grandchildren. Local people spoke at the evening session of the Inquiry and made all these points eloquently. They are the people who count in all this. They are the bedrock of our democratic society. They are the authentic voice of localism. Unusually at this Inquiry local people, from all walks of life, young and old, from across the political spectrum, from every conceivable community organisation, turned up and spoke for a proposed development, praising its virtues, explaining how good it would be for them, how welcome it would be, how needed it is. Don't let these good people down. They deserve to have their aspirations fulfilled. And so they should be.
- 2.162 In the final analysis, there are no sound and clear cut reasons which warrant a decision to refuse the application, but there are persuasive and convincing reasons which tell in favour of allowing the proposed development to proceed. The Applicant requests that the proposal be recommended for approval and that the SoS grants planning permission.

## THE CASE FOR EAST NORTHAMPTONSHIRE COUNCIL (ENC)

- 3.1 This planning application has attracted the most extraordinary local support; Mr Peter Bone, the local conservative MP for Wellingborough and Rushden, told the Inquiry<sup>133</sup> he had never known anything like it. At a time when the SoS is hoping to persuade local communities to welcome and appreciate the many benefits that development can bring, this application emphatically vindicates his approach. This is not a case of planning being done to local people top-down; this is a case where a developer has carefully and deliberately canvassed local opinion and aspiration, and designed a scheme that responds to what it was told. Unsurprisingly, when the planning application was made it was supported.<sup>134</sup> The LPA and ENC carefully assessed the application, realised that it was not in accordance with the out-of-date development plan, applied the presumption in favour of sustainable development, weighed the benefits against adverse impacts, decided that material considerations indicated determination of the application other than in accordance with the development plan and resolved to grant consent.
- 3.2 The Rushden Lakes proposal is the opportunity the community has long been waiting for to meet its priorities for jobs and shops and, at the same time,

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<sup>133</sup> See the speaking note of his evidence

<sup>134</sup> See JR proof (doc APP3) at paragraph 2.22

deliver leisure opportunities that would further enhance quality of life for local people and visitors alike. The SoS then called-in the application.

- 3.3 The objectors to the scheme include neighbouring local authorities, three of which (the boroughs of Northampton, Kettering and Corby) have appeared at the Inquiry as a consortium – the LAC. Interestingly, the residents of those boroughs have not supported their LPA's approach – quite the opposite. Mr Andy Sawford, the Labour MP for Corby and East Northants, told the Inquiry<sup>135</sup> that as a result of his enquiries he cannot believe that people would not want to shop in Corby town centre if the Rushden Lakes development goes ahead. On balance, he believed that the best interest of his constituency as a whole lay in supporting the proposed development. Locally, he detected cross party support for the proposed development.
- 3.4 The 'common sense' test urged by Mr Harris for Legal & General has been answered emphatically by the local community. Fortunately, the common sense approach is wholly supported by the SoS's policy in the NPPF. Cllr Mackintosh, the leader of NBC, in making his early public remarks about the proposed development, no doubt well informed by his local knowledge and when common sense was to the fore, realised that the prospect of Northampton residents making a shopping trip to Rushden Lakes instead of shopping at the existing and more convenient outlets closer to hand in their own town was unlikely.<sup>136</sup>
- 3.5 The Rushden Lakes proposal has caused a division in the NNJPU.<sup>137</sup> Two LPAs – Corby Borough Council (CBC) and Kettering Borough Council (KBC) are opposed to it; two support it - Wellingborough Borough Council (WBC) and ENC. As a result the four LPAs in the NNJPU cannot agree on important elements of the content of the NNJCS review. Rather than dissolve the NNJPU and abandon the NNJCS review, the parties have agreed that this appeal should be determined before further progress is made. There is no evidence that the NNJPU will be dissolved following this appeal or that further progress on the NNJCS depends on a particular outcome in this appeal. The SoS has been effectively asked to arbitrate on the issue of the sequential and impact tests in retail planning policy. In the circumstances this has been the right solution so that the established pattern of joint working on forward planning in this area is preserved.
- 3.6 No party has suggested that the ES is not fit for purpose and therefore fails to meet the requirements of the EIA Regulations. In coming to his decision the SoS is required to have regard to the totality of the Environmental Information (the ES and other information) now before the Inquiry. No doubt the SoS will do so.

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<sup>135</sup> See the speaking note of his evidence

<sup>136</sup> Statement in the press by Cllr Mackintosh

<sup>137</sup> North Northamptonshire Joint Planning Unit

***Issue (a): The extent to which the proposed development is consistent with the development plan for the area and would deliver sustainable development.***

3.7 The elements of the development plan are identified in the SoCG at paragraph 8.2. The majority of the developable part of the site is identified as a commitment for industrial and commercial uses in the 1996 Local Plan. Although both Rushden and the application site are within the “Urban Core” shown on the Key Diagram<sup>138</sup> the strategic level NNJCS, adopted in 2008, does not anticipate retail-led development of this scale at Rushden (Policy 12) and has a ‘three-towns’ settlement hierarchy based on the Growth Towns of Corby, Kettering and Wellingborough with Rushden sitting in the tier below as a “Smaller Town” (Policy 1). The planning application in this case does not, in ENC’s view, accord with these elements of the development plan; so much was made clear in the Report to Committee (RTC).<sup>139</sup>

3.8 There are however, other parts of the development plan, and the NNJCS in particular, with which the application is wholly in accordance, including:

(a) The Vision for North Northamptonshire.<sup>140</sup> The proposed development would assist greatly in meeting the vision by:

- (i) Delivering jobs for which there is a step-change requirement.
- (ii) Delivering much needed investment in services and facilities which would assist in making North Northamptonshire a “more self sufficient area” and better able, in particular, to meet the needs of the growing population in the south of North Northamptonshire.
- (iii) Regenerating Rushden, a town of the urban core.
- (iv) The enhancement of the valuable environmental resource that is Rushden Lakes and the Nene Valley.

(b) Objective 1 – Green Living. The proposal is well designed, promotes sustainable transport choices and encourages healthy lifestyles.

(c) Objective 2 – Environment. The proposed development and investment would bring about a step change in biodiversity management, result in a net gain in Green Infrastructure and would enhance landscape character.

(d) Objective 3 – Network of Settlements. The proposal would be urban-focused and support greater self-sufficiency of the area as a whole.

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<sup>138</sup> CD A7.3 page 36

<sup>139</sup> CDB.14

<sup>140</sup> CD A7.3 page 19

(e) Objective 5 – Connectivity and Modal Shift. Transport choice would be increased.

(f) Objective 6 – Infrastructure and Services. The development would sustain and enhance the communities in and around Rushden and build confidence in North Northamptonshire for investors and others.

(g) Objective 7 – the Economy. The development would provide jobs and bring skills reducing out commuting leading to a more diverse, dynamic and self-reliant economy.

(h) Objective 8 – Quality of Life. The quality of life in Rushden and surrounds would be raised considerably.

(i) Objective 9 – Regeneration. The proposal makes use of previously developed land, delivers supporting infrastructure and plainly inspires community confidence all on a site that has been ear-marked for development for a considerable time but no scheme has been delivered.

3.9 These objectives are translated into the policies and reflected within them. For example, Policy 5 which relates to Green Infrastructure, finds its expression in the access improvements promoted in the development with their leisure and tourism benefits. Equally other policies in the NNJCS are fully complied with by the proposals. These issues were explored in detail in the RTC.

3.10 It is trite law<sup>141</sup> that in reaching a judgment on what the development plan indicates when considering a planning application, a decision-maker must have regard to the development plan as a whole. Despite the level of development plan support for the proposed development, ENC has reached the view (see RTC paragraph 7.12) that the Rushden Lakes project is to be judged as being contrary to the development plan as a whole mainly because Policy 12 is to be regarded as the principal policy relating to the retail-led development proposed. However, officers and members at ENC regard such non-conformity as being outweighed by other material considerations, not least having applied the presumption in favour of sustainable development in the NPPF. The development plan is now to be seen through the prism of the NPPF. For this reason ENC resolved to grant planning permission subject to 'call-in' by the SoS.

3.11 The SoS asked in the call-in letter whether LXB's proposal is properly to be regarded as amounting to sustainable development. ENC is in no doubt that this proposal would deliver "change for the better" and in a way that ensures a better life for the people of Rushden and North Northamptonshire that does

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<sup>141</sup> R v Rochdale MBC ex p Milne (2001) 81 P.&C.R 365

not prejudice the lives of future generations.<sup>142</sup> Applying paragraphs 18 to 219 of the NPPF as a whole, ENC is convinced that the proposed development, in practice, amounts to sustainable development across all three dimensions, is the correct local solution achieving very positive improvements in the quality of the built and natural environment and local people's quality of life.<sup>143</sup> It is clear beyond doubt that this too is the view of local people themselves.

- 3.12 The NPPF is quite clear<sup>144</sup> that, while the planning system is plan-led, the LPA should apply the presumption in favour of sustainable development in determining planning applications. Planning permission should be granted because:

- (a) Relevant policies in the development plan are out-of-date;
- (b) Adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits.

- 3.13 The "relevant policies" which are out of date are (and in the main, they are precisely those policies relied on by objectors in resisting this development):

- (a) NNJCS Policy 1 – the objectors' case is put on the basis that the adopted plan's settlement hierarchy would be disturbed by treating Rushden as the equivalent of a Growth Town.
- (b) NNJCS Policy 12 – the objections include that the scale of retail development is not identified in the adopted plan.
- (c) The use for which the application site is identified as a commitment in the Local Plan.

- 3.14 Policy 1 seeks to strengthen the network of settlements within North Northamptonshire as a whole. Development is to be principally directed towards the urban core (in which the application site is situated). While the focus is to be on the three Growth Towns, Rushden is to be a secondary focal point. While the regeneration of town centres is emphasised, the aim is to "provide jobs and services, deliver economic prosperity and support self sufficiency of the network of centres." This policy is out of date for the following reasons.

- 3.15 In bringing forward the NNJCS in 2005-2008, the NNJPU considered including Rushden as a Growth Town thus having a Four Towns rather than a Three Towns strategy. The Four Towns option was discounted, not because it would have adverse consequences, but simply because there was doubt over the

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<sup>142</sup> NPPF, Ministerial Foreword

<sup>143</sup> See NPPF paragraphs 6 to 10

<sup>144</sup> NPPF, paragraphs 196 and 197

deliverability of the Rushden element of such a strategy.<sup>145</sup> At that time growth in Rushden of any material scale was judged to be “difficult to achieve”.<sup>146</sup> That, as the current application now demonstrates, is plainly no longer the case.

- 3.16 The members of the NNJPU recognise the contribution that Rushden is now able to make to growth in North Northamptonshire for the benefit of local residents. The NNJPU is now promoting a review of the NNJCS in which it is agreed by the constituent LPAs that Rushden should be the fourth Growth Town. While KBC expressed some initial reservation,<sup>147</sup> it now must be taken as accepting Rushden’s enhanced role as a Growth Town; if KBC did not, it could not remain a member of the NNJPU in which case there would be no NNJCS review to bring forward. Rushden is, alongside other settlements nearby, a post-industrial town still recovering from the impact of the loss of the boot and shoe trade that once underpinned the local economy. It craves investment and growth to enhance its fortunes which is the motivation for its enhanced status in the emerging plan. The only outstanding issue to resolve is the effect of increased retail development at Rushden Lakes as proposed by LXB in this planning application.<sup>148</sup> Once that is established in this application, the NNJCS review will proceed either with or without Rushden Lakes.
- 3.17 The agreement within the NNJPU that Rushden should be a Growth Town is founded on a “robust evidence base and rationale;”<sup>149</sup> it is not a matter of political expediency. Two members of the LAC appearing at this Inquiry thus have no issue in principle to growth at Rushden.
- 3.18 The other member of the LAC, NBC, did not object in principle either.<sup>150</sup> The WNJPU,<sup>151</sup> of which NBC is a member, in its consultation response,<sup>152</sup> positively supported the spatial strategy being promoted by its neighbours in the NNJPU and made no adverse comment in respect of draft Policy 10 which expressly confirms Growth Town status for Rushden. The LAC’s concerns are not matters of principle, but rather, in this context, those of detail: if there is no objectionable adverse impact on their town centres, there can be no objection by the LAC to growth in Rushden. This concern is precisely what is to be examined at this Inquiry.
- 3.19 Rushden itself is most anxious to support the Government’s growth agenda in full measure. The NNJPU found that “there are clear local aspirations for

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<sup>145</sup> See CD A7.1 page 109-112

<sup>146</sup> CD A7.1, paragraph 9.19

<sup>147</sup> See report to NNJC 31/1/13 (CD A7.13) at paragraph 3.11, 4<sup>th</sup> bullet

<sup>148</sup> See report to NNJC 14/3/13 (CD A7.14)

<sup>149</sup> CD A7.13, paragraph 3.16

<sup>150</sup> Mr Lewin in 2XX

<sup>151</sup> West Northamptonshire Joint Planning Unit

<sup>152</sup> ENC 9

regeneration, population expansion, employment and retail offers and to attract greater investment in infrastructure.”<sup>153</sup>

- 3.20 Legal & General has not to date responded to the review of the NNJCS. To the extent that it might object in the future, such objection could only be on the basis of an alleged adverse impact on the Grosvenor Centre; again, this has been examined in great detail at this Inquiry.
- 3.21 While the emerging NNJCS review has not yet reached a stage where its draft policies can be accorded significant weight, the principle of Rushden’s position as a Growth Town is evidence-based and largely unopposed. It is therefore a material consideration to which the SoS can and should give significant weight. The quantum and location of retail development is, in this application, a matter of detail which will be considered in the section below. It is only right to observe that the issue of the quantum of retail and its relationship to national planning policy has enjoyed far greater scrutiny through this Inquiry process than would ever be possible in a Local Plan Public Examination.
- 3.22 Policy 12 is also out of date because it does not reflect up-to-date policy in the NPPF.
- 3.23 The NPPF at [23], 6<sup>th</sup> bullet provides that it is important that needs for retail development “are met in full and are not compromised by limited site availability” and the LPA, in plan-making, is required to “ensure a sufficient supply of suitable sites”. How to meet this requirement, in plan-making, is set out in the 7<sup>th</sup> bullet by allocating sites and setting policies.
- 3.24 It is self-evident that because site availability and market deliverability at Rushden was doubted at the time of the evolution and adoption of the NNJCS (see above), Rushden was not expressly identified to receive a floorspace allocation. Further, at that time national planning policy focused on meeting quantitative need not qualitative need. In addition, in so far as the need for sites for retail development in the south of North Northamptonshire were due to be met on sites to be allocated by a later DPD in Wellingborough<sup>154</sup> (the closest Growth Town to Rushden to be specifically identified in Policy 12 with a requirement for additional comparison goods floorspace), those sites are no longer able or available to accommodate the scale anticipated.<sup>155</sup> Indeed for the reasons explained in Mr Nutter’s evidence, the Wellingborough TCAAP is out of date as the proposals for retail development can no longer be realised in the light of the changed intentions of Tresham College.
- 3.25 Policy 12 of the NNJCS also included a decision-making element to be applied in circumstances including the determination of the instant planning

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<sup>153</sup> CD A7.13, paragraph 3.13

<sup>154</sup> The Wellingborough Town Centre AAP adopted in 2009

<sup>155</sup> See KN proof ENC3 at paragraph 5.64-5 and paragraph 5.69-73

application. The sequential test in the 3<sup>rd</sup> paragraph of Policy 12 is itself not in accordance with that now found in NPPF [24]. That in Policy 12 provides for a cascade of (1) defined town centres, (2) well-connected edge of centre, (3) district and local centres, and (4) existing retail areas that are well served by a choice of means of transport. The NPPF's cascade is (1) town centres (2) edge of centre and (3) out of centre. At each of stages (2) and (3) where more than one site is available, a mechanism for selecting the preferred site is set out. It is self-evident that the NPPF sequential test is a marked change from that in Policy 12 which must now be regarded as being out of date.

- 3.26 Policy 12 at its 4<sup>th</sup> paragraph, reflects the then current national policy, and so includes tests of 'appropriate scale' and 'need'. These are no longer included in the NPPF as free-standing tests. To that extent, Policy 12 is further out of date.
- 3.27 Finally, Policy 12 required the delivery of specified minimum net increases (above then existing commitments) in comparison goods floor space in the three named Growth Towns. To date, 12 years into the plan period and 8 years before its end point,<sup>156</sup> very little progress has been made. Indeed in Corby, the position has gone backwards as the Evolution Corby commitment is stalled. In Wellingborough, sites once relied on are not available. The NPPF requires plans to be viable and deliverable;<sup>157</sup> any plan policy which promotes or relies on development which can no longer be delivered cannot sensibly be regarded as being up to date.
- 3.28 Finally, in so far as the adopted LP contains/relies on the allocation of the application site as an 'employment commitment' it too is not up to date because it cannot and will not be delivered. The NPPF promotes the flexible use of such sites where it is clear where there is no reasonable prospect of delivery,<sup>158</sup> and reflects the fact that jobs in the retail and leisure sectors can make an important contribution to the local economy. Indeed there is a similar provision in relation to the re-use of employment sites no longer considered suitable for the purpose in the NNJCS at Policy 11f.
- 3.29 For all these reasons, therefore, key policies and provisions in the adopted development plan are not up to date. That being the case, the provisions of NPPF [14], "decision taking" apply: planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.<sup>159</sup> This plainly places an evidential burden on those who wish to demonstrate that planning permission should be withheld.

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<sup>156</sup> The plan period was 2001-21.

<sup>157</sup> See NPPF paragraph 173

<sup>158</sup> NPPF, paragraph 22

<sup>159</sup> It has not been suggested that specific policies in the NPPF indicate development of the application site should be restricted as illustrated by footnote 9.

- 3.30 No one at this Inquiry has suggested that the application proposals are not deliverable.
- 3.31 Further consideration of the planning balance and the presumption in favour of sustainable development will be returned to once sections 2, 4 and 11 of the NPPF have been considered.

***Issue (b): The extent to which the proposed development accords with the NPPF, in particular Section 2, which relates to ensuring the vitality of town centres.***

- 3.32 It has already been noted that Section 2 of the NPPF requires that needs for retail uses are “met in full” and are not “compromised by limited site availability”.<sup>160</sup> This applies with particular force in circumstances where there is a deliberate development plan policy support for a drive to further self-sufficiency by clawing back expenditure that is currently leaking out of North Northamptonshire.
- 3.33 NPPF Section 2 establishes but two tests at the decision-making stage: a sequential test and an impact test. Objectors seem bent on (re)introducing additional (former) need and scale tests; such an approach is misconceived. With regards to scale, the approach in the NPPF is clearly not to limit growth by reference to a separate test of scale. If an individual proposal is unacceptably large then it would be likely to fail the impact test and thus be harmful. If the scale of a proposal is not such as to give rise to harmful impacts, then the intention is clearly that it should not be refused simply on the grounds of scale. Legal & General suggests<sup>161</sup> that the sequential test should have regard to the hierarchy of settlements. However, for reasons already explained, the adopted settlement hierarchy is itself out of date certainly as it applies to Rushden. Simply placing the old policy from PPS4 alongside the up to date policy in the NPPF demonstrates that these contentions are fallacious.
- 3.34 With regards to need, if there is no quantitative local need or capacity for a proposed development, such that it has the effect of drawing in significant levels of trade from a wide catchment area, any harm that results to neighbouring centres would manifest itself under the impact test; there is no requirement for a separate free-standing test of need and none is included in the NPPF.
- 3.35 Despite the passing of the free-standing need and scale tests, objectors seek to maintain them by reference to the PPS4 PG.<sup>162</sup> Indeed Mr Jones<sup>163</sup> sought

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<sup>160</sup> NPPF, paragraph 23, 6<sup>th</sup> bullet

<sup>161</sup> See 2XX of Mr Rhodes and ReX of Mr Jones

<sup>162</sup> CD A2

<sup>163</sup> In 1XX

to justify this approach by explaining that in his view when national policy is abandoned by the SoS, the good practice adopted by practitioners in the furtherance of the superseded policy should nevertheless survive as a material consideration in its own right. Such an approach is wholly misconceived. It is clear that PG is only material where the policy in the NPPF reflects that in previous policy in PPS4.<sup>164</sup> Mr Jones and Mr Goddard face a further difficulty in that although the PPS4 PG is still extant, it too may have been revoked at the time of the Inspector's report or the SoS's decision. To continue to have regard to it in these circumstances would be wholly perverse, especially where it is being deployed to attempt to resurrect through old guidance policy which has now deceased.

- 3.36 The sequential test relevant to decision-taking is found at NPPF [24]. As the application site is out of centre, the test will be satisfied if "suitable [in or edge of centre] sites are not available". The question then arises: suitable for what? The answer to this question of law is suitable for the development proposed by the Applicant.<sup>165</sup> The Legal & General submissions in relation to the legal construction of "suitable" were somewhat opaque. It is, of course, correct that the meaning of the term should be construed in its context: that is a task which we undertake below, addressing in particular the question of "flexibility". However, that the terms are to be construed (and therefore applied) in the real world of real development is beyond argument. The real world is the context.
- 3.37 Although much was made of the fact that the Tesco Stores case was Scottish and related to Scottish policy it is worthwhile pointing out the similarity of the words which were at stake in that case which were "no suitable site is available".<sup>166</sup> It was in connection with those words that the Supreme Court determined that that phrase should be interpreted as meaning "suitable for the development proposed by the Applicant."<sup>167</sup> This was the approach taken to the case in Zurich Assurance [61-62]. The submission made by Legal & General that this approach would rob the sequential approach of its force was considered and rejected by Lord Hope at paragraph 37 of his judgment before reinforcing the "real world in which developers operate" as being the basis on which the suitability ought to be considered. Thus a cornucopia of unit shops or rag-bag of small sites are not suitable to accommodate a proposal to meet the qualitative need of an area which currently has to travel significant distances to undertake comparison shopping. We turn therefore to the contextual interpretation of the policy.

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<sup>164</sup> Telford & Wrekin BC v SSCLG [2013] EWHC 1638 (Admin) (APP19) at paragraphs 17-20 & 35

<sup>165</sup> Tesco Stores Ltd v Dundee CC [2012] 2 P&CR 9 (CD A1C) at paragraphs 29 & 38 as discussed by KN in ENC3 at paragraphs 5.39-41 and R(Zurich Assurance Ltd) v North Lincs C [2012] EWHC 3708 (Admin) (CD A1D) at paragraphs 61-62

<sup>166</sup> CD A1.c Para 25

<sup>167</sup> CDA1.c Para 24

- 3.38 The sequential test in the NPPF also requires developers to demonstrate flexibility on issues such as format and scale. No indication as to what degree of flexibility is required is contained in the NPPF. Such a requirement was however previously contained in PPS4 and so any relevant PG advice continues to be material. PPS4 PG<sup>168</sup> is of assistance: flexibility in a business model, use of multi level stores, flexible car parking requirements or arrangements, innovative servicing solutions and a willingness to depart from standard formats. No serious complaint by the LAC or by Legal & General has been made in respect of these matters.
- 3.39 Flexibility as to format and scale were but two components of Policy EC15d in PPS4. Another, not now expressly identified in the NPPF, was a requirement (iv) to consider the scope for disaggregating specific parts of a retail or leisure development onto separate sequentially preferable sites. It is clear that this change in policy approach must be taken to have been deliberate on the part of the SoS; he could easily have made it clear if he intended a policy of disaggregation to continue.<sup>169</sup> That he did not do so is a very clear indication that there is no longer such a requirement in national retail planning policy and relevant parts of extant PPS4 PG that suggest otherwise cannot be regarded as up to date or given any weight.<sup>170</sup>
- 3.40 There is also a dispute between LXB/ENC and the LAC/Legal & General as to the appropriate area of search for sequentially superior sites. The NPPF is silent on this issue. Mr Nutter has considered the advice given in PPS4 PG.<sup>171</sup> The development at Rushden Lakes is promoted on the basis that the scale and quality of the existing comparison goods offer in the area is deficient with the result that residents are forced to travel further afield in order for these needs to be met. The LAC and Legal & General respond by asserting that this is simply a reflection of the hierarchy of settlements and that the residents of south North Northamptonshire should be expected to travel to higher order centres for their higher order retail requirements. They raise the spectre of a coach and horses being driven through the planning system by every settlement justifying self-sufficiency (or at least inappropriate levels of self-sufficiency) in terms of comparison goods shopping. This is a ridiculous argument to deploy in this case:
- (a) The aim of achieving greater self-sufficiency leading to clawback of expenditure has already been identified as part of the vision and objectives of the NNJCS. Nowhere does the NNJCS suggest that the needs of south North Northamptonshire should be met out of North Northamptonshire, for example in Northampton. To suggest that a site within a centre or even town from

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<sup>168</sup> CDA2 at paragraph 6.27-28

<sup>169</sup> Mr Jones in 1XX

<sup>170</sup> See further Mr Nutter in ENC3 at paragraphs 5.34-38

<sup>171</sup> ENC3 at paragraphs 5.10-33

which expenditure is to be clawed back is sequentially preferable would be self-evidently perverse.

(b) The south of North Northamptonshire has been identified as needing increased comparison goods floorspace in Policy 12 which is now unlikely to be delivered in Wellingborough as planned.

(c) Rushden is to become a Growth Town because previous delivery barriers to it doing so are no longer an obstacle (see above).

(d) It is simply absurd, in the real world, to expect that significant numbers of residents of Rushden and the smaller settlements nearby will travel to the higher order centres, particularly Northampton, by public transport.

3.41 For all these reasons<sup>172</sup> Mr Nutter identifies an area of search as encompassing zones 9 to 11.<sup>173</sup> In addition, Mr Nutter identifies that within that area of search, candidate sites must be able to accommodate development of sufficient critical mass to effectively claw back leaking expenditure.<sup>174</sup>

3.42 In the properly defined area of search the task is to identify sequentially preferable sites that are suitable and available which necessarily includes consideration of deliverability/viability. Mr Nutter identifies two candidate sites:<sup>175</sup> Palmbest, Rushden and The Swansgate Centre, Wellingborough. Both are then discounted: Palmbest because it is simply not available or big enough (i.e. suitable) and The Swansgate Centre because it is not available and viable. It is noteworthy that none of Rushden Town Council, Wellingborough Borough or Town Councils or the local chambers of commerce suggests that either represent sequentially superior sites. Mr Nutter also discounts additional sites suggested by objectors within zones 9 to 11:<sup>176</sup> the Peter Crisp site in Rushden because the available units are not suitable and the Trensham College and Market Square sites in Wellingborough because they are no longer available because in the case of the college site plans to vacate it have been abandoned (a material change in circumstances since its allocation in the AAP), and, in the case of the Market Square site, because it is too small on its own to be suitable.

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<sup>172</sup> Explained further at ENC3 paragraphs 5.10-32

<sup>173</sup> See ENC3 at paragraph 5.33

<sup>174</sup> Legal & General make essentially the same argument when pressing the importance of improving the attraction of the Grosvenor Centre in Northampton as it fights to claw back expenditure from Milton Keynes, Leicester and out of centre retail parks in Northampton itself.

<sup>175</sup> ENC3 paragraph 5.58

<sup>176</sup> ENC3 at paragraphs 5.68-73

- 3.43 The proper conclusion for the SoS to draw on the evidence is clear: there is no suitable and available sequentially superior site. We turn now to the second test – impact.
- 3.44 There is broad agreement as to which town centres ought to be considered:<sup>177</sup> Kettering, Corby and Wellingborough in the NNJCS area and Northampton in the WNJCS area. While there is likely to be some claw back from other centres (including for example Milton Keynes and Bedford) no one at this Inquiry has seriously or sensibly suggested any such resulting impact would be significantly adverse. It is also important to remember that the impact test in paragraph 26 of the NPPF applies only in respect of impact on centres. Therefore when considering the impact of claw back it is very important to ensure it is only claw back from centres that is considered and not, for example, that from out of centre retail parks. This is particularly relevant in considering the alleged impact on Northampton. There are two impacts to consider: effect on public and private investment (existing, committed and planned) and town centre vitality and viability.
- 3.45 There appears to be general agreement that “existing” investment is to be taken as a reference to investment that has already been made and that “committed” investment is that which is contractually committed (private) or subject to resolution (public). There is a dispute as to what is meant by “planned” investment.
- 3.46 Mr Nutter for ENC agrees that in considering the effect on planned investment it is proper to have regard to relevant parts of the PPS4 PG.<sup>178</sup> The methodology outlined therein suggests that evidence<sup>179</sup> of the following will be relevant:
- (a) Paragraph 7.17 - Town centre development opportunities which are being actively progressed; key considerations will include:
    - (i) The stage at which the proposal has reached;
    - (ii) The degree to which developers/occupiers are committed;
    - (iii) The level and significance of predicted direct and indirect impacts.<sup>180</sup>
  - (b) Paragraph 7.19 - The effects on current/forecast turnovers and market share; operator demand/competition for the same market opportunity; the need/capacity for both; investor confidence/concern.
  - (c) Paragraph 7.20 – The effect on key anchors.

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<sup>177</sup> Mr Goddard at LAC5 paragraph 7.13-14 accepts there will be no significantly adverse impact on Rushden itself.

<sup>178</sup> See ENC3, paragraph 6.11

<sup>179</sup> It is submitted that unsubstantiated assertion will not suffice

<sup>180</sup> As will be seen, there is some overlap here with the vitality and viability limb of the impact test.

- (d) Paragraph 7.21 - The policy status of the planned investment; e.g. is it a key provision of the development plan?
  - (e) Paragraph 7.21 - The degree of risk.
- 3.47 Wellingborough can, in the circumstances, be dealt with shortly. There is no evidence that any planned investment is being actively progressed or that any plans have reached further than embryonic stage or that any developer is committed. While there are plans identified in the AAP these are unlikely to be progressed. There is no evidence that any are viable and as set out above the AAP is as Mr Nutter concluded out of date. There is no serious expression of any investor concern. The Wellingborough Chamber of Commerce and WBC are four-square behind the Rushden Lakes project.
- 3.48 With regard to Northampton it is important to realise that there is bound to be some impact if the development plan strategy to claw back leaking expenditure is to succeed. It is important to remember that the RTP West Northamptonshire Retail Study identified that Northampton was a healthy centre: *"Northampton is currently performing its role as the highest order centre in West Northamptonshire satisfactorily."*<sup>181</sup> Whilst it notes the need for improvement, involving the extension of the Grosvenor Centre, this recent objective appraisal does not bear out the descriptions of the objectors. Intriguingly, Mr Denness in his proof describes the centre in glowing terms.
- 3.49 Considering the evidence before the Inquiry against the matters identified in PPS4 PG the following conclusions should be drawn in respect of Northampton town centre:
- (a) The Grosvenor Centre redevelopment and extension is identified in the NCAAP.<sup>182</sup> However, there is not even a sketch let alone a design of what is proposed. There is no planning application let alone a consent. The plan produced today reinforced that far from there being a few (2% we were told) unknown land-ownerships there are a number of known owners not within the ownership or control of Legal & General who would have to be the subject of a CPO which is yet to be a glint in the eye of NBC. The Grosvenor Centre is yet to be conceived, let alone formed into an embryo.
  - (b) It cannot be said that the Grosvenor Centre has been pro-actively progressed. Since 2000 Legal & General has announced various plans that have all come to nothing.<sup>183</sup> This has been during times of abundance as well as lean years. Throughout, the Grosvenor Centre extension has had a supportive planning policy context: this is not of recent invention. No doubt

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<sup>181</sup> CD8.2 page 13 paragraph 3.11

<sup>182</sup> Northampton Central Area Action Plan January 2013 CD9.3

<sup>183</sup> 2XX of Mr Jones and ENC13

down the years it would have said the same things as it has said (indirectly) to this Inquiry about how it is on the cusp of embarking on the extension. The frequently expressed intentions have been consistently fruitless. The evidence is plain that it is stalled for reasons wholly unconnected with Rushden Lakes.

(c) There is no evidence that Legal & General is actually contractually committed to doing anything. There is evidence of a 2009 DA with NBC, but no evidence as to what that agreement requires or commits Legal & General to. No witness for NBC or Legal & General had had sight of the DA.

(d) There is no evidence that can be tested that any identified or embryonic redevelopment scheme at Grosvenor Centre is viable. There is no evidence of any effect of the Rushden Lakes proposal on the viability of redevelopment at the Grosvenor Centre. All witnesses for Legal & General and the LAC have not themselves been privy to any viability discussions. It would obviously have been open to Legal & General to call such evidence but it chose not to do so. If either Legal & General or NBC wanted to do so but were contractually prevented from doing so by the other that cannot be a matter that stands in favour of the objectors.

(e) The evidence before the Inquiry shows that there is no competition for the same retailers or market opportunity as between the Grosvenor Centre and Rushden Lakes. The evidence shows that:

- (i) Retailers adopt different formats in town centres and on retail parks.
- (ii) Retailers that do trade in both town centres and retail parks do so in close proximity, certainly within the same urban or catchment area.
- (iii) Likely or target retailers for the Grosvenor Centre from Mr Whiteley has very limited overlap with those assumed by Mr Goddard to be likely at Rushden Lakes.

(f) There is no evidence from key anchors at the Grosvenor Centre that has been called by objectors. Instead reliance seems to be placed on the conclusion of the NCAAP Inspector. The second-hand evidence before him was not tested by cross examination. It is clear that the evidence on behalf of Legal & General did not paint a complete picture.<sup>184</sup> It seems that in August 2012 Legal & General told the NCAAP Inspector in response to his specific concern that the Grosvenor Centre extension was viable. At that time the Rushden Lakes application was in and there was no mention of it in their evidence. Furthermore, even after the resolution to grant Rushden Lakes, which occurred during the currency of the NCAAP examination, Legal & General did not say anything to the Inspector to gainsay the impression he was given that the Grosvenor Centre scheme was viable, nor did the Rushden

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<sup>184</sup> 2XX of Mr Jones and ENC11, APP34

Lakes resolution deter NBC from adopting the NCAAP. This was a very different picture from that painted by Mr Jones in his evidence to this Inquiry where in paragraphs 7.39-7.40 he is clear that there is currently an examination of viability on foot and that there is no available conclusion there is any viable scheme.

(g) At its height, the evidence on the effect of planned investment at the Grosvenor Centre amounts to a bare allegation from Legal & General that it will not proceed with any as yet unspecified plans for investment should Rushden Lakes be permitted.<sup>185</sup> The degree of risk is not at all great given the track record of Legal & General's pronouncements set out above. NBC, as stated in the past, has the opportunity to progress with the redevelopment with another partner.<sup>186</sup>

(h) In respect of projects/proposals identified in the NCAAP, there is no free-standing evidence of there being any adverse effect on investor confidence. The LAC's case in respect of Northampton town centre regarding investor confidence stands or falls with Legal & General and the Grosvenor Centre.

3.50 In any event the claim that the resolution to grant planning permission at Rushden Lakes is the cause of the current hiatus in the Grosvenor Centre project or the alleged crisis of confidence at Legal & General is not borne out by the evidence:<sup>187</sup>

(a) On 17 May 2012, Legal & General's agents were concerned that a proposed out of centre foodstore would impact on Grosvenor Centre investment decisions as a convenience anchor was important to the viability of redevelopment, and that to grant planning permission at Barrack Rd, on top of the very many other out of centre retail permissions granted by NBC over the previous 15 years would have a significant impact on Grosvenor Centre deliverability.<sup>188</sup>

(b) In June 2012 Legal & General announced its current scheme was not viable, that work on a planning application would cease leading to the 'hiatus'. Mr Jones confirmed in cross examination that the prevailing general economic conditions were highly material.

(c) On 12 June 2012, the leader of NBC made it clear that he was fed up and frustrated, but ascribed no blame to the Rushden Lakes project.<sup>189</sup>

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<sup>185</sup> See letter at LG3, Appendix 13, 1<sup>st</sup> paragraph

<sup>186</sup> See 2XX of Mr Whiteley in relation to CDA9.1

<sup>187</sup> Put to Mr Jones in 1XX

<sup>188</sup> APP9 Appendix 5

<sup>189</sup> APP36

(d) The minutes of a debate at NBC on 2 July 2012 do not mention the Rushden Lakes effect at all.<sup>190</sup>

(e) Statements submitted to the NCAAP Examination (on or about 13 August 2012) on behalf of Legal & General<sup>191</sup> similarly do not mention Rushden Lakes; key points relied on included general economic conditions and the plethora of out of centre permissions granted by NBC. Mr Jones confirmed in cross examination that the EiP hearing statement was truthful and accurate.

- 3.51 Mr Jones in cross examination agreed that the NCAAP Inspector's report was based on less information than is now available. In addition, it is clear that the evidence he did have was not able to be tested in cross examination as it has at this Inquiry. The weight to be attached to conclusion reached in the Examination is thus limited.
- 3.52 The proper conclusion to draw is that Legal & General has been involved with the Grosvenor Centre since 1999 and did not invest in it during the economic boom. Any assertion by Legal & General that the resolution to grant planning permission at Rushden Lakes played an influential part in its decision in June 2012 to cease work on a planning application for the Grosvenor Centre and to conduct a viability review is not sensible. Its assertion that a grant of planning permission at Rushden Lakes would preclude future investment at the Grosvenor Centre on the grounds of viability is also unevidenced<sup>192</sup> and, again, not sensible.
- 3.53 In Corby there is extant development plan support for a proposal known as Evolution Corby in which 15,500m<sup>2</sup> net of additional comparison goods floorspace would be delivered over the period to 2021.<sup>193</sup> In 2008 a planning application was made; CBC resolved to grant but the permission was never issued. The scheme was effectively abandoned by the previous owners. The new owners, Helical (Corby) Ltd objects to the Rushden Lakes application but there is no revised scheme and no evidence of any planned investment of such a scale that could deliver Evolution Corby. Furthermore, as Mr Nutter explains, Corby is simply not seeking to compete in the same market as Rushden. There is no compelling evidence of any significant adverse effect on planned investment in Corby. All of the retail impact analysis demonstrates that the measured effect of Corby is very small: even Mr Goddard has not been able to generate any significant loss of trade in his modelling.

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<sup>190</sup> APP38

<sup>191</sup> APP34

<sup>192</sup> No witness for Legal & General or the LAC was able to give any evidence in XX to that effect

<sup>193</sup> See Mr Nutter's proof ENC3 at paragraph 6.15-17

- 3.54 In Kettering<sup>194</sup> there is similarly some policy support for improvements, particularly at the Wadcroft/Newlands Phase I site. However, again, there is no evidence of any scheme being progressed for comprehensive redevelopment as set out in the AAP. Neither Mr Goddard nor Miss Garbutt for the LAC gives any direct evidence on investment planned in Kettering. That offered by PR Kettering Ltd<sup>195</sup> has not been able to be tested by cross examination. Mr Nutter was not cross examined on his evidence in relation to investment in Kettering at all.
- 3.55 Turning next to evidence of impact on vitality and viability. Although some parts of the evidence have a scientific appearance, this is in the end a matter of professional judgment, in particular in so far as it relates to the assumptions as to where the trade for the new development will be drawn from. As in most cases of competing judgments, the task of the decision-maker is to select the most reliable, tested against the available empirical evidence and logic.
- 3.56 In order to assess such impact it is first necessary to establish the likely catchment area of the proposal and its likely turnover. The sum of money which is likely to be available to be drawn from relevant centres and elsewhere to the proposed development is then known. It is then necessary to determine which centres it is likely to be drawn from and what scope there is for claw back and from where. All experts have, in considering the question of existing catchments and patterns of trade draw used the same shopping survey data to inform their judgments.<sup>196</sup> In respect of each centre, the effect on the vitality and viability of those centres can then be analysed.
- 3.57 Both Mr Nutter and Mr Goddard judge that the core catchment is likely to be zones 9 to 11, with Mr Goddard adding in zone 7. Mr Goddard's secondary catchment is much more extensive and also covers most of the urban area of Northampton (zones WN4 to 7). As Mr Nutter explained in cross examination, it is just not credible to assume that substantial numbers of people living in Northampton and beyond would be drawn to Rushden Lakes when Northampton town centre is on their door step and when they would drive very close to if not past other retail parks en route. He also explained that if such persons were willing to travel for such a time, Milton Keynes was a much more attractive proposition as a very high order comparison goods draw. Mr Nutter's catchment assessment is therefore robust and credible.
- 3.58 As Mr Nutter explains, where end operators in a retail scheme are unknown, assumptions as to turnover have to be made. His assumptions are that the garden centre and Terrace A would trade as Mr Burnett suggests - £5.1m and £9.1m respectively. For Terraces B and C, applying an average of £4,000/m<sup>2</sup>,

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<sup>194</sup> See Mr Nutter's proof ENC3 at paragraph 6.18-21

<sup>195</sup> PRK2

<sup>196</sup> CDA7.6 RTP 2011 Household Survey

he judges turnover at £73.4m. This gives a total turnover of £87.6m. In order to arrive at the turnover figure for the 2018 test year, Mr Nutter then assumes that turnover would increase in line with national averages. The 2018 figure is therefore £99.6m<sup>197</sup> nearly £10m above the figure adopted by Mr Burnett at this Inquiry.<sup>198</sup>

3.59 The equivalent figure adopted by Mr Goddard for the LAC is £139.5m<sup>199</sup> about £40m above Mr Nutter's figure. Mr Nutter explained in chief that a key difference between them was in Mr Goddard's selection of a £5,500/m<sup>2</sup> average for Terraces B and C. Mr Goddard's figure is not reliable as it is based on analysis of schemes<sup>200</sup> that are not truly comparable. In particular, the Greyhound Retail Park in Chester does not trade at an average of £12,863/m<sup>2</sup>, but at £3,400/m<sup>2</sup>.<sup>201</sup> The Northwich Retail Park trades very successfully at £4,336/m<sup>2</sup>. The "super-scheme" at Banbury just off the M40 motorway trades at £4,882/m<sup>2</sup> and includes a premier full flagship M&S and new concept Next store and enjoys excellent access. Mr Goddard also produced a list of prospective tenants for Rushden Lakes. The company average for M&S is £4,987/m<sup>2</sup><sup>202</sup> and for Next is £4,456/m<sup>2</sup>.<sup>203</sup> As was explained by Mr Nutter in cross examination, Mr Goddard's assumption of an average of £5,500/m<sup>2</sup> for Terraces A and B would not even be achieved if they were occupied by tenants all achieving more than the average turnover by M&S. This all suggests that Mr Goddard's figure is too high and Mr Nutter's is robust and appropriate.

3.60 In an attempt to underpin his existing work, Mr Goddard undertook sensitivity testing in his rebuttal proof. However, as was exposed in cross examination, his glaring error in assuming an Argos at Rushden Lakes would turn over £22.4m, instead of a company average based sales per outlet in the £5m to £6m range,<sup>204</sup> means that his turnover is inflated by about £17m. This narrows the gap between Mr Goddard (sensitivity) and Mr Nutter to £23m. Mr Nutter's robust assumption that turnover would improve in line with national trends (which accounted for £9.6m of 2018 turnover) is to be contrasted with Mr Goddard's efficiency allowance of £15.2m. If Nutter is correct, which it is submitted he is, then the gap narrows still further to about £17m. Mr Goddard's trade draw includes an assumption that £7m would flow to Rushden Lakes from outside his already unrealistic and very large catchment area and that £8m would flow from tertiary zones WN11 (Buckingham) and WH (immediately north of Milton Keynes). If Mr Nutter is

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<sup>197</sup> ENC3, paragraph 6.64

<sup>198</sup> See Mr Burnett's proof APP5, paragraph 3.10

<sup>199</sup> LAC5, paragraph 7.6

<sup>200</sup> LAC6, Appendix 10

<sup>201</sup> Mr Nutter in chief and not taken issue with thereafter

<sup>202</sup> Table BPD C in APP11, Appendix 2

<sup>203</sup> Table BPD D in APP11, Appendix 2.

<sup>204</sup> See APP27

correct that WN11 is simply too far away to be considered as falling within the catchment of Rushden Lakes, and that WH is firmly within the considerable sphere of influence of Milton Keynes, then the gap all but disappears. What Mr Goddard's sensitivity testing does is to show that Mr Nutter's original work was robust and reliable and his was not.

- 3.61 To assess the impact on individual centres, it is necessary to drill-down into the figures and "follow the money". It is axiomatic that not all comparison goods trade drawn to Rushden Lakes from each zone will be drawn from money that is now spent in town centres. A judgment has to be made as to the draw from town centres and that from out of centre retail parks. Mr Goddard has made such a judgment but, as was exposed in cross examination and in ENC10, that judgment does not survive a sensitivity test because it is based on improbable and disproportionate differentials between town centres and out of centre retail parks. His modelling is defective for at least two important reasons: firstly, it does not reflect the current existing attractiveness demonstrated by the Household Survey of town centres and retail parks where the split is now currently generally even between the two (albeit in some zones retail parks are favoured;<sup>205</sup>) secondly, it is illogical and Mr Goddard could provide no sensible explanation for why the trade draw had been skewed so significantly. The problems infect the analysis of the impact both on Northampton town centre and Kettering town centre.
- 3.62 Page 1 of ENC10 sets out the results of Mr Goddard's trade draw assumptions from the Rushden Lakes home zones on Northampton town centre and the out of centre Riverside Park to the east (i.e. towards Rushden) both before<sup>206</sup> and after<sup>207</sup> Rushden Lakes is opened together with the sensitivity test position.<sup>208</sup> The result is completely at odds with what Mr Goddard said he would expect applying his professional judgment. Rushden Lakes is shown as clawing back disproportionate and unexpected trade from the town centre when compared with the out of centre retail park. Whereas Mr Goddard had expected it would show significant trade redirected from Riverside Park this was not the case. Far more trade (about 10 times as much) was redirected from the town centre. PPS4 PG Annex D.27 advises that judgments should be based on existing shopping patterns. Whereas existing shopping patterns of those resident in the Rushden home zones show an approximately 50:50 split between town centre and retail park shopping, the analysis at ENC10 shows that Mr Goddard's data does not, even on the basis of his sensitivity test.
- 3.63 Page 2 of ENC10 shows the other side of the coin: the effect of Rushden Lakes on the shopping patterns of those living in the Northampton home zones. There continue to be bizarre outcomes. Mr Goddard was simply

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<sup>205</sup> Mr Goddard Appendix 13 Table 5

<sup>206</sup> From Mr Goddard's table 10

<sup>207</sup> From Mr Goddard's table 14

<sup>208</sup> From Mr Goddard's table 16a

unable<sup>209</sup> to explain why the diversion of expenditure by residents of zones W3 and W5 away from Northampton town centre increased in his sensitivity test. He was in similar difficulty in respect of explaining why, regarding zones W3, W4, W5 and W7 the impact on Riverside Park decreased in his sensitivity. Mr Goddard told the Inquiry that he could not explain why the data showed this, that it was counter-intuitive and that he would expect the opposite so it was “probably wrong”. On page 3 of ENC10, Mr Goddard was unable to explain the outputs in respect of the Northfield Avenue Retail Park. The reason why his data output are “wrong” (or inexplicable) is of course, because they were based on inappropriate and unsupportable professional judgment. The attempt to air-brush this from history in the LAC closing at paragraph 3.35 betrays a fundamental misunderstanding of Mr Goddard’s work. The errors were not “mathematical quirks thrown up by the computer modelling” but rather quirks created by the application of Mr Goddard’s judgment which proved faulty. These errors were not in “a few cells” but in fact in the key zones of Mr Goddard’s primary and secondary catchment.

- 3.64 There can be no possible doubt that Mr Nutter is to be preferred to Mr Goddard when it comes to accepting the outputs of professional judgment. It is telling that when you follow the money the amount drawn from the primary catchment identified by Mr Nutter and Mr Goddard is broadly equivalent. It is only when the exaggerated turnover used by Mr Goddard needs to be deployed that it is necessary for him to spread that implausibly high turnover he is required to contend that trade will be drawn from far and wide and in particular heavily from zones in Northampton. Thus the inaccurate turnover is coupled with the defective judgment to compile a modelling exercise which is not fit for purpose or a sensible basis for decision making. Mr Nutter’s judgments reflect the empirical evidence available and are based on coherent and logical analysis. His outputs are in his Tables 6.2 and 6.3.<sup>210</sup>
- 3.65 The solus effect on Corby town centre is -0.8% rising to -6.8% when taking account of existing commitments. The solus effect on Kettering town centre is -4.8% rising to -8.7% when taking account of existing commitments. The solus effect on Northampton town centre is -5.4% rising to -7.8% when taking account of existing commitments. However, in all cases the turnover in 2018 would be higher than in the base year of 2011. In each case Mr Nutter opines that the impact would not be significant.<sup>211</sup>
- 3.66 The effect on Wellingborough Mr Nutter has always accepted is more finely balanced. The solus effect on the town centre is -12.2% and is the same taking account of existing commitments. In both cases the turnover in 2018 would be similar to the base year of 2011. While the comparison goods floorspace position is not as strong as the other centres, the overall vitality

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<sup>209</sup> In 2XX

<sup>210</sup> Mr Nutter proof ENC3, page 62-63

<sup>211</sup> See “Consideration of Consequences” at Mr Nutter’s proof ENC3, p64-66

and viability of Wellingborough is underpinned by convenience goods investment.<sup>212</sup> WBC is fully aware of Mr Nutter's assessment and has not withheld its support for Rushden Lakes on the grounds of adverse retail impact.

- 3.67 As a result, ENC is firmly of the opinion that consideration of section 2 of the NPPF does not indicate a refusal of planning permission.

***Issue (c): The extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car.***

- 3.68 Section 4 of the NPPF requires that journey length for shopping, jobs and leisure activity be minimised [37 and 34], that sustainable transport opportunities be maximised [29 and 34] while accepting that different solutions will be available in rural and urban areas, that development should take up opportunities for sustainable transport modes to reduce the need for major transport infrastructure [32], 1<sup>st</sup> bullet) and that where there is a choice of sites for development (for example in a sequential test) the 'well connected' option be selected [24].

- 3.69 While ENC did not call any direct evidence on this issue,<sup>213</sup> it continues to hold the views it held at the time the application was determined:

(a) In terms of vehicle mileage savings it is common sense that if significant expenditure from the Rushden Lakes home zones is clawed back from more distant centres there would be vehicle mileage savings. Mr Bird's calculations for LXB were criticised in cross examination but no alternative calculation was ever advanced by the LAC or Legal & General. It was suggested that Mr Bird had failed to take into account some trips that would be generated by Rushden Lakes e.g. current trips to Northampton by bus that would be replaced by a trip to Rushden Lakes by car but these do no more than chip away at the edges of the savings. Other suggestions were frankly bizarre e.g. the suggestion that diverting comparison goods shopping from Northampton to Rushden Lakes would still require a trip to Northampton to go to the bank, as if there were no banks in Rushden.

(b) In any event, there is currently not an attractive bus service to Northampton town centre from Rushden. Residents in zones 9 to 11 shopping in Northampton have no real choice other than to travel by car.

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<sup>212</sup> Mr Nutter proof ENC3, paragraph 6.80

<sup>213</sup> So it did not take up inquiry time in XX of Mr Hunter-Yeats

(c) There were no objections from highway authorities on the sustainable travel issue after a full consultative process. The LAC's and Legal & General's attempt to portray a failure to agree to some parts of the SoCG was not and cannot be taken to be an indication of an objection to those parts.

(d) LXB proposed enhancements to bus provision, walking and cycling that would be delivered. Legal & General's principal criticisms seemed to be that there was no bus to be provided on a Sunday and there would not be 2 buses an hour directly into the site. LXB has now increased its planned provision to meet those concerns. In addition, passengers using the existing bus that goes to Waitrose on the opposite side of the A45 to Rushden Lakes would have the opportunity to walk over the new footbridge into the new retail and leisure development. LXB has now restored the provision that at the time the application was determined satisfied the Highway Authority. Furthermore, the Highway Authority and bus operator have always been clear that planned housing development in the area would increase patronage of the bus services leading to increased confidence in the longer term sustainability of the services when funding from LXB ceases.

(e) There is no realistic alternative choice to meeting comparison goods shopping needs in the south of North Northamptonshire (see the sequential test above) and ENC is content that LXB has taken all reasonable steps to maximise travel by non-car modes.

(f) ENC accepts that the framework travel plan proposed by LXB is appropriate and meets policy expectations.

3.70 ENC is, therefore, satisfied that the SoS should conclude that the proposed development is consistent with Government advice in promoting more sustainable transport as set out in section 4 of the NPPF.

***Issue (d): The extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF).***

3.71 Section 11 of the NPPF requires valued landscapes to be enhanced [109], 1<sup>st</sup> bullet), the provision of net gains in biodiversity where possible [109], 3<sup>rd</sup> bullet), despoiled and degraded land to be remediated, previously developed land to be effectively re-used [111] and weight to be given to the contribution made to wider ecological networks [113].

3.72 In cross examination Mr Jones accepted that although his evidence included criticisms of the ecological benefits of the proposed development he was not an expert and that Legal & General had not sought expert advice. He reached his non-expert judgment without having had the benefit of considering the views of the local Wildlife Trust and the RSPB presented to this Inquiry. He

now accepts that the proposals would provide significant benefits that are welcome according to the Wildlife Trust and RSPB.

- 3.73 The Wildlife Trust letter to the Inquiry dated 23 April 2013<sup>214</sup> makes it clear that it would manage the proposed visitor centre, the 32ha of land within the application site and a further 60ha of land controlled by the Applicant. This land includes SSSI, SPA and a Ramsar site. It also lies in the Nene Valley Improvement Area where ecological awareness and access is to be encouraged. It confirms that unmanaged access and trespass on the land is a *“key issue in the current decline in the condition of the SPA”*. It further confirms that the nature conservation value of the site would be enhanced by the proactive ecological management that it would undertake. By taking responsibility for LXB controlled land, the Wildlife Trust confirms it would be able to link up with its other nature reserves in the area to give a total integrated reserve area managed for people and wildlife of around 500ha. The visitor centre is judged to be an important base from which to manage conservation activities and provide outreach education to school children and visitors. It concludes by stating that *“the proposals will bring significant nature conservation benefits.”*
- 3.74 The RSPB letter to the Inquiry dated 21 June 2013<sup>215</sup> states that it works closely with the Wildlife Trust in the Nene Valley and endorses its views. This is particularly important because the area is important for protected over-wintering birds.
- 3.75 It is plain that, applying the policy in section 11 of the NPPF substantial weight should be given to these benefits in the planning balance.

***Issue (e): Whether any permission should be subject to any conditions and, if so, the form that these should take.***

- 3.76 The RTC set out in full the conditions it was minded to attach to the permission should it have retained jurisdiction over the application. Since the resolution to grant further work has been done refining these conditions as the call-in process unfurled. A draft was supplied to the Inspector and Rule 6 parties through the SoCG. This led to further scrutiny and refinement.
- 3.77 The result is a comprehensive list of conditions which are now agreed and which meet the legal and policy requirements. ENC is not aware of any outstanding matters of dispute.

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<sup>214</sup> INQ2

<sup>215</sup> INQ2

***Issue (f): Whether any planning permission granted should be accompanied by any planning obligations under s106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.***

3.78 Regulation 122 of the CIL Regulations provides that for an individual obligation to be a lawful reason for granting planning permission, it must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related to the scale and kind of the development.

3.79 In this case there is an agreement<sup>216</sup> and a unilateral undertaking<sup>217</sup> Obligation proffered. LXB has provided a Statement of Compliance to explain how each meets the Regulation 122 tests<sup>218</sup> which ENC endorses.

3.80 There are some matters of principle about which Legal & General do not agree. While no doubt LXB will respond in detail, ENC's position is:

(a) There can be no objection in principle to the making of a Rushden town centre manager contribution. This would foster links between Rushden Lakes and the town centre, pump-prime capacity-building in the town centre, co-ordinate bids for future improvement funds so that at the end of the funding period voluntary and/or business bodies would be in a position to ensure the future health of the town centre.

(b) The importance of a Travel Plan Manager will be well known to the SoS. LXB would secure such an appointment for at least 5 years. Thereafter good practice would be likely to be embedded, and if it is, the need for LXB to provide continuing support. If such support is needed, it would continue as necessary. No objection to this proposal has been received from the Highway Authority.

(c) The visitor centre and boathouse would now be provided before any retail floorspace is open for trading.

(d) The provision for repayment of any unspent public transport contributions 2 years after they are made is reasonable. Public transport subsidy would cease after 3 years at which time both the operator, Stagecoach, and the Highway Authority are satisfied that the bus services would be viable. If that is in any doubt, remaining funds can be expended for a further 2 years before final repayment is due.

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<sup>216</sup> Annex C to the SoCG

<sup>217</sup> APP 40

<sup>218</sup> APP 41

(e) ENC understands that the unilateral planning obligation is to be varied by deed so that in the event that the bus service on route 49 ceases and is replaced by an equivalent service, the business and facilities at Rushden Lakes are not required to close their doors.

***Issue (a) revisited: The Presumption in favour of Sustainable Development – the Planning Balance.***

- 3.81 The RTC identified the benefits that would accrue as a result of the proposed development.<sup>219</sup> Those not considered thus far are jobs and enhancement to recreation and leisure facilities and opportunities.
- 3.82 In considering the planning application ENC accepted LXB's assessment that there would be likely to be 290 direct jobs in the construction phase and this phase alone would generate directly £7m for the local economy to which would be added indirect effects.<sup>220</sup> The operational phase was estimated by ENC to generate up to 1,340 direct and 844 indirect jobs generating an annual benefit of some £23m a year for North Northamptonshire. This analysis was not accepted by the LAC and Legal & General who argue that Rushden Lakes would cause a loss of retail jobs elsewhere. LXB produced further evidence in rebuttal.<sup>221</sup>
- 3.83 In cross examination Mr Jones for Legal & General accepted that in respect of any additional jobs at the Grosvenor Centre he had no evidence of a viable scheme to show how they could be delivered. Further, he accepted that his methodology in his Appendix 16 which assumes jobs would be lost on the same basis that they are created was not supported by any study or proper empirical evidence. On the basis of these admissions there is no evidential basis on which to deduct job losses from the evidenced based approach of LXB.
- 3.84 The provision of the boat house and recreational access to the lake is plainly a recreational benefit of the proposed development including to youth organisations. The delivery of the boat house is secured by planning obligation and Canoe2 would occupy at least part of it. These are important community benefits and the boat house would contribute to the development of tourism in the Nene Valley.
- 3.85 The Wildlife Trust letter to the Inquiry confirms that its involvement would secure improved opportunities for bird-watching, walking, angling and boating. Access would be managed and provided through the land it manages to link up with the greenways of the wider Nene Valley. Policy 5 of the NNJCS seeks the improvement and enhancement of the network of sub-

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<sup>219</sup> CD B14 paragraph 7.12.6

<sup>220</sup> CD B14 paragraph 7.6.7.2

<sup>221</sup> APP9, Appendix 7

regional and local green corridors which pass through and close to the application site. Paragraphs 3.37-39 of the supporting text identify the multiple benefits to be derived from green corridor improvements as part of the River Nene Regional Park Project including tourism. CDA4 explains how Policy 5 and the project would be implemented which include<sup>222</sup> support for increased provision including water facilities, visitor attractions, information kiosks and picnic opportunities. All of this and more would be delivered by the proposed development. Mr Jones in cross examination accepted that the proposal would be consistent with NNJCS Policy 5 and the report at CDA4.

- 3.86 It is plain that the jobs, environmental and recreational benefits all fall squarely within the economic, social and environmental roles of sustainable development set out at NPPF [7]. These are benefits which are clearly welcomed by the local community, who surely are those best placed to value them. The SoS should ascribe significant weight to these matters in the planning balance: they are the epitome of his aspirations for a planning system built on Localism.
- 3.87 The benefits that therefore fall to be considered in the NPPF [14] balance include the regeneration of the previously developed site to the benefit of the self-sufficiency of the town and surrounding areas, provision of jobs and benefit to the local economy, enhancement of the environment and ecological benefit, the provision of leisure and recreation facilities, enhanced tourist facilities, connection of the town with the countryside via the new pedestrian and cycle links to the Greenway and Blueway networks including the provision of a bridge over the busy A45, considerable vehicle mileage savings by access to a quality local shopping destination in circumstances where currently long journeys are needed thereby minimising the need to travel, and improved public transport provision.
- 3.88 None of the main alleged retail adverse impacts (failure to apply the sequential test and significantly adverse impact on investment in town centres or the vitality and viability of those centres) has been made out. Access by non-car modes has been reasonably maximised.
- 3.89 While it may not wholly accord with an out of date element of the adopted development plan, Rushden Lakes is truly a proposal for sustainable development in planning policy terms. To the overwhelming majority of the huge number of non-professionals who have taken an interest in this planning application it is plainly a 'good thing'. The SoS can be confident that it represents a case where the interests of sound planning and common sense elide. The benefits are plainly not clearly and demonstrably outweighed by adverse impacts. There are no other material considerations that indicate that planning permission should not be granted.

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<sup>222</sup> CD4, page 32

- 3.90 These proposals articulate the ambition of the local community to grow and prosper, to leave behind the legacy of the collapse of the boot and shoe industry, to meet their own needs for jobs and prosperity and improve their environment. Without them being blessed with vast quantities of public subsidy they are seeking to forge their own future taking a positive attitude to investment and development. These virtues merit reward by the SoS of consent for the scheme before the Inquiry which represents both a sustainable proposal and the very epitome of localism.

## THE CASE FOR THE CONSORTIUM OF LOCAL AUTHORITIES (LAC)

### Introduction

- 4.1 It is very unusual for planning applications to be called in by the SoS because of his recognition of the importance in general of local decision making. There are a few cases, however, of such significance that the SoS departs from his normal practice. This Rushden Lakes application is such a case. The SoS's reasons were "that the application is one that he ought to decide himself because he considers that the proposals may conflict with national policies on important matters".<sup>223</sup>
- 4.2 The SoS was absolutely right.<sup>224</sup> This application raises in acute form really important questions about the interrelation of planning policy and investment. As Mr Goddard said,<sup>225</sup> it is for the SoS to decide whether he takes the "*short term expedient*" of authorising this proposal and the economic activity which it would generate or whether to uphold national policy which promotes "*genuinely plan-led development*"<sup>226</sup> and "*recognises the importance of putting town centres first in planning decisions*".<sup>227</sup> This is not a choice between growth and restraint because the development plan in this instance seeks high levels of growth in the period 2008 to 2021. But a decision is required as to whether or not to support longstanding national and development plan policy for a "*town centre first*" approach to retail and other "*main town centre uses*".<sup>228</sup> There are also strong policy commitments to positive town centre development proposals in the Area Action Plans ("AAPs") for the nearby Boroughs of Kettering, Wellingborough and Northampton.

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<sup>223</sup> DCLG letter 20th December 2012

<sup>224</sup> PRK2, Written Submissions of Mark Robinson, Appendix 1

<sup>225</sup> XX (Katkowski)

<sup>226</sup> CD A1: "*Core Planning Principles*" paragraph 17, first bullet.

<sup>227</sup> CD A6.11 "*High Streets at the Heart of our Communities: The Government's Response to the Mary Portas Review*". Prime Minister's Foreword: "*We have published our new national planning guidance which recognises the importance of putting town centres first in planning decisions.*"

<sup>228</sup> Which the NPPF glossary defines as: "*retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).*"

Whilst not part of the statutory development plan for Rushden, these AAPs are important material considerations.

- 4.3 Northampton Town Centre's AAP was independently examined as recently as Autumn 2012, found sound and adopted in January 2013. The question at the heart of this Inquiry is whether these town centre first plans and proposals are allowed to proceed or whether they are disrupted by opportunistic comparison retail development of sub-regional scale in an out of town location.<sup>229</sup> The implications for investor confidence in town centres generally are obvious and serious.<sup>230</sup> Very considerable investment of public money has already occurred in Northampton and Corby town centres. Giving up on the planned town centre approach now would mean that this public investment would not yield its full value for the community because projected regeneration would be left incomplete. These are matters of much wider than local interest; they go to the root of national planning policy. The Willow Place Shopping Centre in Corby is an example where regeneration has taken place but there are other places where regeneration has not happened.

***Issue (a): The extent to which the proposed development is consistent with the development plan and would deliver a sustainable form of development.***

- 4.4 The development plan is a "*Core Spatial Strategy*". It sets out a Vision, Objectives and spatially articulated policies for implementing them in the period up to 2021. The Strategy<sup>231</sup> is a comprehensive and balanced plan for growth. It is comprehensive in that it deals with growth in homes and jobs coupled with provision for infrastructure and services including transport, recreational space and retail. There are ten balanced Objectives, none of which is prime. Two Objectives are, however, of particular significance for this application: Objective Three – Network of Settlements, and Objective Four – Town Centre Focus. Whilst greater (not total) self-sufficiency for North Northamptonshire forms part of these Objectives, this end is to be achieved within "*a sustainable urban-focused*" framework of settlements whose roles and characters will shape "*the scale and location of growth*" and within a focus for investment and growth on Town Centres. The examining Inspector described the NNJCS as identifying '*an identifiable "spatial vision" with a meaningful local perspective.*'<sup>232</sup>
- 4.5 The Spatial Strategy emerges from the Objectives, with numbers 3 and 4 underpinning Policies 1 and 12 in particular. Policy 1 provides that the objective of achieving greater self sufficiency for North Northamptonshire is to be achieved by principally directing development to the urban core,

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<sup>229</sup> As to which, see Miss Garbutt in x, commenting in particular on the distance from the town and the degree of separation caused by the A45

<sup>230</sup> PRK Appendix 2 – Selection of letters from town centre investors.

<sup>231</sup> CD A7.3 Chapter 3

<sup>232</sup> CD A7.4, Inspector's Report, paragraph 12

*“focused on the three Growth Towns of Corby, Kettering and Wellingborough. The smaller towns”, including Rushden “will provide secondary focal points for development within this urban core”. The Policy states that “the emphasis will be on regeneration of the town centres...” Table 1 sets out in more detail the Settlement Roles. Relevantly for this case, the top two levels of the hierarchy provide as follows:*

CATEGORY	SETTLEMENTS INCLUDED	ROLES	IMPLICATIONS
Growth Towns	Corby Kettering Wellingborough	To provide the focus for major co-ordinated growth and regeneration. Identified as ‘sub-regional centres’ in town centre hierarchy and focus of new retail development.	Greatest share of new employment, retail and leisure development. Main locations for new housing through urban capacity and sustainable urban extensions. Improved transport choice and linkages between neighbouring towns. The focus of new infrastructure and the removal of constraints on housing delivery.
Smaller Towns	Burton Latimer Desborough Higham Ferrers Irthlingborough Rothwell Rushden	To complement the Growth Town expansion by providing secondary focal points within the urban core. Rushden identified as ‘other main town centre’ in town centre hierarchy, remaining towns identified as ‘localised convenience and service centres’.	Scale of new development related to infrastructure provision and regeneration needs. Local service roles and expansion of employment opportunities. Improved transport choice and links to Growth Towns. Rushden to consolidate its position as a fourth main town centre and be a focus for new employment development.

It is noticeable that Rushden’s role is to *“complement”* the three *“sub regional centres”*, as a *“localised convenience and service centre”*.

4.6 In his written evidence, Mr Rhodes placed considerable emphasis on paragraph 3.11 of the NNJCS,<sup>233</sup> arguing that the NNJCS recognises and is permissive of out of centre retail development, that the examining Inspector anticipated that the Plan would *“fail”* and therefore required an addition to the paragraph to cover such an eventuality. Accordingly, the proposition goes, the application proposal is either in accordance with the NNJCS or, the Plan having *“failed”*, it is necessary and appropriate to remedy the situation by means of Rushden Lakes. In his oral evidence, Mr Rhodes’ reliance on paragraph 3.11 was more circumspect, giving more weight to his allegation that the NNJCS is out of date. This shift of emphasis is typical of the way the Applicant has put forward ever changing rationales for the scheme, none of which is ultimately satisfying.

4.7 To the extent that it is still argued that paragraph 3.11 is permissive of out of centre retail development, it is necessary to consider Policy 11, *“Distribution of Jobs”* and Policy 12, *“Distribution of Retail Development”*. Clearly, given the hierarchical approach of the spatial strategy, these policies are closely related to and consistent with Policy 1 and Table 1. Policy 11(c) provides that *“new sites will be allocated to meet any shortfall in supply. These will be*

<sup>233</sup> See Main Proof paragraphs 4.22-23, 4.31, 5.20 and 5.23 and Rebuttal paragraph 2.3(5)

within or adjoining the main urban areas ... The town centres and other areas with good public transport connections will be the preferred locations for new office development." Paragraph 3.93 explains:

*"The town centres are the preferred location for the focus of new office development followed by other areas with good public transport connections. However, the town centres cannot entirely accommodate the amount of land envisaged as being required for office-based uses. Furthermore, in view of the need to bring about economic growth as fast as possible, certain types of business use (such as research and development) may find more commercially attractive locations within the sustainable urban extensions or other prominent sites at the edge of the towns. These will need to be in locations that are, or can be made, highly accessible by a range of transport modes."*

4.8 Policy 12 provides as follows:

*"The town centres of Kettering, Corby and Wellingborough will be strengthened & regenerated as the focus of sustainable communities in North Northamptonshire. For the period 2004 to 2021 development plan documents will make provision, in addition to existing commitments, for a minimum net increase in comparison shopping floor space of:*

*Kettering 20,500m<sup>2</sup>*

*Corby 15,500m<sup>2</sup>*

*Wellingborough 15,500m<sup>2</sup>*

*Development of an appropriate scale that enhances the retail offer of Rushden town centre will be supported. The remaining Smaller Towns and Rural Service Centres will consolidate their roles in providing mainly convenience shopping and local services. Local deficiencies in convenience retail provision will be addressed by provisions made through detailed development plan documents.*

*Where retail development, for which there is an identified need, cannot be accommodated within the defined town centre areas, a sequential approach will be followed with preference first to well-connected edge of town-centre locations followed by district and local centres including those in the sustainable urban extensions, and then existing retail areas that are well served by a choice of means of transport.*

*The scale of retail development should be appropriate to the role and function of the centre where it is to be located. Accordingly, proposals for major retail development and their phasing will be assessed to ensure that they do not have an adverse impact on the long term vitality and viability of other town centres or the ability of North Northamptonshire to retain expenditure."*

- 4.9 Paragraph 3.11, which supports Policy 1: Strengthening the Network of Settlements, states:

*"The three Growth Towns will incorporate a mix of leisure, retail, and employment uses. Development within the town centres will take into account and build upon the historic character of the towns to ensure that their distinct identity is maintained. Improved cultural, community and leisure facilities within the growth towns will enhance their position as the focal points for the area as a whole and beyond. The towns will benefit from a healthier evening economy, which will support their vitality and viability. The town centres are, however, constrained and while emphasis will be on their regeneration, other complementary sites will be required either edge of town or out of town to fulfil the growth strategy and meet the need for early investment."*

- 4.10 The disputed final sentence was added by the examining Inspector, who considered the *"Spatial Strategy – A Strong Network of Settlements"* in his Report.<sup>234</sup> When reading this section, it is essential to bear in mind the fact that Policy 12: Distribution of Jobs in the Submission NNJCS<sup>235</sup> became Policy 11 in the adopted Plan. He noted that the employment policy envisaged *"a high quality employment site at each growth town"* and went on to approve of the flexibility in paragraph (c) of that policy and its supporting text.<sup>236</sup> 'Employment' for the purposes of the Plan means B Class uses.<sup>237</sup> He noted the *"Roles and Relationships Study"* which supported the plan and the particular role of Kettering as a *"strong sub-regional retail centre"*, anticipating the Area Action Plans would further the NNJCS's policy for the 3 Growth Towns to grow on their *"particular strengths"*. Mr Rhodes relies on part of paragraph 23 of the Report; it reads in full:

*"I agree with the representors that it is unlikely that there would eventually be three or four strategic office parks, or three sub regional retail centres, but the supporting text and Policy 12 are flexible enough for new employment sites to be allocated where required. I believe the Core Spatial Strategy (CSS) points the way for the future direction of the town centres. Regardless of the proposed 'balanced approach' in the CSS, it seems to me that the market will ultimately have a considerable influence on the success, or otherwise, of each town centre to fulfil its particular role identified in the supporting text at paragraph 3.102."*

- 4.11 Paragraph 3.102 of the Submitted NNJCS became paragraph 3.101 of the adopted Plan. Adopted paragraph 3.101 sets out that the 3 Growth Towns are to be the *"focus of development with Kettering remaining the main retail*

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<sup>234</sup> CD A7.4, paragraphs 20-27

<sup>235</sup> CD A7.23

<sup>236</sup> Now paragraph 3.91 in the adopted CSS

<sup>237</sup> CD A7.3 (adopted Plan) paragraph 3.89; CD A.23 (submission version), paragraph. 3.90

*centre*". The adopted Policy 12 comparison floorspaces are listed. There is no mention of Rushden. Mr Rhodes speculated that there must have been *"debate about the reality of the retail strategy at the examination"*, leading to concern on the part of the Inspector. Mr Goddard firmly rejected that assumption for the following reasons:

(1) He had investigated this theory and discovered that while the Inspector asked a number of questions about the ability of the town centres to accommodate office development, the only question on retail related to the relative positions of Corby and Kettering.

(2) The 2005 RTP Study on Roles and Relationships,<sup>238</sup> which formed the major evidence base for Policies 1 and 12, considered questions of physical and expenditure capacity to support the floorspace figures in adopted Policy 12 and it also considered qualitative factors. Notably, they reminded the Authorities that the then national policy prescription for town centres with physical constraints was planned expansion of town centres though they identified no difficulty about the town centres' ability to accommodate retail growth.<sup>239</sup> In advocating the 3 Growth Towns Strategy, they rejected the 4 Towns Option including Rushden as overambitious and because of the physical constraints of that linear centre. There was therefore clear evidence dealing with demand and deliverability (viability and commercial realism and risks to successful delivery).<sup>240</sup> Mr Goddard's understanding was that this work was not seriously challenged by the Inspector or anyone else at the Examination – and, in turn, his evidence about his investigations on this point was not challenged by the Applicant or ENC.<sup>241</sup>

(3) The natural interpretation of the Inspector's reasoning is not that he was seeking to undermine the town centre first retail policy of the plan by a side wind, having raised questions about town centre capacity for employment growth but none about retail. Rather, he was seeking, by a minor amendment to supporting text for Policy 1, the spatial hierarchy, to bring it into line with (adopted) Policy 11 - particularly paragraph (c) - and its supporting text at (adopted) paragraphs 3.91 – 3.93. The reference in his additional sentence to the *"need for early investment"* chimes with (adopted) paragraph 3.93 which refers to *"the need to bring about economic growth as fast as possible"*. The remainder of that paragraph refers to potential requirements of R & D uses for *"prominent sites at the edge of the towns"*.

- 4.12 Whilst there is no mention in the report of the Rushden Lakes site, the fact is that it was, by that stage, a committed major employment site. Adopted paragraph 3.91 encourages employment at Rushden. Nothing in the

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<sup>238</sup> CD A7.1, p.102, paragraph 9.7; pp.120-121, particularly paragraphs 10.39-10.41

<sup>239</sup> See p.102, footnote 42. See now NPPF paragraph 23, 6<sup>th</sup> bullet which carries forward that policy.

<sup>240</sup> See p.112, Tab 9.7, bottom row - Option 7.

<sup>241</sup> CD 7.3 paragraph 1.2

Inspector's Report or the NNJCS, however, encourages major retail development at an out of centre or out of town location at Rushden (or anywhere else). The fact that Mr Rhodes sought to justify the application in relation to the development plan on the basis of such a tenuous argument simply highlights the fact that the proposal is fundamentally at odds with the spatial strategy of the development plan and its retail policy.

- 4.13 The policies of Chapter 3 – the Spatial Strategy – distribute development in accordance with Policy 1 and Table 1, particularly housing and employment. Under Policy 10, a mere 9.8% of the housing requirement goes to the Smaller Towns, one of which is Rushden. The Growth Towns take the lion's share. Policy 11 adopts a similar approach to employment, though the figures are Borough/District rather than town based.
- 4.14 It is immediately apparent that the application is wholly out of accord with the spatial strategy, particularly Policies 1 and 12. At 25,818m<sup>2</sup> (net) A Class uses, the proposal significantly exceeds the amount of planned growth for any of the Growth Towns<sup>242</sup> in Policy 12. Leaving aside questions of impact and sequential testing, such a large off centre comparison retail development cannot possibly be said to meet the Rushden policy on two bases:

- (1) that its scale is not appropriate to Rushden's supporting role as set out in Policy 1, Table 1 and paragraph 3.12 (Policy 12 second and fourth sections); and
- (2) that it would not *"enhance the retail offer of Rushden town centre"* – all parties are agreed that it will divert trade, ranging from £5m to £8.7m (9% to 15.6% impacts).<sup>243</sup>

In terms of the development plan, the proposals constitute the wrong type of development in the wrong place. Whilst there would not be conflict with policies for green infrastructure and some aspects of general sustainable development principles, compliance with these general policies does not detract from the fact that this application offends the spatial strategy of the development plan both generally and in relation specifically to the principal land uses proposed, which are main town centre uses.

- 4.15 The LPA recognised this conflict; they advertised the application as a departure; the report to Committee advised that the proposals were contrary

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<sup>242</sup> Note the policy is not rigid or prescriptive about all 3 towns having to accommodate the same amounts of comparison floorspace, so there is inbuilt flexibility, e.g. in the event that one town centre cannot deliver as much space as originally indicated. It is still sequentially preferable for it to go to one of the other centres rather than out of centre.

<sup>243</sup> APP41 (Note on CIL Compliance) recognises that there would be adverse impact on Rushden Town Centre and suggests that a financial payment is justified to mitigate it, the implication being that without such a payment permission should be withheld. There has, however, been no evidence to explain how, if at all, the financial sum could mitigate the impact and/or the extent to which there would be residual impact and why that would be acceptable whereas unmitigated it would not be.

to development plan policy, "*principally*" because the scale and format of the development do not accord with Policy 12; having reviewed development plan and national policy, Mr Wilson and his team<sup>244</sup> concluded:

*"the main thrust of policy advice across the different hierarchy of plans is on much the same basis and in the case of this development is principally about encouraging retail development in central town locations and supporting the vitality and viability of town centres..."*

The LPA supported the application in spite of this conflict on the basis of other material considerations, which will be considered later, but their recognition of the basic conflict is accurate and significant, as well as being in stark contrast to the position of the Applicant.

- 4.16 NNJCS Policy 13: General Sustainable Development Principles provides a checklist<sup>245</sup> of key issues, stating that proposals should meet needs in sustainable ways, in particular:

*"(c) Maintain and improve the provision of accessible local services and community services, whilst focusing uses that attract a lot of visitors within the town centres; ...*

*(e) Be designed to take full account of the transport user hierarchy of pedestrian-cyclist-public transport-private vehicle, and incorporate measures to contribute to an overall target of 20% modal shift in developments of over 200 dwellings and elsewhere 5% over the plan period."*

- 4.17 ENC's Committee Report does not deal in terms with either of these paragraphs of the Policy. The final advice of the Highways Authority was reported in an update.<sup>246</sup> It is now clear that the Authority does not accept that the proposal would reduce leakage and lead to reduction in vehicle mileage. It makes clear that the proposals would lead to an actual increase in vehicle miles travelled and expresses doubts about the effectiveness of pedestrian infrastructure.<sup>247</sup> The Consortium endorses and relies upon the Legal & General's case on transport sustainability and submits on the basis of it and the Highway Authority's Transport Note that the proposals are not in accord with the Sustainable Development Principles of the NNJCS either.

- 4.18 Policy 13 sits within Chapter 4 of the NNJCS, entitled "*Building Sustainable Communities*". The introductory paragraphs<sup>248</sup> explain how the pursuit of

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<sup>244</sup> Though for some unexplained reason, the Policy team was not formally consulted and was asked not to make a written response.

<sup>245</sup> CD A7.3, paragraph 4.10

<sup>246</sup> CD B15, Item 11

<sup>247</sup> APP50

<sup>248</sup> CD A7.3 paragraphs 4.1-4.9; see also paragraph. 1.9

sustainable development will meet needs, raise standards and protect assets. Whilst not expressed in terms of a presumption in favour of sustainable development, this section – and the whole Plan for growth in North Northamptonshire – sits comfortably with current policy contained in the NPPF.

- 4.19 The NNJCS was prepared and independently examined under the Planning and Compulsory Purchase Act 2004 (“PCPA”). It was subjected to Sustainability Appraisal and Strategic Environmental Assessment. Both the NNJPU and the Inspector were bound by the duty under s.39 PCPA to exercise their functions with the objective of achieving sustainable development. Its comprehensive and balanced approach to growth epitomises the principles of sustainable developments now summarised in the NPPF as comprising economic, social and environmental roles. As a JCS, it also embodies principles contained in the Localism Act’s duty to co-operate in the planning of sustainable development.<sup>249</sup>
- 4.20 While these features of the NNJCS do not, in themselves, answer the Inspector’s question about the sustainability of the application, the fact that it is so misaligned with the strategy of the Plan is a strong pointer to the proposal’s unsustainability. The Government had the opportunity, when promoting the Localism Act 2011, to move away from a plan-led system to a simple presumption in favour of sustainable development as tested in the draft version of paragraph 14 of the NPPF.<sup>250</sup> It chose not to do so, retained s.38 (6) PCPA and amended the NPPF to make clear that the statutory status of the development plan remains unchanged.<sup>251</sup> With such a clear answer emerging from the development plan in this case; it is for the Applicant to demonstrate that other material considerations undoubtedly outweigh the fundamental conflict of this major scheme with the NNJCS. Therefore paragraph 12 of the NPPF applies.
- 4.21 The Applicant argues that the NNJCS is out of date because:
- (1) Its policies are inconsistent in some respects with the NPPF.
  - (2) It has failed to meet retail needs in full.
  - (3) The NNJCS is being reviewed.
- 4.22 They therefore rely on the second section of paragraph 14 of the NPPF effectively to reverse the presumption under s.38 (6) and paragraph 12.

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<sup>249</sup> See Annex

<sup>250</sup> CD A1A and see Mr Rhodes XX (Ellis)

<sup>251</sup> CD A1 paragraphs 2, 11, 12

## Inconsistency with the NPPF

4.23 The NPPF provides that relevant policies in development plans should now be given *“due weight”* according to their degree of consistency with the policies of the Framework.<sup>252</sup>

4.24 Section 2 of the NPPF, *“Ensuring the vitality of town centres”* requires plans to promote competitive town centres and sets out ten hallmarks which policies should bear. Particularly relevant in this case are:

(1) *“recognise town centres as the hearts of their communities and pursue policies to support their viability and vitality”;*

(2) *“define a network and hierarchy of centres that is resilient to anticipated future economic changes”;*

(4) *“promote competitive town centres ...”;*

(6) *“allocate a range of suitable sites to meet the scale and type of ... retail, tourism development needed in town centres. It is important that needs for retail and other main town centre uses are met in full and not compromised by limited site availability; LPAs should therefore undertake an assessment of need to expand town centres to ensure a sufficient supply of suitable sites”;*

(7) *“allocate appropriate edge of centre sites for main town centre uses ... where suitable town centre sites are not available. If sufficient edge of centre sites cannot be identified set policies for meeting the identified needs in other accessible locations that are well connected to the town centre”;*

(10) *“where town centres are in decline, LPAs should plan positively for their future to encourage economic activity.”*

4.25 The following important principles emerge from these hallmarks:

(1) Ensuring the vitality and viability of town centres remains the unifying policy objective; town centres are a *“Good Thing”*, to be positively supported and promoted by the planning system.

(2) As the *“hearts of their communities”*, they are required to serve and be vital and viable for the whole community.

(3) In order to fulfil their function as *“hearts”*, they need the oxygen of money from sources across the retail and commercial sectors, including the most commercially attractive and successful elements. On occasions, they

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<sup>252</sup> CD A.1 paragraph 215

also need and receive public sector investment but such funding should not displace the roles of private investment and visitor expenditure.

(4) Out of centre development which attracts expenditure which would – or could – potentially otherwise go to town centres is not supported in principle by national policy and therefore should not be supported in principle by development plan policy, because it diverts investment and expenditure away from the “*hearts*” of communities to peripheral areas; the latter are likely to be less well served by public transport or less able to maximise public and private investment in public transport (contrary to the objectives of widening access and reducing carbon emissions).

(5) Development plans are seen as necessary and important for retail planning.

(6) The definition of a network and hierarchy of centres remains part of national policy.

(7) Defining such networks and hierarchies is a strategic activity and the need for resilience means that it is one where a medium to long term view is to be taken.

(8) The pursuit of vitality and viability is to be structured and complementary; the new statutory duty to co-operate<sup>253</sup> is also relevant.

(9) The concept of a hierarchy inevitably involves the consideration of scale and how a proposal fits into the hierarchy in terms of scale.

(10) In the retail context, NPPF policy about meeting needs in full is set in the context of allocating sites in town centres and “*expanding town centres*”, subject to sequential testing of potential edge and out of centre allocations and setting policies for meeting needs in “*other accessible locations that are well connected to the town centre*”.

(11) When town centres are in decline, the response should be positive planning.

(12) Where LPAs have followed this planned approach to town centres and growth through development plans, it is not in accordance with national policy to depart from the Plans without good reason.

4.26 Mr Burnett agreed with these propositions<sup>254</sup> - unsurprisingly, since they are all based on the NPPF. It is all the more curious, therefore, that the Applicant apparently jettisons these principles when interpreting the development

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<sup>253</sup> See NPPF paragraph 178

<sup>254</sup> XX (Ellis)

management paragraphs 24-27. The sequential and impact tests there set out are apparently to be applied in a vacuum, divorced from the comprehensive statement of policy objectives in paragraph 23 and divorced from the development plan; crucially, it is argued that Policy 12 is out of date because it includes considerations of scale in the location of retail proposals. Mr Wilson agreed that scale is relevant to applying both impact and sequential tests; Mr Nutter says the same in his proof, also stating that need is relevant to the exercise of defining a search area.<sup>255</sup> The Applicant, on the other hand, points to the reference to needs in the third paragraph of Policy 12, citing it as a further symptom of its being out of date, as well as the inclusion of district centres among sequential preferences.

- 4.27 Taking the 12 hallmarks of NPPF-compliant development plans above, the NNJCS can be seen to be up to date in all its essentials. It is based on an expert needs assessment.<sup>256</sup> As noted above, the Plan was prepared under modern procedures and was pronounced sound by the Inspector. Mr Burnett did not suggest that it had been unsound at adoption.<sup>257</sup> Policy 12 plans positively for growth in town centres and includes a sequence by which to make provision for any further needs. It is founded upon an evidence-based strategic network and hierarchy of towns and seeks to guide investment in an orderly fashion in accordance with that hierarchy. While the sequential test paragraph is not worded identically to that in the NPPF, the distinction is of no significance in this case, since district and local centres are not in issue.
- 4.28 The NNJPU has recently carried out an assessment<sup>258</sup> of the NNJCS including Policies 1 and 12. It concluded that it is generally consistent with the NPPF noting, particularly that it is *“a Plan which seeks high levels of growth, alongside increased infrastructure provision, which meets high design and sustainability standards. The policies within the Plan are largely consistent with the NPPF which is supportive of economic growth, and contains a presumption in favour of sustainable development”*. The detailed caveat regarding deliverability criteria relied on by Mr Rhodes<sup>259</sup> related to policies which are not relevant to this case. This resolution of the NNJPU post-dated ENC's resolution to support the application and was understandably not considered in the Committee Report. What was less understandable was Mr Wilson's omission to mention it in his proof (submitted several weeks after the resolution) or even in his oral evidence in chief, although he cheerfully pointed out that it was *“well known”*. Reluctantly, he had to agree that this resolution by the NNJPU – which includes Councillors from ENC – is a new material consideration.

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<sup>255</sup> XX (Ellis) and Mr Nutter's proof paragraph 5.16

<sup>256</sup> CD A7.1

<sup>257</sup> XX (Ellis)

<sup>258</sup> CD A7.22 Item 5, 13/13 Report and Planning Advisory Service Self-Assessment Checklist, page.9

<sup>259</sup> Op Cit, paragraph 2.2, 2<sup>nd</sup> bullet; Mr Rhodes XX (Ellis)

- 4.29 To summarise, relevant policies of the NNJCS are consistent with the NPPF. They should, therefore, be given great weight.<sup>260</sup> In particular, the requirement of Policy 12 that the scale of retail development be appropriate to the role and function of the centre where it is to be located is integral to the hierarchical spatial strategy and integral to the hierarchical/network approach espoused by the NPPF. The Applicant's contention that scale is now irrelevant to development management is not supported by Messrs Wilson and Nutter and does not bear examination. If the Applicant is right, then the implication is that there would be *"totally different results"*<sup>261</sup> in relation to major proposals such as this depending on whether they were pursued through the development plan or development management processes. There have been two opportunities to pursue these proposals (or something like them) through the development plan – via the adopted NNJCS and via consultation on the Review of the Plan. On neither occasion did the Applicant nor their predecessors do so. With regard to the latter, LXB responded just a few months before submitting the application, on the basis of a much smaller, mixed use proposal comprising retail/leisure/tourism and B Class uses.
- 4.30 Retail development would be of an appropriate scale having regard to Rushden's position in the shopping hierarchy and the site's strategically accessible location. The role and function of retail development on the site would be, they said, to accommodate uses that are complementary to the retail offer in the town centre and cannot be accommodated in the town centre, e.g. a large garden centre and other retail occupiers with business models that would not otherwise be able to locate in Rushden.<sup>262</sup> What changed? In July 2011, the draft NPPF was published which, as well as according the development plan a less significant role than the final version included a more relaxed sequential test<sup>263</sup> and omitted what is now paragraph 27, to the effect that where an application, inter alia, fails the sequential test, it should be refused. As we know, retail policy in the NPPF was revisited as a result of the Portas Review, with the object, in the Prime Minister's words, of *"putting town centres first in planning decisions"*.
- 4.31 The reading of national policy (and consequent rejection of the development plan) for which the Applicant contends would subvert the Prime Minister's commitment. Whilst it might remain valid for plan making, abandoning considerations of scale in development management would open the way for many more opportunistic applications for major out of centre development, rendering planned retail hierarchies unstable and irrelevant. The consequences for investor confidence to embark on the difficult job of bringing forward town centre development would be very serious. As Mr Goddard said, if the answer outside Rushden is "Yes", why should it not also

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<sup>260</sup> CD A.1, NPPF, paragraph 215

<sup>261</sup> Mr Goddard in X

<sup>262</sup> LAC 12, p.3

<sup>263</sup> CDA 1A and A1; compare paragraph 78 of the former with 24 of the later

be “Yes” outside Daventry or Towcester, or indeed in any postcode around 30 minutes’ drive from a sub-regional or regional centre? The policy tool for managing such issues in the tried and tested one of retail networks and hierarchies, reaffirmed by the NPPF and exemplified in the NNJCS.

- 4.32 These arrangements are not just the product of planners’ desire for control or intellectual tidiness; rather, they are the means by which public and private investment decisions can be made on a reasonably stable, known footing. In other words, they are the means by which the flow of financial oxygen to the hearts of communities can be secured. As will be seen, the effect of the proposed development would be to siphon off a substantial amount of the “purest oxygen” – the investment in and income from higher order comparison retail activity – to a destination which would not perform the other (less lucrative but equally important) roles of a town centre. Such a result would be wholly contrary to the development plan and cannot be what was intended in the drafting of Chapter 2 of the NPPF. It is the opposite of sustainable development.

### Failure to Meet Retail Needs in Full?

- 4.33 The Applicant sought to justify the proposal on the basis of a ‘gap’ in provision for Rushden’s core 10 minute catchment area (represented by Zone 10 and parts of Zones 7, 9 and 11).<sup>264</sup> It is argued that “leakage” out of the North Northamptonshire Catchment Area (“NNCA”) is excessive with the result that the NNJCS objective to achieve greater self sufficiency is undermined. Because the town centre growth planned in Policy 12 has not yet happened and housing delivery has been delayed,<sup>265</sup> they say that the Plan has “failed” and that Rushden Lakes is therefore required to plug the gap. Mr Rhodes dismisses the NNJPU’s assessment of consistency with NPPF as superficial and not based on any up to date assessment of retail needs. He cites NPPF policy that retail needs must be met “in full” and says that the NNJCS evidence base did not set out to do this and, in particular, contained no assessment of qualitative needs. For good measure, a new argument emerged during the Inquiry to the effect that since one of the allocated sites in Wellingborough’s Area Action Plan (“AAP”)<sup>266</sup> is no longer available and since the site is only a few miles from Wellingborough, this is a justification for the proposed retail floorspace.
- 4.34 Mr Goddard dealt with these arguments in his written and oral evidence. His company was instructed by the NNJPU in early 2012 to do two things: firstly, to review the evidence base for the current and emerging NNJCS and, secondly to review the application. They reviewed the NNJCS retail evidence base consisting of two RTP capacity analyses and testing of different growth

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<sup>264</sup> Set out on Mr Goddard’s Plan 3

<sup>265</sup> Miss Garbutt’s Note APP19 sets out the up to date position

<sup>266</sup> CD A12.3; Site E1, Tresham College

options. They noted that the evidence base had taken account of the growth strategies for adjoining areas including Northampton and that that town *"has a key functional relationship with North Northamptonshire"*. In the light of these relationships, they considered that *"the CSS provides the basis of a realistic and deliverable strategy for North Northamptonshire"*.<sup>267</sup> Reviewing the updated RTP evidence base<sup>268</sup> which included a new household survey (upon which all the retail evidence at this Inquiry has been based) and updated population and expenditure forecasts, GVA noted that:

- (1) the overall retention rate of expenditure in the NNCA had increased to 61.5% from 50% in 2005;
- (2) Corby's market share had increased, reflecting the opening of Willow Place<sup>269</sup> whereas Kettering's had fallen due to out of centre competition; Wellingborough's share had declined too but Rushden town centre's share had increased a little between 2005 and 2010;
- (3) the Study identified less capacity for additional comparison goods floorspace than in 2005/6;
- (4) RTP's recommendation was that the Strategy should remain essentially unchanged, though they had tested capacity on static retention and increasing (64% at 2021 and 65% at 2031) retention rate scenarios.

GVA's conclusions on the Strategy were:

- (1) that the RTP 2011 capacity forecasts were, by 2012, marginally over-optimistic;
- (2) that Rushden town centre could accommodate a mere 1,949m<sup>2</sup> net additional comparison floorspace at 2016, 3,295 m<sup>2</sup> by 2021 and 4,805 m<sup>2</sup> by 2026, though allowing for existing out of centre performance at Rushden, globally the figures would be marginally greater; enhancing floorspace at Rushden would be likely to deflect significant capacity away from other town centres;
- (3) having reviewed opportunities at Kettering and Corby, that they had *"significant potential for new development and the development potential of both centres should be fully exploited in order to maximise the level of trade retained in North Northamptonshire town centres"*;
- (4) that at Wellingborough and Rushden town centres, there were more limited opportunities, in the former case because of the complexities associated with Tresham College and in the latter because of lack of operator demand; moreover, noting the role of Northampton, they anticipated that it would *"continue to meet a significant proportion of 'higher order' shopping needs of residents of those towns"*;
- (5) that the current *"3 centres"* retail strategy remained sound.

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<sup>267</sup> CD A7.7 *"Independent Assessment of the Retail Strategy for North Northamptonshire and the Implications of the Rushden Lakes Proposals"*, p.9, paragraph 2.18

<sup>268</sup> CD A7.6 North Northamptonshire JPU – Retail Capacity Update, February 2011

<sup>269</sup> See *"Before"* and *"After"* photos in Miss Garbutt's Appendix 18

- 4.35 In his oral evidence, Mr Goddard demonstrated that, based on RTP's further (2012) update; there is *"negative capacity"* for new comparison floorspace. Notwithstanding that current situation, he noted and approved the absence of maxima in Policy 12 and said that it was still right to plan for growth in the town centres. By contrast, Mr Burnett's critique of RTP (his Appendix 2) does not, as he agreed, take account of the policy implications or realism of increasing Rushden's market share. He accepted that his client had had the opportunity to take issue with the RTP 2011 Update in their representation on the draft NNJCS Review, but had not availed themselves of it.<sup>270</sup> As noted above, of course, the effect of the application is actually to divert an appreciable amount of trade from Rushden and Wellingborough town centres, rather than complement and bolster them. Mr Burnett, when asked, did not suggest that the NNJCS was unsound at adoption.<sup>271</sup> Before examining whether any new material considerations have rendered the Plan unsound in the meantime, two further points about the NNJCS should be noted.
- 4.36 Firstly, the document recognises the regional centre role of Northampton: at paragraph 1.16, the *"key functional relationship"* is highlighted, including its proposed *"increased retail ... offer"*. It continues that *"The studies of transport and retail issues that underpin this Plan have taken account of these relationships ..."* Likewise, at paragraph 3.24, *"The Plan recognises that, whilst becoming more self-sufficient, North Northamptonshire will not meet all of the needs of local people. In particular, health and higher education facilities at Peterborough and retail and leisure services at surrounding large sub-regional centres; and employment opportunities outside the area will continue to draw people out of North Northamptonshire."* Accordingly, in this balanced and comprehensive Strategy, Policy 2: Connecting North Northamptonshire with surrounding Areas makes provision, amongst other transport improvements, for upgrading multi-modal links to Northampton.
- 4.37 Secondly, the NNJCS does not set a timetable for delivery of the Policy 12 floorspace commitments. Mr Goddard explained that it would be unrealistic to treat retail development in that way because of the complexities and *"granular nature"* of developing in town centres. Paragraph 3.103 recognises that *"development will proceed at different rates in the three centres in response to market demands and regeneration needs as sites become available ... The retail strategy will be reviewed in the light of market conditions and monitoring of delivery"*. Two separate expert companies – RTP and GVA have now reviewed the retail Strategy and recommended its continuation.
- 4.38 The NNJCS was adopted in August 2008. It was closely followed, as Mr Chase reminded the Inquiry, by the Lehmann crash and the ensuing financial crisis.

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<sup>270</sup> XX (Ellis)

<sup>271</sup> XX (Ellis)

Inevitably this would have affected delivery of all aspects of the Plan – for example, the major Sustainable Urban Extensions planned at Kettering and Corby, as well as town centre investment. The NPPF, doubtless recognising the practical differences between residential and retail development, deals differently with delays to delivery. Whilst the absence of a 5 year supply of housing land automatically renders housing policies out of date,<sup>272</sup> town centre and retail policies are not approached in the same way. There was no challenge<sup>273</sup> to any of Miss Garbutt's factual evidence<sup>274</sup> on the progress being made in terms of town centre delivery, investment and planning at Corby and Kettering. Viewed in the light of prevailing economic circumstances over the last few years, progress is impressive. To take a couple from the many examples, in Kettering the new Market Place Building with restaurants and residential uses on allocated site RQ2 was completed in summer 2011 with £2.5m of Growth Area funding and a public realm scheme was undertaken in 2009 in the market place at a cost of £4m.

## Review of the NNJCS

- 4.39 The examining Inspector advised an *"early review"* of the NNJCS despite his finding of soundness because of concerns about infrastructure funding and the implications for housing and employment,<sup>275</sup> rather than specifically in connection with town centres or retail provision. Nevertheless, as noted above, a review was commenced, supported by fresh retail capacity analysis.
- 4.40 All witnesses agreed that the NNJCS Review is at too early a stage to attract more than limited weight. Yet the Applicant and ENC repeatedly sought to rely on the *"emerging Growth Town status of Rushden"*. The NNJPU resolved, in January 2013, that Rushden should be *"included as a named Growth Town"*<sup>276</sup> but this step is of little, if any, assistance to the Applicant and ENC. This is, firstly, because work on the Review has now stopped, stymied by the impasse brought about by the application.<sup>277</sup> Legal advice to the NNJPU was to the effect that to take forward a JCS with Rushden Lakes as part of its retail strategy would be unsound. Given the results of the RTP 2012 update, GVA's independent review of the same date and the contents of NPPF paragraph 23, this advice is not surprising. The NNJPU (including members from ENC and WBC) resolved to accept the recommended approach to defer further statutory steps in plan preparation until the SoS has determined the application.

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<sup>272</sup> CD A.1 paragraph 49

<sup>273</sup> Mr Rhodes XX (Ellis)

<sup>274</sup> Miss Garbutt's proof paragraphs 7.21 – 7.68

<sup>275</sup> CDA7.4: Inspector's Report paragraphs 7, 60 and 142. NB Policy 12 in the Inspector's Report became adopted Policy 11.

<sup>276</sup> CD A7.13

<sup>277</sup> CD A7.14

4.41 Secondly, the draft Plan:

- (1) does not allocate the Rushden Lakes site; it records it as a strategic commitment for employment and leisure;
- (2) draft Policy 10 continues a town centre focussed approach, albeit that Rushden is elevated in the hierarchy;
- (3) the importance of Northampton continues to be recognised in draft Policy 17;
- (4) even with Rushden's new status, housing and employment growth continues to be weighted to Corby and Kettering rather than Rushden and Wellingborough though it should be noted that the NNJPU decided in January 2013 that the levels there set out are undeliverable so much remains to be worked out in connection with the reviewed strategy, as Miss Garbutt observed.<sup>278</sup> The fact that ENC has achieved relatively more housing growth since adoption of the NNJCS is not a reason to overturn the retail strategy either. Kettering's contribution is to be made largely through extensive Sustainable Urban Extensions, the delivery of which will similarly have been impaired by prevailing economic circumstances. East Kettering is now coming forward and the promoter, who is committed to providing some £20m contribution to Kettering town centre, objects to the application on the basis that it would *"skew the balance away from Kettering"* with negative effects on its development which relies in part for its success on a strong and attractive town centre;
- (5) as Miss Garbutt said, the split of development between the 4 towns remains to be decided; permitting Rushden Lakes now would force the NNJPU's hand in the opposite direction to the one which they are being expertly advised to take.<sup>279</sup>

4.42 In short, the review cannot possibly be a reason for overturning the spatial strategy of the adopted development plan for the period 2008 – 2021. As the Irchester Inspector said:

*"43. As noted earlier, although new figures were agreed by the NNJPU in March, those figures have not yet appeared in any draft plan, and have not been subject to any consultation. Before the draft CS Review can go forward for submission, it must be subject to any consultation. After that, it must be independently tested through the public examination process, and at that stage, it will be necessary for the NNJPU authorities to show that the housing provisions meet the district's full, objectively assessed needs. That must also include demonstrating compliance with the new duty under the Localism Act to co-operate with neighbouring authorities. The issues to be dealt with in the examination will inevitably be complex. I cannot speculate as to the outcome of this process, but it would not be unusual for any plan to undergo further changes before its final adoption. For all these reasons, the draft CS Review cannot yet carry significant weight."*

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<sup>278</sup> Rebuttal paragraphs 7, 8 and 10 and Appendix 1

<sup>279</sup> Miss Garbutt XX (Katkowski) and RX

44 *The adopted CSS, in contrast, remains in force as part of the statutory development plan, and as such it must be the starting point for my decision, as a matter of law. The adopted plan was examined and found sound only five years ago, which is not a long time in the context of the timescales needed for plan making. I accept that some of the relevant circumstances have now changed, but that does not mean that the adopted plan should be disregarded altogether....."*

**Issue (b): The extent to which the proposed development accords with the NPPF, in particular section 2 which relates to ensuring the vitality of town centres.**

4.43 Section 2 of the NPPF has been considered in some detail under the Inspector's first question. It has already been concluded:

- (1) that the application does not accord with the development plan;
- (2) that the development plan is consistent with the NPPF;
- (3) that the application does not accord with the objectives of Section 2 of the NPPF; and
- (4) that, in retail and spatial planning terms, the application does not amount to sustainable development.

These four conclusions overlap with and feed into the question of accordance with Section 2 of the NPPF. Nevertheless, the specific issues of compliance with paragraph 24 (sequential test) and 26 (impact) must now be addressed.

#### **The sequential test - "The only Show out of Town?"<sup>280</sup>**

4.44 The starting point in applying the sequential test is the proposed development. As Lord Hope stated in Tesco Stores Ltd v Dundee City Council [2012] 2 P.&C.R. 9, "*It is the proposal for which the developer seeks permission that has to be considered when the question is asked whether no suitable site is available within or on the edge of the town centre*" [38]. Accordingly, the Consortium in applying the sequential test focuses closely on the nature of the Applicant's proposals. It is a hybrid application, with only outline permission sought for the hotel, leisure centre and crèche. No Grampian conditions or phasing requirements in the s.106 agreement are offered to ensure that the various elements of the proposals come forward. Condition 7 with its reference to a phasing plan is only to enable the LPA to understand the construction stages and does not require the whole development to be built out. Furthermore, no viability evidence has been adduced to show that the development can only come forward as a whole.<sup>281</sup>

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<sup>280</sup> See exchange between Katkowski and Goddard in xx

<sup>281</sup> Whilst Mr Goddard rightly accepted in xx (Katkowski) that the NPPF does not require applicants to demonstrate that all the elements of their proposals are needed in viability terms, the absence of such evidence in this case of an

The Applicant states that the scale of the proposals is required to provide sufficient critical mass *"so that occupiers can experience mutual benefits of co-location and a successful development can be delivered in Rushden"*.<sup>282</sup>

- 4.45 Bizarrely, Mr Nutter in his advice to the LPA, drew speculative and inexperienced conclusions about viability, purporting to explain on this basis the presence of the restaurants and hotel (with its reference to catering for 3 million visitors a year in a facility apparently required to meet the shopping needs predominantly of the 10 minute catchment); that is not, in fact, how the case was made by the Applicant and by the stage of writing his proof, Mr Nutter accepted that *"little evidence has been provided by the Applicant which demonstrates that the scale of floorspace proposed is essential to ensure that the development as a whole is viable"*.<sup>283</sup> In fact, there was none and the retail SoCG recognises that viability was not one of the Applicant's arguments.<sup>284</sup> Nevertheless, Mr Nutter's early recognition of the need to find a rationale for the collection of uses in the scheme is telling, as is the fact that his purported justification was misguided. Mr Nutter's firm evidenced the GVA 2012 study in a letter to Ellandi LLP.
- 4.46 LXB's letter to Mr Rhodes dated 23 May 2013 does not claim that the scale or mix of development is necessary to achieve viability, describing *"4 (sic) distinct categories"* of mixed leisure, garden centre and associated terrace and open A1 retail terraces.<sup>285</sup> It is said that the large anchor stores (Marks & Spencer and potentially Debenhams) cannot be split off from the smaller stores, yet the presence of smaller stores in town centres could of course fulfil this supportive role.<sup>286</sup> In any event this rationale does not extend to the garden centre, hotel, crèche or leisure centre. Mr Burnett agreed that there is *"no guarantee"* as to whether or when the outline elements of the proposal might be implemented.<sup>287</sup>
- 4.47 Interestingly, LXB's marketing agent describes the proposal (in an email to Kettering town centre retailer Clarks Shoes) in terms of phases, with Terraces B and C comprising the first phase, together with 1,300 car parking spaces, restaurants and a drive through coffee shop; the garden centre, Terrace A and the hotel/crèche/leisure club are allocated to a *"further phase."*<sup>288</sup> Furthermore, no retailer-specific requirements are put forward to suggest

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amalgam of different elements in a hybrid planning application is indicative of the degree of flexibility which could have been applied by the Applicants, but was not

<sup>282</sup> Mr Burnett proof paragraph 4.4

<sup>283</sup> Mr Nutter proof paragraph 5.48. He and Mr Wilson had simply not grappled with the possibility of the totality of the proposal failing to materialise; neither was able to explain in xx (Ellis) the absence of phasing conditions

<sup>284</sup> Mr Goddard Appendix 8, paragraph 8.1

<sup>285</sup> Mr Rhodes' proof Appendix 4 and XX Harris

<sup>286</sup> As identified by Cushman & Wakefield in their report on the Wadcroft site in Kettering town centre: Miss Garbutt's proof, Appendix 10, paragraph 6.1.2

<sup>287</sup> Mr Burnett xx Ellis

<sup>288</sup> PRK2: Robinson (Ellandi) Submission Appendix 5

that only the Rushden Lakes site is suitable: the proposal is essentially speculative at present, with no retailers signed up apart from Marks & Spencer. No operators suggest any physical or commercial constraints associated with other sites which mean that only Rushden Lakes can fulfil their requirements.

- 4.48 In short, the proposals are a loose collection of distinct elements. They are not interdependent and the commercial elements are not dependent upon any particular features of the site. They are unlikely to come forward together and a number may not come forward at all. These facts have implications in terms of both the physical characteristics of sequentially preferable sites and their timing which will be considered below.
- 4.49 The sequential test in paragraph 24 of the NPPF requires consideration of whether there are other "*suitable*" sites. The correct interpretation of suitable was given by Mr Goddard: "*suitable*" means suitable to do the job, which here is the provision of higher order comparison goods floorspace. That is the "*primary driver of the proposal*".<sup>289</sup> The only site specific elements are those for outdoor leisure and management measures in mitigation of increased public access, in respect of which there is no sequential test since these elements are not 'main town centre uses'.<sup>290</sup> In light of this, as well as the absence of any ties that bind all the elements of the proposal together or to the site, the sequential test should extend to investigating whether there are preferable sites which can accommodate the main town centre uses either individually or as a whole.
- 4.50 This is made clear by the NPPF's express requirement that Applicants and LPAs should demonstrate flexibility when applying the sequential test (paragraph 24). The extent of flexibility adopted by the Applicant in the present case amounts only to the installation of mezzanines and not filling the site with even more retail floorspace.<sup>291</sup> This does not amount to any meaningful flexibility. There has been no consideration given to bringing forward elements of the proposal on different sites and no justification as to why the various elements could not come forward individually in this way.<sup>292</sup>
- 4.51 The Applicant and ENC attempt to circumvent the sequential test by arguing that the NPPF no longer requires developers to consider disaggregating elements of a proposal to other sites. This approach rests upon a misreading of the policy. The NPPF requires Applicants and LPAs to "*demonstrate flexibility on issues such as format and scale*". The list is not exhaustive and it is to be expected that whereas PPS4 gave several examples of flexibility

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<sup>289</sup> Mr Goddard XX by Katkowski day 7

<sup>290</sup> NPPF Glossary, CD A.1 page 53

<sup>291</sup> Mr Burnett XX by Ellis day 3

<sup>292</sup> Mr Burnett appendices 6 and 7 reject all sites on the basis that they are too small and/or otherwise unsuitable to host the entire proposal

(EC15.1: format; scale; car parking provision; disaggregation), the new slimmed down national policy will list fewer examples. The overarching requirement of flexibility remains and for it to have any force it must include exploring the disaggregation of composite proposals such as these. The alternative is to drive a coach and horses through the sequential test by enabling developers to bolt on further uses until the list of potential sites has narrowed to one: the developer's preferred, out of town site.

- 4.52 This submission is supported by the saving of the PPS4 PG which advises that as part of the requirement for flexibility, disaggregation should be considered (paragraphs 6.27 – 6.35). It is correct that if any aspect of the PG conflicts with the NPPF then the PG must give way. As recently held in Telford and Wrekin Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 1638,<sup>293</sup> a decision maker should “*use the Practice Guidance conscious of the fact that, in some parts of its detail, it is directed towards a differently formulated policy test*” [17]. At the same time the saving of the PG from the bonfire is a positive endorsement of its continuing relevance. Here there is no conflict between the PG and the NPPF; the advice as to disaggregation adds flesh to the bones of the NPPF's requirement of flexibility.
- 4.53 Regardless of the advice in the PG, however, the matter is put beyond doubt by the decision of the Supreme Court in Tesco Stores Ltd v Dundee City Council [2012] 2 P.&C.R. 9.<sup>294</sup> The Court emphasised that an inflexible approach – including one which refused to give any consideration to subdividing large proposals – can undermine the sequential test. Lord Reed referred to an “*inbuilt difficulty*” in the sequential approach, that “*On the one hand, the policy could be defeated by developers and retailers taking an inflexible approach to their requirements*” while on the other hand authorities should not be taking “*an entirely inappropriate business decision on behalf of the developer*” [28]. The answer consists in a flexible approach, and significantly the Court noted that this approach included “*where appropriate adjusting or sub-dividing large proposals*” [28]. The Court was here referring to the then extant Scottish planning policy on the matter, but this context explains what the Court meant when stating that flexibility is required. Lord Hope in his brief supporting judgment referred to the need for a ‘real world’ approach to the sequential test at [38] and in light of this earlier discussion in Lord Reed's leading judgment, the real world is one which includes consideration of disaggregation. It also includes the Development Plan: Lord Reed expressly placed the search for sequential sites in the context of the Development Plan, as the Consortium do in the present case by having regard to the network and hierarchy of settlements when considering the appropriate location for higher order retail uses.<sup>295</sup>

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<sup>293</sup> APP 19

<sup>294</sup> CD A1C

<sup>295</sup> Paragraph 27

- 4.54 In the Dundee case the development proposed was a single store (an Asda superstore, with café and petrol filling station). In the more recent case of R(on the application of Zurich Assurance Ltd) v North Lincolnshire Council [2012] EWHC 3708 (Admin),<sup>296</sup> where the court affirmed the need for a 'real world' approach to the sequential test, the proposal consisted of a retail park with four retail units. It was conceded that there was non-compliance with the sequential test in respect of the three smaller units because of a failure to consider disaggregating them. The dispute was about a larger Marks & Spencer unit and whether that should be split into two separate Marks & Spencer stores. The planning committee accepted the evidence on viability to the effect that the store could not be sub-divided in this way, a decision which was upheld by the High Court as lawful [62]. The dispute in both the Dundee and Zurich cases therefore concerned single large stores. The scope for disaggregation in this context may be significantly reduced, as recognised by the PG which states that "*In the case of single retailer or leisure operators, it is not the purpose of national policy to require development to be split into separate sites where flexibility in their business model and the scope for disaggregation have been demonstrated*" (at paragraph 6.30). The scope for disaggregation will be case-specific. The present proposals however are not a single store or anything like it, but rather a loose grouping eminently capable of separate location.
- 4.55 Mr Kitchen's email gives a glimpse of what is proposed in 'the real world' – a 'pretty major and serious park' with a definite first phase consisting of the 'mainstream fashion pitch' Terraces B and C, 1,300 car parking spaces with catering facilities to match and a catchment up to 60 minutes from the site. Mr Goddard agreed: "in the real world the essence of the proposal is a sub regional retail park – sub regional scale of A1 retail park ... The job I see the application doing is that of a sub regional centre over a wide catchment. That's the primary driver of this scheme."<sup>297</sup> Mr Chase agreed that the "open A1" Terraces B and C would be the first to be delivered, along with the "important" parking spaces; the achievement of Marks and Spencer as an anchor would "send a strong message to customers" and another retail anchor would be sought, such as Debenhams or Primark. He also described the proposal as a "retail park."<sup>298</sup> This is not a "small proposal ... a very large part of which is a garden centre" as suggested by Mr Sawford MP.<sup>299</sup> This wholly misguided impression does, to some extent, call into question the reliability of public support for the scheme. As all the expert witnesses agreed, what matters is the strength of the planning arguments rather than the "weight of the postbag" – these fundamental misconceptions on the part of a prominent supporter illustrate the wisdom of that approach.

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<sup>296</sup> CD A.1D

<sup>297</sup> Mr Goddard in x and xx (Katkowski)

<sup>298</sup> XX (Ellis)

<sup>299</sup> XX (Ellis)

- 4.56 It is said by the Applicant and ENC that this development is 'location specific', that is that it can only be accommodated on the Rushden Lakes site.<sup>300</sup> This is misconceived. In so far as it is said that the existence of a 'Rushden need' requires this scale of retail floorspace in this location, no such need exists for the reasons explained above. An alternative argument that the leisure, tourism and nature conservation opportunities offered by the site mean that the proposals can only be located on the site is also without merit. The Applicant has made clear that no 'enabling development' case is being made - it is not said that the development plan non-compliance is justified in order to bring forward the leisure, tourism and nature conservation aspects of the proposal. Nor is viability evidence provided to show that these aspects are essential to the scheme coming forward as a whole.
- 4.57 In the absence of such a link, flexibility requires consideration of whether the retail elements can be provided in sequentially preferable locations. Mr Chase's comment that he "*cannot see how a Lakeside Visitor Centre and Boat House facility can possibly be seen as uses which can be promoted in a town and city centre unless it has a boat club or lakes*" misses the point of the sequential test,<sup>301</sup> as does Mr Burnett's pro-forma response to each sequentially preferable site put forward by the Consortium that they are "*not suitable to provide leisure/ecology benefits at the Lakes that [the] proposed development will provide*".<sup>302</sup> When tested, Mr Burnett confirmed that when he said in his 'PPS4 Assessment'<sup>303</sup> that the lakes and leisure elements of the scheme were not necessary for viability, he had done so "on instructions". Suitability does not concern the scope to provide boating lakes and nature conservation benefits, but to accommodate main town centre uses.
- 4.58 The Consortium's search shows that there are a large number of sequentially preferable sites where elements of the proposals could be located either individually or collectively. All parties appear to agree that the area of search should be defined by the catchment area that the proposals are likely to serve, although they disagree about the catchment.<sup>304</sup> Mr Goddard considers that this consists of a primary catchment of Zones N7, N9, N10 and 11, a secondary catchment comprising zones to the north and west of the primary catchment and a further 10% from beyond this area. Within this catchment and supported as the focus for retail development in the network of settlements in the Development Plan are the three Growth Towns of Corby, Kettering and Wellingborough. This and the very significant scale of the proposals, exceeding the net comparison goods floorspace of each of three

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<sup>300</sup> E.g. Mr Wilson proof paragraph 6

<sup>301</sup> Mr Chase proof paragraph 9.3

<sup>302</sup> Mr Burnett appendix 6

<sup>303</sup> CD B5 page .35; XX (Ellis)

<sup>304</sup> Mr Burnett xx (Ellis); Mr Goddard in x (unchallenged on this point). Mr Nutter, unlike Mr Burnett, extends his area of search to Wellingborough on the basis of his understanding of the likely primary catchment area

Growth Towns,<sup>305</sup> makes sites in these towns suitable for the purposes of paragraph 24 of the NPPF. This reference to suitability, read in the context of the NPPF's emphasis on decision-taking being 'genuinely plan-led', must mean suitable having regard to the location of the site in the settlement hierarchy.

- 4.59 The three Growth Towns contain a number of sequentially preferable sites which are both suitable and available. The Wadcroft/Newlands Phase 1 site in Kettering offers a very significant opportunity for retail-led development through allocation in the Kettering TCAAP for 16,000sqm net comparison goods floorspace, with delivery envisaged in the TCAAP in 2015/16. The AAP has recently been assessed by the Council to be consistent with the NPPF. PR Kettering, who have a long leasehold interest in the Newlands Phase 1 parcel of the site, have been in discussion with the Council, who are the freeholder of this parcel and the majority owner of the other parcel of the site (Wadcroft), in relation to bringing forward redevelopment of the site.<sup>306</sup>
- 4.60 In Corby the Evolution Corby site has capacity for around 14,000sqm net comparison goods floorspace and although Helical (Corby) Ltd, the current owners, are not looking to progress that scheme, they have confirmed that they are seeking to invest substantial sums into the town centre in new schemes to regenerate the town.<sup>307</sup>
- 4.61 In Wellingborough the TCAAP was premised on the proposed relocation of the Tresham Institute from its current site, and accordingly the Tresham Institute and Market sites are together allocated for 18,000sqm net A1-A2 retail floorspace. It is now apparent that the Tresham Institute will not be relocating such that the proposed retail redevelopment will not be brought forward there. However, the site to which the Institute was to relocate has as a result become available. This is the High Street/Jackson's Lane site, which is currently allocated in Policy PS3 for a new campus for the Tresham Institute. Neither this nor any of the remaining allocated sites in Wellingborough have been considered at all by the Applicant.
- 4.62 In Rushden itself the Palmbest site is identified in the Rushden Regeneration Strategy (2010)<sup>308</sup> as key to the town's regeneration plans and to provide an opportunity to deliver a retail-led mixed-use scheme. This 1.34 hectare site is suitable to accommodate a proportion of the retail floorspace proposed for Rushden Lakes and in town centre terms the site should be considered

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<sup>305</sup> Mr Goddard's proof paragraph 3.3: Rushden Lakes 30,719sqm; Kettering 21,256sqm; Corby 16,244sqm; Wellingborough 17,983sqm (includes the external planting area of the garden centre (4901sqm) but excludes 929sqm convenience goods floorspace)

<sup>306</sup> Mr Robinson's written submission paragraph 3.18

<sup>307</sup> Letter from Jones Lang LaSalle to the Planning Inspectorate on behalf of Helical (Corby) Ltd dated 21<sup>st</sup> June 2013.

<sup>308</sup> CD A6.4

available given the 6-10 year timeframe suggested by the Regeneration Strategy (p.39).

- 4.63 The regional centre and county town of Northampton sits outside the Development Plan area but is recognised within the Plan as being at the top of the settlement hierarchy. For this reason and because it is within the catchment of the proposals, it is a more appropriate location for the scale of retail development proposed. The Grosvenor Centre extension site within Northampton town centre is both suitable and available. It could accommodate a very significant proportion of both the retail floorspace and other uses proposed for Rushden Lakes given its allocation in the very recently examined and adopted CAAP Policy 17 to provide an additional 24,300sqm net internal retail floorspace plus ancillary uses including restaurant and leisure floorspace. It should also be considered to be available in the short term in light of the evidence of Legal & General that the first phase could start on site by early 2017.<sup>309</sup> The commitment of NBC and Legal & General to bring the development forward and the significant public sector investment make the timescale realistic and achievable.
- 4.64 “Available” is not defined in the NPPF, but it must be interpreted so as to give effect to the unifying policy aim of Section 2 of NPPF to ‘Ensure the vitality of town centres’. Mr Burnett accepted that the purpose behind the sequential test is to ensure that the town centre first approach is not prejudiced, recognising that the Government had specifically restored it as a development management test in response to the Portas Report; that the planning application had been made under the auspices of the draft NPPF which predated Portas and did not include a paragraph 27 test; and that the Government in its Response and the Prime Minister in his Foreword to it had made clear their uncompromising town centre first policy in the context of development management as well as plan making. It would be totally counterproductive to have national policy which seeks a “genuinely plan led approach” and includes strongly town centre focused policy for plan preparation (paragraph 23) only then to consider applications for out of centre retail proposals in a wholly opportunistic fashion, divorced from the town centre first proposals of the development plan.
- 4.65 Yet this is what the Applicant asks the Inspector and SoS to do. Despite the well known fact that large and complex town centre schemes can take 10 – 15 years to deliver as Mr Goddard said, the Applicant apparently argues that all sequential sites must be available at the point of application for planning permission (or possibly determination, or both). Mr Katkowski sought to draw a rigid distinction in cross examination of Mr Goddard between paragraph 23 and paragraphs 24 to 27 of the NPPF (despite Mr Burnett’s acceptance, noted above, of the obvious point that Section 2 is built upon the unifying policy

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<sup>309</sup> Mr Jones proof paragraph 7.43

objective of ensuring the viability of town centres). Mr Goddard firmly disagreed; the sequential test must be applied with common sense and all practitioners recognise that matters like need are relevant. Mr Rhodes apparently agreed with him about that because, answering Mr Harris in cross examination whilst maintaining a similar interpretative disconnect to Mr Katkowski in relation to the issues of scale and hierarchies, he nevertheless said that the term 'suitable' in paragraph 24 "also embraces the need which the proposal is intended to serve." If Messrs Goddard and Rhodes are right, then it is clear that 'availability' must be an application-sensitive test.

- 4.66 Messrs Burnett and Rhodes suggest that there is a quantitative and/or qualitative 'gap' in comparison floorspace provision and that they seek to serve a Rushden (or possibly Wellingborough) based need in order to claw back trade which is leaking out of North Northamptonshire. The statutory and policy starting point for determining the application is the development plan (which Lord Reed specifically recognised as being significant for sequential testing). The plan in this case makes provision in centre for meeting the needs which the Applicant claims to be aiming to meet. The plan period runs until 2021 and a realistic approach must be adopted, having regard to the practicalities of town centre development.
- 4.67 It would undermine the sequential test only to consider such sites if they are available immediately, whenever an Applicant chooses to make an application (for example, because he perceives an opportunity in terms of draft national policy). Contrary to the suggestion of the Applicant, therefore, the present tense of "*are ... available*" in paragraph 24 cannot sensibly only be taken to refer to sites available today.<sup>310</sup> Such an approach would also fail to recognise the long term impact which large scale out of town development such as the present scheme is capable of having on town centres; the potential for long term impacts requires a long term approach to identifying available sites. Whilst the impact test in paragraph 26 is a free standing one, as a matter of principle policy ought to be interpreted where possible so as to be internally consistent and logical.
- 4.68 Northampton contains a number of other sequentially preferable sites in addition to the Grosvenor Centre extension. Abington Street East is allocated for 6,000sqm net comparison goods floorspace and could therefore accommodate the entirety of Terrace A of the Rushden Lakes proposal, with space to spare. As to availability, the CAAP Delivery Strategy envisages the site being brought forward for development around 2021 but this is principally because it is considered that the Grosvenor Centre redevelopment will absorb capacity in the nearer term, and in fact the site could be available within five years. Drapery and land on College Street adjacent to the Market Square is allocated for up to 11,300sqm net of comparison goods floorspace

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<sup>310</sup> Katkowski XX of Mr Goddard, day 7

and although in multiple ownership, the Council has stated its willingness to use its compulsory purchase powers as appropriate to meet local development needs.

- 4.69 Both the Grosvenor Centre and the other Northampton sites should be considered to be deliverable. They have the benefit of allocation in the very recently adopted CAAP where the Inspector specifically considered deliverability and found that the Grosvenor Centre, Abington Street East and the Drapery “are justified and would ensure effective delivery of the proposed comparison retail development to meet the needs of the Central Area over the plan period”.<sup>311</sup> They sit within a plan for which “the resources and partnership arrangements are in place to implement the key schemes”.<sup>312</sup> The deliverability of the Grosvenor Centre extension was specifically challenged at the Examination, but the Inspector concluded that the proposed extension was “a realistic and effective proposal”.<sup>313</sup> The fundamental physical obstacle to the Grosvenor Centre extension has been removed with the relocation of the existing bus station and development of a new bus interchange to be opened by March 2014, for which the Grosvenor Centre extension was the overriding justification, regardless of whatever other consequential benefits it may have. The scale of financial investment in the relocation from both central and local government is indicative of the confidence they have in the deliverability of the scheme: £8,000,000 from West Northamptonshire Development Corporation and £3,000,000 from NBC.<sup>314</sup>
- 4.70 The existence of the DA between the Council and Legal & General engenders further confidence and although understandably and unsurprisingly the detail has not been disclosed the summary which has been made available shows that a number of milestones have been passed and was relied on by the CAAP Inspector. The progress that has been made in passing these milestones is all the more significant given the economic climate in which the parties have been operating. That Inspector concluded that “*there is little evidence to point to the likelihood of the scheme being a white elephant as some representations suggest*”; the Applicant in this Inquiry simply seeks to re-run these arguments that have very recently been considered thoroughly and holistically, and rejected.<sup>315</sup>
- 4.71 These are the larger sequentially preferable sites, although reference should be made to the full list set out at Appendix 4 of Mr Goddard’s proof. Further, the list makes clear that it is not just the comparison uses that the alternative sites could accommodate: the hotel, restaurants, leisure club, crèche and

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<sup>311</sup> CDA9.2, paragraph 25

<sup>312</sup> Paragraph 82

<sup>313</sup> Paragraph 80

<sup>314</sup> Mr Lewin’s proof paragraph 6.8

<sup>315</sup> CD A9.2, paragraph 79

convenience goods floorspace could all be accommodated elsewhere on town centre sites.

- 4.72 The suggestion that these sites can accommodate significant retail led redevelopment was not seriously challenged by the Applicant or ENC. The dispute comes down to the points about, firstly, timescale of availability and, secondly, scope to accommodate every element of the Rushden Lakes proposal, transplanted whole, which for the reasons outlined above are without merit. Significant comment was made on the approach taken by members of the Consortium to applications for other out of town retail development. The allegation of double-standards turned out to be unfounded: Mr Lewin explained, for example, that the retail parks around Northampton largely pre-dated the introduction of more rigorous modern retail policy.<sup>316</sup> The Applicant's list out of town retail applications in Northampton produced in response to Mr Lewin's oral evidence in fact proves the point.<sup>317</sup> It does not show a series of open A1 permissions but rather consents for bulky and convenience goods floorspace and various certificates of lawful development. There are a number of consents for mezzanine floorspace but what the document does not disclose is that these have largely been restricted by condition to bulky goods sales only. Contrary to the Applicant's suggestion of Northampton continuing to grant unrestricted out of town comparison floorspace, the Northampton retail parks were in fact permitted in the 1990s or earlier.
- 4.73 The Next application<sup>318</sup> at Riverside Retail Park has not yet been determined so it would be inappropriate for NBC to say anything about its merits at this stage but it is a very particular proposal which is put on the basis that there has been substantial engagement with the sequential process in order to meet a specific current operational need. KBC's grant of permission to remove a bulky goods condition from a single unit at Belgrave Retail Park and the Council's conclusion that there were no sequentially preferable sites was justified on the basis that the town centre sites could not be brought forward without further associated development.<sup>319</sup> These permissions are therefore examples of case-specific and common sense applications of the sequential test. In any event, regardless of the merits of the Applicant's criticisms, these were distractions from the real question of the performance of the present proposals against the sequential and impact tests and the Development Plan.

### **Impact – NPPF Paragraphs 26 and 27**

- 4.74 The NPPF impact test is designed firstly to protect three categories of investment – existing, committed or planned – which may be public or

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<sup>316</sup> Mr Lewin XX by Katkowski, Day 6

<sup>317</sup> APP40

<sup>318</sup> APP23

<sup>319</sup> Mr Rhodes rebuttal Appendix 6

private or both. That investment must be in a centre or centres in the catchment area of the proposal. Secondly, there is *"old fashioned"* impact upon town centre vitality and viability. Paragraph 27 sets the evidential bar – *likelihood* (not certainty) of significant adverse impact.

4.75 Mr Goddard summarised his concerns and the differences of approach between experts in his oral evidence in chief. The town centres in respect of which he fears the second (*"old fashioned"*) type of impact to a significant degree are Wellingborough and to a lesser extent Kettering and Northampton. Significant impact on Wellingborough is not disputed: Mr Nutter accepts such an impact in his proof and the initial WYG review and Mr Rhodes accepted that in practical terms if Rushden Lakes happens the aspirations for development in Wellingborough contained in the AAP are significantly curtailed. In relation to the other centres, although Mr Goddard has some concerns about loss of retailers from Northampton (where the AAP Inspector recorded fears that anchor stores may be *"at a turning point"*), the real issue is investor confidence. To this extent, debate about the wording of Policy 12<sup>320</sup> in this regard is largely academic because this is primarily a case about the effects upon investment. The effects in this area are unusually manifest: the Inspector in this case can conclude with certainty that the largest and most significant town centre retail investment in Northamptonshire – the Grosvenor Centre extension – will be prejudiced as a result of the proposed development.

4.76 The main areas of dispute concern:

- (1) the likely characteristics and turnover of the proposed development;
- (2) the likely trade draw pattern, both in terms of geographical source and the centres and out of centre locations from which trade will be drawn.

4.77 With regard to both matters, there is a paradox at the heart of the proponents' cases. The Applicant's arguments are predicated on a *"Rushden need"* which is reflected in Mr Burnett's judgment that 69% of diverted trade will come from postal zone 10 (an area which is of no policy significance whatsoever). They also say that the development has to be of sufficient scale to achieve the claimed *"clawback"* of trade from outside the NNCA (which is an area of policy significance because of the NNJCS's objective of achieving greater self sufficiency). It therefore needs to be attractive enough to tease people back from the competing attractions of (principally) Northampton; but it should not be taking trade predominantly from Northampton town centre, rather from the retail parks around the town, nor should it be seen to impinge upon the trade of the NNCA town centres. To try and navigate round all these potential rocks, the Applicant paints a curious picture of a high quality, unique retail/leisure destination anchored by

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<sup>320</sup> Miss Garbutt xx (Katkowski): she deferred to Mr Goddard on the point and he applied the test of significant impact on the vitality and viability of centres

Marks and Spencer and another store of similar calibre, perhaps Debenhams but then suggest that a considerable degree of overlap will occur with Northampton's retail park traders.<sup>321</sup>

- 4.78 There is more than a whiff of unreality about these contentions. Even the supportive Mr Nutter does not quite swallow the tale of so 'significant and ambitious and increase'<sup>322</sup> because he concludes that the primary catchment would focus on Zones N9, N10 and N11 (85% draw) with secondary zones (15%) extending further out towards Kettering, Thrapston and Northampton.<sup>323</sup> He explained in cross examination that he did not extend the primary catchment as far as Kettering because its customer base had been shown to be very loyal in the RTP household survey,<sup>324</sup> but of course RTP were not factoring in the Rushden Lakes proposal; rather, they were surveying existing patterns of shopping behaviour.
- 4.79 Mr Goddard considers that 62% will come from zones N7, N9, N10 and N11, the remainder coming predominantly from zones W3, W6, W7 and W10 around Northampton.<sup>325</sup> Given the site's highly accessible position on the A45, attractive committed/potential anchors and likely supporting tenant line-up,<sup>326</sup> together with in excess of 1,300 plus free, surface level car parking spaces he concludes that it would be a major retail park which would exert a wide influence over the car borne market within 30 minutes.<sup>327</sup> Whilst the Northampton ("W") zones would not form part of its primary catchment, there is considerable overlap of catchments in the area. Moreover, as noted above, the NNJCS assumes a certain amount of legitimate retail expenditure going from NNCA to the regional centre and county town of Northampton.
- 4.80 His retail planning judgment is corroborated by the market pitch of Mr Kitchen who clearly considers that the 20-30 minute catchment would be of greatest commercial significance. He describes it in the following terms: *"Two drive times are attached....The first plan shows the catchment area in terms of 10 minutes from the site, 10-20 minutes and also 20-30 minutes. The second one additionally shows the 30-60 minutes band. With the 20 to 30 minutes drive time band, you will see this takes in Market Harborough, Corby and Kettering to the north, Huntingdon to the east, Bedford to the south as well as Northampton, Wellingborough and Rushden in the more immediate catchment. This is a considerable area that is not currently well served by*

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<sup>321</sup> Mr Goddard XX (Katkowski)

<sup>322</sup> Mr Nutter proof paragraph 4.41

<sup>323</sup> Appendix KN01 and Proof Tab 6.1

<sup>324</sup> XX (Ellis)

<sup>325</sup> Mr Goddard Plan 3 and Appendix 13, Tab 13

<sup>326</sup> Mr Goddard Appendix 9; Rhodes Appendix 4; Robinson (Ellandi) Appendix 5

<sup>327</sup> Mr Goddard Plan 2 for overlapping 30 minute drive time isochrones

*retail schemes.” Almost as an afterthought, he adds: “In addition there is an immediate catchment of 100,000 within 10 minutes of the site.”<sup>328</sup>*

- 4.81 Interestingly, there is no mention in that communication about looking to compete directly with Northampton’s and Kettering’s retail parks. Later parts of the document, explain why – it is because the emphasis is all on high end retailers – Arcadia, H&M, New Look, Monsoon, Gap and so forth, rather than the bulkier end of the market which is catered for on the parks, despite some historic open A1 permissions/established uses. As Mr Goddard said, the old adage that *“like takes from like”* means that there is no incentive for the highly successful retail park operators around Northampton, Wellingborough and Kettering to undertake capital investment to capture largely the same market which they are currently tapping.
- 4.82 Corby, Kettering and Northampton town centres all have developers involved who have relied on development plans which rightly focus growth there and who are keen to invest but who would be unable to do so if they have to bid for tenants against cheaper, more flexible and attractive out of town space with extensive free car parking. Mr Whiteley explained the difficulties faced by town centre developers nationally as a result of cost differentials between in and out of centre space. He also explained that Northampton town centre has been unable to meet some tenant requirements because of the constrained, dated and in some cases unattractive nature of the offer.
- 4.83 All witnesses were agreed on the need for investment in town centres. In this case, Legal & General, one of the biggest players in the market, has stated in evidence that it would not proceed with proposals for the development of the Grosvenor Centre extension in Northampton town centre. This allocation is the ‘most critical’ element of the entire recently approved and adopted CAAP. Contrary to the suggestion made to Mr Goddard in cross examination, RTP in the evidence upon which the Inspector relied assumed 10% inflow to Northampton town centre from the NNCA.<sup>329</sup> The extension proposal is intimately linked with the bus interchange development which has been described above. There is therefore both committed and planned investment. As Mr Lewin said, if the Grosvenor Centre extension does not come forward, then the benefit of that public investment will not be fully exploited.
- 4.84 Whilst he took the view, effectively, that ‘The Plan must go on’ in the event of Legal & General’s departure from the scheme, Mr Goddard explained on the basis of his very considerable experience of such schemes elsewhere how very difficult that would be in practice given the physical layout and the prospect of a new development partner trying to work round a sitting tenant.

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<sup>328</sup> PRK 2, Appendix 5

<sup>329</sup> See CD 8.3 RTP 2012 Update p.3 paragraph 2.1, page A1 map and page 17 Summary of Comparison Capacity; CD 8.2 2011 Update, page 19 paragraph 4.1, page 20, map, page 27, paragraph 5.1 and page 57, Table 6, quantitative need, Rows F and G (E and F on table) = 10% inflow

Whilst it is for Legal & General to press its own case, the Consortium submit that such evidence from such a source more than satisfies the threshold of likelihood in paragraph 27 of the NPPF. For the Applicant to ask for letters from individual retailers is simply to affect a forensic naivety and to inflate the evidential burden artificially beyond that which policy prescribes.

- 4.85 Corby, where the benefits of town centre investment are palpable at the junction between new and old, also benefits from an experienced new owner, Helical Bar, who wish to continue the good work and match the public money which has been invested with private funds; but they can only do so if they can rely on being able to find suitable tenants for their proposals. While the town is not in the primary catchment, it is not far away by good roads from Rushden, as Mr Kitchen on behalf of LXB recognises.
- 4.86 At Kettering, Ellandi are investing in the existing town centre scheme and looking to expand in line with the NNJCS and AAP on which they have, reasonably, relied. Debenhams have been mentioned as a potential anchor along with hopes for an expanded Marks and Spencer. Mr Goddard's opinion that it was not credible to suppose that there could be three new Debenhams and M&S – at Northampton, Kettering and Rushden Lakes, was not challenged. He also confirmed that there are no retail parks in Northamptonshire which currently boast M&S and Debenhams stores, of whatever precise size and configuration. Coupled with the unusually large comparison and convenience offer across the A45 at Skew Bridge, the Rushden Lakes scheme would be uniquely powerful in the market.
- 4.87 Wellingborough and Rushden would both suffer due to geographical proximity and Mr Goddard shared the concern of WBC's Head of Planning who recommended objecting because, said Mr Wilson (who had formerly occupied the same position) he was probably *"concerned about the town centre."*<sup>330</sup> Mr Burnett accepted that Rushden town centre would lose market share. S106 obligations to contribute financially to town centre management in Rushden and Higham Ferrers are inadequately justified and puzzling. The implication is that impact upon these two centres would, in the opinion of the Applicant and ENC, have justified refusal of planning permission but for the contributions.
- 4.88 There is, however, no analysis anywhere of what would actually be required to mitigate the impacts or whether, in fact, they are capable of remedy. ENC's Committee report simply states that a contribution of £150,000 would *"help maximise the complementary benefits of the scheme and....minimise any potential adverse impacts as far as is feasible."* This bland statement does not address the statutory tests any more than the recent 'Statement of Compliance'.<sup>331</sup> Meanwhile, Wellingborough, which suffers a greater

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<sup>330</sup> XX (Ellis)

<sup>331</sup> APP 41

percentage impact than Rushden on Mr Burnett's figures,<sup>332</sup> gets nothing, despite its vulnerability with the main Swansgate Centre up for sale. There has been no explanation for this apparent mystery.

- 4.89 In conclusion, Mr Goddard's trade draw pattern and assessment of the impacts upon tenant interest most accurately reflect the likely outcome if Rushden Lakes is approved. His evidence is to be preferred to that of the other two experts, although it must be noted that in several respects, Mr Nutter's opinions supported Mr Goddard's more closely than Mr Burnett's.
- 4.90 Differences on turnover were largely determined by assumptions about tenant mix for this almost wholly speculative scheme. Messrs Nutter and Goddard essentially agreed about the approach to floorspace efficiency. Given the efficiency of the new floorspace proposed, it is reasonable to assume an allowance because the average data figures apply to all operators' space including much that is vastly inferior. Moreover, if tenants are able to operate to a high level of efficiency from commencement, it is reasonable to build in a factor for that from the start. Mr Goddard pointed to a number of 'sense checks' for his turnover assumptions. Firstly, Riverside Retail Park is turning over at more than £10,500 per sq metre and it is not open A1, has less parking than the proposed scheme, is not anchored by Debenhams and does not have the leisure 'destination' attractions of Rushden Lakes.
- 4.91 That is more than twice Mr Goddard's assumed turnover per sq metre. Mr Burnett, on the other hand, assumes that the new floorspace will turn over at a lower rate than the average level in Rushden town centre; this is simply not credible as there would be no comparison in terms of modernity, attraction and sheer weight of the offers, as partially recognised by the Applicant's ill explained financial contribution to Rushden town centre. Mr Goddard has also produced evidence of turnovers at broadly comparable establishments and they show that he is not wide of the mark.
- 4.92 On learning of the proposed conditions limiting the extent of fashion floorspace, Mr Goddard undertook a sensitivity check. He subsequently accepted that in relation to the Argos model a lower net sales area should have been used, although this does illustrate the difficulties in relying on theoretical tenant lines ups - fully substantiated benchmarks as relied on by Mr Goddard are preferable. It is not accepted that Argos is an unrealistic potential occupier, on the basis of the Applicant's own evidence.<sup>333</sup>
- 4.93 There were also mathematical quirks thrown up by the computer modelling in relation to a few cells but Mr Goddard's judgment that the conditions could potentially affect the pattern of trade draw (rather than turnover as such) is sensible. It is a simple outworking of the *"like draws from like"* principle. Mr

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<sup>332</sup> Mr Burnett Appendix 1 Table BPD 9

<sup>333</sup> Mr Goddard Rx – Mr Rhodes Appendix 4 and Mr Chase proof of evidence

Goddard's careful attempt to assess the effect of the conditions here is also in stark contrast to the absence of rigour or transparency in the Applicant's approach of offering substantive new conditions at the 11th hour, and the LPA's complete failure to engage with the need for such conditions, implicitly accepting that they are needed to mitigate impact but then making no attempt to assess what if any effect they have on impact.

***Issue (c): The extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car.***

- 4.94 The Consortium relies on the evidence of Legal & General in respect of this issue and agrees with the conclusion that the proposals represent a particularly unsustainable form of development in transport terms.

***Issue (d): The extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF).***

- 4.95 Significant weight has been placed by the Applicant on the benefits of the proposal in terms of nature conservation, leisure and tourism. The Consortium recognise that the proposals bring benefits in these areas, while noting that they have largely been overstated, both in relation to what the proposal would deliver and what is likely to come forward in any event on the site and in the surrounding area.

- 4.96 A robust assessment of the nature conservation and ecology benefits of the proposal must focus on the ES. This document is clear that the effects of the proposal in these areas would be either neutral or at best minor beneficial. Of the 21 ecological receptors identified in the ES, 18 would be subject either to a neutral or minor adverse impact, and only 3 would see a minor beneficial impact.<sup>334</sup> Many of the ecological measures proposed by the Applicant, in the Access and Habitat Management Plan in particular, are by way of mitigation to prevent this sensitive site suffering from significant adverse impacts and offer very limited net benefits in nature conservation terms. The SoCG refers to "*significant benefits of the development*" in terms of conserving and enhancing the natural environment,<sup>335</sup> which appears to contradict the conclusions of the ES, but the detailed assessment in the ES must of course take precedence and indeed the Applicant, ENC, and Natural England confirm in the SoCG that "*The scope, methodology and conclusions of the*

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<sup>334</sup> Environmental Statement, Table 4.15: Summary of the construction and post-construction residual impacts of the development on ecological receptors

<sup>335</sup> INQ3 paragraph 14.1.2

*Environmental Statement are agreed*".<sup>336</sup> The reference in the letters of the RSPB dated 21 June 2013 and the Wildlife Trust dated 23 April 2013 to "*significant nature conservation ... benefits*" should similarly be read subject to the more thorough analysis in the ES which makes clear that these benefits are not in fact significant.

- 4.97 The proposals would enable leisure use of the site, help to open up this part of the Nene Valley to leisure and tourism, and in so doing further the objective in the NPPF to enhance green infrastructure (section 11, paragraph 114). At the same time it should be noted that the leisure and tourism potential of the Nene Valley is being enhanced in any event through the Nene Valley Strategic Plan and the application proposals would represent an additional benefit to this as opposed to a being a key part of the strategy: neither Rushden nor the site is identified as either a primary or secondary gateway to the Nene Valley in the Nene Valley Strategic Plan and access is already provided nearby at Higham Ferrers (with two existing footbridges over the A45) which is identified as a secondary gateway and is on the Nene Way footpath.<sup>337</sup>
- 4.98 Further, this scale of out of town retail floorspace is not the only way to achieve these benefits, as accepted by both Mr Rhodes and Mr Wilson.<sup>338</sup> There is no suggestion that the extant business park permission (EN/10/00688/RWL) is not viable, as indicated by the fact that it was renewed as recently as October 2012, and this consent includes a footbridge over the A45, significant pedestrian and cycle links within the site as well as water-based recreation uses.<sup>339</sup> The LXB submission on the NNJCS review conceived of a much smaller scale of development – evident by the fact that it claimed to deliver only 350 jobs as opposed to the claimed 1,350 from the current proposal – and one that remained complementary to Rushden town centre, yet was also able to deliver the benefits in terms of leisure uses and public access to the natural environment.<sup>340</sup>
- 4.99 The Consortium adopts and commends to the Inspector Legal & General's conclusions on the extent of the economic and employment benefits of the proposal. In relation to the latter issue, even such economic and employment benefits as can properly be identified are not ones which the NPPF supports: the NPPF records the Government's commitment "*to ensuring that the planning system does everything it can to support sustainable economic growth*" (paragraph 19) whereas the fact that the proposals fail both the sequential and impact tests means that the proposals cannot represent

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<sup>336</sup> INQ3 paragraph 5.2.2

<sup>337</sup> CD A4, Appendix E (Strategic Plan)

<sup>338</sup> Mr Rhodes XX by Ellis, Day 5; Mr Wilson XX by Mr Taylor, Day 4

<sup>339</sup> INQ3, Appendix 2 (Detailed Site History), paragraphs 22-28 and attached plans

<sup>340</sup> LAC12

sustainable economic growth, coming as they do at the expense of economic prosperity elsewhere.

- 4.100 Weighing all the above benefits in the planning balance, it is evident that they do not, properly understood, outweigh the non-compliance with both the Development Plan and the retail policies of the NPPF.

***Issue (e): Whether any permission should be subject to any conditions and, if so, the form those should take.***

- 4.101 The relevance of the conditions offered by the Applicant to the Consortium's case has been addressed in the relevant sections above. The proposed conditions do not make the development acceptable in planning terms.

***Issue (f): Whether any planning permission granted should be accompanied by any planning obligation under Section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable.***

- 4.102 As with the issue of conditions, the Section 106 Agreement and recently offered unilateral undertaking have been dealt with above so far as they concern the Consortium's case. They do not make the development acceptable in planning terms either.

## **Conclusion**

- 4.103 The application scheme is in conflict with the Development Plan and the town centre first approach to which the Government committed itself in its response to the Portas Review and the final version of the NPPF. The scheme seeks to overturn the settlement hierarchy by reference to an artificial concept of need which bears no relation to the scale of development proposed or the size of Rushden. In doing so, it would divert trade and investment away from the town centres of Corby, Kettering, Wellingborough and Northampton where the Development Plan and national policy seek to concentrate it and where investor confidence depends on it coming forward. The proposals are the antithesis of the town centre first approach and planned system, they do not represent sustainable development and they should be refused.

## **THE CASE FOR LEGAL AND GENERAL PROPERTY**

### **Introduction**

- 5.1 The proposal before the Inquiry would result in the single largest agglomeration of out of centre retail floorspace in the entire County of Northamptonshire. It would dwarf the centres of Rushden and Higham Ferrers from which it is distant and equidistant.

- 5.2 The suggestion that there is an objectively based locationally specific needs case for such a scale of floorspace in this area is fundamentally flawed. There is not a need for such a scale of development when the proper role of this part of the catchment in the retail network and hierarchy is understood.
- 5.3 Once this, the essence of the case on behalf of the developer, is set aside, the entire case for a new out of centre car-based retail park of this scale must fall away.
- 5.4 Further, once it is established that there is no need for the development to be of this scale or to contain all of its component town centre uses at this location, it will be seen that the sequential analysis which has been undertaken is inadequate to the point of invisibility. No attempt at all has been made to consider whether, with flexibility, part of the developer's proposals can be located in the relevant higher order centre. The reason why no attempt to undertake this exercise was essayed is because the developer knows it would not be possible for him to pass that test.
- 5.5 The proposal would result in the largest single retail park in Northamptonshire directly sharing a higher order catchment with Northampton the designated and planned higher order centre for the area. The Applicant and the LPA's trade draw assumptions are ludicrous and result in the impact on Northampton being wildly underestimated.
- 5.6 Northampton Centre is now fragile. It has not kept pace with Milton Keynes. It critically needs a new retail attractor. Its anchors are at a turning point.
- 5.7 With this vulnerability in mind, the opening 14 miles away along a good trunk road of a high-end, high order offer of this scale will have a powerful significant and negative impact on the already "at risk" town centre of Northampton.
- 5.8 Further it will kill for ever the planned investment in the most critical town centre redevelopment, the Grosvenor Centre extension.
- 5.9 Finally and critically, the proposal would not result in a net reduction in the need to travel by car at all, the underlying essence of the developer's case. It will result in the opposite.
- 5.10 The developer has deliberately and wilfully closed its eyes to the real world travel implications of siting a development of this scale at this location on the highway network, away from anything that might be called a fully functioning town centre. It has relied on a wholly unlikely supposition that nearly  $\frac{3}{4}$  of all trips to the centre will be from Zone 10 and that none of these trips will need to go to the higher order centres at all and in any event for other purposes.

- 5.11 The Highway Authority at last has made what we always understood to be their stance on this crystal clear. The suggestion that this is sustainable development which would reduce mileage overall is simply not true.
- 5.12 In all of these circumstances, simply applying the NPPF on its face the proposal should be refused.
- 5.13 The alleged benefits of the proposal do not come close to suggesting otherwise. There is no evidence at all to support the contention that they can only arise through this scale of development.
- 5.14 These submissions are structured as requested by the Inspector by reference to the main issues set out at the back of the PIM note.
- 5.15 We have changed the order of the issues to avoid repetition and for ease of presentation.
- 5.16 Before we embark on the task of engaging with the issues two preliminary matters arise.

### **The Inquiry Process and Fairness**

- 5.17 The purpose of the Inquiry process is to ensure that the SoS is properly and fully advised as to matters relevant to the exercise of his statutory functions.
- 5.18 The Public Inquiry system also is meant to allow those objecting to proposals to understand the case being made for the proposal and to present their own case fairly in front of an independent Inspector.
- 5.19 The Inquiry procedure rules require the full case being advanced by a developer to be set out in its Rule 6 statement and for the evidence in support of that case to be submitted to the Inquiry 4 weeks before the Inquiry begins. This is to allow key elements of the parties' cases to be understood, for instruction to be taken and for proper cross examination to take place to assist the SoS on the matter of weight.
- 5.20 In this case, the SoS has particularly asked to be advised about the compliance of the proposals with the transportation sections of the NPPF. He has done so because he apprehends that the proposal might not comply with this policy.
- 5.21 Throughout the Inquiry, the transportation credentials of the proposal and in particular the delivery of these proposals were considered at length. The proposals were tested and were found to be severely wanting both as to the nature of the transport offer and their delivery.

- 5.22 On the penultimate day of evidence, and only after the Rule 6 party's evidence on transport had concluded, a wholly new and different transport case was advanced on behalf of the Applicant. Further elements of that case were presented on the last day of evidence just before closing.
- 5.23 As a matter of procedural fairness, the objector ought to have been allowed to call evidence in relation to these new issues and to test by cross examination the bare assertions as to deliverability which are contained in simple e mails which were tendered right at the end of the penultimate day of evidence.
- 5.24 This is not a simple issue of proposals evolving; it is a deliberate and wilful avoiding of public scrutiny of the real world deliverability of a new transport case which is now proposed at the death knell of the Inquiry.
- 5.25 If any substantial weight is given to this wholly untested evidence, the Rule 6 Party will have been significantly and harmfully prejudiced by its inability to engage with the evidence in an appropriate way.
- 5.26 This is particularly the case when the evidence that the newly unveiled Sunday service will continue beyond the three years only for which it is secured is even on the Applicant's case hopelessly non committal - "credibly likely".<sup>341</sup>
- 5.27 The position becomes much worse when it is now known that an exercise in ridership and fare collection for the Sunday service *has* in fact been undertaken by Stagecoach but has not been placed before the Inquiry for testing because it illustrates that even in year three, there is a significant deficit on the Sunday service and little prospect of continuing viability.
- 5.28 There is no room for a finding that "I see no reason to doubt the evidence of deliverability of the new bus service". There is no such evidence of deliverability; that which exists has simply not been tested and in any event suggests that the Sunday service in particular will simply not exist beyond 3 years.
- 5.29 We identified our wish to test this new transport evidence and the weight it should be given but have not been allowed to. That is unfair. The Rule 6 party reserves its position in relation to this procedural unfairness in the event that the decision-maker places weight on these wholly untested assertions relating to the new transport case.

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<sup>341</sup> See Stagecoach e mail to David Bird

## The Nature and Scale of the Proposal

- 5.30 The proposed development however “demystified” is massive. It is so large it would rank as the 8th largest retail park in the country.<sup>342</sup> It would provide on a single out of town location more than the entire comparison goods floorspace requirement for the entire district to 2021 as set out in the NNJCS. In essence it is a proposal for the creation of a new sub-regional shopping destination which is not identified in any development plan document.
- 5.31 Further it is designed not to meet the day to day needs of the catchment but to have a high order offer. It is deliberately aimed at “high end operators normally found in higher order centres such as Northampton.”<sup>343</sup>
- 5.32 Indeed, Mr Chase confirmed in cross examination that the proposed development would be targeting the same retailers that the proposed Grosvenor Centre redevelopment would be targeting for the most important retail scheme for the centre of the much higher order regional centre of Northampton.
- 5.33 The list of retailers set out in Mr Rhodes’ Appendix 4 that the Applicant explains it is targeting when compared to the list of retailers that would be targeted for occupation of the Grosvenor Centre extension in Mr Goddard’s evidence and Mr Denness’s evidence are effectively the same.
- 5.34 The Applicant’s agent has in the real world described the scheme as “a pretty major and serious park” with an M&S anchor. He also emphasises that it would have a wide catchment explains that Terraces B and C “will very much provide the mainstream fashion pitch and we see these units appealing to the likes of Arcadia, H&M, New Look, JD/Bank, River Island, Monsoon and Gap.”
- 5.35 Mr Chase confirmed this in his evidence to the Inquiry and that the list of potential tenants for the proposed development was similar to the potential tenants for Legal & General’s Grosvenor Centre redevelopment. This was also confirmed by Mr Denness.<sup>344</sup> Indeed, the Applicant has produced a letter to this Inquiry revealing that it has secured M&S. Mr Chase explained in cross examination that it would also be targeting Debenhams and other high fashion retailers. There is no other out of town centre in Northamptonshire that has both M&S and Debenhams and high street fashion retailers of the high order and scale sought by LXB on the same retail park.<sup>345</sup>
- 5.36 The anchor stores proposed are of sufficient size to be able to offer “full range” department stores for both M&S and Debenhams. Debenhams

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<sup>342</sup> Mr Denness EiC

<sup>343</sup> See PRK2 Appendix 5

<sup>344</sup> Mr Denness EiC

<sup>345</sup> XX and RX of Goddard

confirmed in writing that it can operate a full range store in the scale of anchor unit provided.<sup>346</sup> Mr Denness confirmed in his evidence to the Inquiry that even within the Garden Centre and Retail Terrace A there would be high street branded retailers as has become common through concessions at garden centres. He explained that the garden centre itself would act as an anchor just as the garden centre at Bicester does. The suggestion then that the Garden Centre and Terrace A would not compete with high streets in other centres is thus nonsense.

- 5.37 Both Mr Goddard and Mr Denness explained to the Inquiry that there is no other retail park in Northamptonshire that would have a remotely similar scale and high fashion offer.<sup>347</sup> As Mr. Goddard explained the Rushden Lakes proposal would not compete with existing out of centre parks with a lower order offer. It would compete directly with the higher order offer of Northampton town centre.<sup>348</sup> The simple fact is that the proposed sub-regional retail development is specifically designed to attract the high quality high fashion retailers that the Grosvenor Centre redevelopment would be seeking to attract. It is designed to provide a high order and scale of offer that is not replicated anywhere else outside Northampton in the County.

***Issue (b): The extent to which the proposed development accords with the NPPF, in particular Section 2 which relates to ensuring the vitality and viability of town centres.***

## **Introduction**

- 5.38 The Applicant argues, and is driven to argue, that the NPPF constitutes a “fundamental shift” a “sea change” in the essence of retail policy - requiring of decision-makers a different approach to the determination of planning applications.<sup>349</sup>
- 5.39 It is no such thing. It was not intended that the NPPF should effect such a shift, there is nothing in the Ministerial Statements surrounding the launch of the document or contained within it which supports such an assertion and the most recent emanation from Government, the response to the Portas Report, makes it perfectly clear that the document is not meant to signal anything other than a continuation of the previous town centre first policy.
- 5.40 This absence of support for the “fundamental shift” argument is also echoed in the post NPPF Inspector’s decision letters, almost all of which indicate that the basic underlying policy nexus remains as it was. The Consortium of opposing Councils has set out in detail the position as to why the NPPF does

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<sup>346</sup> Mr Denness EiC and Miss Garbutt Appendix 10

<sup>347</sup> RX Mr Goddard

<sup>348</sup> Mr Goddard in XX Dove and RX Mr Goddard

<sup>349</sup> Mr Rhodes in XX Ellis

not constitute a fundamental shift in policy. What is instructive for the Rule 6 party is the fact that the Applicant needs to make this submission at all.

- 5.41 The reason that this submission needs to be made is because it is recognised by the Applicant that without such an alleged shift in policy, this application would fail abjectly. Legal & General will now explore the three aspects of the case relating to the NPPF which are critical to its legitimate interests at the Inquiry. These are the issues of need, sequential approach and impact.

## **NPPF and Need**

### **Introduction**

- 5.42 There is no requirement on a developer to show need for a proposal. But, as the Applicant accepts in terms in its proofs of evidence, in the particular circumstances of the present case, the issue of the scale of the development and the appropriateness of the sequential site search is indivisibly linked with the issue of need. The case advanced is that: there is a need to claw back trade to encourage less travel, that that need drives the scale of the proposal and that that scale of development conditions the nature of the sequential analysis which is appropriate.
- 5.43 It is critically important therefore that the nature of the need case is properly analysed. If the Applicant fails to apply the need elements of the NPPF accurately, that is fatal to the case overall. For those in any doubt as to the fundamental importance of this need element of the case to the Applicant this can be seen in section 5 of Mr Rhodes' proof.

### **Need and hierarchy**

- 5.44 Critical to an understanding of the issue of retail need is an understanding of network and hierarchy of centres. Need for retail floorspace does not simply exist as a platonic concept shorn of any context. Every catchment cannot necessarily provide all the floorspace required to meet all of the expenditure which potentially arises from its inhabitants. Thus, a small market town will simply not have the expenditure power by itself to support the range of comparison facilities to which over a year its residents will need to resort. Higher order comparison expenditure is not a daily or weekly purchase; it requires a larger catchment area to support it.
- 5.45 Further, to be effective in market terms it needs an agglomeration of offer of competition to be effective for the customer. It is for this reason that such an offer *is needed* in the higher order centres. It is there that the greatest sustainability benefits are to be found, where the highest penetration of public transport is seen and where the other important travel related uses such as leisure, culture, work and education are to be found. This approach is reflected in the NPPF. This was accepted by Mr Rhodes. The NPPF is crystal clear that local plans should identify and defend the network and hierarchy of

centres for an area. The reason behind this is that spatially this arrangement is seen to be the most sustainable means of meeting retail need.

- 5.46 NPPF [23] also makes it clear that it is plan making which should seek to meet the need for town centre uses *in full* and that the absence of appropriate sites should not stand in the way of the meeting of that need. It is this paragraph which seeks to put into effect the injunction in [17] that objectively identified needs should be met in full. The NPPF does not say that that any or each identified small part of an area has to have its own needs met "in full". It says that the needs of a Local Planning Authority's area should be met in full.
- 5.47 That requirement must be read in the context of the rest of the paragraph which indicates that decision makers should in identifying need have regard to the network and hierarchy of centres. Mr Rhodes agreed. The needs of a catchment in this regard can only be understood and derived from an understanding of the place of the relevant catchment in the hierarchy. In the present case the question to be asked is, is there a need for a proposal of this scale having regard to the place of the application site and its catchment in the hierarchy? If there is not such a need, this fundamentally colours the issues of the consideration of scale of the development, the sequential approach applicable and the issue of the benefits claimed for the proposal on the basis that it is meeting need. The answer to this question falls to be considered under two headings.

#### **Need at the application site**

- 5.48 There is clearly no need for this scale of out of centre proposal generated by the site itself. Neither can there be an argument that there should be this scale of town centre development in order simply to support the claimed other benefits which flow from the development

#### **Need in Rushden and catchment**

- 5.49 Rushden is a medium sized market town. It, with Higham Ferrers, has a population in the tens of thousands only - the whole of zone 10 is only about 60,000. It serves a largely rural village and hamlet community. It serves the needs of its catchment in a perfectly appropriate way given its place in the hierarchy. There is not a need for a massive high order fashion based department store/variety store anchored out of centre development. The very speaking of the words emphasises their ludicrous nature.
- 5.50 The retention rate for the Rushden Lakes' "home-zone" is not unusual or untypical, given its role and function. As Mr. Goddard explained Daventry is situated a similar distance from Northampton it has a population in its home

zone of 29,356 in its home zone and a comparison and a market retention of 23.9%.<sup>350</sup> On the Applicant's approach Daventry too should have a sub-regional high order development similar to the Rushden Lakes scheme to claw back the expenditure lost to Northampton. And Towcester. And so on.

- 5.51 This is not what NPPF has in mind. An application for a proposal of this scale, nature and offer in Rushden Town Centre is clearly not needed for Rushden to continue to play its appropriate role in the network and hierarchy of centres. Please ask yourself this question, is there a land-use planning need for Rushden Town Centre to accommodate a development of 40,000sq m of new floorspace with a new Debenhams full range department store, a new Marks and Spencer and an additional massive heft of high order fashion retailers. Clearly the answer is no, there is not. Further such "all at once" development in the town centre would clearly be inconsistent with the place of Rushden Town Centre in the hierarchy. It would at a stroke be increasing the existing floorspace within the centre by more than twice.
- 5.52 So the question to be asked is whether if such a proposition is not needed in this context in Rushden Centre, why can it be said to be needed on a greater scale including a Garden Centre at an out of centre location serving the same catchment with its place in the hierarchy. The answer is that it is not. The suggestion that there is a requirement to increase retention rates for this catchment might have some limited merit but the question of whether this constitutes a need for this scale of retail is a completely different question.
- 5.53 The issue of whether any level of trade retention constitutes a freestanding need within the catchment simply cannot be divorced from the scale and nature of retail floorspace which would arise as a result of the increased retail share promoted to achieve that. This is a fundamental premise that the case advanced by the Applicant has sought to cloak. If, contrary to our submissions, there is need for Rushden or North Northampton to enhance its overall market share consistent with its role, a much smaller, less sub-regional offer than that which is proposed is what would be needed consistent with the network and hierarchy of centres, the key context for identifying and meeting need. Such a smaller offer would of course need to be the subject of a very different sequential analysis.

### **Mr Burnett's Balanced Hierarchy**

- 5.54 The suggestion advanced by Mr Burnett that there must be a *need* for a proposal of this scale because post development you would be left with a balanced hierarchy of centres based on overall in and out of centre floorspace is incorrect as a matter of fact and wrong as a matter of policy application.

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<sup>350</sup> Mr Goddard Rebuttal p5 paragraph 27-28.

- 5.55 First, what the network and hierarchy of centres seeks to achieve is a spatial balance of town centres. It is how town centres interact and mesh as a linked and balanced network which is the relevant consideration. It is wholly inappropriate to say there is a great deal of out of centre development across the borough and that this should set the balancing criteria for the network of centres. That would simply allow a replication of existing unsustainable relationships across the borough. This proposal even if it were in the town centre would fundamentally alter the balance of retail provision across the region.
- 5.56 Secondly, the Burnett balancing argument ignores the fact that this proposal would not in fact form or operate in any way as part of Rushden Centre (or Higham Ferrers): no party asserts that it would; a careful and correct decision has been taken not to advance this case. This is not a form of Rushden catching up, which would be contrary to the development plan, with the designated Growth centres. Rather it is the creation of a brand new self contained destination centre, all in one fell swoop at a new out of centre, out of town location. This is a new free-standing retail centre which dwarfs Rushden and is functionally and physically unconnected from the hierarchical town centre.
- 5.57 It would not have the multi-uses of a hierarchy town centre. It would be largely uni-functional and poorly served by buses. The location of Rushden (or equidistant Higham Ferrers) is purely co-incidental. Rushden has been chosen as the “badge” for the development because it is the higher order of the two nearest settlements. In retail terms this relationship is no more than accidental. This is not Rushden balancing the hierarchy which itself would be contrary to the development plan it is Rushden Lakes acting as a new sub-regional high order centre all by itself. That is a fundamental and irreversible alteration to the retail hierarchy of the area. Any other conclusion would be perverse given the cases advanced by the parties. Three Growth Centres and supporting centre would become three growth centres, a supporting centre and a freestanding out of town new centre larger than all of the others promoted outside of the plan-led system and on a misapplication of the understanding of need.

## **NPPF and need conclusions**

- 5.58 The underlying *raison d'être* for this proposal is that it would produce more sustainable retail patterns by meeting a local need. But there simply is no local need for a proposal of this scale and function having regard to the network and hierarchy of centres in this area. It is impossible to construct a rational argument that a market town of this scale with its rural catchment needs an all at once regional scale high order offer. This proposal would create a new freestanding centre larger than any other in the NNJPU area which is not needed by the town with which it has been associated or the

catchment in which it sits. This means it would draw from wider afield than suggested which in turn would have an impact on the alleged sustainability and journey reducing credentials of the site. This fatally undermines the whole essence of the case for the developer. This is now recognised by the Highway Authority. It also has profound implications for the balance of the case advanced by the Applicant.

## **NPPF - Sequential Approach**

### **Relationship to Need**

- 5.59 The inextricable link between the need identified and the sequential approach is accepted in the evidence of the Applicant.<sup>351</sup> If there is not the "Rushden" based locational need for this scale and function of development, then there is an acceptance that the "Rushden" based sequential analysis which has been undertaken is fundamentally flawed. This is because, even the very limited Rushden sequential approach which was undertaken (and belatedly extended to Wellingborough) was undertaken on the basis that it was only sites which met the alleged Rushden need and which reflected the scale and function of the proposal which were considered. As Mr Rhodes put it, if we are right there's no need to do more.<sup>352</sup> If however they are wrong on the locational nature of the need, there is no Plan B for the Applicant.
- 5.60 Thus the failure properly or accurately to identify need is fatal to the sequential exercise undertaken. This by itself would be sufficient to mean that the proposal had failed to meet the sequential approach. This is the case whoever is right about the legal meaning of the words in NPPF paragraph 26. As a result paragraph 27 makes it clear: the proposal should be refused.

### **Legal Meaning of paragraph 24 NPPF - the Legal submissions**

- 5.61 The Applicant and the LPA have failed as a matter of law properly to interpret the meaning of the sequential approach as drafted. The interpretation argued for would be wholly inconsistent with the context and tenor of the NPPF. This matter of law needs very careful consideration. You will receive four careful submissions as the legal meaning of the words in the NPPF from four Leading Counsel. The Inspector is not a lawyer. He cannot reach a definitive view on the meaning of the words. That will ultimately be a matter for the SoS aided by the Treasury Solicitor.
- 5.62 This will be the first call-in case following the year long transition period where the issue of the legal meaning of the NPPF on this issue has been considered. It is of critical importance that the matter is determined accurately. It is important therefore either that you report your conclusions in

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<sup>351</sup> See paragraph 5.40 et seq Mr Rhodes proof

<sup>352</sup> See paragraph 5.40 of Mr Rhodes' proof

the alternative to the SoS or that PINS seeks the assistance of the Treasury Solicitor on these issues before conclusions based on one interpretation or another are drawn. This issue is so fundamental to the structure and correctness of the decision-making process that to do otherwise would be inappropriate and unfair all round.

### The rival arguments

- 5.63 The case advanced by the Applicant in short is that when examining the term “suitable” in NPPF [24], it should be read as meaning “suitable to meet the needs of the application proposed by the developer only”. It follows that if a town centre site is not suitable to meet these needs as identified in the application, it is not a suitable site in sequential terms. This would mean that in order to evade the town centre first principle, a developer could simply adopt a scale of development in an out of town location which was significantly bigger than any town centre available site and claim that no suitable town centre site was available. It would be strange if a town centre first policy document advocated that approach.
- 5.64 The basis for this submission is said to derive from *Tesco Stores v Dundee City Council* [2012] UKSC 13. In that case two issues were considered. The issue of suitability and the issue of flexibility. Both matters are of central importance in the circumstances of this case.

### The Issue of Suitability

- 5.65 At paragraph 21 of the Judgment, Lord Reed said:

*“A provision in the development plan which requires an assessment of whether a site is “suitable” for a particular purpose calls for judgment in its application. But the question whether such a provision is concerned with suitability for one purpose or another is not a question of planning judgment: it is a question of textual interpretation which can only be answered by construing the language used in its context.”*

- 5.66 That identification of the need for textual analysis in context is critical. The context for the Scottish case was essentially and primarily Policy 45 of the Dundee Local Plan. Unlike NPPF [26], Policy 45 was a multi-criterion based policy for development outwith the relevant centres. The criteria dealing with suitable alternative site was one criterion, there were other criteria relating to need, consistency with other Local Plan policies (including those dealing with hierarchy) but the word suitable was not used in relation to these other issues. The Court held inter alia that since the word suitable related to the first criteria only it would *in that context* be wrong to conflate the meaning of suitable with the other principles separately identified in the policy and that in the context of the wording of that policy suitable related to suitability for the development proposed [paragraph 26].

- 5.67 Further, the context of the Scottish case included the provisions of the Scottish NPPG 8. The Judge said "*that guidance forms part of the relevant context to which regard can be had when construing [the meaning of suitable].*" "*Paragraph 13 refers to the need to identify sites which can meet the requirements of developers and retailers, and the scope for accommodating the proposed development....throughout the relevant section of the guidance, the focus is upon the availability of sites which might accommodate the proposed development and the requirements of the developer... ).*
- 5.68 It was, and the Court was keen to stress, against *this* contextual background, that the Court determined that suitable meant suitable for the development proposed. The context of the NPPF could not be more different. The Supreme Court was not considering the context of the NPPF at all. Nothing it says, binds the decision maker in this case as to the legal meaning of the NPPF in its context. And when the context of the NPPF is explored in detail (an exercise the Applicant's were noticeably shy of) the difference between that and the context in Dundee become apparent.
- 5.69 Thus, the retail policies of the NPPF all sit within Chapter 2 of the document. They are drafted to be read understood and construed as a whole. It is accepted by all parties to the Inquiry that in NPPF [23], the word suitable in relation to retail sites means suitable inter alia having regard to the role and hierarchy of town centres. Thus when allocating sites to meet the retail need in a sequential manner: suitable and viable town centre sites are to be chosen by reference to a range of factors including their impact on the network and hierarchy. Mr Rhodes accepted and was clear that this must be the case. Suitable here in this context meant suitable having regard to the other factors in this part of the guidance.
- 5.70 When the same term "suitable sites" appears in the very next paragraph however, it is said that the meaning of "suitable" now has to be limited to the Dundee Local Plan Policy 45 and NPPG Scottish meaning of the word. But as most sensible commentators agree, (and this is where you would have heard that this is a Scottish case) this is to throw away the very essence of the judgment which is that contextual analysis of the wording of a policy must proceed in the correct context.
- 5.71 Thus suitable in NPPF [24] cannot simply mean in the context of the NPPF when read as a whole "suitable to meet the requirement of the development applied for". It means the same as it does in the paragraph before, part of its essential context. If a wholly different meaning was meant to apply to this "suitable", it would have been easy to have said so.
- 5.72 Reference to R V Zurich v North Lincolnshire has also been made. It is a first instance decision which turns (on the relevant ground) on the issue of whether disaggregation had been demonstrated in relation to the old PPS4

policy. What was said about the word “suitable” in the Scottish case was not a necessary part of the reasoning for the decision. It is not an authority which deals at all with the NPPF wording now at large. The issue of context is not reported as even having been argued. It doesn’t assist with the issues at large before the Inquiry. The consequences of the proper interpretation of “suitable” in context are clear and are set out below. Before that though it is worth dealing with the legal meaning of flexibility.

## **Flexibility**

- 5.73 NPPF [24] requires Applicants and LPAs to “demonstrate flexibility” in relation to the sequential approach on issues *such as* format and scale. There really can be no doubt about the meaning of these words in the context in which they are found. It means that in undertaking the sequential test, you are required to demonstrate flexibility of approach in relation to relevant town centre and edge of centre sites. This includes showing flexibility as to format and scale (which are identified) and as to other matters relevant to the need to show flexibility such as the ability to fit smaller parts of the proposal in relevant town centre sites, particularly where there is no requirement at all or no need for a multi-faceted, multi limbed retail development all to be provided on the same site.
- 5.74 Of course such flexibility must be real world flexibility but it is a flexibility which must be demonstrated. On a proper reading as a matter of law, this requirement for flexibility requires the decision maker to consider all types of flexibility which are relevant to the aim and objective of the policy which is the location of development in the town centre where appropriate and possible. Format and scale are deliberately not a closed list. Other matters which are relevant to achieving the aim must also be considered where relevant.
- 5.75 Scale clearly brings with it a consideration of the potential for smaller elements of an application proposal to be sub-divided in order that their scale might be located within a town centre. The Applicant, so keen on Dundee, mislays the fact that, interestingly the issue of the flexibility of scale was considered in the Dundee case, where the provision in the NPPG was that “the application of the sequential approach requires flexibility and realism from the developer and retailer as well as from the Local Planning Authority.” The Court noted that this flexibility required developers to have regard to “format, design and scale”. This in turn meant that developers were expected to consider the “scope for accommodating the proposed development in a different built form and where appropriate adjusting or sub-dividing large proposals, in order that their scale might fit better with development in existing town centres.”

### **The consequences of a proper interpretation of the sequential analysis in the context of the NPPF**

- 5.76 If the meaning of the word suitable is not limited to suitable to meet and only meet the needs of the application, and if flexibility includes flexibility as to scale and the ability to subdivide the constituent parts of the proposal then on its own case, the Applicant has signally failed to meet the requirements of the sequential approach. Mr Rhodes says as much in paragraph 5.40 of his proof. For him, the word flexibility has little if any consequence.
- 5.77 This is because his sequential exercise has not considered any higher order centres at all as being suitable. Neither has there been any attempt to even essay whether component parts of the town centre uses can be located in the nearby or higher order centres. The requirement that flexibility should extend to the placing of parts of the development in relevant town centres in the catchment is particularly appropriate in the circumstances of the present case because there is no retail or viability logic which supports the need for all of the town centre uses to be provided at Rushden Lakes. The component parts are not argued to be necessary parts of an indivisible whole or of a particular retail format. In this case there is no reason why very significant flexibility ought not to be shown as part of the proper sequential analysis.
- 5.78 If the Consortium and the Rule 6 party are right about the interpretation of NPPF [24] as a matter of law, it will follow that even on the Applicant's own case there has been a complete failure to pass the sequential test. Applying NPPF [27] means the application should be refused. This would be the case even if the Grosvenor Centre were not a sequentially preferable site. But it is.

### **Grosvenor Centre is a sequentially preferred site**

- 5.79 The Grosvenor Centre is a town centre allocated retail site. That allocation is clear, new and up-to-date. It post dates the NPPF and is consistent with it. It is a suitable site in the terms of the sequential test properly understood. It is able to accommodate at least some of the town centre uses which are otherwise proposed at Rushden Lakes. This is particularly the case in relation to that part of the nature and scale of the Rushden Lakes development which does not need to be in the Zone 10 catchment.
- 5.80 The Grosvenor Centre is particularly suited to the higher order offer, consistent with its place in the hierarchy. A development of the extension fulfilling the principles of the allocation has been found to be deliverable in principle. No evidence to the Inquiry has sought to assert that in principle a Grosvenor Centre extension is not deliverable. In all of these circumstances, the Grosvenor Centre is with appropriate flexibility clearly a suitable sequentially preferred site for the provision of higher order town centre floorspace which is being proposed at Rushden Lakes.

## **NPPF and impact**

- 5.81 NPPF [26] requires decision-makers to assess the impact of the proposals on town centre vitality and viability. NPPF [27] requires a refusal where the impact of a proposal on vitality and viability is significant and adverse. Legal & General is the owner of the Grosvenor Centre. In the event that the Rushden Lakes development gains planning permission, it will not extend the Grosvenor Centre. This by itself will have a massive impact on the future vitality and viability of the Centre. The centrality of the Grosvenor Centre extension to the future health of the Centre was made crystal clear through the recent unchallenged CAAP process.
- 5.82 The SoS will pay careful attention to this very recent up-to-date analysis. Neither the Applicant nor the ENC chose to take part in that plan-led process which identified the weaknesses of and remedies for Northampton Town Centre. Its conclusions were clear and unambiguous. They should not be set aside now in the context of a development control application.
- 5.83 In addition to the harm associated with this significant loss of investment, there would also be a very significant trade impact upon the Town Centre as a whole. The range of impact on a major, regional centre caused by a single out of administrative area, out of town development are unprecedented. But of course, the figure of impact, remarkable though it is doesn't tell the entire story. The overlap of catchment and high order offer at Rushden Lakes is on any proper analysis of the evidence very significant. The suggestion that the reach of Rushden Lakes given its scale offer and attraction would be limited to those Zones close to Rushden and no further is risible.
- 5.84 Legal & General recognises that Rushden Lakes as a new free-standing centre would seek to serve the same market as the Regional Centre. It is convinced that the harm to an already vulnerable centre would be significant and long-lasting. Legal & General is content to adopt the numerical analysis and qualitative judgments prepared and presented by Mr Goddard on this issue. Even with a conservative trade draw assumption from Northampton, the levels of impact identified by Mr Goddard are too high to set aside. This is particularly the case bearing in mind that most of the impact would be directed at the higher order facilities such as the town's anchor stores which have been publically and formally identified as in difficulty and at a turning point. The impacts would be significant and adverse. Permission should be refused on this basis alone by reason of NPPF [27].

## **NPPF Impact on investment decisions**

### **Introduction**

- 5.85 The NPPF contains a careful and precise test as to how potential impact on investment decisions, existing, committed and planned are to be considered.

This advice is supplemented by guidance in the PPS4 PG note which all parties agree is up-to-date and relevant. And yet rarely at an Inquiry could the application of the guidance contained in the NPPF and advice in the PG have been so traduced and altered. The test is: is there likely to be a significant adverse impact on existing committed and planned public and private investment in a centre – paragraphs 26 and 27. That test falls to be applied.

### **Has there been existing investment in the Grosvenor Centre extension?**

- 5.86 The answer to this question is clearly yes. £11M of public money has been spent specifically to deliver the relocation of the bus station as an integral part of the Grosvenor Centre extension. It is in a very significant way a commencement of the Grosvenor Centre extension project. As part of the process of funding to the tune of £8M, the Development Corporation had to satisfy itself that the expenditure of public money was cost effective and did so by reference to the wider Grosvenor Centre extension project. There is no prospect of this public money having being raised or spent in the absence of it being part of the overall project. As part of the investment decision, the public bodies were satisfied with the in principle deliverability of a Grosvenor Centre extension consistent with the development plan allocation.

### **Is there planned investment in the Centre?**

- 5.87 The answer to this question is yes. Public and private investment is clearly planned for the Grosvenor Centre extension. The NPPF introduced a new regime for development plan processes. It now requires development plan process not only to consider the suitability of investment in land use planning terms but also its deliverability in principle. NPPF [173 and 182] were simply not mentioned by the Applicant at all. They seek to ensure that plans are deliverable and that key allocation sites are not allocated unless there is evidence that they are in principle deliverable. It is a legal requirement of soundness that a plan should be deliverable. The Inspector considering the Grosvenor Centre extension allocation was clear not only that there was the appropriate level of justification for the allocation in terms of the tests of soundness but that most of the more difficult hurdles to delivery were already passed.
- 5.88 He clearly well understood that the scheme which had previously been considered a potential scheme was being reconsidered by reason of viability issues but notwithstanding this was still sufficiently confident that in principle viable development could take place. This is consistent of course with the investment decisions of the public bodies in relation to the bus relocation. There is no requirement in the NPPF that there be paraded a specific identified scheme in order to engage this impact test. If that were the test, the NPPF could have said so. It is not. The test is, is there planned investment which is likely to be significantly impacted by the proposal.

Planned investment does not require the demonstration of an actual specific scheme. In this case the combination of the removal of the bus station, the main hurdle to delivery, its financing as part of the overall project, the very recent allocation of the site as part of a deliverable and sound plan and the positions of the developer and Local Authority, the parties to a binding DA, are more than enough to identify planned investment in the town centre.

**Is that planned investment of importance for Northampton Town Centre?**

- 5.89 The answer to this question is yes. The purpose underlying this question posed by the PPS4 PG is to ensure that the more important the planned investment in a centre, the less risk should be taken to disrupt or to harm that investment. The planned investment in the Grosvenor Centre extension is the critical part of the town centre strategy for Northampton. There is no investment decision more important. The SoS who is obliged to sanction the expenditure of the Development Corporation will be only too well aware of the importance of this investment. Without this investment Northampton can only further wither.

**Will the Rushden Lakes Proposal significantly harm the planned investment?**

- 5.90 The answer to this question is yes. The location of Rushden Lakes is just 14 miles away from the Grosvenor Centre. It would clearly share the same market when the actual evidence is explored in detail. It is set up in terms to compete with the Northampton offer and the likely Grosvenor Centre extension offer. It is nonsense to say that a new high order retail park of this nature will simply not be competing for the same retailers. It will. In terms of anchor tenants, both developments will be and are seeking Debenhams as one of their main components. It is public knowledge and agreed that Debenhams is very unhappy with its ability to trade effectively in the Town Centre. In tough economic times, there is in Mr Denness's view, little prospect at all of Debenhams taking an anchor unit at Rushden Lakes and also a new unit in the Grosvenor Centre extension. Debenhams at Rushden Lakes removes them as a potential anchor at the Grosvenor Centre extension.
- 5.91 But it doesn't stop there. The potential operator line up for the Grosvenor Centre extension and Rushden Lakes is almost one and the same. For the reasons set out above, there is simply not the need for that high order, sub regional type offer at Rushden, there is certainly in market terms no need for it at both Rushden and Northampton. Retailers would be able to achieve significantly lower rents, enhanced turnovers and higher profits at the less constrained Rushden Lakes site. They would gain significant benefit from the free and unfettered car parking at the site and the remarkable penetration into the catchment that the trunk road network allows.

- 5.92 If there is a choice between Rushden Lakes and the Grosvenor Centre extension, that choice is likely to be exercised in favour of Rushden Lakes. Mr Chase who was only instructed in the days leading up to the Inquiry says: "Don't Worry!" the evidence establishes that fascias would locate in out of centre and in centre locations both. He relied on evidence from Chester and Leicester to this effect. This was the only evidence of this nature upon which he relied. Unfortunately, we were unable to cross examine him on this element of his evidence. But Mr Denness gave unchallenged evidence of the complete difference between the circumstances in these towns and catchments and those that prevail in Northampton.
- 5.93 First, chronology. Fosse Park and Chester Park schemes, and the strategies of businesses to the town centre, were conceived in a very different economic climate. Now retailers are looking to consolidate their landholdings in fewer and fewer locations. This very fact was recognised and accepted by the Inspector in the CAAP Inquiry. Secondly, and more importantly, Leicester and Chester are catchments which dwarf that of Northampton being many times larger. There was (and remains) significant scope for dual representation in out and in centre locations there. The PPS4 PG in terms tells the decision-maker to place weight on the concerns of investors in relation to these issues. The concerns of Legal & General and its position are set out very clearly in the letter to this Inquiry. This is not said lightly. Legal & General does not come to this Inquiry lightly or without thought. Legal & General's very presence here indicates the nature of the concern.
- 5.94 Legal & General comes to the Inquiry with the full backing and consistent support of NBC, the responsible and democratically elected planning authority and development partner with a development plan position that could not be more up-to date or relevant. Confidence is critical in town centre investment. Confidence is a brittle commodity. Because of recent unfounded allegations made and then withdrawn by the Applicant at this Inquiry, the case being advanced by Legal & General is properly advanced. Legal & General has confirmed by letter that if Rushden Lakes goes ahead, for the reasons set out in the letter in Mr Jones's Appendices, the plans for the Grosvenor Centre extension recently cemented through the development plan process would not.

***Issue (a): The extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development.***

- 5.95 In the submissions for this issue the Rule 6 party adopts those of the LPA. It is clear beyond per-adventure that the proposal does not accord with the relevant provisions of the development plan. It is scarcely arguable that it is not. The real issue is whether the development plan or relevant parts of the development plan remain up-to-date.

- 5.96 In North Northamptonshire the hierarchy and network of centres is defined by the NNJCS which defines Wellingborough, Corby and Kettering as the three growth centres and Rushden in a secondary tier. Policy 12 is particularly relevant when it says that *"The scale of retail development should be appropriate to the role and function of the centre where it is to be located"*. The NNJCS makes it in clear in Policy 1 and Policy 12 that Rushden is a second tier settlement. The spatial strategy within Policy 1 envisages Rushden as providing a secondary focal point for development within its urban core.<sup>353</sup>
- 5.97 Policy 12 envisages the three growth towns as being the focus for meeting the planned increase in comparison shopping to 2021.<sup>354</sup> It does not provide any particular timescale for the provision of the minimum amounts of additional comparison goods floorspace set out in the Policy. It envisages a *"balanced network of centres"* as set out in Figure 14 of the NNJCS.<sup>355</sup> That figure states for Rushden under the heading *"enhancement of existing offer"* *"no specific growth strategy but town centre development encouraged"*. Policy 12 itself states that *"development of an appropriate scale that enhances the retail offer of Rushden town centre will be supported"*.
- 5.98 This part of the development plan is wholly consistent with the NPPF which, as explained, requires regard to be had to need, scale and the defined network and hierarchy when determining the present application. The Applicant in terms accepted that that the network and hierarchy as set out in Policy 12 of the NNJCS is up to date.<sup>356</sup> It is doubted that that acceptance will be repeated in submissions. The Applicant proposes development of a sub-regional scale that is not remotely envisaged by the NNJCS spatial strategy or the defined retail hierarchy, in a location not envisaged by the defined retail hierarchy and of a high order function not envisaged by the defined retail hierarchy.
- 5.99 Further, rather than enhancing the retail offer of Rushden town centre it would have significant adverse impacts upon it as it would function to draw trips away from that centre. There is no realistic likelihood of linked trips being made between Rushden Lakes and Rushden town centre; people would drive to Rushden Lakes and then drive home. The only reasonable conclusion here is that the proposed development conflicts with this up to date part of the development plan. The Applicant argues however that the NNJCS seeks to increase the retention of retail expenditure within North Northamptonshire and points to the last sentence of Policy 12 within the NNJCS as support for this contention. This contention is flawed.

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<sup>353</sup> CD A7.3 page 25

<sup>354</sup> CD A7.3 p 57 paragraph 101

<sup>355</sup> CD A7.3 paragraph 3.100 last sentence

<sup>356</sup> Mr Burnett XX by Ellis and XX by Harris

- 5.100 Whilst the NNJCS does seek to increase trade retention within North Northamptonshire it does so within the context of the retail network and hierarchy that it defines and through the scale of comparison goods expenditure it envisages to come forward over the period to 2021 within the town centres of the growth towns. It does not envisage any significant retention of retail spend through the provision of a sub-regional out of town development which is physically and functionally divorced and remote from any town centre and which is only proximate to a second tier centre identified to be merely a “secondary focal point”. In other words, it envisaged the transfer of expenditure from one town centre to another.<sup>357</sup>
- 5.101 Further, in relation to the NNJCS, the Inspector asked a number of witnesses to comment upon whether the evidence base of the NNJCS was “up to date” in relation to housing and other matters in the light of the revocation of the RSS. In relation to the retail hierarchy, however, RTP has updated its earlier work. It is now based upon population forecasts that are not dependent upon the RSS.<sup>358</sup>
- 5.102 However those forecasts do not reveal any significant comparative change between the population in Zone 10 and those in Zones 3 (Corby), 6 (Kettering) and 9 (Wellingborough). Between 2010 and 2016 the level of growth within the growth towns is forecast materially to outstrip in zone 10<sup>359</sup> on the RTP 2012 update projections. The same pattern is reflected in their projections to 2031.<sup>360</sup>
- 5.103 A similar pattern can be seen from the forecasts of total comparison expenditure<sup>361</sup> for these zones. Neither what has happened since the adoption of the NNJCS nor what is forecast to occur provides a basis for suggesting that circumstances have changed sufficient to justify any change in the adopted NNJCS approach to the retail hierarchy.
- 5.104 There has been no substantial change in the relationship between Rushden and Higham Ferrers to the towns of Kettering, Wellingborough and Corby nor is one forecast. There is then no evidential basis for concluding that Zone 10 should be given greater status in the retail hierarchy because the RSS has been revoked or that that revocation means that the adopted plan’s retail hierarchy is out of date.

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<sup>357</sup> Miss Garbutt XX by Katkowski

<sup>358</sup> See CD7.8 page 8 paragraph 3.3

<sup>359</sup> 10% in Zone 3 Corby, 4% in Zone 6 Kettering, 2% Zone 10 Rushden and Higham Ferrers, 1% in Zone 9 (Wellingborough) see CD A7.8 Appendix 2 Table 1 – growth 2010 to 2016

<sup>360</sup> 18% in Zone 3, 23% in Zone 6, 14% in Zone 9 and 17% in Zone 10

<sup>361</sup> See CDA7.8 Table 3a

***Issue (c): The extent to which the proposed development is consistent with Government advice in promoting more sustainable transport; promoting accessibility to jobs leisure facilities by public transport, walking and cycling; and reducing the need to travel especially by car.***

## **Relevant Policy**

5.105 The NPPF [30] explains that it is an objective of the planning system to support a pattern of development which facilitates the use of sustainable modes of transport. NPPF [34] states that developments that generate significant movement are to be located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.<sup>362</sup> Mr Rhodes accepted in cross examination<sup>363</sup> that this paragraph created the applicable tests which the proposed development had to pass.

5.106 As such it is necessary to consider:

- (a) whether the proposed development is located where the need to travel will be minimised; and
- (b) whether the use of sustainable transport modes will be maximised.

5.107 In addition, it is submitted that development that does not have access to high quality public transport facilities will be contrary to national planning policy objectives.<sup>364</sup> Further, the NPPF's approach to sustainable transport issues is supported by the NNJCS which developed its spatial strategy with regard to the relevant local transport plans and strategies.<sup>365</sup> Indeed, the NNJCS has a modal shift away from the private car as an objective.<sup>366</sup> It suggests that parking supply should be managed to level the playing field between the car and other travel options.<sup>367</sup>

5.108 The NNJCS adopts a transport user hierarchy so that development is designed to put users of sustainable transport modes first and users of the car last.<sup>368</sup> For Rushden the NNJCS envisages a new centrally located bus interchange.<sup>369</sup> Thus, the NNJCS must be viewed as consistent with the NPPF in relation to sustainable transport issues and up to date. Its policies should be given full weight. It follows that if the proposed development fails the tests set out above it would be contrary to the NPPF and contrary to the

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<sup>362</sup> NPPF paragraph 34

<sup>363</sup> Mr Rhodes XX by Harris

<sup>364</sup> NPPS paragraph 35 second bullet point

<sup>365</sup> CD A7.3 page 8 paragraph 1.14, page 9 paragraph 1.16.

<sup>366</sup> CD A7.3 paragraph 2.9 and objective 5 page 20, page 27 Para 3.17 – 5% reduction in car use for existing areas

<sup>367</sup> CDA7.3 paragraph 3.18

<sup>368</sup> CDA7.3 Policy 13

<sup>369</sup> CDA7.3 Policy 3 p31

development plan. The first issue to be considered is location and minimising the need to travel.

**Location alleged to minimise the need to travel.**

5.109 This is the very cornerstone of the Applicant's case. From the beginning to the end, it has been alleged that the main purpose of this high order out of centre new retail destination has been to promote a sustainable form of development.<sup>370</sup> Without this, there is no sustainable case for the proposal at all. The logic behind the analysis is that the provision of this facility, this new centre, would create sustainable patterns of behaviour, allowing local people access to facilities locally. The flaw in this argument is that in order to derive these benefits, one has to close one's eyes to the inevitable consequences of creating such a park of scale and function, namely that its catchment would not be limited to local people.

5.110 In addition, one has to adopt such a low trip generation figure for the proposal as to be implausible. Now this is not a highway capacity issue - no issue on highway capacity or junction capacity is raised, it is a sustainability and vehicle mileage saving issue. This matter is of critical importance now that the position of the Highway Authority on this matter is crystal clear. This submission is not the place to rehearse the arguments set out in Mr Hunter-Yeats' Appendix1. But his analysis of the flaws in Mr Bird's regression analysis has to be grappled with because they go to the heart of the claims for vehicle mileage reduction. The sustainable pattern of trips argument is premised on the retail work undertaken by Mr Burnett. For the reasons set out in the evidence of Mr Goddard, the underlying argument that this is and would remain a local facility is simply unsustainable.

5.111 The evidence produced by Mr Hunter-Yeats and its corresponding table in particular establish how implausible it is that 70% of the turnover of the store would be limited to Zone 10 given the location of nearby population and the speedy access to the site by car that they would have. And yet it is on this basis that the argument based on less travel as a result of the proposal is based. As Legal & General pointed out in evidence, this would lead to the wholly unlikely requirement for each household, every single household, in the whole of Zone 10 to visit the new centre 1.3 times a week. That is simply preposterous. Mr Goddard's once a fortnight seems more plausible but even that seems generous to the Applicant from any rational point of view.

5.112 The whole edifice of the sustainable location case is built on this weak and implausible evidential basis; the paradox was identified in opening. The site is strong enough to capture 70% of Zone 10 but so weak as not to influence materially anywhere else. And the Highway Authority has always recognised

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<sup>370</sup> See Mr Rhodes' proof paragraph 5.54

this in truth. The Highway Authority was never a signatory to the proposition in the SoCG that the location of the site would result in sustainable patterns of travel and vehicle mileage saving. And now we know why. The Applicant sought to minimise the absence of signature by telling the Inquiry in terms that the Highway Authority simply did not have a view on the matter. How wrong. The Highway Authority has now explained that this assertion was not supported by any assessment into existing destinations and the differences in trip length as a result of the change in shopping destination. Further, the Highway Authority supports the view that Rushden Lakes would “no doubt encourage shoppers from...Northampton” to travel to Rushden Lakes leading overall to “an actual increase in vehicle miles travelled”.

- 5.113 This indicates that the Highway Authority supports the view of the witnesses for Legal & General and the Consortium that the catchment for the proposed development would be much wider than assumed by the Applicant. Further, it supports the view of Mr Hunter-Yeats who explained in his evidence that the likelihood is that the proposed development would give rise to greater vehicle mileage travelled given that Rushden Lakes would attract people from Northampton who might otherwise have shopped by bus and given that Rushden Lakes provides no opportunity for linked trips with other town centre uses. On this basis the only reasonable conclusion is that the proposed development fails against the test of being located where the need to travel would be minimised. This removes the cornerstone, the very essence of the case for this huge out of centre proposal.

### **Maximising the Use of Sustainable Transport Modes**

- 5.114 We now turn to the ability to get to the site by sustainable transport modes. The site does not function as part of Rushden or Higham Ferrers. It is separated by a physical and psychological barrier of the A45, a significant dual carriageway trunk road. The pedestrian bridge would improve this but it would not make the trip a pleasant one, one which would be preferable to take than the car. The existing situation is that there are very poor links for pedestrians and cyclists. There is no rail service in close proximity and no bus services that serve the application site.
- 5.115 It is well connected to the road network and highly accessible by private car. Indeed, it is difficult to envisage a site that is less well connected in terms of sustainable transport modes or better connected in terms of access by the private car. The site is not located where the need to travel would be minimised.
- 5.116 So far as whether the proposal would maximise the use of sustainable transport modes, the Applicant’s own evidence demonstrates that it would not. Mr Bird forecasts that only 74 out of 1,000 visitors would walk, 16 out of

1,000 visitors would cycle and only 11 out of 1,000 would use a bus.<sup>371</sup> On the other hand 900 out of 1,000 would arrive by car. All that to a destination half the size of Northampton town centre.

- 5.117 The proposed development provides more than enough car parking – all of which is free. Contrary to the NNJCS, there has been no attempt to manage car parking supply here so as to produce a level playing field between sustainable transport options and the use of car.
- 5.118 The only proposals before this Inquiry to encourage walking from nearby settlements to the Rushden Lakes scheme are the proposed pedestrian bridge over the A45 and then an at grade crossing of the A5001 Northampton Road to a footway on its southern side adjacent to the Waitrose car park.
- 5.119 Whilst this assists in making the site accessible for those unlikely enough to walk all the way there from Rushden or Higham Ferrers, it does not and cannot take away from the simple fact that the application site is simply too far away from residential populations for anyone to be likely to walk, particularly when they can use a car and be there in a fraction of the time. This has now been identified by the Highway Authority as a real issue for the proposals.
- 5.120 Mr Hunter-Yeats explained that the walk-in catchment was very low indeed because there is very little housing within 800m and only a small amount of housing within 800m to 1,200m.<sup>372</sup> Of the housing within the 800m to 1,200m (a 10 to 15 minute walk) more than half is within Higham Ferrers and the walking route to the proposed development would be along the B645 on a narrow footway less than 1m wide without natural surveillance.<sup>373</sup> The reality is that is not a walk that many would undertake at all. In any event, it would take far less time for those living in the 800m to 1,200m catchment to get in a car and drive to the proposed development than to walk or catch a bus and that is what they would do.
- 5.121 As the Highway Authority has put it: how likely is it that residents would walk carrying large or heavy shopping?<sup>374</sup> The answer is obvious they would not when they can hop in a car and be there in a fraction of the time, with plenty of free parking to accommodate them. There is nothing in the proposed development that maximises the use of walking as an alternative to the car.

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<sup>371</sup> Mr Hunter-Yeats proof page 5 paragraph 2.2.8 referring to data in the TA Addendum Appendix b – 7.4% pedestrian mode share, 1.6% cyclists and 1.1% bus. 90% mode share private car

<sup>372</sup> Mr Hunter-Yeats EiC and Appendices Figure DHY-4

<sup>373</sup> Mr Hunter- Yeats proof page 15 paragraph 3.2.5 and Photo P1.

<sup>374</sup> APP50

- 5.122 Turning to cycling, it is the case that it is less likely that people would cycle to a retail destination than to an employment or education destination.<sup>375</sup> If one is seeking to encourage those who currently do not use cycling for shopping trips to do so, it is necessary to ensure that they feel safe in using the proposed route. Externally to the application site no specific cycling facilities are proposed to encourage residents to cycle to the development; no bike lanes and no bike specific crossings are offered. For residents of Higham Ferrers to cycle the route is along the B645, sharing the carriageway with motor vehicles and without natural surveillance.
- 5.123 For those coming from Rushden via the Greenway, Mr Hunter-Yeats described the nature of the route again without natural surveillance. Once one gets to the south side of the A45 there is then a bridge to negotiate. These are not attractive cycling routes. Those who have a car are far more likely to choose to use it to access the proposed development than to use a bicycle. There is nothing in the proposed development that maximises the use of walking as an alternative to the car.

### **Bus Provision**

- 5.124 The position in relation to buses has changed during the latter part of the Inquiry only after the only transport witness to give evidence against the proposals had left the witness box. The suggestion now is that there is to be a daily, half hourly service. This is said to consist of the “procuring” of the existing Waitrose bus (bus 49) being diverted into the site and the bespoke bus originally relied upon as part of Mr Bird’s evidence. There is also identified the “procuring” not providing of a Sunday hourly bus service. Mr Hunter-Yeats was not given the opportunity to comment on these services or how they were to be secured. But he was clear that for shopping trips including on a Sunday; the second busiest day, it was appropriate and realistic to provide 15-20 minute services to a new bespoke retail centre in order properly to effect a modal shift towards public transport in line with national and local policy.
- 5.125 No explanation has been given as to why this appropriate level of provision is not achievable at this brand new allegedly sustainable location. No viability issues are raised about such provision and it is frankly unbelievable that this scale of development cannot do better. But much more important than this is the fact that all of these services are to be secured for only 3 years. Even when the bus provision was more limited - the case advanced at the Inquiry sessions - the evidence that there was a self sustaining level of provision beyond 3 years was simply hopeless.

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<sup>375</sup> Mr Hunter-Yeats proof page 18 paragraph 3.3.1

- 5.126 It was based on a mere assertion that ridership might increase and or that funds might be available from WEAST. No weight could be ascribed to such assertions. It became clear from the cross examination of Mr Bird that no ridership or fare assessments had been undertaken to underwrite these assertions. Certainly none was produced. Further, no realistic mechanism for the provision of monies from WEAST was or ever has been identified. The references in the S106 to other East Northamptonshire developments clearly didn't relate to WEAST and have not been explained at all. No mechanism for money from these sources has been identified. They no longer appear to factor in the debate.
- 5.127 Mr Bird accepted in terms that in these circumstances, if the SoS believed that the provision of buses beyond 3 years was necessary: it would be necessary for that to be secured by a S106 Agreement. The level of uncertainty surrounding the provision of the bus provision beyond 3 years was such that the absence of the security of service beyond that time was fatal to the public transport credentials of the site. There was simply no credible evidence at all to support the suggestion that the services would continue and it was accepted that no bus service was deliverable reasonably on a Sunday.
- 5.128 The evidence in support of the new services is even weaker and even more bizarre. First, the additional buses are to be procured from others not provided for by the developer. There is no obligation on the developer to ensure the buses are provided, the obligation is to secure a contract that a third party would provide them. There is even in the first 3 years therefore no guarantee of their delivery. Thus, if for whatever reason, the procurement agreement fails, the developer's obligations have been met but the buses are not provided.
- 5.129 This is recognised in the S106 Agreement by the remarkable and completely unenforceable position that if the additional bus services cease during the first 3 years, the development, all of its tenants etc are to cease operation. Further, there is even less guarantee of on-going provision beyond the 3 years at all. There is again no evidence of ridership or fare structure placed before the Inquiry. In the absence of this little weight can be given to the assurances that the matter has been considered by the operator in relation to the new bus services and in the absence of testing of this evidence.
- 5.130 This is critical especially on Sunday. The evidence is that there is no confidence at all about the long term future of a bus service on Sunday. We now know that a ridership analysis has been done but tellingly has not been provided to the Inquiry. What the operator says about this is stark and clear.

*"Sunday services are notoriously hard to sustain, except in areas which have an already relatively high mode share for buses. It is fair to say that East Northants has a very low bus mode share, albeit one that we are keen to*

*continue to increase. You will have seen Steve Bird's proposals for a degressional support profile which gives a clear sense of the expected revenue buildup, on which we would be taking a significant commercial risk. It does, however, reflect our best estimate based on our wider experience and local knowledge. You will see that in the final year a £20K subsidy is needed, and therefore it is possible the Company would need to take an interim commercial view about ongoing revenue development to maintain the service thereafter. While I or the Company would not want to warranty absolutely at this stage the long term commercial sustainability beyond the subsidy period/profile agreed, we would say, absolutely unequivocally, that this proposal from LXB to serve Rushden Lakes on Sunday represents the best opportunity that we can see, by far, or catalysing a long term sustainable quality Sunday bus service for the Four Towns area. I would suggest that this in itself might be considered a material consideration weighing in favour of the proposals."*<sup>376</sup>

- 5.131 The Highway Authority note<sup>377</sup> on Sunday buses is stonily silent about the potential for any service at all beyond 3 years on this route. There is no evidence of a realistic sustainable service on Sunday beyond 3 years. There is deliberately no provision provided for beyond that. The SoS should be clear about this.

### **Conclusion on Buses**

- 5.132 In truth this has not been an evidentially sufficient way to deal with one of the key issues identified by the SoS. In conclusion, the bus service proposed even for the first 3 years is inadequate. Its security beyond that is simply not supported by a robust view of the evidence. There is no "I see no reason to doubt the evidence of the operator on this issue: there is no such sustainable evidence.

***Issue (d): The extent to which the proposed development is consistent with Government guidance particularly in relation to giving appropriate weight to protected species and biodiversity issues.***

- 5.133 The Applicant claims that there are a number of benefits arising from the scheme. It is submitted that the weight that should be given to these benefits has been significantly overplayed. In particular, the ecological benefits have been entirely overstated before this Inquiry. Indeed, the Applicant's own ES identifies that the ecological benefits are minor beneficial.<sup>378</sup> In the light of that, these matters can only be given limited weight in favour of a grant of planning permission.

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<sup>376</sup> LG15

<sup>377</sup> APP50

<sup>378</sup> CD B.4 Table 4.15

- 5.134 So far as the regeneration, employment and economic benefits are concerned, the Applicant points to and relies upon gross benefits without regard to the potential employment and economic impacts that the proposed development may have elsewhere. This is a flawed approach. Indeed, the HM Treasury Green Book states that projects should be assessed in terms of their additionality. This is their net, rather than gross impact.<sup>379</sup>
- 5.135 As explained above, it is the case that if the proposed development proceeds then this would have significant impacts upon other centres including Northampton both in terms of reduction in trade and would prevent planning investment in Northampton from coming forward with significant consequences for that town centre. Thus, any regeneration, employment or economic benefits of the Rushden Lakes scheme would be offset by these consequences.
- 5.136 In terms of regeneration, whilst the proposed development would have regenerative benefits, it would result in the planned regeneration within Northampton, which forms the vital component of the CAAP, being lost. It is submitted that the loss of the vital component of regeneration in the regional centre that forms the centrepiece of the CAAP is of greater significance than the regenerative benefit of an unsustainable out of centre scheme which is not planned for in any development plan.
- 5.137 In the case of employment, if the proposed development comes forward the Grosvenor Centre redevelopment would not and the employment opportunities associated with that scheme and the other schemes within Northampton that depend upon it<sup>380</sup> would be lost. The scale of jobs lost is approximately the same amount as would be gained at the proposed development. As a result in numerical terms, to grant planning permission results in no net gain in terms of employment. Indeed, it is the case that the amount of unemployment in Northampton is nearly three times that of Rushden.<sup>381</sup> It is therefore plainly more important to provide employment in Northampton than in Rushden.<sup>382</sup> As such, it is submitted that the net employment effect of the proposed development is harmful as it would result in job losses in an area where they are needed more greatly.
- 5.138 In terms of the other benefits, there is no evidence that these could not be secured through a development at Rushden Lakes that is of a smaller scale and more appropriate to the role of Rushden in the settlement hierarchy. Thus, little weight can be ascribed to the alleged benefits in the balance in favour of the grant of planning permission. Consequently, it is submitted that the alleged benefits of the proposal do not come close to outweighing the

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<sup>379</sup> Whiteley Proof page16 paragraph 4.4.2

<sup>380</sup> See Mr Whiteley EiC

<sup>381</sup> Mr Jones Appendix 15

<sup>382</sup> Confirmed by Mr Wilson in XX by Taylor

harm caused by the proposal. Neither is there any evidence that the proposed scale of development is the only way in which such benefits might be brought forward. In these circumstances, the benefits should be afforded little weight insofar as they are said to outweigh harms of the proposal.

## Overall Conclusion

5.139 It is submitted that the development plan is up to date in respect of its relevant policies. As such section 38(6) of the 2004 Act falls to be applied. The proposed development significantly conflicts with the development plan and the NPPF. The remaining material considerations are insufficient to outweigh the conflict with the development plan and the NPPF. As such planning permission must be refused. Alternatively, if it is considered that relevant policies within the development plan are out of date and that the second part of the presumption in favour of sustainable development applies, there is significant conflict with the policies within the NPPF. The proposed development fails the sequential test and the impact test. Each of those failures on its own requires planning permission to be refused. On this basis it cannot be said that planning permission should be granted. To grant planning permission for the proposed development would have significant implications for the future viability and vitality of local town centres and inward investment within those centres. It would stop the vital town centre regeneration within Northampton. The proposed development would be virtually entirely car dependent and would fail to maximise the use of sustainable transport modes. It is entirely unsustainable. It is the very antithesis of good planning; it is the wrong development, in the wrong place at the wrong time. We respectfully ask the SoS to refuse planning permission.

## THE CASE FOR INTERESTED PERSONS WHO APPEARED AT THE INQUIRY

6.1 **Mr Peter Bone MP.**<sup>383</sup> Mr Bone is MP for Wellingborough and Rushden. He said that since he first entered politics, few, if any issues, had generated as much popular support as the proposals for Rushden Lakes. In recent weeks the full, overwhelming scale of support for this development has become apparent and serves to underline just how important the project is to Rushden, Wellingborough and the whole of East Northamptonshire. The Yes 2 Rushden Lakes campaign, set up and run by local people, has been swamped with support and over 1,000 letters have been written in support of this proposal. The Rushden Lakes/Skew Bridge development is by far the most popular planning application that he has ever handled. From the responses to the consultation, less than 5 people objected to the development, and 2,046 supported the development. More than 2,000 people wrote to the SoS agreeing with the statement:

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<sup>383</sup> See IP1 for full statement

*'I support the Listening Campaign for the Skew Bridge/Rushden Lakes development and 2,000 new jobs for the local area'*

- 6.2 Mr Bone also received a petition supporting the development from 1,200 of his constituents. He said that the planning application for the Rushden Lakes Retail and Leisure Park has the support of ENC, WBC, Rushden Town Council, Higham Ferrers Town Council and the overwhelming majority of local residents. He said that this issue is of such importance that it even transcends party politics. It is a genuine sign of this scheme's significance that members of the Conservative and Labour Party, as well as some of the smaller parties are all united in their support of the proposal. He pointed out that the proposal has the support of Mr Andy Sawford (Labour) who speaks on behalf of Corby but also the rural towns and villages of East Northamptonshire. Mr Bone's view is that Rushden Lakes is a desperately needed infrastructure project within his constituency.
- 6.3 He said that this is an area that is undergoing great population growth, even more so with the 3,000 homes Stanton Cross would bring, and yet the employment rate in Rushden is about 50% of the other growth towns within the area. Wellingborough, the nearest town to Rushden Lakes after Rushden itself, is a town that is about to enter a prolonged period of growth. It recognises that far from competing with it, Rushden Lakes would present an opportunity to work alongside the town - creating jobs for its residents and giving people the opportunity to spend their money locally rather than in towns and cities over 30 miles away. The LP, which is more than 15 years out of date, has been largely replaced by the NNJCS. This strategy admits that Rushden Town Centre is unable to accommodate significant retail growth and that as a result the town suffers from significant retail leakage.
- 6.4 He claimed that by employing local people and keeping more money in the local economy the knock-on effects would be beyond doubt. At present, tens of millions of pounds a year are flowing out of the local economy, much of which is even going out of the County. Giving local people a reason to spend their money locally would create a virtuous cycle, increasing prosperity in the region. This is without even considering the extra spending power residents would have when they would not have to fill the car with petrol for a 50 mile round trip every time they want to go shopping.
- 6.5 He stated that it was not just local residents who are backing this scheme, but also local business, including retailers. High Street traders in Wellingborough and Rushden have given it their firm support, as have both towns' Chambers of Commerce. They recognise the value in keeping people's spending in the town. It is clear that both towns must rise to the challenge of presenting a different, yet complementary offer to these proposals. Wellingborough has a clear vision of being a 21<sup>st</sup> century market town while Rushden and Higham Ferrers already have a strong locally based independent-led retail offer. LXB has also agreed to fund a town centre

manager for Rushden, Higham Ferrers and the surroundings towns and villages for three years to work with these towns to ensure they maximise the opportunity Rushden Lakes would present.

- 6.6 He argued that since the decline of the shoemaking industry, investment in the area has never quite succeeded in creating new industries and jobs on the kind of scale necessary to prevent people leaving the area to work. Rushden Lakes has the potential to help reverse this unfortunate trend, and deliver the jobs at all levels this area so desperately needs. The job opportunities available, especially those for young people, are important to highlight. Young people leaving school at 16 or 18 have fewer and fewer chances to break into the world of work. Without question, Rushden Lakes would make a huge difference to the lives of many hundreds if not thousands of young people in the constituency and beyond. It is absolutely no exaggeration to state that the success of this project would mean the creation of jobs for a great number of young people, where at present there is nothing.
- 6.7 He claimed that the benefits to young people would not end at the prospect of gaining employment in the development or of finding a new place to socialise. The operators of the new boathouse and marina, a local company called Canoe 2, would be legally obliged to make their facilities available free of charge to the community. This means that the Scouts Association and Sea Cadets would be able to offer their youngsters the opportunity to try water-bound activities. There is no other facility quite like this in the constituency and it would offer a wonderful resource to two organisations who do great work with young people.
- 6.8 The Rushden Lakes site is a derelict brownfield site, in much need of rejuvenation. It is also a vital area of natural wildlife which is under threat. At the moment, the site is cut off from the surrounding area - accessible to only a few off - road vehicle users whose single interest appears to be to cause as much harm as possible. Natural England has grave concerns about the wellbeing of the SSSI neighbouring the proposed development site. Indeed, they, and the local Wildlife Trust, are supportive of this scheme because it is the only way access to the site can be controlled and this important natural resource secured. Controlled public access and bird-watching spots around the site would also serve to allow viewing of the bird-life without disturbing their roosting and nesting sites.
- 6.9 The carefully managed protection of the environment this scheme would promote goes hand in hand with the opening up of this most delightful location. There would be newly resurfaced footpaths around the lakes and even a reinstated bridge to link up the greenways to the north of the site. Regardless of whether his constituents choose to shop or eat at Rushden Lakes, the wider benefits of this scheme would be open to them all, free of charge. The spectacular bridge across the A45 would create a seamless link

between the town of Rushden and the countryside beyond for walkers and cyclists while public transport improvements would mean that, regardless of what mode of transport they use, people would be able to reach the site cheaply and easily.

- 6.10 Mr Bone said that this development would strongly conform with the tests set out in the NPPF. There is a clear need to retain local expenditure in the area and a clear need to improve the range and choice of shops available to the residents of Rushden and the surrounding area. Indeed, he argued that there are very few developments that could claim such a huge range of benefits for the community - from the opening up of the countryside, protection of a SSSI and regeneration of a brownfield site, to the tremendous community and sustainable transport benefits. It is these benefits which should outweigh outdated local planning policies. The Government is committed to Localism - to putting local people in charge of their own destinies. The support for this development is 'localism in action' and this development should proceed.
- 6.11 **Mr Derek Clark MEP.** Mr Clark is an MEP for the East Midlands. He said that the proposal is not just a collection of shops but a scheme to improve leisure facilities and shops; it was not just unusual but a unique opportunity. He stated that it was a proposal for local people. He was much encouraged when he found that local people were in favour and local businesses were not opposed. When schemes like this are successful there are a number of spin off benefits. He was aware that NBC opposed the proposal. However, the scheme was nothing to do with Northampton which is 15 miles away. If trade is taken away from Northampton then it is Northampton's own fault not the fault of Rushden Lakes. Mr Clark welcomed the proposal. As a resident of Northampton he was fully aware of the bus station development and the considerable public sector investment to bring that about.
- 6.12 **Mr Philip Hollobone MP.**<sup>384</sup> Mr Hollobone is the MP for Kettering. He said that he opposed the Rushden Lakes proposal. He pointed out that Kettering lies at the centre of a spine of three large North Northamptonshire towns, the others being Corby and Wellingborough. ENC makes up the fourth authority collaborating in preparing strategic planning policy for growth through the NNJCS. Kettering is the largest of the North Northamptonshire towns, and has agreed to facilitate growth for some 13,100 homes and 16,200 new jobs by 2021, in excess of 8,000 homes at Kettering alone. Kettering also provides the largest town centre, serving the smaller neighbouring towns and rural hinterland. There are three key and interrelated ambitions for the Borough: (i) a better offer for our town centres; (ii) a better education and training offer and (iii) a better employment offer - high grade, higher density jobs.

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<sup>384</sup> See IP2 for full statement

- 6.13 He claimed that the mutually supportive role of these three aspirations cannot be over-stated. The town centres and the skills base will be persuasive to inward investors. Similarly, high grade employment supports vibrant town centres. Kettering aspires to continue to provide sustainable growth. To achieve this it needs to continue to develop its town centre as the strong heart to its community. Government policy provides strong support for town centres. The Government's response to Mary Portas' review into the future of our high streets endorsed many of the review's recommendations and the Government has made clear its determination that the planning system does everything it can to support the vitality and viability of our town centres. The Rushden Lakes scheme, a large scale out of town retail development, stands opposed to this objective of making high streets the heart of communities once again.
- 6.14 He argued that North Northamptonshire has embraced the growth agenda, contributing to a substantial increase in housing delivery throughout the area. It is a good proposition for growth, with 41,000 new homes planned to 2031, many of which have already gained planning permission. KBC has seen strong development in its business rates growth, punching above its weight. Improvements to the A14 are scheduled to commence later this year. This is one stream of investment, which would help in unlocking housing and employment development throughout the area. The planned electrification and key upgrades to the Midland Mainline should again make those towns and cities along its route more attractive for investment. The short-sighted and inappropriate proposals at Rushden Lakes run counter to this planned approach by seeking to take trade away from the towns and centres where it should be focused. Mr Hollobone supports the Government's strong focus on town centres and is opposed to developments such as Rushden Lakes which would undermine this approach and unacceptably threaten the high streets of Kettering and other Northamptonshire towns.
- 6.15 **Mr Andy Sawford MP.**<sup>385</sup> Mr Sawford is the MP for Corby and East Northants. His constituency includes a large part of East Northamptonshire and is directly adjacent to the proposed Rushden Lakes development site. He has followed the debate closely and sought to ensure that he has a good grasp of the issues and considerations so that he could reach conclusions that are robust and in the overall interests of his constituency. He has read a range of the reports, consulted with colleagues – including those both for and against the proposal, spoken with the main organisations with a commercial interest in the outcome of the application and, most importantly, talked to local people about their views. As a result of this, his conclusion is that Rushden Lakes is in the best interests of the people in this area and the local economy and should be allowed to proceed. He fully supports the development.

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<sup>385</sup> See IP3 for full statement

- 6.16 Mr Sawford said that Rushden Lakes would deliver jobs. The argument that the development would generate more than 1,500 jobs is both well-founded and compelling, particularly in the current economic climate. This is an area that is still struggling to find its way after the decline of large-scale shoe manufacturing. Youth unemployment is a serious problem and he saw this scheme as helping to diversify the range of job opportunities available, adding a significant 'retail and leisure' component to the existing manufacturing, food and distribution businesses in the area.
- 6.17 He also stated that Rushden Lakes would provide amenities for local people. The people of East Northamptonshire have the right to enjoy better shopping and leisure choices. He pointed out that this is an under-developed area for retail and leisure uses. He appreciated that many local people are forced to travel quite a few miles to visit the kind of large-scale retailers at which they wish to shop. This development would help to keep local spending in the local area. The 'leisure and recreation' element of the plan would be similarly important for people in the area. The developer is in advanced negotiations with boating holiday operator Canoe 2 to occupy the lake's new boathouse which could be used by community organisations such as the Scouts Association and Sea Cadets, giving many young people their first taste of water sports in a safe and controlled environment.
- 6.18 Mr Sawford asserted that 'no change' was not an attractive option. The site has been neglected for many years. It has the potential to be a real gem in East Northamptonshire's landscape but, since the country club closed, it is one that has been hidden from public view and fallen badly into disrepair. The transformation of the site would sit alongside the Wildlife Trust's project to improve the quality of the natural environment as well as provide greater public access to the Lakes for walkers and cyclists. The enthusiasm of local people to trade an area of dereliction for one that enables them to enjoy and take pride in the 'look and feel' of the site is understandable.
- 6.19 He considered that the impact on other Northamptonshire towns including Corby would be limited. Corby is the largest urban area in his constituency and Mr Sawford was anxious, therefore, to understand the reasons for the opposition of some in the town to the scheme. Based on the evidence seen in the reports, he said that there was little overlap between the retail catchment areas of Rushden and Corby. According to the Applicant's retail study, Corby does not rely on spending from Rushden to support the vitality of its town centre, with less than 0.5% of its trade coming from Rushden. He was not convinced that the development of Rushden Lakes would seriously reduce the footfall in the existing retail area in the centre of Corby.
- 6.20 The more serious and legitimate basis for concern is the additional competition for retail investment posed by the development. There is a finite amount of funds that is available for retail investment in this area. However, regardless of Rushden Lakes, the investment case for other parts of

his constituency remains very strong, based – as it is – on anticipated population growth and considerable increases in the number of households in the north of the county. He did not accept that these people would not want to shop in Corby town centre if Rushden Lakes goes ahead. Corby is different to the other areas that are opposing this development.

- 6.21 CBC has really backed the town centre, which has been improving in recent years. In other areas there is great inconsistency in the position being taken; Northampton - Sixfields and A45, Kettering - Tesco site and the Northfield Avenue. Those authorities have created additional out of town retail space over many years and now they seek to prevent Rushden Lakes. To those worried about keeping their town centres competitive, quality, price, retail mix, parking charges, access are more significant.
- 6.22 Mr Sawford argued that the effect on the other towns in his constituency would be positive. He represented Irthlingborough, Raunds, Oundle and Thrapston. He thought that people from all of these towns would be more likely to go to Milton Keynes or Peterborough at present for shopping than to Northamptonshire towns and it would be positive for the County's economy and environment to improve the retail offer in East Northamptonshire. Irthlingborough and Raunds particularly stand to benefit as Rushden Lakes would be on their doorstep. It is pleasing that the greenways would be improved so that walking to the site would be possible, and for Irthlingborough it would be only a short walk for shoppers and people working at Rushden Lakes.
- 6.23 Mr Sawford said that his views of the Rushden Lakes proposal have been influenced by the principle of Localism which should empower local communities to have more of a say and influence over what happens within them. He has spoken with many people in the vicinity of the proposed site – residents, local traders, councillors from the nearby town and parish councils – and it is clear that there is a very high degree of support for the scheme by those in the immediate vicinity of the scheme. This is the view in a community where people were positively engaged in the planning process and who worked with the developer to help shape their plans to reflect the needs of that community. The proposal has unanimous cross party support locally and universal cross-border support from the nearest LPA (Wellingborough).
- 6.24 He recognised that others have raised important concerns about the proposal most of these are coming from towns that are at some distance from the site. However, there is very strong support from Irthlingborough Council, which is Labour led, reflecting the cross party nature of the support in East Northamptonshire. Mr Peter Bone, the MP for Wellingborough and Rushden has spoken at the Inquiry and Mr Sawford supported his arguments. These are the constituencies which are most directly affected by this development. This support from the MPs is a reflection of local views and a considered take on what is in the best interests of the areas.

- 6.25 In conclusion Mr Sawford said that he had to act on what he believed to be in the best overall interests of the people in the area. He was convinced that the employment benefits would be real and would not be offset to any appreciable extent by any job losses elsewhere. As well as giving a much-needed boost to the economy of this under-developed part of Northamptonshire, the development would provide a set of amenities that would be valued by local people. Action is required and this gateway to East Northants should not be neglected any longer. Whilst others see Rushden Lakes as a threat to their own prosperity, he did not believe this to be so and he certainly did not accept it as a reason to overlook this opportunity to bring serious investment to this part of East Northants. Ultimately, he said, this should be a truly local decision reflecting the needs and wishes of the community closest to where the development will take place. He fully supported the proposal.
- 6.26 **Councillor Glen Harwood MBE.**<sup>386</sup> Cllr Harwood is Deputy Leader of ENC. He confirmed that ENC was unanimously behind the proposal. Its wholehearted support is not only total, unusually perhaps, it is also cross party. ENC's Development Control Committee studied all the planning advantages and disadvantages of the proposal before coming to its unanimous decision to grant approval. Importantly, the whole project and what it can do for this area, blends in perfectly with the ENC's Corporate Plan and Strategy for the District. The proposal has his full support.
- 6.27 He said that ENC has a vision statement - 'Working with our communities to sustain a thriving District'. He emphasized the word 'thriving'. ENC firmly believes that this proposal would go a considerable way to achieving that 'thriving' status and the Council is, right now, working alongside its communities towards that end. ENC's aim is to bring investment into the area and to reverse the decline of some of our towns, in particular, Rushden. In essence, ENC is totally committed to doing the very best it can for its residents and there is absolutely no doubt that this proposal would go some way to achieving those corporate aims.
- 6.28 In the year 2000, Rushden hosted numerous factories and workshops associated with the boot and shoe industry and its allied trades. At that time, it was by far the largest employer in the area. That same year, some 62 separate sites in Rushden were registered as being directly involved in the industry. Today, there are only 4 boot and shoe companies still operating from factories or workshops in Rushden. Regardless of the reasons for the demise of the industry; demise there has been - with the obvious and inevitable loss of employment opportunities.

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<sup>386</sup> See IP4 for full statement

- 6.29 Cllr Harwood noted that Corby, one of the objecting Councils, has suffered a similar demise i.e. in the steel industry. However, Corby has, over the years, received quite massive amounts of funding from both Government and Europe to assist in its regeneration and revitalization. Despite being in a similar situation, Rushden simply hasn't received anything like those levels of funding - and so it becomes even more imperative that the huge benefits and extensive opportunities this particular proposal would bring, are grasped with both hands. Since the year 2000, the working age population of Rushden has increased by over 13% but employment opportunities haven't kept pace with that. Additionally, quite recently, the NNJPU identified Rushden as the 4th 'Growth Town' in the area, alongside Corby, Kettering and Wellingborough albeit that is yet to be formally agreed and ratified. It is clear that, having an employer on the doorstep of a growing town, with potential for up to 2,000 jobs, including apprenticeships, simply cannot be ignored.
- 6.30 Over the past few years there have been a variety of initiatives aimed at regenerating and revitalising Rushden High Street and huge amounts of effort, time and resources have been put in by ENC, the Town Council, the Chamber of Commerce and other organisations. In funding terms alone, ENC has contributed over £1 million whilst a further £0.75 million has been granted from other partnership organisations. In total, just short of £2 million has been injected into the regeneration and revitalisation of Rushden High Street. The High Street still has some constraints. Deliveries to some of the retail outlets can be difficult with limited access to the rear of some of the shops. That is not an easy thing to fix or change and so providing opportunity for additional shopping choice, albeit not in the Town Centre, is very much a positive thing. It is noteworthy that the Rushden Chamber of Commerce and Rushden High Street Business Leaders are very supportive of this proposal.
- 6.31 Although this proposal is not in the development plan, the NPPF advises that: *"LPAs should identify and plan for new or emerging sectors likely to locate in their area. Policies should be flexible enough to accommodate needs not anticipated in the plan and to allow a rapid response to changes in economic circumstances"*. He claimed that this proposal would fall neatly into that bracket. He found it difficult to explain that Councils outside East Northants could have such a major input on whether or not a particular development in East Northants goes ahead.
- 6.32 He said that the Government is a very strong advocate of there being a *"Locally led planning system"* which empowers local people to shape their surroundings and set out a positive vision for the future of their area. Support for Rushden Lakes is massive. The application site is currently an eyesore. It is a very run-down, blighted piece of land which is subject to regular anti social behaviour and very frequently suffers environmental crimes such as fly-tipping. This proposal would utterly transform that area, bringing new life to it and introducing many new, positive features and facilities for local people.

- 6.33 He argued that the NPPF records 3 dimensions to sustainable development: economic, social and environmental and without doubt, this proposal ticks all 3 of those boxes. It would create a significant number of employment opportunities, both during construction and once fully operational. It would allow local people to spend locally - improving the local economy. It would give local people a choice that hitherto they have not enjoyed. It would reduce carbon emissions as distances to shop would be reduced. It would introduce a range of leisure activities and facilities that could be enjoyed by whole families and all age groups. The Bailey bridge across the river would be repaired and brought back into use. This would allow the public to have access to some of the most pleasant walks, following public footpaths and cycle routes around wildlife areas and lakes. In summary, there are only positives and benefits that would be generated by this development.
- 6.34 Cllr Harwood said that the proposal would transform the employment prospects of the area, improve the local economy and improve shopping choice. It would also provide a range of modern leisure and pleasure facilities, improve nearby highways, provide a much needed hotel, and open up currently underused footpaths and cycle paths. Further, it would improve the whole tourist experience and tourist economy, with educational opportunities at the visitors centre, and a managed wildlife and green environment. The benefits would be extensive, positive and very real. They clearly outweigh any perceived, possible or alleged adverse impact that this proposal might have on any other Town or Council many miles away.
- 6.35 **Councillor Thomas Pursglove**<sup>387</sup> (Corby Conservative Club Ltd). Cllr Pursglove said that the people of East Northamptonshire have made their opinion clear and there is widespread support for this proposal. Local people want this proposal to deliver the jobs, the leisure facilities and the retail choice that it promises. He has lived in Northamptonshire all his life and he spoke as both a Wellingborough Councillor and as the Conservative Parliamentary Candidate for Corby and East Northamptonshire.
- 6.36 He said that the people of Wellingborough are fully behind this development. There is enormous local backing for this scheme, not least because people are tired of getting in their cars and driving for half an hour or more simply to go shopping on a Saturday afternoon. This problem would only grow, given the significant housing growth anticipated in the area in the years ahead — including at WEAST; a huge scheme with planning permission, which is very close to the site.
- 6.37 The support of Wellingborough is well-known, but what has been less well publicised is the great benefits Rushden Lakes would have for people living in rural East Northamptonshire. For many years, investment has been focused

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<sup>387</sup> See IP5 for full statement

on the urban centres in the north and west of the county, but it is these rural communities who are among those who have suffered most since the decline of the manufacturing industry in this county. Cllr Pursglove's grandfather was employed for many years in the shoe trade.

- 6.38 He said that it is they who have much to gain from the positive impact this scheme would have on the local economy. And, not just from the 2,000 jobs it would create, but from the wider benefit of keeping local spending local. What is unique about this scheme, and what has impressed him most, is that visitors would not have to spend a single penny in the shops or restaurants to enjoy it. People would be able to enjoy walks and bicycle rides in a scenic place that has until now been blighted and forgotten. What is more, the boathouse would be run by a successful local company in the form of Canoe 2, who would be obliged to open the facility up to young people free of charge including the Sea Cadets and the Scout Association.
- 6.39 In essence, Rushden Lakes would be the gateway to the Nene Valley, encouraging people to explore further this picturesque part of the world. It has the potential to give the tourism, leisure and hospitality industries a very welcome boost. The people of Corby do not feel threatened by Rushden Lakes; far from it. There is absolutely no widespread opposition from local people. If anything, people in Corby, like those in Northampton, Bedford and Kettering, would welcome the opportunity for new jobs within a reasonable travelling time. At a time when the Government's key priority is to deliver economic growth and jobs, it would be foolish to slam the door shut on this once-in-a-lifetime opportunity. People need jobs wherever possible.
- 6.40 He argued that neither CBC, nor the commercial interests in the town have any reason to feel threatened by Rushden Lakes. He said that commercial interests in Corby have pushed the Council to oppose this proposal and it has a disastrous record of mismanagement in attempting to deliver a series of high-profile regeneration projects over the last few years. Even in these difficult economic times, it is rare that employment and development is welcomed. The majority of local people want this investment to go ahead and to see the benefits of this vital scheme. He also referred to the words of Cllr David Mackintosh, the Leader of NBC: *"I don't think this is something that will derail the redevelopment of the Grosvenor Centre....anyone who lives in Northampton knows a development in Rushden will not have an impact on where they go shopping."*

### Other oral representations

- 6.41 On Tuesday 9 July 2013 an evening session of the Inquiry was held at the Huxlow Science College, Finedon Road, Irthlingborough. This was a very well attended with some 200 people present and 28 interested persons gave their views about the proposal. It is not intended to describe in detail all aspects of the speeches made at this evening session of the Inquiry. The

following paragraphs provide the gist of the representations made and the reader should refer to the Interested Persons' Documents list in the Appendices to follow up individual representations in more detail.<sup>388</sup>

*Councillor Sarah Peacock (Leader of Rushden Town Council)*

- 6.42 The Rushden Lakes proposal has been discussed with the Town Council for over two years. LXB has developed a plan to bring this brownfield site back to life. The proposal has generated much interest because it would offer a garden centre, shops, restaurants, wildlife walks, a visitor centre, lake facilities and it would open up the countryside to the community. This proposal would promote the Council's ethos of healthy living and provide an attractive "gateway" to the town simultaneously it would enhance and protect the environment.
- 6.43 Rushden needs good quality, local jobs. Without them, the town will gradually turn into a dormitory community, with no social cohesion and with increasing social problems. The scheme has never been viewed as being in competition with our High Street retailers, but one that would complement and help the town move forward and thrive. It would provide a town centre manager who would encourage modern facilities to the Lakes and work with the existing town retailers.
- 6.44 The scheme would complement the town centre as it would allow people to walk from the town to Rushden lakes and further into the Nene Valley. The Greenway route is an East Northamptonshire project which develops a network of walking and cycle routes across the district. The Town Council has worked hard with the developers to ensure that this scheme works for the local residents.

*Adrian House - Chairman Rushden & Higham Chamber of Trade*

- 6.45 Having spent over 40 years of his working life in the High Street Mr House said he could speak with some authority as he has witnessed the changing shopping habits of the local population. The most striking aspect for him is the lack of investment in the town following the demise of the shoe industry. With jobs scarce, more and more people just live in the town and go out of town for everything else.
- 6.46 This area of the town has been left untouched for far too long and this development would bring a major and much needed boost to the profile of the town in so many ways and would be a catalyst for more jobs, more visitors and more investment. It would also greatly reduce the need for local people to go anywhere else. A Town Centre Manager is promised if this

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<sup>388</sup> See IP6-IP33

proposal goes ahead. This is a vital role which would be able to help the town centre businesses focus on working together to promote their special offers and services that the big retailers cannot match. It would also ensure a presence at Rushden Lakes to inform visitors of what is available in the town.

- 6.47 The main threat to the town centre businesses is from the internet not from the retail part of the project which would have only a minimal effect on trade. All of his customers say that Rushden Lakes would enhance the town with a superb leisure facility for local people and visitors alike for years to come and cannot understand why people in other towns are interfering in these plans.

*Reverend Philip Evans - Vicar of Whitefriars Church in Rushden*

- 6.48 Reverend Evans represents the Rushden and Higham Council of Churches. The Council resolved unanimously at its meeting on 7 May 2013 to ask him to attend the Inquiry on its behalf and to express its full support for the Rushden Lakes development. The Rushden and Higham Council of Churches comprise representatives from every single Christian Church in the towns - some 12 in all, from all the main denominations. Together they have some 1,500 members and many hundreds more adherents and supporters in the community. It is striking, arguably unusual for all churches to speak with such unanimity on a local issue. They want Rushden Lakes to go ahead, the area needs the development, and it is both right and just for the local economy to be helped to grow in this way.
- 6.49 He has a passion to see young people given every chance to enjoy life in all its fullness, and to be given fair and equal opportunities. He serves as the Vice Chair of Governors at the Rushden Community College, and as Vice Chair of Governors at Whitefriars Junior School – a community school in Rushden. He has been a governor at both these schools over a period of 8 years. He is therefore in touch with children and young people from the ages of 7 to 18 on a daily basis. He said the young people of this community need both the facilities and the job opportunities that Rushden Lakes would provide.
- 6.50 The most recent figures for youth unemployment on the Northamptonshire Observatory website (June 2012) show that a staggering 46.6% of 16 to 19 years olds in East Northants are unemployed - compared to just 29.4% for Northampton, and 25.1% for the County as a whole. Revd Evans lives and works in this community, meeting and serving people of all backgrounds, ages, persuasions, and beliefs - in every social category. Everywhere locally he hears of nothing but enthusiasm for Rushden Lakes – an extraordinary depth and range of local support. This town has suffered many social and economic blows in recent decades. This scheme would play a key part in restoring local pride, confidence and hope.

*County Councillor Derek Lawson (Higham Ferrers Division and Leader of Higham Ferrers Town Council)*

- 6.51 He said that this is a once in a lifetime opportunity to bring something really positive and exciting to the area. Indeed it is felt that this is the best hope for future growth and viability as a successful community with good expectations for young people. Over the past months the supporters of the Rushden Lakes development have talked about the creation of some 2,000 jobs which in itself is a compelling reason to grant planning permission for the project. Since the demise of the footwear industry, which used to provide jobs for 80% of our local workforce, the area has to an extent been stagnating and although sterling efforts have been made to create new jobs there is a real need to stimulate the local economy. The Rushden Lakes development would undoubtedly do this and at the same time provide an attractive leisure and shopping facility for all the family to enjoy be they young or old.
- 6.52 Local Authorities in consultation with their residents enthusiastically support this project. Neighbourhood plans being worked on at the moment reflect the need for the stimulus to the local economy that is desperately needed. The Rushden Lakes development is needed for a vibrant and successful community. At the recent County Council elections Rushden Lakes was the one issue above all others that was heard on the doorsteps. There is overwhelming support from electors for this wonderful scheme and for it to become a reality. The people have spoken and what they have said loud and clear is that they want the Rushden Lakes development to go ahead.

*Kiran Williams (BNP Paribas Real Estate)*

- 6.53 She spoke on behalf of her client CBRE Britannica Fund who own the Swansgate Shopping Centre, which effectively forms the core of Wellingborough town centre, accommodating around 50 retailers and about 1,000 free parking bays. Her client has previously submitted representations in objection to the Inquiry proposal. CBRE Britannica Fund reaffirmed its objections to the proposal on the grounds of the scale and amount of retail development proposed, and its impact on existing centres such as Wellingborough town centre. She argued that the proposal is sub-regional in scale and that the development proposes 38,292 sqm of gross floorspace, in an out of centre location. The development proposes 11% more floorspace than Swansgate Shopping Centre. Indeed, the total amount of retail floorspace in Wellingborough, including out of centre floorspace, is 48,473 sqm. The total amount of existing floorspace within Rushden, together with the proposed Rushden Lakes proposal would be 54,197 sqm. Clearly this is significantly more than the existing floorspace at Wellingborough, and other nearby sub regional centres.
- 6.54 The proposal would impact on Swansgate Shopping Centre. Due to its size and scale, it would severely undermine the long term future of the

Swansgate Shopping Centre to the detriment of future investment and local jobs. Policy 12 of the NNJCS (2008), outlines that retail development will primarily be directed to the town centres of Kettering, Corby and Wellingborough. The policy highlights that smaller towns such as Rushden will only provide a secondary focal point for development. With regards to Rushden the policy states that, only development of an 'appropriate scale' that is deemed to enhance the retail offer of the town centre will be supported. The proposal is contrary to Policy 12 of the NNJCS.

- 6.55 In terms of the sequential approach, the independent retail report submitted with the planning application alleges in paragraph 33 that there are no other sites available in Rushden that are suitable to accommodate the application proposal. She strongly disagreed with this statement. Policy 12 of the NNJCS, outlines that a sequential approach must be followed with preference given to edge of centre locations and then to existing retail centres. If there is a need for additional retail floorspace within Rushden then disaggregation of that provision should be made around Rushden town centre to boost its performance, rather than the creation of a standalone out of centre development, which would be contrary to national and local planning policy.

*Thom Collins (Rushden Resident)*

- 6.56 He said that he was a member of The Skew Bridge Country Club, where one could dine and have an enjoyable walk around the lake watching the wildlife. He referred to the A45 Skew Bridge roundabout which he said is very dangerous at present and which would be improved by LXB. When it has been completed it would allow the Northampton Road modification, which would save local traffic using the roundabout from Rushden to Higham Ferrers and Higham Ferrers to Rushden. He supported the erection of a footbridge over the busy A45 dual carriageway so that local residents could cross safely and the proposed repairs to the River Nene Bridge, which no longer has a crossing surface. He fully supports the development.
- 6.57 The Government wants Councils to promote growth in order to get the country out of recession. Rushden, with the help of ENC, is actively trying to do this and the Rushden Lakes scheme would go a long way to help with the creation of some 1,700 new jobs. This would stop young and talented individuals from moving away from Rushden and help to boost the local economy. He supports the scheme as it ticks the boxes in terms of job creation as well as encouraging people to take more exercise by providing pedestrian links to the nature reserve, leisure and shopping facilities. He has attended all of the Rushden Lakes Public Inquiry sessions, at Thrapston and has not heard any clear evidence that should prevent the project from being accepted. He is very disappointed by the reaction of other Councils within the region who have demanded a Public Inquiry. ENC has not objected to the growth of other areas, so he is saddened that other

Councils feel the need to object to growth at Rushden Lakes. This proposal is both wanted and needed.

*Councillor David Jenney (ENC and Rushden Town Council, Mayor of Rushden, representing Wellingborough and Rushden Conservative Association)*

- 6.58 Cllr Jenney said Rushden and its hinterland lost its boot and shoe industry gradually in the late 1980's which resulted in approximately 6,000 job losses. There was no dramatic here today, gone tomorrow decision that would attract Government support, as in Corby. Instead there was the general drip of firms transferring to cheaper labour markets out East. Following this loss, this part of Northamptonshire experienced extremely high levels of new housing. The Barrington Road, Greenacre and Meadow Sweet estates totalling some 8,000 people were all being developed as the industry fell into decline. To be clear 6,000 jobs lost and 8,000 more people. Consequently the town very swiftly moved from being one with an industrial base to being a dormitory depending upon other towns to supply jobs for its population. In North Northamptonshire the ratio of homes to jobs is broadly neutral in Corby, Kettering, Wellingborough and the Rural North of East Northamptonshire. The area particular to this Inquiry Rushden, Higham, Irthlingborough and Raunds, has 50% less jobs than homes.
- 6.59 Kettering has done well off the back of the soon to be widened A14. Corby has had massive Government support over the last 20 years. Government policy is to build more houses, which is fully supported. Rushden has recently been designated as the first Growth Town in East Northamptonshire with the possibility of a SUE of 2,000 houses being built. Add to this the increased population as a result of WEAST, due to commence on site shortly and in Irthlingborough, Raunds and Rushden there will be a further 10,000 homes built by 2031. This equates to building another town the current size of Rushden in 18 years. Rushden Lakes would be no more than 4 miles from any of these dwellings. Now that is fine, so long as the necessary employment opportunities are also created. The privately funded Rushden Lakes scheme would assist in that process as well as creating leisure and shopping opportunities for this massively enhanced population. Rushden Lakes would be a key driver for regeneration.
- 6.60 The Rushden Lakes scheme would be complementary to Rushden High Street. The sizes of the modern shops provided would contrast sharply with the small units provided by our forefathers in the early 20th Century. These shops are full of character and provide, and would continue to provide, the opportunity for both niche markets and local shopping. The shops on the High Street are owned by a myriad of landlords, many of them absentee owners, as on any High Street. In the last 20 years the only really significant retail developments have been at Crown Park (Waitrose and Wickes) and Asda all of which have been outside the Town Centre.

Consequently the Town Centre retains its original Victorian plan. Existing shops in the High Street are just not large enough to attract national companies to the area and therefore local people are forced to travel to either Milton Keynes or Peterborough to find large modern stores, not Northampton or Kettering. The advent of Rushden Lakes would ameliorate this need and therefore be a much needed sustainable development for East Northamptonshire. The people of this area desperately want this deliverable scheme to proceed and it should be recommended for approval.

*Andrew Scarborough (Wellingborough Borough Council)*

- 6.61 Cllr Scarborough made two key points in support of the proposal. First, he said that the proposal has the strong support of Councillors of all parties at WBC. The current plans for Rushden Lakes are of very considerable strategic importance for the future prosperity of Wellingborough. If this project is successful it would bring significant benefits in terms of job opportunities for local people both during the construction period and even more once the site is open. It would also broaden the range of jobs available in the local economy which is overly dependent on warehousing and distribution. These benefits are of particular importance at a time of austerity and public spending cuts. Wellingborough is steadily losing jobs and local people are seeing significant reductions in their standard of living. This proposal has the potential to make a real difference to the lives of many local people and it is undoubtedly worthy of support.
- 6.62 Secondly, the plans to bring Rushden Lakes back into productive use after years of dereliction would also provide a much needed stimulus to WBC's long-standing plans to develop the area of WEAST. This is a large mixed use scheme and forms a major part of the overall strategic approach to bringing new homes and jobs to the Borough. Its progress has been greatly slowed by the recession and the development of Rushden Lakes, in a location very close to and easily accessible from WEAST would radically improve its attractiveness as a place to live and work.

*Andrew Langley (Chair) Destination Nene Valley Partnership*

- 6.63 Mr Langley said that the partners include the Wildlife Trust, the Environment Agency, River Nene Regional Park and the Rockingham Forest Trust, as well as the County, East Northants and Wellingborough Councils. The project has widespread support and seeks to develop the brand of The Nene Valley on a national basis, to drive visitor and tourism interest, whilst protecting and enhancing the natural environment. The Rushden Lakes development is a perfect example of how one can manage growth and yet improve wildlife maintenance. The visitors that this development would attract, would provide a major boost to stakeholders, be they boat hire companies, restaurants, B & B's, country parks and farm shops.

- 6.64 About one mile away would be a new Roman heritage site, Chester Farm, which is an archaeological find of national significance, which the County Council plans to develop into a visitor and educational attraction. To have Rushden Lakes so close and accessible via cycle paths along the corridor of the Nene River would be amazing. Cycle paths and walkways are an integral part of the vision. The proposed Greenway extension would integrate into the adjacent Bovis Homes development of 3,000 houses at Stanton Cross in Wellingborough. A "Boris bike" type hire scheme, with bike racks at key sites including Rushden Lakes, fully connecting the Nene Valley and its communities, is one of our aims.
- 6.65 Mr Langley said that the vision that has been adopted is essentially the Green Infrastructure chapter of the County Council's "Arc Strategy", which recognises the importance of sustainable growth. The Rushden Lakes development with the Wildlife Trust management does this in spades, ensuring that the site becomes an environmental haven, as well as a vitally important economic hub, actually improving what is there currently. This development is so much more than a retail park. It offers connectivity to the entire Nene Valley, it offers massive spin offs for tourism and helps put the Nene Valley on the map.
- 6.66 The concerns about this proposal appear nothing more than an over exaggerated fear of competition. A terrible message would be sent to the good people of East Northants if their interests and mandates were overruled by their neighbours. To deny such an economic boost to this area, denies East Northamptonshire the ability to build and determine its own future. It would be a travesty and an unprecedented political sleight to an entire community, that would feel abandoned, isolated and without worth. The case for granting planning permission for Rushden Lakes is overwhelming. This development should be allowed to proceed unhindered and without undue interference from those that do not live in the area.

*Gill Mercer (Rushden Town and East Northants Councillor)*

- 6.67 She spoke as chair of two Twinning Associations: the Higham Ferrers/Raunds Twinning Association, which is twinned with Hachenburg in Germany and the Rushden Association which is twinned with Loreley in Germany. She explained the difficulties in accommodating guests from these areas due to the lack of hotel beds in Rushden, Higham Ferrers and Raunds. The Rushden Lakes proposal includes a hotel and conference centre which would be a huge advantage. Visitors could spend a whole day at Rushden Lakes, shopping, eating, exploring the lakes and watching the wildlife. The East Northants Tourism Strategy puts Rushden Lakes at the heart of its economic strategy. Key to it is increased participation in active recreation. Rushden Lakes would encourage walking, cycling, angling, bird-watching and boating. It would be a top quality wildlife and leisure destination, drawing in tourists and encouraging day visitors to stay longer, thus boosting visitor spend. A hotel would also

assist business growth. Rushden Lakes would be a tourist attraction in its own right. Visitors would stay in the hotel and spend money in the Nene Valley. The extra footfall would make a hotel viable and facilitate growth in the local economy.

*Alyson Alfree (Rockingham Forest Trust/Stanwick Lakes)*

- 6.68 She said that the Rockingham Forest Trust is a Northamptonshire-based environmental charity. One of its primary activities is to run a visitor attraction at Stanwick Lakes as a social enterprise which is also managed as a nature reserve. With the support of Local Authorities including ENC and NCC as well as lottery funding and many private trusts, the Trust has been connecting people and places for nearly 20 years. Rushden Lakes would be a neighbour to Stanwick Lakes which would be wholeheartedly welcomed. Stanwick Lakes has become a very popular family tourist attraction bringing in visitors from all around the region, especially in the summer months. There is a commitment from the authorities to support the growth of tourism and it is clear that this proposed development would encourage a great many people to explore the wider area.
- 6.69 Whilst Rushden Lakes itself is a very pretty site it sadly has sat empty, inaccessible and open to anti-social behaviour for far too long. Opening it up to the public would see it become a gateway to the wider region. Rushden Lakes is complementary to Stanwick Lakes, not competition. The developer has already met with the Trust and discussed using the Rushden Lakes site to promote special events hosted at Stanwick Lakes, as well as providing information about the SPA status for the important wildlife in the Nene Valley. The developer has also confirmed that outdoor or indoor adventure play equipment for children would not be included in any of the plans and therefore it would not be in direct competition with Stanwick Lakes. She fully supports the project.

*Debbie Jackson (Canoe England)*

- 6.70 She said that Canoe England, the National Governing Body of Canoeing, one of forty six NGBs funded by Sport England, a non-departmental public body who receive funding under the Department for Culture, Media and Sport. Rushden Lakes has the potential to be a site of national significance for Canoe England as it would greatly increase the number of people going canoeing. The strategic objectives of Canoe England include: to increase regular participation; to be internationally successful; to create more and better places to paddle and to raise its profile. All of these would be realised by the development of Rushden Lakes as a water sports venue.
- 6.71 Rushden Lakes would offer something new to this part of the country and would be a huge boost for tourism. Successful examples of this include partnership working with local businesses and The Wildlife Trust, including

bat spotting, canoe tours and dawn chorus trips that enable people to appreciate the natural surroundings whilst participating in this much loved sport. Rushden Lakes is in a similar situation now to another site. In late 2007 the Yorkshire Region of Canoe England successfully completed negotiations with developers for a lease of the former Wath Lake at Manvers, in Rotherham, plus an area of land to enable the erection of a boat house.

- 6.72 Manvers Waterfront Boat Club is now a sustainable multi-water sports centre situated on Manvers Lake, it specialises in water sports, with canoeing being at the heart of its activities. The centre works in partnership with Canoe England and local partners such as the Environment Agency, the Carbon Trust and local educational establishments to be a haven for the community. The site now offers canoeing and kayaking along with triathlon, running, open water swimming, windsurfing, sailing, fishing, model boating, sub-aqua, biking and wildlife conservation catering for community groups from Duke of Edinburgh to the Universities and therefore has shown sustainability. Rushden Lakes could follow suit. Rushden Lakes would be a key site in driving participation in this sport and Canoe England fully supports this proposal.

*Richard Nelson (Canoe2)*

- 6.73 He said that Canoe 2 is a Northamptonshire-based holiday company offering short breaks on the River Nene. It expects to provide upwards of 3,000 people with canoeing trips this season. Canoe2 has held discussions with the Applicant in relation to Rushden Lakes. If the project is granted permission then Canoe2 would be able to take on the running of the boat house, using it as the new operational headquarters for the company, resulting in increased exposure and giving more people the opportunity to discover the wonderful River Nene Valley. Canoe2 would be legally obliged to offer community and youth groups such as the Sea Cadets and the Scouts the opportunity to use the facilities free of charge as part of the agreement for taking on the boat house. Canoe2 is really keen to take on that responsibility and introduce a whole generation of people to the glorious waterways on our doorstep. The new boat house meets the needs of Canoe2 perfectly; it is carbon-neutral which is good for the environment and it would be a great place for the company to grow.
- 6.74 Canoe2 is supported through the Rural Development Programme for England, which is jointly funded by DEFRA and the European Union, receiving £105,000 over 3 years from a fund to boost economic activity in rural areas. Boosting tourism in this area is a real priority because of the money it brings into the region, benefitting many other businesses and not just Canoe2. Waterway-based leisure is an increasingly valuable part of the tourism and leisure economy and this development would broaden the region's offer to visitors and create better links through its Blueways with the River Nene.

- 6.75 He said that canoeing trips of between 2-5 days are crucial to the business model. Canoe2 has been able to attract hundreds of new visitors to stay overnight, with an expectation of 1,200 overnight stays this season within the Nene Valley. A hotel at Rushden Lakes would give customers the opportunity to stay over before they start their river trip. Indeed the importance of canoeing and kayaking specifically to the region was demonstrated recently when the Environment Agency spent a six-figure sum installing canoe platforms at most of the 40 locks on the River Nene to make it easier and safer for canoeists to negotiate the river. Feedback from accommodation providers and pubs along the river confirms that, by bringing tourists in, their business is increased.

*Tony Knott (Scouts)*

- 6.76 Mr Knott supports the proposal both personally and on behalf of Scouting in Northamptonshire. The development would provide an opportunity of extending water activities throughout the County and in Nene Valley (East Northants), Wellingborough and Glendon (Kettering and Corby) Districts in particular. Scouting exists to actively engage and support young people, aged 6 to 25, in their personal development, empowering them to make a positive contribution to society. A balanced programme is provided but most join predominantly to take part in outdoor and adventurous activities and if these opportunities are not provided and maximised young people do not stay.
- 6.77 The Rushden Lakes site is unique. It is currently inaccessible. This proposal would provide: increased opportunity for water based activities including kayaking, canoeing, sailing, rafting, bell boating; increased opportunity for conservation activities and understanding of the importance of preservation of our natural environment; use of a boat house, boat storage facilities and a meeting room free of charge. A permanent purpose built facility would enable the Scouts to arrange formal activity training courses both for young people and adults which is not easy to do when activities are arranged on an ad-hoc and logistically difficult basis. The scheme would open up an empty site on private land for young people to enjoy. Scouting develops young people both individually and as team members and gets them outdoors and engaged in physical activity. Rushden Lakes would give more young people the opportunity to take part in adventurous and exciting water activities.

*John Webb (Sea Cadets)*

- 6.78 He said that the Sea Cadets is a voluntary youth charity sponsored by the local community and the Royal Navy. The Sea Cadets is open to young people between the ages of 10 and 18 years regardless of their background and has a membership of about 14,000 Cadets nationally. In Northamptonshire there are currently two Sea Cadet Units, one in Northampton and one in Kettering, staffed entirely by adult volunteers. In 2005 the Northampton Unit having

grown to well over 100 Cadets expanded into East Northants and set up a Unit in Rushden which has a membership of 25 young people.

- 6.79 The Sea Cadets aim to help young people into responsible adulthood using a naval theme promoting nautical adventure and fun. Often people come from some of the most deprived areas in the local community and many struggle academically. Activities are primarily waterborne, provide self reliance, confidence and teamwork. The aim is to get young people active and experiencing new activities, whether that is paddling a canoe or participating in a Tall Ships Race in the Channel.
- 6.80 The LXB development would offer the Sea Cadets a valuable local resource to get local young people afloat and active. This facility would be used to get young people to appreciate the environment and enjoy an active lifestyle, whilst being watched by the local community. The LXB development would also offer a safe environment for activities and to store equipment. The Sea Cadets are positive supporters of the LXB scheme.

*Maurice Weight (Maritime Volunteer Service) (MVS)*

- 6.81 He said that the MVS is a recognised national maritime charity and training organisation, a uniformed body of volunteers with more than 400 members in more than 30 Units around the coasts and estuaries of the United Kingdom. Each unit meets weekly for training which is put into practice afloat using a range of craft including sail, canoes, powerful RIBs,<sup>389</sup> launches, dories, purpose made rescue craft and even offshore training ships. The aims of the MVS are: to train people in nautical and maritime skills; to assist at maritime events throughout the country; to provide a support emergency service both afloat and ashore in times of need; to train people in nautical and maritime skills; to form volunteer flood water rescue teams to support Northants Fire and Rescue in times of stretch; to support the local community and to educate young people in the hazards of natural waterways. The Rushden Lakes project would enable MVS to provide permanent accommodation for practical and theory training in Rushden. It would also offer a maritime experience to a whole range of vulnerable groups.

*Councillor Helen Howell (Raunds Town Council)*

- 6.82 She supports the development at Rushden Lakes. She said that there are very few local retail and employment opportunities for the residents of Raunds. She saw the main benefits to Raunds as: (i) increased choice for local people; (ii) improved quality of life; (iii) better bus services; (iv) the retail offer would not compete with local shops; (v) the development would bring new jobs to the area (vi) increased footfall in the area would help to

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<sup>389</sup> Rigid inflatable boats

regenerate the local economy; and (vii) there would be environmental benefits.

*Councillor John Farrar (Irthlingborough Town Council)*

- 6.83 He said that Northampton, Kettering and Corby have all had their vision and developments realised. Now it is the turn of Irthlingborough and East Northamptonshire to realise their vision for the future with Rushden Lakes. It would be the biggest, most significant and vital development for the area to date. This would not be just another retail park. It would be a leisure amenity, a garden centre, a marina, a site of scientific interest and a welcome facility for walkers and cyclists not only for the present generation but for generations not yet born. He fully supports the proposal.

*Councillor Richard Lewis (Rushden Town Council)*

- 6.84 He spoke for the 4 towns of Rushden, Higham Ferrers, Irthlingborough and Raunds. He highlighted the *gradual* decline in the shoe industry from the 1970s with consequent job losses well in excess of 6,000. He explained that Rushden and the adjacent towns desperately need commercial development and not just houses. He contrasted the Rushden experience with Corby where some 6,000 jobs were lost overnight but there was significant Government support at Corby and new industry was brought to that town. Compared to neighbouring large towns, Rushden has received no significant support to encourage new business growth.
- 6.85 He argued that changes in Local Government since 1974 have compounded the problem with the formation of ENC and the NNJPU. The population of the 4 towns is now greater than that of Corby or Kettering and is only 25% smaller than Wellingborough, but these 3 towns have nearly double the number of jobs per head of population. The Rushden Lakes development has almost overwhelming local support and for that matter support from many residents of the neighbouring large towns. The Rushden Lakes project would be the first major development in this area with real jobs growth. Many of the new jobs would be for younger people. There is much anticipation amongst young people for the potential that Rushden Lakes offers. He said that local jobs for local people are desperately needed.

*Councillor Bob Nightingale (East Northants Council)*

- 6.86 He said that the proposal had cross party support and that local residents wanted this development to happen. He referred to the wider community benefits associated with the project including the bridge, the water sports facilities and opening up the countryside. He thought the proposal would particularly benefit young people with lots of apprenticeship opportunities.

*Councillor Tim Maguire (Borough Council of Wellingborough)*

- 6.87 He said that all parties are united and squarely behind this development. The WBC was too slow to get behind this project and should have been an active supporter from the start. Wellingborough is a 21st century market town whereas Rushden Lakes would provide a completely different offer and the two complement each other. He said that those living closest to the site fully supported the development. He stated that he lived a quarter of a mile from the site in Irchester Ward and residents there have made it absolutely clear that they want this development to go ahead. He said the volume of support has been unlike anything seen before. People are ready to accept change because they can see quite clearly just how positive it is going to be for the area. He also referred to plans to build a multi-million pound heritage centre at Chester Farm – the site of an Iron Age settlement and a medieval town. He fully supports the Rushden Lakes project.

*Andrew Hutchinson – Member of the public*

- 6.88 Mr Hutchinson is resident of Raunds which is a small town off the A45 some 4 miles north east of the site. He said that towns flanking the A45 between Thrapston and Earls Barton are set to see a rise in population to 170,000 by 2020. He said that LXB realises that if the proposed development is to thrive it must contain retail, recreation, social and welfare activities. Products and services offered must be of the widest possible choice so reducing leakage to other towns and thereby saving local residents time and money. He produced figures of the likely savings in time, distance travelled and cost of travel in his submitted statement. He fully supports the development.

*Councillor Andy Mercer (ENC Spencer Ward Councillor) and Rushden Town Councillor*

- 6.89 He said that Rushden suffered massive decline when the shoe industry decayed away. The jobs at Rushden Lakes will help make up for that loss. Those workers would do much of their shopping locally, thereby boosting the local shops. It would also inject significant extra revenue into the High Streets of the neighbouring towns. The trade bodies in Rushden and Wellingborough support the scheme. Another major issue is that of tourism. It is a goal of ENC to exploit the tourism potential of the Nene Valley.
- 6.90 However, it currently lacks critical mass. Stanwick Lakes is a superb facility, but there isn't enough there to keep a visitor sufficiently entertained to stay for a whole day. Rushden Lakes would add an extra attraction, and consequently extend the average length of a visit and hopefully the average spend per tourist. The wildlife is another significant issue. At present, the Ramsar site and the SSSI are vulnerable. They need the protection that a managed site would bring. The wildlife includes over-wintering birds, a heronry, and a fishery. Red kites are regularly seen over the site and otters

are suspected to be present. Moreover, there have been unconfirmed reports of an osprey scouting the site.

- 6.91 The scheme proposes to widen the adjacent junction on the A45 trunk road, which would significantly increase its capacity. It would also fund a new road between Higham and Rushden. This would take some traffic off the A45 completely, and thereby relieve the A45 by a further small percentage. Over the last decade, logistics has driven much of the growth in the County's economy, aided by the County's position at the centre of the country. However, any congestion at junctions within the County would diminish its attraction for logistics companies, for whom journey time is money. By reducing congestion, Rushden Lakes would feed the County's future growth.
- 6.92 Rushden Lakes was once the site of a popular social club, and the foundations are still visible. The site was a valued and well-connected part of the Town. Indeed, the nearest home is just over 250m from it. From Rushden's ASDA to Rushden Lakes, is less than a 1km, via Northampton Road and the Hayway. These roads are used by children attending the school. Moreover, these distances are walking distances. This scheme would bring many benefits to the local community and the local economy. They are significant, demonstrable and deliverable. Rushden Lakes would deliver jobs within a year. Many recent retail schemes in Northamptonshire have been opposed, and some forced elsewhere (e.g. IKEA). If Rushden Lakes is refused planning consent, it would be the final straw. It would tell the development industry that Northamptonshire is not a "safe" place to invest. Investor confidence would be severely damaged, and that would make both growth and regeneration extremely challenging. This scheme should be approved.

*Lorna Wilshire (Rushden Town Centre Partnership)*

- 6.93 She said the aim of the Rushden Town Partnership (RTP) is to help improve trade and invigorate businesses in Rushden. RTP want to forge and develop links between the people and businesses as well as between businesses, aiding the growth of creative ideas in the town and making it a more attractive place to visit. A big part of RTP's mission is to encourage people to stay local when shopping, by making things easier and more accessible for them. Rushden Lakes is key to meeting the demands of the growing Rushden population. This is a thoroughly enticing and modern way to extend the town and to provide efficiently for the residents by dramatically increasing the choice available to local consumers. The existing town and Rushden Lakes would complement each other.
- 6.94 She said that if the Rushden Lakes goes ahead, it would help different businesses at various stages. This development would encourage new businesses to be set up thanks to the advertisement it would provide, it would help businesses to grow thanks to the footfall and it would boost struggling businesses thanks to the increased number of visitors. As a result

not only would Rushden Lakes help the job market directly but also indirectly in the town by invigorating local businesses. Rushden Lakes would be a very large advertisement for the town; Rushden would benefit enormously from being put back on the map.

- 6.95 There is a real and immediate need to have a Town Centre Manager. There are many traders who would greatly appreciate the added support, advice and guidance of a Town Centre Manager. Communication between businesses plays a huge role in the success of Rushden functioning to the best of its capability. The Town Centre Manager would support and aid this important network. The fact that this position would come about thanks to Rushden Lakes would be another enormous help to the town. The visitor's centre would also be a formidable platform from which local traders could promote their businesses. The RTP believe that Rushden Lakes would help restore the faith of local people in this town. This project would cement the town and community together. It would make Rushden a proud place in which to live.

*Alan Piggott (Wellingborough Chamber of Commerce)*

- 6.96 Mr Piggott said that the Wellingborough Chamber of Commerce is fully committed to supporting Rushden Lakes. The Chamber does not think that there would be a major impact on Wellingborough town centre trade. The redevelopment of Wellingborough town centre is now unlikely to include any major retail redevelopment, in the medium or longer term, either on Church Street, (as Tresham is staying where it is) or as an expansion of the Swansgate Centre (as this is in receivership and there is currently no owner). The strategy for Wellingborough High Street should be around independent retailers, its heritage and as a service centre - which is what WBC are pursuing. This is more complementary than competing with Rushden Lakes.
- 6.97 The Chamber is very keen to encourage job creation both in the construction phase and for the longer term retail jobs that would be created by this exciting project. Wellingborough has a high unemployment rate, especially in the age range 18-24. Job creation, especially for the younger age groups is essential to the wellbeing and future of the area, so opportunities aligned to construction and access to an apprenticeship scheme, which would be developed, would be vital for young people.
- 6.98 The presence of Rushden Lakes should also help to attract home buyers and increase demand for housing and thereby stimulate delivery of some of the stalled applications, as better facilities would be on their doorstep. Wellingborough has over 6,000 consented houses which could be developed, but 2 major urban extensions have stalled due to weak market demand and viability issues. The town centre has failed to attract the interest and investment required to ensure its redevelopment as envisaged by the Council's AAP and the Chamber considers that this opportunity has now been lost. However, the Chamber is supportive of convenience/food retailing taking

place in the town centre and this may still be a possibility. More businesses would potentially be attracted to locate in the Wellingborough/Rushden area as it becomes more sustainable and better able to provide for the needs of their workforces.

- 6.99 Local residents in the past have had to look to Northampton and Milton Keynes to fulfil some of their shopping needs. Wellingborough has a strong town centre but a limited range of national and multiple stores particularly for fashion retail. Having Rushden Lakes close by would provide a greater choice and limit the distance that people would need to travel to access these facilities. Mr Piggott referred to a letter recently published in one of the local newspapers which he believed sums up the strong feelings about this project. It said 'Northampton, Kettering and Corby have had many years of growth and many years to make sure their towns are what shoppers want. So along comes Rushden Lakes and all of a sudden all three are running scared!' Northampton had the massive opportunity to have IKEA but declined it and therefore lost a golden opportunity to Bletchley/Milton Keynes. There is now a wonderful opportunity to have a major facility that would stop money being lost to towns such as Milton Keynes and Peterborough. This new shopping opportunity would improve the area and bring much needed prosperity for many years to come.

*Harry Graham MBE (Rushden Pensioners' Forum)*

- 6.100 Mr Graham said that there is no doubt that this important development would improve the health and well being of local residents in Rushden and the surrounding district, especially for older people. Leisure facilities in Rushden are not generous but this scheme would provide the opportunity for pleasant walks amongst wildlife trails encouraging people to be fitter and healthier. This is very important for older people and should be actively encouraged. To have this facility on the doorstep of Rushden would ensure that it is well used and easily accessible.
- 6.101 These proposals would also bring a much-improved public transport service ensuring that older people would be able to get out and about. The town currently has a very poor bus service and is only available from 1000 to 1500 hours Monday to Saturday. This often leaves people stranded and does not encourage movement due to the limited hours of operation. There is no current bus service to Northampton on Sundays. The new bus service would be a big improvement and would link the town with this new development. Rushden Lakes is not an out of town planning proposal but it would be an integral part of the renewal of leisure and shopping facilities in Rushden. The opportunity to greatly improve our environment at all levels should not be missed. Rushden Lakes is part of the vision to meet future needs.

*Jack Spriggs (Rushden Town Councillor Hayden Ward/Young people in Rushden)*

- 6.102 Mr Spriggs is in favour of Rushden Lakes. He is the youngest Councillor in the country. This gives him the chance to give a young person's perspective on this development which he believes is going to be crucial to his generation. The people he is speaking for are his generation, the hardworking young people of Rushden and North Northamptonshire. The current economic climate has made it difficult for anyone to secure full-time employment.
- 6.103 In Rushden this summer hundreds of people are going to be leaving school. Leaving school at 16, finishing education at 18 and coming back home after completing university. Of course people can stay at school or go on and get further training, or if can even go to university. But sooner or later each and every one is going to need to get a job and jobs in East Northamptonshire are few and far between right now. It's the choice of either sitting at home and trying to get a job somewhere in the local area or having to accept that there is nothing and looking further afield to Leicester, Birmingham or London.
- 6.104 Rushden Lakes would provide a chance to change that. It would have a massive impact on the hardworking young people in the town. The 2,000 jobs that would be created simply cannot be ignored, and a large number of those jobs would go to people in East Northants, in Wellingborough, and even in Northampton. It is not just the jobs that the scheme would directly create. Even if working in a garden centre or clothes store isn't for everyone, with that much more money and employment in the town it's bound to have a big impact on the area as a whole. Local people aren't going to have to go off anywhere else to spend their money so it has to boost the local economy that in turn is going to create all kinds of jobs in other sectors. This scheme should be approved because it is unequivocally important.

*Helen Danzig (Yes 2 Rushden Lakes)*

- 6.105 She said that she was a Rushden homeowner and housewife who feels very passionately about Rushden Lakes. She became involved in this campaign and started the Facebook page because she was compelled to do something as she felt so strongly about the fact it was being challenged. Since setting up the site in mid February there have been over 2,100 likes and 1,000 comments; all are encouraging Rushden Lakes to happen. People in Kettering and Northampton are also supportive. This proposal would encourage growth, jobs and hope for all of Rushden and the surrounding towns. Northampton built Riverside which has since been extended and this did not endanger their shopping centre.
- 6.106 She said that Rushden Lakes would not have any impact. If people don't want to shop in Corby they would go to Peterborough and Northampton people would go down one junction on the M1 to Milton Keynes rather than come to Rushden. She said that she wanted the best for the town and her

children and dreams that one day her 6 year old daughter may get married at the hotel that would be built. She visualizes children riding their bikes down to the Lakes and spending the day there and meeting up with families for dinner or shopping. She said that she had 2 young children and wanted a better future for them as well as all of the other children in the area.

## **7. WRITTEN REPRESENTATIONS FROM INTERESTED PERSONS**

- 7.1 The written representations from interested persons submitted in the context of the Council's consideration of the application are summarised first<sup>390</sup> following by those submitted as a result of the SoS's Direction to call-in the application.<sup>391</sup> It is not intended in this section to describe in detail all aspects of the written representations which have been submitted. The comments in the following paragraphs are intended to outline the material points of concern rather than provide precise descriptions of every issue raised. If readers wish to follow up certain written representations in more detail then they should refer to the consultation responses, the documents at C1-C21 and the blue folders which comprise document INQ2. All written representations and responses have been taken fully into account in my conclusion and recommendation.

### **Representations at the planning application stage**

- 7.2 There were 30 responses from the general public with 23 being in favour of the application. The reasons expressed for supporting the proposals are summarised in the following bullet points with some comments reproduced.
- 'A great asset to our Town, Jobs, Jobs, Jobs yes please'.
  - A boon for the area. Rushden has suffered from a lack of investment and this is an opportunity to right that wrong. Objections from Kettering and Northampton should be ignored.
  - 'This is major investment in our stagnating area. Please, please, please make this go ahead. Jobs, things to do and what we all need more than anything - stimulation of the economy'.
  - 'There has been a great deal of house building over the last ten years and local amenities have not kept up. I appreciate concerns over the impact on local high streets but I think this is a great opportunity to improve what is currently an eyesore and a dumping ground'.
  - 'It is not fair that the shoppers of Rushden have to travel so far to use the large chain stores. At least this will give us Marks & Sparks. Maybe others will follow'.
  - Prospect of 1,500 jobs can only be a good thing, use of the land will be good as currently derelict.

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<sup>390</sup> See Docs C1-C21

<sup>391</sup> See INQ2

- Support for development to stimulate stagnant economy, if planning approval given it would be worth considering a provision that a certain number of apprenticeships are generated by the main contractor and a certain percentage of the main contractor's supply chain is procured from within a radius that covers the East Northants area.
- Will provide much needed jobs and financial stimulus for the area, reduce CO2 emissions
- By reducing the need to travel distance for shopping, remove an eyesore from the landscape and reduce anti-social behaviour and illegal use of motorbikes on this site.
- 'Improved shopping to people living in our area' ...'The improvement to the infrastructure in the area.'
- Support for the application to kick-start regeneration but concerns about the access onto the A45.
- Rushden Historical Transport Society has no objection to the planning application in general but a corner of the suggested garden centre cuts across the route of the disused Wellingborough to Higham Ferrers branch line, we would ask that this is revised on the plan to leave it clear so that this line could be reinstated as and when future transport requirements necessitate.
- 'I am glad to see that the plans use the natural assets of the area i.e. lake, woods, etc but would ask that the foot bridge access is made mandatory in line with the emphasis on access for all.'
- The proposals will recapture back to the County significant retail leakage, be a central hub supporting the "Destination Nene" inward investment priority. Make a major contribution to the protection and understanding of the SPA, provide new net jobs to match new housing, reduce out-commuting, reduce CO2 and save on travel-to-work costs. It will in the shorter term provide construction jobs and support "construction skills". It will directly support Rushden Town Centre through contributions to a new Town Centre Manager; enhanced bus services and more footfall.
- 'I believe the development is a long overdue addition to the area. East Northants sadly lacks this kind of retail/leisure experience.'

7.3 There were 7 responses which were which were against the application. The main reasons cited for objecting are summarised below.

- Impact on small businesses in Rushden and High Ferrers – 'This development will in my opinion be the death of Rushden and Higham small businesses. The already decimated High Street is in danger of becoming a ghost town.'
- Wellingborough Traders Group objected as they felt that this would harm Wellingborough Town Centre, at a time when Government policy is supporting town centres. Concerned about loss of larger retailers from Town Centre and impact on independent retailers and displacement effect of jobs.

- The area has been re-colonised by otters, a large heronry has been established on the eastern edge of the ski lake, and the Cettis Warbler has re-established itself in the area. Increased noise, light pollution, boat traffic and visitor numbers will degrade the wildlife habitat.
- 7.4 A number of petitions were submitted to the Council in support of the proposal. Cllr P Whiting from Higham Ferrers submitted a petition on 6 June 2012 which was circulated for 2 weeks around the stores and retailers within Higham Ferrers. A total of 562 people signed the petition. Mr Roger Clarke also submitted a petition to Higham Ferrers Town Council dated 27 May 2012 and forwarded to the Council in support of the development citing that this would be both good for Higham and Rushden having facilities on the doorstep and not having to travel further afield. A total of 114 people signed this petition. Sean Lever submitted a petition with 491 signatures and comments in support of the proposal and a further petition was submitted from Cllr Hobbs on 16 August 2012 listing 79 people in support.
- 7.5 There were a number of responses from neighbouring authorities and relevant organisations. Several of these responses refer to the marina and lock elements of the scheme which are no longer a part of the proposals. The reader should refer to the Council's Committee Report dated 10 October 2012 for details of these responses.<sup>392</sup> Irchester Parish Council was generally in favour of the application but concerned about increase in traffic through the villages of Irchester and Little Irchester and effect on the wildlife of the valley.
- 7.6 The Wildlife Trust was concerned about the potential conflict between the proposed footpath networks and the access arrangements for the public and maintenance but was supportive of areas of wild flower meadow within the scheme and the commitment from the developer for the on-going maintenance of these areas. The Northamptonshire Police raised no formal objection to the application subject to a number of conditions. Natural England was broadly satisfied with the mitigation details subject to a more detailed Access and Habitat Management Plan and a Construction Management Plan.
- 7.7 WBC raised no objection to the application but made the following comments: (i) the s106 to contribute to mitigation measures for Wellingborough Town centre (ii) improved public transport from Wellingborough (iii) improved footpath and cycle access along the Nene Valley, in particular including links to Chester Farm and the proposed development at Wellingborough East (Stanton Cross) (iv) training and apprenticeships. CBC objected on the basis that: (i) the sequential test is flawed; (ii) the amount of floorspace proposed is comparable to that

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<sup>392</sup> See B14 pages 9-15

identified for the whole of North Northamptonshire; (iii) the sub-regional scale of the development does not accord with local or national policy and (iv) the retail impact information supporting the application is flawed.

- 7.8 KBC objected to the application on the grounds that the proposed development is unacceptable in principle. There is no development plan support for the proposal in an out of town location at Rushden. The application has failed the sequential and impact tests and therefore the NPPF directs the application should be refused. NBC strongly objected to the application. It was concerned that the Applicant has not undertaken a proper retail impact assessment in regard to the impact of the scheme upon Northampton Town Centre and Weston Favell District Centre or an adequate sequential assessment of alternative sites. Concern was also expressed that an out of town, unallocated, retail development of a sub-regional scale at Rushden Lakes had the potential to significantly impact upon the vitality and deliverability of well advanced plans for the redevelopment of Northampton Town Centre. These comments were submitted as a holding objection until such time as a proper retail assessment, including full sequential analysis, had been carried out. NBC considered that the application should be refused.
- 7.9 Higham Ferrers Town Council wholeheartedly welcomed and supported the application. The Council recommended approval but made comments about a number of matters including concerns about improvements to the Skew Bridge roundabout, the need for a footbridge across the A45 and the impact of the development on Chowns Mill roundabout. Bedford Borough Council objected to the proposals on the grounds that the development would be sub-regional in scale and would impact on the trade of Bedford Town Centre and could prejudice planned investment in Bedford. As the proposal was not in a town centre and was of a scale that would be detrimental to existing higher order town centres in the wider catchment the application should be rejected.
- 7.10 Rushden Town Council supported the application as it would bring employment to Rushden and boost the local economy. Also the site has SSSI status and this would encourage additional tourism and leisure pursuits which would help the local economy. The Council considered that a footbridge would be required as part of the scheme to link the site to the town, this should also link to the current 'Greenway'. A number of issues were raised about the provision of a Town Centre Manager and public transport access to the site.
- 7.11 NCC Waste Planning Authority and the Environment Agency requested additional information. NCC Highways expressed a number of concerns on matters relating to trip rates, local road assessment, the A45 Skew Bridge Roundabout, the Chowns Mill Roundabout, public transport, foot/cycle bridge and the service road. The Highways Agency issued a TR110 Holding Direction on the grounds that insufficient information had been provided in support of the application to ensure that the A45 trunk road continued to serve its purpose as part of the national system of routes for through traffic. West

Northamptonshire Development Corporation objected to the proposal on the grounds that it did not conform to the NPPF or the development plan and would potentially impact on the planned existing and committed public and private sector investment within Northampton.

- 7.12 There were objections from other commercial interests. CBRE Britannica Fund (Swansgate Shopping Centre, Wellingborough) strongly objected to the proposals on the grounds of the quantum of development and its resultant impact on Wellingborough town centre. It was argued that the proposed development (approximately 38,292 sq m of retail floorspace) was some 11% larger than the total retail capacity of the Swansgate Shopping Centre and was akin to the creation of a new town centre. Being close to Wellingborough it had the potential to severely undermine the long term future of the Swansgate Shopping Centre. It was claimed that that this was contrary to the objectives of Policy 1 and Policy 12 of the adopted NNJCS. Furthermore, it was stated that where there is an identified need for retail development the sequential test must be followed with preference given to edge of centre and then existing retail areas which are well served by public transport. If there is additional need for comparison retail floorspace it is stated that this should be delivered through disaggregated provision within Rushden town centre. The issue of potential job losses in neighbouring centres was also raised. It was requested that the Council should refuse planning permission.
- 7.13 Legal & General (Grosvenor Centre, Northampton). Drivers Jonas Deloitte on behalf of Legal & General objected to the proposals and supplied an addendum report to the original objection setting out the further points of objections. Significant concerns were expressed about the principle of the Rushden Lakes proposals being a substantial amount of retail floorspace in an out-of-town centre location. There was also a concern that it would draw considerable amounts of trade and shoppers from existing town centres in Northamptonshire undermining current and future planned investment within these centres. They requested that planning permission be refused.
- 7.14 PR Kettering Ltd (Newlands Shopping Centre, Kettering). Ellandi, on behalf of PR Kettering Ltd, referred to the NPPF and its commitment to promote competitive town centres and the need for LPAs to apply a sequential test and impact assessment for developments containing main town centre uses that are not in an existing centre. It was argued that the application was contrary to the development plan and failed to undertake a satisfactory assessment of sequential sites and also underestimated the impact of the development on existing town centres. Overall, it was stated that the proposal was of an inappropriate scale and would lead to significant cumulative impact on a number of centres, notably Wellingborough and Kettering and would prejudice planned investment in those centres. It was requested that the application be refused planning permission.

- 7.15 Helical (Corby) Ltd (Corby Town Centre). Jones Lang LaSalle, on behalf of Helical (Corby) Ltd, objected to the proposals stating that the application was flawed and should be refused on the following basis;
- The application failed the sequential approach – it was contrary to local and national policy.
  - The proposals would have a significant impact on town centres – affecting the vitality and viability of the town centres in North Northamptonshire by creating a competing out-of-town centre that would strengthen the draw away from the town centres.
- 7.16 Ropemaker Properties Ltd (Riverside Retail Park, Northampton). Turley Associates, on behalf of Ropemaker Properties Ltd, raised strong objections to the proposals particularly the scale of the retail element which it was argued would draw trade away from existing centres and impact adversely on their vitality and viability. It is claimed that there was limited need for this development and that there was sufficient capacity to accommodate additional comparison goods retailing within existing centres without developing Rushden Lakes. Therefore, the proposals fail to satisfy the sequential test. It was argued that the proposal being of such a scale would significantly impact existing trade within surrounding centres and their investment. The proposals would become a regional destination drawing trade from Northampton and its catchment adversely impacting on accessible services and facilities in the town. It was concluded that the proposals were contrary to the 'town centre first' approach of the NPPF and failed the sequential test and therefore the application should be refused.

### **Representations received following the call-in**

- 7.17 Many of the representations made at the initial application stage were reiterated following the call-in and are summarised above. There were some 963 letters of support and some 17 letters of objection. In addition, there were several supporting petitions including one submitted by Cllr Sylvia Hobbs (80+) to demonstrate the strength of feeling of the people of Irthlingborough and one from the Rushden and Newton Bromswold Women's Institute (24). A further petition was conducted by Wellingborough MP, Mr Peter Bone through his "Listening to Wellingborough" initiative and was sent out to every household in his constituency. The petition slip asked residents if they "support the listening campaign for Skew Bridge/Rushden Lakes development and 2,000 new jobs for the local area". The responses showed overwhelming support for the scheme from the local community with only 5 people objecting. Since its launch in February 2013, to date the *Yes 2 Rushden Lakes* Facebook page organised by a cross-party community coalition has gained 1,664 followers. The *Yes 2 Rushden Lakes* Twitter account has some 183 followers. The leader of WBC submitted a letter giving full support to the project. Indeed analysis of the written representations shows overwhelming support of the scheme from the local community.

- 7.18 The opposition is primarily centred on letters from some local MPs, nearby Councils and individual owners or investors in shopping centres. Aside from this there is one letter from a Rushden-based optician and a letter from Wellingborough traders. No Chambers of Commerce objected to the proposals.
- 7.19 The most popular statement for support was jobs and boosting the local economy. Many people listed this as their main reason for supporting the scheme saying it would allow the town to prosper and would create flexible employment opportunities for young people and mothers hoping to return to work, as well as managerial positions. Another popular reason for support was the retail choice offered by the proposals. Many people were very keen to stress that they did not shop in Northampton or any of the other Boroughs listed in the objector's retail impact report. Many stated that they shopped further afield (e.g. Milton Keynes) and the Rushden Lakes scheme would allow them to save money on petrol costs and travelling time by being able to shop closer to home. A number of people also stated their dismay at the objecting Borough Councils seeking to block Rushden's growth when they have built their own developments of this sort. The objectors' primarily focused on retail impact, whether the suggested 2,000 jobs would actually exist, and the environmental impacts of the scheme.
- 7.20 Support for the proposal can be related to a number of themes:
- (i) Local Economy /Jobs
- Rushden Lakes development could be the catalyst for desperately needed and significant community renewal.
  - East Northamptonshire has become an area of warehouses, more giant warehouses, lorries and logistics. We desperately need new jobs that aren't warehouse jobs..... Most of these warehouse jobs are unsuitable for mothers who want to work. We need Rushden Lakes to bring new jobs into the area and boost the economy. We need part-time jobs in shops and the leisure industry for mums and older generations.
  - The local economy would inevitably receive a boost, something which must surely be encouraged. In the current times of austerity, the opportunity to develop Rushden Lakes with a scheme which has funding in place and is 'ready-to-go' must be given the go-ahead.
  - The Rushden Lakes development will be the most wonderful thing that could happen to the area, jobs for local people, pride and money to spend in the town and a chance to reinvent the area.
  - I am 13 years old and have lived in Rushden all my life. I love Rushden but I know that my sister, who is 16 years old has had great difficulty in finding a job. This development will bring new jobs to the area not only for Rushden people but for others in surrounding towns.
  - East Northants is a designated area for growth and many new houses are being built in the area. This needs to be supported with new infrastructure

and investment and, more importantly, jobs. I believe the new development would create work in the construction industry in the short term and jobs in the retail/leisure industry in the longer term.

(ii) Recreation/Connectivity/Leisure

- I have four children of my own who will be of an age where they will want to go out shopping or get weekend jobs around the time the Lakes development is due to be finished..... The nearest cinema is a 25 minute drive away in either direction or the nearest shopping area of any use is a similar distance away. We are stranded in Rushden with substandard facilities. Rushden Lakes would give Rushden meaning, purpose and bring life into the area.
- The Greenway is popular with dog walkers, joggers and cyclists and its expansion into Rushden Lakes will make Rushden a much nicer place to live.
- Bringing leisure facilities back here would encourage more outdoor pursuit from local people, increasing fitness and wellbeing.
- I have recently become a first time mum and think this project will help the town tremendously. To be able to walk with my son to a place like this and be able to buy him clothes and other supplies, for me and my husband to go out for a meal, and for myself and my other 'mum' friends to use the leisure facilities planned would be awesome.

(iii) Transport

- The area of the proposed development is currently unattractive, and the road is dangerous. We often go out of our way to avoid the roundabout near the site. People have died on the roundabout and it is a black spot locally for accidents. This proposal sees the road being widened and this roundabout being made safer.
- The improved bus services would also be funded by the section 106 agreement should also make transport between the Rushden Lakes and the town centre easier for many people, allowing residents without cars to get to shops/work much more easily.
- The current A45 roundabout for the site is a well-known black spot for crashes and lorries overturning and this would be a great opportunity for the developers to contribute to a better access to the site combined with making the roundabout safer at no cost to the public purse.
- As a non-car owner, I have to rely on buses to other towns when I am unable to purchase any requirements from Rushden town centre. As a mother of two, the return bus trip is very costly and therefore only taken when considered a necessity. The Rushden Lakes development would be of extreme benefit to others like myself and also local people who are struggling to make ends meet and may not be able to spend a fortune on petrol travelling to other towns.

- The roundabout which will be the entrance to Rushden Lakes gets very overloaded at peak times. I was very glad to learn that LXB are paying to have this made into a three lane roundabout. This will really help us in Rushden. We also have a problem getting from Higham Ferrers to Waitrose. Many a time I have waited at that junction and thought – wouldn't it be a good idea if they made that footpath into a road – then I wouldn't have to wait here so long and then go round the roundabout. Now I have heard that LXB would make this path into a road – what a lovely Christmas present that would be for Rushden. I also hear they are putting a bridge over this as well, so that would encourage people to walk to work/shop there. What a good idea and a snip at just over a million pounds!

#### (iv) Environment

- The proposed development of the whole site would provide a significant enhancement to the natural green environment of the Nene Valley. When linked to adjacent areas such as Stanwick Lakes, the proposed development would provide access to a 'green lung' for the local area. The provision of healthy recreational outdoor facilities is another local need.
- Most people, particularly those with children and grandchildren have concerns about the future of our environment. We are all aware of the need to lower our carbon footprint in various ways, including less car usage. Already in this area, much of the employment is in large distribution centres which operate 24 hours a day, thus forcing workers to use cars as there is no public transport. If the development at Rushden Lakes does not go ahead, you would effectively force people to shop in Northampton, Kettering or Bedford. So much for reducing our carbon footprint.
- The River Nene Regional Park (RNRP) is a nationally supported project to create an extended national park running from Northampton, towards Peterborough..... To make the RNRP a reality, it is essential that there be no missing links in the chain.....Skew Bridge is roughly the midpoint of the RNRP. It must be included in the RNRP if at all possible. Excluding it would be extremely detrimental to the prospect of the RNRP. It contains internationally important wetlands that are not managed and at risk.
- If it is developed along the lines of the planning application, this would open up this corridor and make it accessible to the public. It would enhance the walkways and provide a link through to Irthlingborough and to Stanwick Lakes. If Rushden Lakes is not developed, this would be detrimental to the green infrastructure.

#### (v) Retail Choice

- The S106 contributions would fund a town centre manager to support the town centres for Rushden and other local towns. This would help to ensure that they are regenerated (rather than jeopardised) by the Rushden Lakes development.

- When Corby built its new Willow Place, we did not complain. When Northampton announced its new development (there have been many) we did not object. When Kettering built its new restaurant quarter and expanded its out of town retail parks, we did not object. It's progress.
- Rushden town centre is in decline. Until relatively recently, there were large independent shops which attracted customers from surrounding villages and towns. There are now no similar shops to encourage people to visit Rushden.
- There is already a Waitrose, Lidl and Wickes DIY store on the other side of the A45, all of which are well established retail outlets. The proposed development would therefore be well placed near to existing local amenities but massively enhancing what we have in Rushden.
- The face of Rushden is changing, there are people now living in Rushden who have money to spend and are looking for places to shop and invest locally. I find my opportunities to do this are limited. As it stands, if I want to go shopping then I'm looking at least a 15-25 minute drive to local towns such as Northampton, Kettering, Bedford or perhaps Milton Keynes.
- As a manager of a business in the High Street of Rushden and looking to establish a new business project in the area, I have a different insight to others. Many have said it would be bad for us on the High Street as it will take trade away but I don't believe this is true. There are many of these new retail leisure parks popping up all over the country and they pull me even if I have to drive for an hour and a half. But while there we always pop in to the local town to see if there is anything different. I believe the same will happen with Rushden Lakes.
- Many elderly people are feeling trapped and let down. With no immediate facilities within Rushden and Higham Ferrers, it is difficult for them to keep active and maintain their independence. Having a local shopping complex, easily accessible, would enable them to lead a better social and active life.
- LXB has offered to provide a bus service to get to people from Rushden/Higham. LXB would also pay over £1million to provide a pedestrian and cycle footbridge over the A45 to reduce further car usage. In addition, LXB would use a lot of other energy savings on the site, so Rushden Lakes would certainly be sustainable.
- The sequential test has shown that there are no retail sites appropriate. However, in addition there are no in-town lakes in this area, not in Rushden Northampton or Kettering. The basis of Rushden Lakes is that it is a new concept of a leisure/lake complex with shops. Where else but next to a lake could this be built?
- I work for the ONS and have in June 2012 surveyed the whole of Rushden and Higham Ferrers for the Consumer Price Index. Men's clothing is particularly difficult to find with no men's footwear or formal wear currently available. Quality clothing shops are non-existent, just three cheap clothing stores. Restaurants and leisure facilities are very limited.....Whilst collecting prices, several other retailers express the worry of being able to carry on and wish that the new development would bring new customers and revitalisation to the area.

(vi) Regenerating a brownfield site

- Skew Bridge was once at the heart of Rushden. It housed a local hotel and restaurant. The site also enjoyed water sport activities. I used to work there many years ago and was always involved in the organised activities that were offered for families. Since the building was destroyed, the site has remained desolate with people using it for 'off road' biking or 'fly' tipping. What a shame to see such a beautiful piece of land go to waste.
- The truth is that this brownfield site is in a terrible state. Part of it is used by illegal motorcyclists with obvious intrusion and disturbance to wildlife. It is also subject to a lot of fly tipping. This application would open up the lakes area to the public on a managed basis, whilst protecting the heronry and other important wildlife areas. It would be a very good tourist attraction, allowing people to learn about their surroundings.

- 7.21 Objections to the proposal were submitted in relation to a various matters. Mr Michael Ellis MP and Mr Brian Binley MP submitted a joint letter in support of the call-in procedure which outlined their concerns on the matter. Mr Ellis submitted a separate letter of objection in which he argued that the proposal would have a profoundly negative impact upon existing town centres in the region, particularly Northampton. Reference was made to national policy on town centres the Local Plans for North Northamptonshire and West Northamptonshire. He pointed out that a substantial amount of public and private sector investment has been made in order to pave the way for substantial redevelopment of Northampton town centre. It is argued that all of this would be put in jeopardy if the Rushden Lakes scheme is approved. Similar impacts are anticipated in Kettering, Corby, Wellingborough and Bedford. He stated that Rushden Lakes would be located in an unsustainable location contrary to national and local policy. Similar arguments were submitted by Cllr David Mackintosh Leader of NBC.
- 7.22 Other objections at the application stage were maintained. Helical (Corby) Ltd again asked that the application be refused on the grounds that it failed the sequential test and also would have a significant adverse impact on designated town centres, as well as prejudicing significant investment in these centres.
- 7.23 Ropemaker Properties, the owners of Riverside Retail Park (RRP) in Northampton, also maintained its objection. Ropemaker Properties was granted Rule 6 status under the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 but did not appear at the Inquiry. A proof of evidence was submitted on behalf of Ropemaker Properties and this is document RM2. The proof expands upon the observations and recommendations made previously regarding the proposals. It assesses the proposals against the current planning policy context and the most up to date evidence available, including additional evidence relating to the relationship between RRP and Northampton Town Centre.

7.24 Overall Ropemaker Properties is firmly of the view that the SoS should refuse to grant planning permission for the proposals. It is argued that there is robust evidence which demonstrates that the proposals would have a significant adverse impact on Northampton Town Centre and its surrounding area and the failure of the proposals to satisfy the sequential test, would outweigh the benefits of the proposals. In summary the main points are:

- the extant outline permission allowing development at the site for a similar amount of floorspace as the proposals is not comparable to the proposals in that it is not a retail-led development and would not have similar effects or impacts in terms of Rushden's contribution within its local or sub-regional area.
- the proposals comprise circa 26,000 sq m net sales area (excluding the plants area to the garden centre which would increase this figure to over 30,000 sq m net sales). This is larger than the comparison sales area of all the town centres of the Growth Towns.
- the likely tenants of the Rushden Lakes proposal include Marks and Spencer, Debenhams, Outfit (which includes the Topshop, Dorothy Perkins, Oasis, Wallis, Burton and Miss Selfridge brands), H&M and River Island amongst others. Many of these retailers are not currently represented in the Growth Towns.
- in view of the characteristics of the proposals, it would function as a higher order centre above the Venuescores of the Growth Towns and draw trade from a large catchment given its location on the strategic road network and evidenced by RRP's draw from areas to the east.
- the existing draw of trade to RRP from the east benefits Northampton as a whole as people tend to link trips to RRP with other facilities in the town centre and in Northampton more widely. RRP therefore attracts custom (that may otherwise be attracted to Milton Keynes) allowing the potential for linked trips into Northampton town centre.
- the proposals would develop a 'step change' in retail offer in a location that is not central within the North Northamptonshire sub region and not capable of serving all of it; or consistent with other development strategies and proposals.
- there is no retail need for the scale and form of the Rushden Lakes proposals.
- limited flexibility on scale and format has been shown by the Applicant in applying the sequential approach, pursuant to paragraph 24 of the NPPF.
- RRP is a sequentially preferable site capable of being redeveloped to accommodate the proposals that would provide greater potential to generate linked trips to Northampton town centre and other facilities in Northampton.
- the impacts on Northampton town centre resulting from the proposals is so substantial that it would prejudice the delivery of the investment required to support the proposed step change in retail provision to allow Northampton to compete more effectively with Milton Keynes and provide for a more sustainable pattern of shopping.

- 7.25 It is concluded that the proposals would have a significant adverse impact on existing comparison goods shopping in the region. It is claimed that the cumulative adverse impacts of the proposals are so significantly adverse that they would outweigh any benefits of the scheme. The proposals cannot therefore be regarded as sustainable development and are therefore contrary to the NPPF and should be refused planning permission.
- 7.26 PR Kettering Limited (PRK) maintained its objection from the planning application stage. PRK was granted Rule 6 status under the Town and Country Planning (Inquiries Procedure) (England) Rules 2000 but did not appear at the Inquiry. A proof of evidence was submitted on behalf of PRK and this is document PRK2. PRK is the owner of the Newlands Shopping Centre located in Kettering. PRK contends that the proposal should be refused planning permission on the basis that there would be negative implications for the viability of the Newlands Shopping Centre and the vitality of the Kettering Town Centre.
- 7.27 It is argued that PRK has invested heavily in the Newlands Shopping Centre and in the Kettering Town Centre. PRK is also in the process of adding significant further investment for improvements to both the Newlands Shopping Centre and Kettering as a whole. It is claimed that the delivery of this significant investment by PRK would be at risk if the proposal is allowed to proceed, as the proposal would have a significant impact on occupier demand in the Newlands Shopping Centre and the wider Kettering Town centre. The additional major benefits this inward investment would have brought to the vitality of the Kettering Town Centre would also be lost.
- 7.28 It is stated that the proposed level of new retail development comprised within the application proposal would comprise as much retail development as currently exists in the entirety of Kettering Town Centre. It would displace existing jobs and spending would be drawn away from Kettering Town Centre rather than creating any new jobs or spending. The proposal would be contrary to local planning policy and the NNJCS. Furthermore, the proposal would be contrary to policies in the NPPF. It is stated that the Applicant has not satisfied the sequential test and there has been a failure to undertake a satisfactory impact assessment in relation to the proposal.
- 7.29 Bedford Borough Council maintained its objection to the proposal. It is argued that the assessment of sequentially preferable sites has failed to consider the availability of suitable alternatives within Bedford town centre. It is contended that Bedford town centre is within the catchment area that would be served by the development and there are sequentially preferable sites within the town centre which have not been properly assessed by the Applicant or ENC. Consequently, ENC's consideration of the application has failed to follow the sequential approach set out within the NPPF.

- 7.30 It is stated that the assessment of the significance and impact of the proposed development is flawed in concluding that the proposal would purely provide a locationally specific need to serve the requirements of Rushden. It is considered that the proposal is of sub regional significance and would have significant impact on Bedford town centre, contrary to the aims of the NPPF, Bedford's adopted Core Strategy & Rural Issues Plan and Bedford Town Centre Area Action Plan. It is concluded that planning permission should not be granted for the proposal.

## 8. INSPECTOR'S CONCLUSIONS

*[In this section the numbers in superscript refer to the preceding paragraphs.]*

- 8.1 Points (a) to (f) set out at paragraph 1.2 above relate to the matters about which the SoS needs to be informed and cover the main considerations of prime significance in this case. The conclusions that follow are structured to address each of the points (a) to (d) in turn. I then proceed to examine conditions in point (e) that might be imposed should the SoS determine that planning permission should be granted and then the issue of planning obligations under S106 of the 1990 Act in point (h) before giving my overall conclusion and recommendation <sup>[1.2]</sup>.
- 8.2 At the outset it is important for the SoS to note that planning permission on the whole of the previously developed land, was first granted in 2002 for a business park - 51,000m<sup>2</sup> of business use, 3,600m<sup>2</sup> of commercial and leisure use with some ancillary retail, a 175 bed hotel plus a 100 boat marina and lock/weir. This, and succeeding permissions, included a pedestrian and cycle bridge across the A45, and a condition requiring an Access and Management Plan for the ski lake and its immediate environs. This permission remains extant, following approval of an extension of time application in 2012 <sup>[1.12]</sup>.
- 8.3 It is also important at the outset to be clear what the proposed scheme is and what it is not. The objectors claim that Rushden Lakes would be "half the size of Northampton" but this seriously misconstrues the position. It would be only 21% of the comparison goods floorspace of greater Northampton. Moreover, the evidence makes clear the mixed use composition of the proposal. The proposal is for a mixed retail, recreation and leisure scheme with a unique range of uses. It seeks (a) detailed approval for the erection of a home and garden centre, retail units, drive thru restaurant, gatehouse, lakeside visitor centre, restaurants and boathouse, together with proposals for access; and (b) outline approval for a hotel, crèche and leisure club plus removal of ski slope and associated site levelling, landscaping, habitat management and improvement works, vehicular access and servicing proposals together with the provision of car and cycle parking and a bus stop. <sup>[1.13, 2.1, 5.30-5.37, 5.116]</sup>.

- 8.4 I deal first with compliance with the development plan and sustainable development principles.

***Issue (a) the extent to which the proposed development is consistent with the development plan for the area and would deliver a sustainable form of development.***

- 8.5 The statutory development plan includes the North Northamptonshire Core Spatial Strategy 2008 (NNJCS), which largely sets strategic - rather than development management - policies for the North Northamptonshire Area. The East Northampton Local Plan (1996) (LP) is the most recent site-specific development plan document for the application site and policies were saved by a Direction made by the SoS on 21 September 2007. The Minerals and Waste Core Strategy DPD identifies the application site as a "Sand and gravel safeguarding area" (Policy CS10). However, given that the principle of development on the site is already established through earlier consents, the sites current designation as a Minerals Safeguarding Area under Policy CS10 is less relevant in this case <sup>[1.26-1.33]</sup>.
- 8.6 With regard to emerging plans, the NNJCS has been under review since 2009. An initial "options and issues" consultation on the Emerging Draft NNJCS 2011-2031 was undertaken in Summer 2012 and responses to this initial consultation are being considered by the 4 participating LPAs. The final options have not been agreed by the LPAs and there is no date set for formal statutory consultation on the plan. The Emerging Draft NNJCS therefore has little weight. The ENC's emerging Four Towns Plan will also form a part of the development plan but at this early stage little weight can be afforded to it <sup>[1.34-1.35]</sup>.
- 8.7 The parties agree in the SoCG that the relevant policies in the NNJCS are: Policy 1: Strengthening the Network of Settlements; Policy 5: Green Infrastructure; Policy 8: Delivering Economic Prosperity; Policy 11: Distribution of Jobs; Policy 12: Distribution of Retail Development and Policy 13: General Sustainable Development Principles <sup>[1.26]</sup>.
- 8.8 The majority of the LP policies are now superseded and replaced by policies in the NNJCS. No relevant policies in respect of the Rushden Lakes site have been saved. However, the adopted Proposals Map identifies much of the site as existing commitments (permissions). It identifies the majority of the developable part of the site as having extant commitments for industrial and commercial uses (1.3ha, east of the former ski slope) and recreation and leisure uses (5.5 ha, west of the former ski slope), including bowling alley, sports hall, multi-screen cinema and fast food outlet. The Applicant argues that the proposals are consistent with the development plan but that those policies and in particular Policy 12, are out of date and consequently the application falls to be determined against the terms of the NPPF <sup>[2.7, 3.7]</sup>.

- 8.9 Although both Rushden and the application site are within the “Urban Core” shown on the Key Diagram, the strategic level NNJCS, adopted in 2008, does not anticipate retail-led development of this scale at Rushden (Policy 12) and has a Three Towns settlement hierarchy based on the Growth Towns of Corby, Kettering and Wellingborough with Rushden sitting in the tier below as a Smaller Town (Policy 1). Under Policy 10 the Growth Towns take the lion’s share of the new housing requirement whereas more modest growth (9.8%) is anticipated at the Smaller Towns. Policy 11 adopts a similar approach to employment. The proposals therefore do not accord with these elements of the development plan. Plainly the application is not in accordance with the NNJCS spatial strategy, particularly Policies 1 and 12. At 25,818m<sup>2</sup> (net) A Class uses, the proposal significantly exceeds the amount of planned growth for any of the Growth Towns in Policy 12 [2.9, 3.7, 4.13-4.14].
- 8.10 However, there are other parts of the development plan and the NNJCS in particular, with which the application is wholly in accordance, including The Vision for North Northamptonshire. The proposed development would assist greatly in meeting the vision by delivering jobs for which there is a step-change requirement; delivering much needed investment in services and facilities which would assist in making North Northamptonshire a “*more self sufficient area*” and better able, in particular, to meet the needs of the growing population in the south of North Northamptonshire; regenerating Rushden, a town of the urban core and the enhancement of the valuable environmental resource that is Rushden Lakes and the Nene Valley [3.8].
- 8.11 There is no dispute that a founding principle of the NNJCS is to increase the self sufficiency of North Northamptonshire. This is clear from the NNJCS itself – its vision, objectives and key spatial themes as well as Policy 12. The NNJCS Inspector endorsed and understood the importance of these objectives but recognised in his report at paragraph 23 a risk that the preferred strategy of the plan may not achieve them – hence the addition of paragraph 3.11 to the NNJCS in order for it to be found sound. That paragraph, and Policy 12, expressly provide for other applications, such as Rushden Lakes to be considered on their merits against tests which recognise the importance of retaining expenditure in North Northamptonshire [2.9].
- 8.12 The proposals accord with most of the objectives for realising the vision notably 1, 2, 3, 5, 6, 7, 8 and 9. These objectives are translated into the policies and reflected within them. For example, Policy 5 which relates to Green Infrastructure finds its expression in the access improvements promoted in the development with their leisure and tourism benefits. The proposals are in broad compliance with other policies in the NNJCS, notably Policies 5, 8 and 13 as set out in the SoCG and in the RTC. The LAC claims that the proposals are not in accord with Policy 13 of the NNJCS and in particular criteria (c) and (e). However, the proposals would accord with the majority of the criteria in this policy in terms of meeting needs, raising

standards and protecting assets so there is broad compliance with Policy 13 [3.9, 4.16-4.18].

- 8.13 In reaching a judgment on what the development plan indicates when considering a planning application, a decision-maker must have regard to the development plan as a whole. Despite the level of development plan support for the proposed development, it is clear that the Rushden Lakes proposal must be judged as being contrary to the development plan as a whole, mainly because Policy 12 is regarded as the principal policy relating to this retail-led development. However, the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions. In assessing and determining development proposals, decision makers have to apply the presumption in favour of sustainable development. The development plan is now to be seen through the prism of the NPPF [3.10].
- 8.14 The Applicant and ENC argue that relevant policies in the development plan are out-of-date and that adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits. The “relevant policies” which are claimed to be out of date are in the main those policies relied on by the objectors in opposing the proposed development: (i) Policy 1 of the NNJCS – the objectors’ case is put on the basis that the adopted plan’s settlement hierarchy will be disturbed by treating Rushden as the equivalent of a Growth Town; (ii) Policy 12 of the NNJCS – the objections include that the scale of retail development is not identified in the adopted plan and (iii) the use for which the application site is identified as a commitment in the LP [2.7, 3.12].
- 8.15 These points are examined in turn. Policy 1 seeks to strengthen the network of settlements within North Northamptonshire as a whole. Development is to be principally directed towards the urban core (in which the application site is situated). While the focus is to be on the Three Growth Towns, Rushden is to be a secondary focal point. While the regeneration of town centres is emphasised, the aim is to “provide jobs and services, deliver economic prosperity and support self sufficiency of the network of centres.” This policy is plainly out of date for the following reasons [3.14, 4.5-4.14, 5.96].
- 8.16 In bringing forward the NNJCS in 2005-2008, the NNJPU considered including Rushden as a Growth Town thus having a Four Towns strategy rather than a Three Towns strategy. The Four Towns strategy was discounted, not because it would have adverse consequences, but simply because there was doubt over the deliverability of the Rushden element of such a strategy. At that time growth in Rushden of any material scale was judged to be “difficult to achieve”. That, as the current application now demonstrates, is evidently no longer the case [3.15, 4.5-4.14].
- 8.17 The members of the NNJPU recognise the contribution that Rushden is now able to make to growth in North Northamptonshire for the benefit of local

residents. The NNJPU is now promoting a review of the NNJCS in which it is agreed by the constituent LPAs that Rushden should be the fourth Growth Town. While KBC expressed some initial reservation, it now must be taken as accepting Rushden's enhanced role as a Growth Town; if KBC did not, it could not remain a member of the NNJPU in which case there would be no NNJCS review to bring forward <sup>[2.16, 3.16, 4.5-4.14]</sup>.

- 8.18 Rushden is, alongside other settlements nearby, a post-industrial town still recovering from the impact of the loss of the boot and shoe trade that once underpinned the local economy. It craves investment and growth to enhance its fortunes which is the motivation for its enhanced status in the emerging plan. The only outstanding issue to resolve is the effect of increased retail development at Rushden Lakes as proposed by LXB in this planning application. Once that is established as a result of the decision on this application, the NNJCS review would proceed either with or without the proposed development at Rushden Lakes <sup>[3.16, 4.5-4.14]</sup>.
- 8.19 The agreement within the NNJPU that Rushden should be a Growth Town is founded on a "robust evidence base and rationale." This is not a matter of political expediency. Two members of the LAC who appeared at the Inquiry thus have no issue in principle to growth at Rushden. The other member of the LAC, NBC, did not object in principle either. The WNJPU, of which NBC is a member, in its consultation response, positively supported the spatial strategy being promoted by its neighbours in the NNJPU and made no adverse comment in respect of draft Policy 10 which expressly confirms Growth Town status for Rushden. The LAC's concerns are not matters of principle, but rather, those of detail: if there is no objectionable adverse impact on their town centres, there can be no objection by the LAC to growth in Rushden. This concern is what was examined at this Inquiry <sup>[3.17-3.18, 4.5-4.14]</sup>.
- 8.20 Rushden itself is most anxious to support the Government's growth agenda in full measure. The NNJPU found that "there are clear local aspirations for regeneration, population expansion, employment and retail offers and to attract greater investment in infrastructure." Legal & General has not to date responded to the review of the NNJCS. To the extent that it might object in the future, such objection could only be on the basis of an alleged adverse impact on the Grosvenor Centre which has been examined at this Inquiry <sup>[3.19-3.20, 5.96-5.98]</sup>.
- 8.21 Although the Emerging Draft NNJCS has not yet reached a stage where its draft policies can be accorded significant weight, the principle of Rushden's position as a Growth Town is evidence-based and largely unopposed. It is therefore a material consideration to which the SoS can and should give significant weight. The quantum and location of retail development is, in this application, a matter of detail which will be considered in issue (b) below. It is noteworthy that the issue of the quantum of retail and its relationship to national planning policy has enjoyed far greater scrutiny through this Inquiry process than would be likely in a Local Plan Public Examination <sup>[2.16, 3.21, 4.5-4.14]</sup>.

- 8.22 Policy 12 is also out of date because it does not reflect up-to-date policy in the NPPF. The NPPF at [23], 6<sup>th</sup> bullet provides that it is important that needs for retail development “*are met in full and are not compromised by limited site availability*” and the LPA, in plan-making, is required to “*ensure a sufficient supply of suitable sites*”. How to meet this requirement, in plan-making, is set out in the 7<sup>th</sup> bullet by allocating sites and setting policies [2.14, 3.22-3.23, 4.5-4.14, 5.96-5.98].
- 8.23 It is self-evident that because site availability and market deliverability at Rushden was doubted at the time of the evolution and adoption of the NNJCS, Rushden was not expressly identified to receive a floorspace allocation. Further, at that time national planning policy focused on meeting quantitative need not qualitative need. In addition, in so far as the need for sites for retail development in the south of North Northamptonshire were due to be met on sites to be allocated by a later DPD in Wellingborough (the closest Growth Town to Rushden to be specifically identified in Policy 12 with a requirement for additional comparison goods floorspace), those sites are no longer able or available to accommodate the scale anticipated. Indeed the Wellingborough TCAAP is out of date because the retail proposals can no longer be realised in the light of the changed intentions of Tresham College [2.37, 3.24, 4.5-4.14, 5.96-5.98].
- 8.24 Policy 12 of the NNJCS also included a decision-making element to be applied in circumstances including the determination of the instant planning application. Paragraph 3 of Policy 12 refers to “*identified need*” and this is inconsistent with the NPPF because the latter does not require Applicants to show a need for retail development. Moreover, paragraph 4 of Policy 12 states that “*the scale of retail development should be appropriate*” but there is not a scale test in the NPPF [2.14, 3.25].
- 8.25 The sequential test in the 3<sup>rd</sup> paragraph of Policy 12 is itself not in accordance with that now found in NPPF [24]. That in Policy 12 provides for a cascade of (1) defined town centres, (2) well-connected edge of centre, (3) district and local centres, and (4) existing retail areas that are well served by a choice of means of transport. The NPPF’s cascade is (1) town centres; (2) edge of centre; and (3) out of centre. At each of stages (2) and (3) where more than one site is available, a mechanism for selecting the preferred site is set out. The sequential test in Policy 12 does not acknowledge that planning permission can be granted for out of centre sites whereas the NPPF does [24], provided the sequential test is satisfied. The NPPF sequential test is a marked change from Policy 12 which must now be regarded as out of date [3.25, 4.23-4.32].
- 8.26 The impact test in NPPF [27] asks whether there are likely to be “*significant*” adverse impacts. Policy 12 is not consistent with the NPPF because it sets a lower threshold and merely focuses upon adverse impact per se. Policy 12 is to be given weight according to its degree of consistency with the NPPF [215] and it is clear that the NPPF should prevail in the case of conflict [2.14].

- 8.27 Policy 12 required the delivery of specified minimum net increases (above then existing commitments) in comparison goods floorspace in the three named Growth Towns. To date, 12 years into the plan period and 8 years before its end point, very little progress has been made. Indeed in Corby, the position has gone backwards as the Evolution Corby commitment is stalled. In Wellingborough, sites once relied on are not available. The NPPF requires plans to be viable and deliverable [173]; any plan policy which promotes or relies on development which can no longer be delivered cannot sensibly be regarded as being up-to-date [2.36-2.38, 3.27, 4.5-4.42].
- 8.28 The NNJCS does not contain a presumption in favour of sustainable development; the plan-making part of the presumption NPPF [14] is that *"Local Plans should meet objectively assessed needs with sufficient flexibility to adapt to rapid change, unless ...."*; the 3<sup>rd</sup> core planning principle in the NPPF [17] is that: *"Every effort should be made objectively to identify and then meet the ....development needs of an area, and respond positively to wider opportunities for growth"* and the NPPF [23 – 6<sup>th</sup> bullet], does not allow *"limited site availability"* as an excuse for failing to meet retail needs *"in full"* [2.14].
- 8.29 All of these are wholly new statements of national policy for plan-making which simply did not exist at the time when the NNJCS was drawn up. It is true that the NNJCS was found to be *"sound"* by the Inspector who examined it but it was found to be sound on the basis of a very different set of national policy imperatives from those newly-stated in the NPPF. The NPPF calls for a different, positive approach to plan making, setting out to identify and then meet needs. Moreover, plans which have been prepared without this mind-set are not going to be consistent with the NPPF. The NNJPU has *"self-certified"* that Policy 12 and the NNJCS are up-to-date. However, in the light of these reasons, that conclusion is superficial and plainly wrong [2.14, 4.5-4.42, 5.96-5.98].
- 8.30 Additionally, the NNJCS is out of date because the strategy of Policy 12 and in wider terms the NNJCS as a whole has failed to deliver the growth necessary to enhance the self-sufficiency of the area. Mr Burnett explained that over half way through the NNJCS period (2004 to 2021) no town centre floorspace had been built in any of the three Growth Towns as against the "minimum" 51,500 sq m net increases set out in Policy 12 and paragraph 3.101 of the NNJCS to achieve a *"step-change"* (paragraph 3.101) *"in order to increase trade retention in North Northamptonshire"* (paragraph 3.102). In fact what has happened is that all additional floorspace has been out of centre especially at Kettering, and to a lesser extent, Corby. The nearest of the three Growth Towns to Rushden Lakes, Wellingborough, has had no additional floorspace whether in, edge or out of centre [2.15, 4.5-4.42, 5.96-5.98].
- 8.31 In so far as the adopted LP contains/relies on the allocation of the application site as an employment commitment it too is not up to date because it cannot and will not be delivered. The NPPF promotes the flexible use of such sites where it is clear where there is no reasonable prospect of delivery, and

reflects the fact that jobs in the retail and leisure sectors can make an important contribution to the local economy. Indeed there is a similar provision in relation to the re-use of employment sites no longer considered suitable for the purpose in the NNJCS at Policy 11 (f) [3.28, 4.5-4.42].

- 8.32 Finally, there is no room in this case for a prematurity argument. The key policies and provisions in the adopted development plan are clearly out-of-date. That being the case, the provisions of NPPF [14] “decision taking” apply: planning permission should be granted unless any adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole. It should also be noted that the NNJPU has not been able to agree a retail strategy for the emerging NNJCS and that an impasse has been reached. No one at the Inquiry has suggested that the proposed development is not deliverable [2.19].
- 8.33 There is no possibility of these strategic issues being resolved via an Examination of a plan because there is a fundamental stumbling block – the constituent authorities of the NNJPU cannot agree on the contents of a plan to submit for Examination. This means that it is unrealistic to contend that the issue of whether Rushden Lakes should proceed is one that can and should and must only be determined as part of the plan-making process. Two of the four constituent authorities (ENC and WBC) favour the idea while the other two (KBC and CBC) do not. It falls to the SoS to break the deadlock and once he has then the new NNJCS can be progressed taking on board his decision. There is no other option [2.20, 4.39-4.42].
- 8.34 In relation to issue (a) I conclude that while the proposal would accord with a number of development plan policies and objectives it would not wholly accord with the NNJCS spatial strategy, particularly Policies 1 and 12 and therefore would not be in accordance with the development plan as a whole. At 25,818m<sup>2</sup> (net) A Class uses, the proposal would significantly exceed the amount of planned growth for any of the Growth Towns in Policy 12. At first blush that is a strong pointer to the proposal’s unsustainability. However, the key policies and provisions in the adopted development plan are clearly out-of-date. The proposal would deliver “change for the better” and in a way that ensures a better life for the people of Rushden and North Northamptonshire that does not prejudice the lives of future generations. Applying paragraphs 18 to 219 of the NPPF as a whole, therefore, the proposed development, in practice, amounts to sustainable development across all three dimensions, is the correct local solution achieving very positive improvements in the quality of the built and natural environment and local people’s quality of life. It is clear beyond doubt that this too is the view of local people themselves. The proposal has to be assessed in the context of the other main issues which have been identified. Further consideration of the planning balance and the presumption in favour of sustainable development will be returned to once sections 2, 4 and 11 of the NPPF have been considered under the remaining issues identified by the SoS [3.11, 4.20, 4.29, 5.95, 6.1-7.30].

***Issue (b) the extent to which the proposed development accords with the NPPF, in particular Section 2, which relates to ensuring the vitality of town centres.***

- 8.35 It has already been noted that Section 2 of the NPPF requires that needs for retail uses are “*met in full*” and are not “*compromised by limited site availability*”. This applies with particular force in circumstances where there is a deliberate development plan policy support for a drive to further self-sufficiency by clawing back expenditure that is currently leaking out of North Northamptonshire <sup>[3.32]</sup>.
- 8.36 The NPPF [24, 26 and 27] sets out but two tests at the decision-making stage: a sequential test and an impact test. The whole of NPPF [23] deals explicitly and exclusively with “*planning policies*” and what should happen: “*In drawing up Local Plans...*” Although highly relevant to determining whether the NNJCS is up to date, the NPPF [23] does not purport to, and does not set, any tests for decision-taking. The paragraph stresses the “town centres first” approach to plan-making *but* when it comes to making a decision on a planning application then one has to turn to NPPF [24, 26 and 27] which deal explicitly with assessing applications. In other words, if a proposal meets these two tests then necessarily it is consistent with the town centres first approach <sup>[2.22]</sup>.
- 8.37 It is clear that there cannot be a read across from the plan making NPPF [23] some form of additional test for decision-taking that a proposal must honour the hierarchy of town centres still less some form of test of “appropriate scale” which is not mentioned in NPPF [23]. Plainly, if the two tests are passed an application will be consistent with the NPPF <sup>[2.23]</sup>.
- 8.38 The objectors seem bent on re-introducing additional need and scale tests; such an approach is misconceived. With regards to scale, the approach in the NPPF is clearly not to limit growth by reference to a separate test of scale. If an individual proposal is unacceptably large then it would be likely to fail the impact test and thus be harmful. If the scale of a proposal is not such as to give rise to harmful impacts, then the intention is clearly that it should not be refused simply on the grounds of scale. Scale in itself is not relevant <sup>[2.23-2.27, 3.33, 5.42-5.60]</sup>.
- 8.39 Legal & General suggests that the sequential test should have regard to the hierarchy of settlements. However, for reasons already explained, the adopted settlement hierarchy is itself out of date certainly as it applies to Rushden. Simply placing the old policy from PPS4 alongside the up-to-date policy in the NPPF demonstrates that these contentions are misleading. The notion of a hierarchy of town centres does not feature in the sequential or impact tests <sup>[2.28, 3.33, 5.42-5.60]</sup>.
- 8.40 In terms of need, if there is no quantitative local need or capacity for a development, such that it has the effect of drawing in significant levels of

trade from a wide catchment area, any harm that results to neighbouring centres would manifest itself under the impact test; there is no requirement for a separate free-standing test of need and none is included in the NPPF [3.34, 5.42- 5.60].

- 8.41 Despite the passing of the free-standing need and scale tests, objectors seek to maintain them by reference to the PG. Indeed Mr Jones sought to justify this approach by explaining that in his view when national policy is abandoned by the SoS, the good practice adopted by practitioners in the furtherance of the superseded policy should nevertheless survive as a material consideration in its own right. Such an approach is wholly misconceived [3.35, 5.42- 5.60].
- 8.42 It is clear that the PG is only material where the policy in the NPPF reflects that in previous policy in PPS4. The PG was only ever intended as guidance and must not be read as mandatory rules. Bearing in mind the recent Telford case it must be approached with caution. Although the PG is still extant, it too may have been revoked at the time of the SoS's decision. To continue to have regard to it in these circumstances would be wholly perverse, especially where it is being deployed to attempt to resurrect through old guidance policy which has now deceased [2.24, 3.35, 4.52].

### Sequential Test

- 8.43 The sequential test relevant to decision-taking is found at NPPF [24]. From the evidence that is before me the application site is out of centre, and the test would be satisfied if "suitable [in or edge of centre] sites are not available". There are differences of approach between the Applicant, as against the objectors in relation to the concept of "suitable" sites in the sequential test – in essence, "suitable for what" is the question which arises. The answer to this question of law is suitable for the development proposed by the Applicant. The Legal & General submissions in relation to the legal construction of "suitable" were somewhat opaque. It is, of course, correct that the meaning of the term should be construed in its context. That involves consideration of the question of "flexibility" which is referred to in the last sentence of NPPF [24]. However, that the terms are to be construed (and therefore applied) in the real world of real development is beyond argument. The real world is the context [2.61, 3.35-3.36, 4.44-4.74, 5.59-5.80].
- 8.44 The Supreme Court has told us in *Dundee* what "suitable" means and it has expressly rejected the approach advocated by the LAC and Legal & General that the concept relates to need and/or identified deficiencies in retail provision in the area in question; and it has expressly rejected the notion that "suitable" means that one should alter or reduce the proposal so as to fit onto an alternative site. The policy concerning the sequential approach as set out in the NPPF, and (to the extent that it is still relevant) the non-policy PG that accompanied PPS4, **must** be applied in a manner which complies with the legally binding case law on the meaning of the sequential approach. Plainly

the case in question (*Dundee*) is of seminal importance [2.63, 3.37, 4.44-4.74, 5.59-5.80].

- 8.45 In summary it establishes [a] that if a site is not suitable for the commercial requirements of the developer in question then it is not a suitable site for the purposes of the sequential approach; and [b] that in terms of the size of the alternative site, provided that the Applicant has demonstrated flexibility with regards to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site. These points although related are distinct. Although much was made of the fact that the *Dundee* case was a Scottish case the Supreme Court's decision applies in England (the Supreme Court is the Supreme Court for England too) as the High Court ruled in terms in the North Lincolnshire case at [61] and [62] in which it was read across and applied to the English sequential test then found in PPS4 [2.64, 3.37, 4.44-4.74, 5.59-5.80].
- 8.46 It is important to bear in mind that the sequential test as set out in NPPF [24] require **applications** for main town centre uses to be located in town centres and it then runs through the sequence, edge and then out-of-centre. This makes good the very simple point that what the sequential test seeks is to see whether *the application* i.e. what is proposed, can be accommodated on a town centre site. There is no suggestion here that the sequential test means to refer to anything other than the application proposal. So *Dundee* clearly applies to the NPPF [2.67, 4.44-4.74, 5.59-5.80].
- 8.47 A related submission concerns the differences between national policy as now stated in the NPPF and as previously stated in PPS4. The last sentence of NPPF [24] states that: *"Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale."* This contrasts strikingly with what was said previously in PPS4 in policy EC15.1 at (d) (iv) and 15.2 which contained an explicit requirement for disaggregation. There is no longer any such requirement stated in the NPPF. It is no answer to this to refer to the words "such as" in the last sentence of NPPF [24]. These words cannot be read so as to imply that a major, and extremely controversial, part of previously stated national policy lives on by implication in the NPPF. Had the Government intended to retain disaggregation as a requirement it would and should have explicitly stated this in the NPPF. If it had been intended to carry on with the requirement then all that would have been required is the addition of the word "disaggregation" at the end of NPPF [24] [2.68, 4.44-4.74, 5.59-5.80].
- 8.48 In similar vein, there is nothing in the sequential test as set out in NPPF [24] that states that the concept of "suitable" sites means suitable in terms of the scale of the nearest centre to the site in question and/or its place in the "hierarchy" of centres. The sequential test relates entirely to the application proposal and whether it can be accommodated e.g. on a town centre site. It is also important to be clear that NPPF [23] is entirely related to plan making and it has nothing to do with decision making [2.70, 5.65-5.72].

- 8.49 The NPPF requires developers to demonstrate flexibility on issues such as format and scale. No indication as to what degree of flexibility is required is contained in the NPPF. Such a requirement was previously contained in PPS4 and so any relevant PG advice continues to be material. PPS4 PG is of assistance: flexibility in a business model, use of multi level stores, flexible car parking requirements or arrangements, innovative servicing solutions and a willingness to depart from standard formats. No serious complaint by the LAC or by Legal & General has been made in respect of these matters <sup>[2.72-2.76, 3.38, 4.57, 5.73-5.75]</sup>.
- 8.50 In relation to flexibility the Applicant has demonstrated flexibility on format – a large part of the retail element of the scheme, namely the two anchors and the associated unit shops – anchors B8 and C1 and terraces B and C have full cover mezzanines thus reducing very significantly indeed the footprint of the development. Mr Burnett also referred to flexibility in relation to “scale” and explained that the Applicant could readily have placed far more retail floorspace on the site than has been proposed – in this way the floorspace of the development is reduced. It is clear from the layout that this is correct. A significant part of the scheme is taken up by the hotel and leisure club and various lakeside buildings i.e. by non-retail uses. It is absolutely clear that the whole scheme could not realistically be moved to another location <sup>[2.72]</sup>.
- 8.51 There is no requirement to disaggregate and there is also no realistic likelihood of even the M&S anchored Terrace being built in any of the town centres that have been referred to. It would also be inappropriate for a significant part of the Rushden Lakes scheme to be located in Northampton, which lies at the outer edge of the Rushden Lakes’ catchment, given the aspirations of self-containment for North Northamptonshire in terms of comparison goods choice and sustainability. Mr Goddard accepted that in the real world the scheme must be “*suitable to do the job*”. All that would happen were it feasible to imagine that Rushden Lakes, or even a significant part of it, could migrate to Northampton, is that this would simply consolidate and worsen the porous nature of North Northamptonshire. Further, it is illogical to suggest that shoppers at Rushden Lakes wanting somewhere to eat and drink should be directed to restaurants at Northampton and Kettering <sup>[2.73-2.74]</sup>.
- 8.52 There is a dispute between LXB/ENC and the LAC/Legal & General as to the appropriate area of search for sequentially superior sites. The NPPF is silent on this issue. Mr Nutter referred to the advice given in the PG. It is clear that the development at Rushden Lakes is promoted on the basis that the scale and quality of the existing comparison goods offer in the area is deficient, with the result that residents are forced to travel further afield in order for these needs to be met. The LAC and Legal & General respond by asserting that this is simply a reflection of the hierarchy of settlements and that the residents of south North Northamptonshire should be expected to travel to higher order centres for their higher order retail requirements. They raise the spectre of a coach and horses being driven through the planning system by every settlement justifying self-sufficiency (or at least inappropriate levels of

self-sufficiency) in terms of comparison goods shopping [2.79-2.80, 3.40, 4.58-4.63, 5.79-5.80].

- 8.53 This argument misses the point for several reasons. First, the aim of achieving greater self-sufficiency leading to claw back of expenditure has already been identified as part of the vision and objectives of the NNJCS. Nowhere does the NNJCS suggest that the needs of south North Northamptonshire should be met out of North Northamptonshire, for example in Northampton. Secondly, to suggest that a site within a centre or even town from which expenditure is to be clawed back is sequentially preferable would be self-evidently perverse. Thirdly, the south of North Northamptonshire has been identified as needing increased comparison goods floorspace in Policy 12 which is now unlikely to be delivered in Wellingborough as planned. Fourthly, Rushden is to become a Growth Town because previous delivery barriers to it doing so are no longer an obstacle. It is simply unrealistic, in the real world, to expect that significant numbers of residents of Rushden and the smaller settlements nearby would travel to the higher order centres, such as Northampton, by public transport [3.40]
- 8.54 For all these reasons I consider it is sensible to identify an area of search as encompassing zones 9 to 11 which is what Mr Nutter recommended. In addition, within that area of search, candidate sites must be able to accommodate development of sufficient critical mass to effectively claw back leaking expenditure. In the properly defined area of search the task is to identify sequentially preferable sites that are suitable and available which necessarily includes consideration of deliverability/viability [3.41, 4.58-4.63, 5.79-5.80].
- 8.55 In terms of availability, NPPF [24] simply asks whether town centre or edge of centre sites are "available". It does not ask whether such sites are likely to become available during the remainder of the plan period or over a period of some years. NBC has previously adopted the same interpretation of "available" as LXB do. Mr Lewin accepted that in the Committee report (24 July 2012) in relation to an application to redevelop the Royal Mail site at Barrack Road for a 5,000+ sq m Tesco superstore, the Council rejected Legal & General's objection that availability should have been looked at over a longer time frame. The site was not currently available and that was what was required by the sequential test. That Committee report established that there were no sequentially preferable sites in Northampton town centre for a development of a much smaller scale than Rushden Lakes, as recently as July 2012 – and there is no credible evidence that the position has changed. Similar inconsistent approaches were cited in relation to finding a site for the 99p store in Kettering and in relation to finding a site in Northampton to accommodate the Next proposals at Riverside Retail Park [2.77- 2.84, 3.42, 4.64-4.73, 5.79-5.80, 7.23-7.30].
- 8.56 LXB's case in response to the sites put forward by the objectors is summarised in Mr Burnett's evidence at section 4 and Appendix 7 of his proof. This commentary includes sites put forward by the LAC in Corby, Kettering, Northampton and Bedford. Many of the "sites" in question are tiny

and a lot are individual vacant unit shops. Mr Whiteley accepted that the sites put forward by the LAC are critically dependent upon disaggregating the scheme. I have already indicated that given that the NPPF does not contain a disaggregation requirement, the LAC's suggested sites are not suitable in NPPF terms. In any event, none of the suggested sites withstands scrutiny for the reasons given by Mr Burnett in his Appendix 7 [2.79-2.80 7.23-7.30].

8.57 Mr Nutter identifies two candidate sites in the defined area of search: Palmbest, Rushden and The Swansgate Centre, Wellingborough. Both are then discounted: Palmbest because it is simply not available or big enough (i.e. suitable) and The Swansgate Centre because it is not available and viable. None of Rushden Town Council, WBC or Town Councils or the local chambers of commerce suggests that either represent sequentially superior sites. Mr Nutter also discounts additional sites suggested by objectors within zones 9 to 11: the Peter Crisp site in Rushden because the available units are not suitable and the Trensham College and Market Square sites in Wellingborough because they are no longer available because in the case of the Trensham College site plans to vacate it have been abandoned (a material change in circumstances since its allocation in the AAP), and, in the case of the Market Square site, because it is too small on its own to be suitable. Moreover, as I saw on the site visit, the High Street/Jackson's Lane site would not provide a suitable alternative location to accommodate the Rushden Lakes proposal adopting reasonable flexibility [3.42, 4.58-4.63, 5.79-5.80].

8.58 In all circumstances the proper conclusion for the SoS to draw on the evidence is clear: there is no suitable and available sequentially superior site [3.43].

## Impact Test

8.59 There is broad agreement as to which town centres ought to be considered: Kettering, Corby and Wellingborough in the NNJCS area and Northampton in the WNJCS area. While there is likely to be some claw back from other centres (including for example Milton Keynes and Bedford) no one at the Inquiry has seriously suggested any such resulting impact would be significantly adverse. It is also important to remember that the impact test in the NPPF [26] applies only in respect of impact on centres. Therefore when considering the impact of claw back it is very important to ensure it is only claw back from centres that is considered and not, for example, that from out of centre retail parks. This is relevant in considering the alleged impact on Northampton. There are two impacts to consider: (i) on existing, committed and planned public and private investment and (ii) on town centre vitality and viability [3.44, 4.74-4.93, 5.81-5.94, 7.23-7.30].

### *(i) Existing, committed and planned public and private investment*

8.60 NPPF [26] requires an assessment of the impact (if any) of the proposal on "existing, committed and planned public and private investment" in a centre.

That requirement is quite straightforward, only investment that has been made, has been committed or is planned warrants consideration. There appears to be general agreement that “existing” investment is to be taken as a reference to investment that has already been made and that “committed” investment is that which is contractually committed (private) or subject to resolution (public). There is a dispute as to what is meant by “planned” investment. Paragraphs 7.17 - 7.21 of the PG provides guidance on what is meant by the “effect on planned investment” [2.85, 3.45-3.46, 4.74-4.93, 5.81-5.94].

- 8.61 Wellingborough can, in the circumstances, be dealt with shortly. There is no evidence that any planned investment is being actively progressed or that any plans have reached further than embryonic stage or that any developer is committed. While there are plans identified in the AAP these are unlikely to be progressed. There is no evidence that any are viable and as set out above the AAP is as Mr Nutter concluded out of date. There is no serious expression of any investor concern. The Wellingborough Chamber of Commerce and WBC are four-square behind the Rushden Lakes project [3.47, 4.74-4.93, 5.81-5.94].
- 8.62 With regard to Northampton, Legal & General appeared to suggest that its expenditure in relation to professional fees to date somehow constitutes “existing” investment deserving of consideration under the impact test. However, NPPF [26] refers only to “*investment in a centre*”, not to investment in the services of professional advisors. As for “committed” investment, Legal & General asserted that there is a contractual commitment to invest by virtue of the 2009 Development Agreement (DA) with NBC. However, the DA has a viability pre-condition and a continuing viability condition, the net effect of which is that unless Legal & General is satisfied that it makes sense to proceed then there is no “commitment” on Legal & General’s behalf to do anything at all [2.85, 5.81-5.94].
- 8.63 It is important to realise in relation to Northampton that there is bound to be some impact if the development plan strategy to claw back leaking expenditure is to succeed. The RTP West Northamptonshire Retail Study (2011) identified that Northampton was a healthy centre: “*Northampton is currently performing its role as the highest order centre in West Northamptonshire satisfactorily.*” Whilst it notes the need for improvement, involving the extension of the Grosvenor Centre, this recent objective appraisal does not bear out the descriptions of the objectors. Indeed, Mr Denness in his proof describes the centre in glowing terms [3.48, 4.74-4.93, 5.81-5.94].
- 8.64 Considering the evidence before the Inquiry against the matters identified in the PG paragraphs 7.17 to 7.21 the following conclusions can be drawn in respect of Northampton town centre:
- (i) The Grosvenor Centre redevelopment and extension is identified in the NCAAP. However, there is not even a sketch let alone a design of what is proposed. There is no planning application nor a planning consent. The plan

produced at the Inquiry reinforced that, far from there being a few (2%) unknown land-ownerships, there are a number of known owners not within the ownership or control of Legal & General who will have to be the subject of a CPO which is yet to be a glint in the eye of NBC. The Grosvenor Centre is yet to be conceived, let alone formed into an embryo [2.86-2.88, 3.49, 4.74-4.93, 5.81-5.94].

(ii) It cannot be said that the Grosvenor Centre “scheme” has been pro-actively progressed. Rushden Lakes is not the true cause of the delay in implementation. It is a self-imposed hiatus by Legal & General. Since 2000 Legal & General has announced various plans that have all come to nothing. This has been during the economic boom years as well as the lean years. Throughout the Grosvenor Centre “scheme” has had a supportive planning policy context: this is not of recent invention. It is clear that the “scheme” has stalled for reasons wholly unconnected with Rushden Lakes. Mr Jones confirmed that the hiatus was in actual fact prompted by two factors: the economy and development that had been permitted out of centre (the “noose” around Northampton town centre) that Legal & General has been protesting about in vain for many years [2.92, 3.49, 4.74-4.93, 5.81-5.94].

(iii) There is no evidence that Legal & General is actually contractually committed to do anything. There is evidence of a 2009 DA with NBC but no evidence as to what that DA requires or commits Legal & General to do. No witness for NBC or Legal & General has had sight of the DA [3.49].

(iv) There is no evidence that can be tested that any identified or embryonic redevelopment scheme at the Grosvenor Centre is viable. Legal & General asserts that Rushden Lakes would make the Grosvenor Centre redevelopment scheme unviable and that it would therefore not proceed. However, there is no evidence of any effect of the Rushden Lakes proposal on the viability of redevelopment at the Grosvenor Centre. All witnesses for Legal & General and the LAC have not themselves been privy to any viability discussions. Mr Denness has not been involved in or examined the viability of any options. Mr Jones confirmed that he had not seen any evidence that the Grosvenor Centre extension would be deliverable without Rushden Lakes and not with it [2.91, 3.49, 4.74-4.93, 5.81-5.94].

(v) Without a viable scheme there is no “planned” investment. As Mr Denness agreed, the highest Legal & General can put the case is that there is “*intended investment*.” But such inchoate aspirations do not fall within NPPF [26]. The argument that Rushden Lakes would prejudice the public sector investment in the new, relocated, bus station, which is an existing/committed investment, is not convincing either. The bus station has a whole series of worthwhile benefits in its own right and LXB is hardly responsible for huge amounts of taxpayers’ money having being spent on a new bus station without NBC having secured a commitment from Legal & General to deliver their side of the bargain [2.86, 4.74-4.93, 5.81-5.94].

(vi) The LAC relies on Legal & General's evidence. The LAC argues that the Grosvenor Centre would proceed if Rushden Lakes is refused permission and the Grosvenor Centre would not proceed if Rushden Lakes is granted planning permission. In order for the LAC and Legal & General's cases to stand up to analysis one would need to be satisfied that there is a viable redevelopment/extension scheme for the Grosvenor Centre in the absence of Rushden Lakes, which would become unviable were Rushden Lakes to proceed. In short, there can be no objection under NPPF [26] to a proposal which makes an already unviable scheme even more unviable <sup>[2.88]</sup>.

(vii) It is clear that Rushden Lakes did not feature in Legal & General's hearing statement to the CAAP EiP because Legal & General had assumed that Rushden Lakes would be refused by the LPA. Therefore, in August 2012, irrespective of Rushden Lakes, the Grosvenor Centre extension was not viable. Mr Jones agreed that viability had not improved since then and that he was not saying that Legal & General now had a viable scheme or even a less unviable one. He confirmed that even assuming Rushden Lakes is refused there would still not be a viable scheme. Consequently, the most that can be said is that by factoring Rushden Lakes into the equation Legal & General believes its own unviable scheme to be more unviable. That cannot be a significant adverse impact in NPPF [27] terms <sup>[2.93, 5.81-5.94]</sup>.

(viii) It is no answer to argue that "*in principle*" a viable scheme could be devised. NPPF [27] does not protect mere in principle intentions, but rather safeguards actual plans to invest. Interestingly, the PG suggests that for an "impact on investment" test to be met, that investment must be "actively progressing." By definition, Legal & General's self-imposed hiatus is the opposite of active progression. Legal & General's record speaks for itself. For 13 years Legal & General has failed to bring forward a viable scheme. Mr Goddard accepted that Legal & General has owned the Grosvenor Centre throughout the biggest economic boom that is likely to be seen for many years, but it had failed to bring forward a viable scheme. It would be foolish indeed to stop investment in an undoubtedly viable scheme at Rushden Lakes in order to protect a known-to-be unviable "scheme" at the Grosvenor Centre <sup>[2.94, 5.81-5.94]</sup>.

(ix) Legal & General argued that the NPPF does not require there to be a "scheme." However, that misses the point. In the absence of a scheme, there cannot be a viable scheme and consequently there cannot be "planned" or "committed" investment. At most there can be an *intention* to invest *if, as and when there ever is* a viable scheme but, that is not what the NPPF [26] is aimed at. Mr Lewin alluded to the fact that there had been some 21 previous iterations of the Grosvenor Centre scheme, but he had not seen a worked up scheme and nor had Mr Whiteley. Even at the current Inquiry no precise date could be given as to when a scheme might be forthcoming <sup>[2.98, 5.81-5.94]</sup>.

(x) The evidence before the Inquiry shows that there is no competition for the same retailers or market opportunity as between the Grosvenor Centre

and Rushden Lakes. The evidence shows that: (a) retailers adopt different formats in town centres and on retail parks; (b) retailers that do trade in both town centres and retail parks do so in close proximity, certainly within the same urban or catchment area; and (c) likely or target retailers for the Grosvenor Centre from Mr Whiteley has very limited overlap with those assumed by Mr Goddard to be likely at Rushden Lakes. Mr Chase confirmed that retailers look to plug gaps in their market profile and seek opportunities for *additional* representation [2.101, 3.49, 4.74-4.93, 5.81-5.94].

(xi) Thus, there is no evidence to substantiate that M&S would not have stores at both Rushden Lakes and Northampton town centre. Many retailers such as Next have multi representation in town centres and out of centre. Several retailers have distinct town centre and out of centre formats. Sophisticated retailers operate different format stores in town centres compared to retail parks. Next is a perfect example of this; witness their presence in Northampton town centre, at Riverside Retail Park and at Sixfields and St James Retail Park. The core catchment of all of these stores must overlap very substantially and yet the retailer is represented in these 4 locations, and is looking to expand in both the town centre and Riverside Retail Park. They are also represented in Kettering and Corby [2.101, 2103, 7.23-7.30].

(xii) No evidence from key anchors at the Grosvenor Centre has been called by the objectors. Instead reliance seems to be placed on the conclusion of the NCAAP Inspector. The second-hand evidence before him was not tested by cross examination. It is clear that the evidence on behalf of Legal & General did not paint a complete picture. It seems that in August 2012 Legal & General told the NCAAP Inspector in response to his specific concern that the Grosvenor Centre extension was viable. At that time the Rushden Lakes application was already submitted and there was no mention of it in their evidence. Furthermore, even after the resolution to grant Rushden Lakes, which occurred during the currency of the NCAAP examination, Legal & General did not say anything to the Inspector to gainsay the impression he was given that the Grosvenor Centre scheme was viable, nor did the Rushden Lakes resolution deter NBC from adopting the NCAAP. This was a very different picture from that painted by Mr Jones in his evidence to this Inquiry where he is clear that there is currently an examination of viability on foot and that there is no available conclusion there is any viable scheme [3.49, 5.79-5.80].

(xiii) At its height, the evidence on the effect of planned investment at the Grosvenor Centre amounts to a bare allegation from Legal & General that it will not proceed with any as yet unspecified plans for investment should Rushden Lakes be permitted. The degree of risk is not at all great given the track record of Legal & General's pronouncements set out above. NBC, as stated in the past, has the opportunity to progress with the redevelopment with another partner [3.49, 5.79-5.80].

(xiv) In respect of proposals identified in the NCAAP, there is no free-standing evidence of there being any adverse effect on investor confidence. The LAC's case in relation to Northampton town centre in respect of investor confidence stands or falls with Legal & General and the Grosvenor Centre [3.49, 4.74-4.93, 5.81-5.94].

- 8.65 In any event the claim that the resolution to grant planning permission at Rushden Lakes is the cause of the hiatus in the Grosvenor Centre project or the alleged crisis of confidence at Legal & General is not borne out by the evidence. ENC has set out the chronology of events from 17 May 2012 to 13 August 2012. I note that no blame for the hiatus is ascribed to the Rushden Lakes project. Other factors, such as the prevailing general economic conditions are mentioned. Mr Jones agreed that the NCAAP Inspector's report was based on less information than is now available. In addition, it is clear that the evidence he did have was not able to be tested by cross examination as it has at this Inquiry. The weight to be attached to the conclusion reached in the Examination is thus limited [3.50, 5.81-5.94].
- 8.66 The proper conclusion for the SoS to draw is that Legal & General has been involved with the Grosvenor Centre since 1999 and did not invest in it during the economic boom. Any assertion by Legal & General that the resolution to grant planning permission at Rushden Lakes played an influential part in its decision in June 2012 to cease work on a planning application for the Grosvenor Centre and to conduct a viability review is not sensible. Its assertion that a grant of planning permission at Rushden Lakes would preclude future investment at the Grosvenor Centre on the grounds of viability is also unevidenced and, again, not sensible [3.52, 5.81-5.94].
- 8.67 In Corby there is extant development plan support for a proposal known as Evolution Corby in which 15,500m<sup>2</sup> net of additional comparison goods floorspace would be delivered over the period to 2021. In 2008 a planning application was made; CBC resolved to grant permission but it was never issued. The scheme was effectively abandoned by the previous owners. The new owners, Helical (Corby) Ltd object to the Rushden Lakes application but there is no revised scheme and no evidence of any planned investment of such a scale that could deliver Evolution Corby. Furthermore, as Mr Nutter explained, Corby is simply not seeking to compete in the same market as Rushden. There is no compelling evidence of any significant adverse effect on planned investment in Corby. All of the retail impact analysis demonstrates that the measured effect on Corby is very small: even Mr Goddard has not been able to generate any significant loss of trade in his modelling [3.53, 4.74-4.93, 7.15].
- 8.68 In Kettering there is similarly some policy support for improvements, particularly at the Wadcroft/Newlands Phase I site. However, again there is no evidence of any scheme being progressed for comprehensive redevelopment as set out in the AAP. Neither Mr Goddard nor Miss Garbutt for the LAC gave any direct evidence on investment planned in Kettering. That offered by PR Kettering Ltd was not tested by cross examination at the

Inquiry. Mr Nutter was not cross examined on his evidence in relation to investment in Kettering [3.54, 4.74-4.93, 7.23-7.30].

*(ii) Impact on town centre vitality and viability*

- 8.69 Although some parts of the evidence have a scientific appearance, this is in the end a matter of professional judgment, in particular in so far as it relates to the assumptions as to where the trade for the new development will be drawn from. In order to assess such impact it is first necessary to establish the likely **catchment area** of the proposal and its likely turnover. The sum of money which is likely to be available to be drawn from relevant centres and elsewhere to the proposed development is then known. It is then necessary to determine which centres it is likely to be drawn from and what scope there is for claw back and from where. All experts have, in considering the question of existing catchments and patterns of trade draw, used the same shopping survey data - the RTP 2011 Household Survey. In respect of each centre, the effect on the vitality and viability of those centres can then be analysed [3.55-3.56, 4.74-4.93, 5.81-5.94].
- 8.70 Both Mr Nutter and Mr Goddard judge that the core catchment is likely to be zones 9 to 11, with Mr Goddard adding in zone 7. Mr Goddard's secondary catchment is much more extensive and also covers most of the urban area of Northampton (zones WN4 to 7). However, it is just not credible to assume that substantial numbers of people living in Northampton and beyond would be drawn to Rushden Lakes when Northampton town centre is on their door step and when they would drive very close to if not past other retail parks en route. If such persons were willing to travel for such a time, Milton Keynes would be a much more attractive proposition as a very high order comparison goods draw. I consider Mr Nutter's catchment area is robust and credible [3.57, 4.74-4.93, 5.81-5.94].
- 8.71 The existing **retention rates** for comparison goods expenditure show that Rushden ("home" zone 10) retains only 37.5% compared to Kettering's home zone which retains 76%, Corby (65%) and Wellingborough (53%). Thus, at present, there is significant leakage of comparison goods expenditure from Rushden, its home zone and all the other zones in North Northamptonshire. Rushden and the other towns in North Northamptonshire are presently failing to provide sufficient choice and quality in their comparison goods offer whether in centre or edge/out of centre and their residents travel further afield for comparison goods shopping counter to the fundamental strategic objective of the NNJCS to retain more of such expenditure within North Northamptonshire. Wellingborough's poor performance means that the southern part of North Northamptonshire is poorly served and that the strategy to enhance self containment must apply to even greater effect [2.33, 2.34, 4.74-4.93, 5.81-5.94].
- 8.72 The outflow of expenditure has numerous adverse consequences – it means that residents regularly have to spend their time driving to Northampton (16 miles) or further – this not only wastes time, money and carbon, it adds to congestion and exports local job opportunities. It also means that the local

area forgoes the opportunity to apply local expenditure to achieve a high quality of local development, such as Rushden Lakes. More importantly still, it means that the quality of local life is diminished. These themes came through very powerfully indeed in local residents' exceptionally well thought-through and moving presentations at the evening session of the Inquiry <sup>[2.35, 4.74-4.93, 5.81-5.94, 6.41-6.106]</sup>.

- 8.73 Reference has already been made to the poor progress which has been made in terms of delivering the **NNJCS allocations**. The nearest of the three Growth Towns to Rushden Lakes is Wellingborough which was earmarked in the NNJCS for some 15,500 to 18,500 sq m net additional comparison retail floorspace but over half way through the NNJCS period nothing has been delivered. Terraces B and C would provide a total of 17,431 sq m of net comparison retail floorspace which is within the (minimum) range that was allocated to Wellingborough. The NNJCS provides for substantial retail development in Wellingborough which it is agreed is unlikely to happen. The context for considering the retail impact of Rushden Lakes is that Terraces B and C are no larger than the amount of floorspace that the NNJCS allocates to Wellingborough which is strategically acceptable, indeed advocated, via increased retention of trade within North Northamptonshire, by the NNJCS <sup>[2.36-2.37, 4.74-4.93, 5.81-5.94]</sup>.
- 8.74 Where end operators in a retail scheme are unknown, assumptions as to **turnover** have to be made. Mr Nutter's assumptions are that the garden centre and Terrace A would trade as Mr Burnett suggests - £5.1m and £9.1m respectively. For Terraces B and C, applying an average of £4,000/m<sup>2</sup>, he judges turnover at £73.4m. This gives a total turnover of £87.6m. In order to arrive at the turnover figure for the 2018 test year, Mr Nutter then assumes that turnover would increase in line with national averages. The 2018 figure is therefore £99.6m nearly £10m above the figure adopted by Mr Burnett <sup>[3.58, 4.74-4.93, 5.81-5.94]</sup>.
- 8.75 The turnover figures for Rushden Lakes presented by Mr Burnett and Mr Nutter are very similar: £90 million per annum and £99.6 million per annum respectively by 2018 (the test year). Mr Burnett followed best practice in sense checking his turnover by constructing a series of hypothetical tenant line-ups. Besides making the obvious point that his line-ups were speculative the LAC and Legal & General did not challenge his figures or his methodology <sup>[2.39, 4.74-4.93, 5.81-5.94]</sup>.
- 8.76 I note that the difference between them reflects the use of a floorspace efficiency factor by Mr Nutter, which he has applied to show consistency with the work of RTP. Increases in productivity are more commonly applied to existing floorspace given that there is greater scope within existing floorspace to create more modern higher density stores. However, in seeking to adopt a cautious and robust approach it can be assumed that the turnover of the proposed development would increase in line with national averages by 2018. The turnover figure of £99.6m in 2018 is thus a reasonable figure to adopt <sup>[3.58]</sup>.
- 8.77 The equivalent figure adopted by Mr Goddard for the LAC is £139.5m which is about £40m above Mr Nutter's figure. A key difference between them was Mr

Goddard's selection of a £5,500/m<sup>2</sup> average for Terraces B and C. Mr Goddard's figure is not reliable as it is based on analysis of schemes that are not truly comparable. In particular, the Greyhound Retail Park in Chester does not trade at an average of £12,863/m<sup>2</sup>, but at £3,400/m<sup>2</sup>. The Northwich Retail Park trades very successfully at £4,336/m<sup>2</sup>. Mr Goddard also produced a list of prospective tenants for Rushden Lakes. His figures appear to have been derived from a premature assumption that Rushden Lakes would trade at a benchmark level comparable to open A1 retail parks in more populous and strategically accessible locations, but that assumption does not withstand scrutiny. This all suggests that Mr Goddard's figure is too high and Mr Nutter's is robust and appropriate [3.59, 4.74-4.93, 5.81-5.94].

- 8.78 In an attempt to underpin his existing work, Mr Goddard undertook sensitivity testing in his rebuttal proof. However, as was exposed in cross examination, his glaring error in assuming an Argos at Rushden Lakes would turn over £22.4m, instead of a company average based sales per outlet in the £5m to £6m range, means that his turnover is inflated by about £17m. This narrows the gap between Mr Goddard (sensitivity) and Mr Nutter to £23m. Mr Nutter's robust assumption that turnover would improve in line with national trends (which accounted for £9.6m of 2018 turnover) is to be contrasted with Mr Goddard's efficiency allowance of £15.2m. If Mr Nutter is correct, then the gap narrows still further to about £17m [3.60, 4.74-4.93].
- 8.79 In summary, the inclusion of a wholly unrealistic turnover for Argos and an unjustifiable uplift for floorspace efficiency account for a very large part of the difference between Mr Goddard's turnover on the one hand and Mr Nutter/Mr Burnett on the other. The fact that Mr Goddard did not produce a realistic and robust tenant line up (by including Zara Home and WH Smith) to substantiate his predicted turnover for Rushden Lakes is a powerful sense check. His estimated turnover is simply too high to be realistic [2.49, 4.74-4.93].
- 8.80 The LAC and Legal & General both rely entirely on the evidence of Mr Goddard to show an impact on the vitality and viability of Northampton town centre. However, Mr Goddard's evidence on turnover and trade draw are not credible. LXB has shown that £57.76m or 41% of his £139.5m turnover per annum for Rushden Lakes, in his "primary" case, would be drawn from Northampton town centre. That contrasted with the mere £10.27m per annum or some 7% that he thought would be drawn to Rushden Lakes from out of centre retail parks in Northampton. On his analysis, whereas **without** Rushden Lakes 39% of expenditure from residents of zones 7, 9, 10 and 11 which "leaks" to Northampton would be spent in the town centre and 61% in the out of centre retail parks; **with** Rushden Lakes the position would change dramatically so as to reduce the amount of money spent by residents of these zones in Northampton town centre by a huge 96% and leave only 3% of the leaking money being spent in the town centre as against 97% in the out of centre retail parks. Unequivocally this demonstrates the inconsistency of his assumptions and the obviously excessive loading of impact on the town

centre. Plainly, to the extent that Rushden Lakes would compete with stores in and around Northampton, it would compete with the out of centre retail parks – which are dominant in the area – far more than with the town centre [2.53-2.56, 4.74-4.93].

- 8.81 Moreover, Mr Goddard's trade draw includes an assumption that £7m would flow to Rushden Lakes from outside his already unrealistic and very large catchment area and that £8m would flow from tertiary zones WN11 (Buckingham) and WH (immediately north of Milton Keynes). Mr Nutter is correct that WN11 is simply too far away to be considered as falling within the catchment of Rushden Lakes, and that WH is firmly within the considerable sphere of influence of Milton Keynes. Taking all of these adjustments into account the gap between Mr Goddard and Mr Nutter all but disappears. What Mr Goddard's sensitivity testing shows is that Mr Nutter's original work was robust and reliable and his was not [3.60, 4.74-4.93].
- 8.82 To assess the impact on individual centres, a judgment has to be made as to the draw from town centres and that from out of centre retail parks. Mr Goddard has made such a judgment but that judgment does not survive his sensitivity test because it is based on improbable and disproportionate differentials between town centres and out of centre retail parks. His modelling is defective for two reasons: (i) it does not reflect the current existing attractiveness demonstrated by the Household Survey of town centres and retail parks where the split is now currently generally even between the two; and (ii) it is illogical and Mr Goddard could provide no sensible explanation why the trade draw had been skewed so significantly. The problems infect his analysis on Northampton and Kettering town centres [3.61, 4.74-4.93].
- 8.83 Page 1 of ENC10 sets out the results of Mr Goddard's trade draw assumptions from the Rushden Lakes home zones on Northampton town centre and the out of centre Riverside Park to the east (i.e. towards Rushden) both before and after Rushden Lakes is opened together with the sensitivity test position. The result is completely at odds with what Mr Goddard said he would expect applying his professional judgment. Rushden Lakes is shown as clawing back disproportionate and unexpected trade from the town centre when compared with the out of centre retail park. Whereas Mr Goddard had expected it would show significant trade redirected from Riverside Park this was not the case. Far more trade (about 10 times as much) was redirected from the town centre. The PG Annex D.27 advises that judgments should be based on existing shopping patterns. Whereas existing shopping patterns of those resident in the Rushden home zones show an approximately 50:50 split between town centre and retail park shopping, the analysis at ENC10 shows that Mr Goddard's data does not, even on the basis of his sensitivity test [3.62, 4.74-4.93].
- 8.84 Page 2 of ENC10 shows the effect of Rushden Lakes on the shopping patterns of those living in the Northampton home zones. Mr Goddard was simply unable to explain why the diversion of expenditure by residents of zones W3 and W5 away from Northampton town centre increased in his sensitivity test.

He was in similar difficulty in respect of explaining why, in respect of zones W3, W4, W5 and W7 the impact on Riverside Park decreased in his sensitivity test. Mr Goddard told the Inquiry that he could not explain why the data showed this, that it was counter-intuitive and that he would expect the opposite so it was “probably wrong”. On page 3 of ENC10, Mr Goddard was unable to explain the outputs in respect of the Northfield Avenue Retail Park. In my view, the outputs are “wrong” because they were based on inappropriate and unsupportable professional judgment. The errors were not “mathematical quirks thrown up by the computer modelling.” These errors were in the key zones of Mr Goddard’s primary and secondary catchment <sup>[3.63, 4.74-4.93]</sup>.

- 8.85 Plainly Mr Nutter’s assessment is to be preferred. It is telling that when you follow the money the amount drawn from the primary catchment identified by Mr Nutter and Mr Goddard is broadly equivalent. It is only when the exaggerated turnover used by Mr Goddard needs to be deployed that it is necessary for him to spread that implausibly high turnover he is required to contend that trade will be drawn from far and wide and in particular heavily from zones in Northampton. Thus the inaccurate turnover is coupled with the defective judgment to compile a modelling exercise which is not fit for purpose. Mr Nutter’s judgments (Tables 6.2 and 6.3 of ENC3) reflect the empirical evidence available and are based on coherent and logical analysis <sup>[3.64, 4.74-4.93]</sup>.
- 8.86 The solus effect on Corby town centre is -0.8% rising to -6.8% when taking account of existing commitments. The solus effect on Kettering town centre is -4.8% rising to -8.7% when taking account of existing commitments. The solus effect on Northampton town centre is -5.4% rising to -7.8% when taking account of existing commitments. However, in all cases the turnover in 2018 would be higher than in the base year of 2011. In each case that impact would not be significant. The effect on Wellingborough is more finely balanced. The solus effect on the town centre is -12.2% and is the same taking account of existing commitments. In both cases the turnover in 2018 would be similar to the base year of 2011. While the comparison goods floorspace position is not as strong as the other centres, the overall vitality and viability of Wellingborough is underpinned by convenience goods investment. WBC is fully aware of Mr Nutter’s assessment and has not withheld its support for Rushden Lakes on the grounds of adverse retail impact.
- 8.87 Overall I conclude on issue (b) that consideration of section 2 of the NPPF does not indicate a refusal of planning permission <sup>[3.65, 4.74-4.93, 7.23-7.30]</sup>.

***Issue (c) the extent to which the proposed development is consistent with Government advice in promoting more sustainable transport (Section 4 of the NPPF); promoting accessibility to jobs, leisure facilities and services by public transport, walking and cycling; and reducing the need to travel, especially by car.***

- 8.88 The key parts of section 4 of the NPPF relevant to making a decision on this application are paragraphs 32, 34 and 36. These are the decision-taking as opposed to the plan-making paragraphs. Decision-makers are required by NPPF [32] 1<sup>st</sup> bullet to "*take account*" of *inter alia* whether "*the opportunities for sustainable transport modes have been taken up depending on the nature of the site, to reduce the need for major transport infrastructure*". Mr Hunter-Yeats agreed that NPPF [32] must be applied in a context specific manner depending upon the nature and location of the site, and that the rationale for promoting sustainable transport modes was to reduce the need for major infrastructure to serve the development. Clearly the decision must be sensible and the opportunities for sustainable travel would necessarily vary according to the particular facts of each case [2.115-2.116, 3.68, 5.105].
- 8.89 In terms of the 2<sup>nd</sup> and 3<sup>rd</sup> bullet points of NPPF [32], Legal & General agreed that the footbridge and the routes within the site would be safe and did not suggest that additional highway works were necessary. Moreover, Legal and General did not contend that there would be "severe" impacts as referred to at the end of the paragraph. The principal transport issue is therefore whether the 1<sup>st</sup> bullet point of NPPF [32] has been satisfied [2.117].
- 8.90 In terms of NPPF [34], it provides that decisions should ensure that developments that generate significant movement are located "*where the need to travel will be minimised and the use of sustainable transport modes can be maximised*". But this is qualified by the need to "*take account of policies set out elsewhere in this Framework, particularly in rural areas*". The paragraph does not set some form of overriding additional test e.g. that if the retail sequential test is met, permission should be refused unless one can have (for example) maximum bus services at the level that one might find in a town centre. The paragraph must and can only be looking to achieve what is practicable in the particular circumstances of the site and its location [2.118, 3.69, 5.109-5.123].
- 8.91 Legal & General refers to NPPF [35] but this says in terms that it aims to achieve various aspects "*where practical*." With regard to NPPF [36], the SoS should note that Travel Plan issues are dealt with both by conditions and planning obligations. It is also worth recording that NPPF [24] (the sequential test) contains a preference for well connected sites, not an absolute requirement. If the sequential test is passed that is the end of the matter and NPPF [24] does not provide the basis for a free-standing transport objection [2.119-2.121, 5.109-5.123].
- 8.92 Further, the NPPF's approach to sustainable transport issues is supported by the NNJCS which developed its spatial strategy with regard to the relevant local transport plans and strategies. Section B of the NNJCS highlights that the plan aspires to contribute to modal shift away from the private vehicle use. It suggests that parking supply should be managed to level the playing field between the car and other travel options. It is also important to note the strong plea in NPPF [187] that decision-makers should look for solutions rather than problems. Mr Hunter-Yeats did not offer any solutions to the

perceived problems. In contrast, the highway authorities have followed the advice in NPPF [187] and there is a very full SoCG reflecting extensive agreement on transport matters. Mr Hunter-Yeats accepted that significant weight can be placed on the agreement that has been reached. I now turn to sustainable transport modes [2.122, 3.69, 5.107].

### *Walking*

- 8.93 Walking is an important mode for any development. Historically there was an important connection between Rushden Town Centre and Rushden Lakes. Clearly, the new footbridge would reconnect the town with the Lakes, joining together the employment, residential and retail uses. Legal & General asserts that the A45 would be a “physical barrier” or create “poor walking conditions”. However, the application proposal has to be assessed on the basis of the package of measures which is being offered through the application and the footbridge over the A45 would certainly change that landscape. Mr Bird’s 2km walking catchment area is reasonable and derives from policy and best practice. Some 11,000 people would live within a 2km walk of the site – that is a significant proportion of the inhabitants of Rushden and Higham Ferrers. There is reference in a letter from NCC Highways to people carrying “heavy shopping” over long distances but it must not be forgotten that this is a mixed use retail, leisure and recreation scheme and walking to and from the site would not simply be related to trips to shop [2.123-2.128, 3.69, 5.116-5.123].
- 8.94 In terms of walking access to the application site, as opposed to within the site, Mr Hunter-Yeats’ concerns are overstated. His fears of muggers lurking in the bushes along the Greenways and an intimidating environment created by the old railway cutting are evidently not shared by those who actually use the Greenways. At the evening session evidence was given about how safe these routes are regarded to be for children to use. The routes were seen at the site visit and it is hard to imagine that upon seeing them one recognised Mr Hunter-Yeats’ characterisation of them [2.126, 5.116-5.121].
- 8.95 The Ramblers Association has welcomed the improved pedestrian and cyclist access including the provision of a pedestrian/cyclist bridge over the A45 from the development to Northampton Road and Crown Park. The proposed link from the Greenway to Rushden Lakes is also highlighted. Similarly, the Higham Ferrers Footpath Group responded in support of the pedestrian and cycle provision, noting that linkages to the Greenways and former railway were “especially valuable”. Many members of the public have expressed their support for the walking and cycle provision offered by the scheme [2.127].

### *Cycling*

- 8.96 Externally to the application site no specific cycling facilities are proposed to encourage residents to cycle to the development; no cycle lanes and no cycle specific crossings are offered. However, the benefits of the proposal to

walkers would apply with equal force to cyclists. 79,000 people live within an 8km cycle ride, including a significant element of the population of Wellingborough. Cycling use would increase with improved connections planned not just by LXB but also in conjunction with the WEAST development at Wellingborough and the continuing improvements planned along the Nene Valley. Legal & General express concerns about the cycling experience on the road network. However, section 4 of the NPPF does not place responsibility on the Applicant for the quality of the entire length of routes to and from the application site [2.129-2.130, 5.122-5.123].

### *Bus Services*

- 8.97 Extensive discussions have been held with NCC and the main bus operator in the area, Stagecoach, in order to develop an appropriate and sustainable bus service to the site. The existing service that comes closest to the site is the No 49 that terminates on Crown Way, close to the Waitrose store. The No 49 currently operates an hourly service frequency and serves locations including Kettering, Irthlingborough, Higham Ferrers and Rushden. The Applicant has offered a unilateral planning obligation under the terms of which the bus service to the site would be improved. The existing No.49 bus route would be extended so as to serve the site. Therefore, there would no longer be reliance upon users of that service walking across the new bridge from Waitrose to the site. This improvement in provision means that criticism of this walk and the claim that this bus service should not count are all beside the point [2.131, 5.124].
- 8.98 In addition to the existing bus service, it was originally proposed that LXB would provide funding for a new bus service linking the site with the town centres of Wellingborough, Rushden and Higham Ferrers running hourly between 0700 and 1900 hours Monday to Saturday. That level of service was agreed with the responsible public authorities and they were satisfied with it. NCC is confident that it will increase to a half hourly service when WEAST comes forward. However, at the Inquiry it was argued that the new bus service ought to run 7 days a week and more frequently on weekdays. LXB considered these arguments and secured in the unilateral planning obligation an hourly Sunday bus service (0900 to 1700 hours) as well. LXB considers that this package of public transport improvements is appropriate but if the SoS confirms in the decision letter that a half hourly bus service, seven days a week, is necessary and otherwise meets the requirements of Regulation 122 of the CIL Regulations 2010 then covenants in the unilateral planning obligation will come into effect by virtue of which the new bus service would be provided on a half hourly basis seven days a week [2.132, 3.69, 5.124-5.132].
- 8.99 From the evidence submitted to the Inquiry, the application site is not as accessible as one would expect. There is no rail service nearby. There is currently not an attractive bus service to the site but the enhancements to bus provision proposed by LXB would significantly improve accessibility. I consider it is necessary to provide a new half hourly bus service seven days a

week as provided in the unilateral planning obligation as this is more likely to activate modal shift from cars to public transport. If the SoS agrees that the improved bus service is necessary in order to make the site sufficiently accessible, the unilateral planning obligation would deliver the improved bus service. Given the improved and new bus service plus the other proposed improvements to walking and cycling that would be delivered, it is clear that the proposal before the Inquiry would enhance the accessibility of the site both by slow modes and by public transport. These provisions have been accepted by NCC as providing the necessary assurance that the site would be accessible. Whilst various points have been made in relation to the present position of the site in terms of public transport, the application proposal has to be assessed on the basis of the package of measures which is being offered through the application [2.132, 3.69, 5.124-5.132].

- 8.100 Legal & General's criticism that the new bus service is only secured for 3 years and thereafter its continuing viability is in doubt is not correct. NCC fully expects the new bus service to continue in the long-term and to be self-funding. Legal & General's complaint that the viability of the proposed new bus services has not been tested or proven by LXB completely misses the point. LXB is procuring, not providing the bus services in question. It is Stagecoach who would be running the buses. Stagecoach confirmed (i) that they would expect the No.49 extension to be achievable at no extra cost *"thus in effect already commercial"*; (ii) the proposal to serve Rushden Lakes on Sunday *"represents the best opportunity that we can see, by far, of catalysing a long term commercially sustainable quality Sunday bus service for the Four Towns area"*; and (iii) *"we consider the Monday-Saturday package in the round will be sustainable commercially after the subsidy is removed"* and *"the Sunday service looks credibly likely to become commercially sustainable"*. NCC agrees. This is clear from APP50. With the new bus service provision in place there would be a strong linkage both to the town centre and to a significant number of towns within the local area. This would provide an appropriate and sustainable alternative to the use of the private car and would meet the aspirations of national planning policy [2.133-2.137, 3.69, 5.124-5.132].

#### *Highway improvements*

- 8.101 The proposed improvements to the Skew Bridge roundabout would be beneficial for users of the road network. Without these proposed improvements, already committed development would worsen conditions but there is no funding for the roundabout improvements. Rushden Lakes would fund the works and conditions for road users would improve [2.138].

#### *Trip reduction & carbon saving*

- 8.102 The proposal would bring significant benefits in terms of trip reduction and carbon saving. Clearly if significant expenditure from the Rushden Lakes home zones is clawed back from more distant centres there would be vehicle

mileage savings. Mr Bird's calculations were criticised but no alternative calculation was ever advanced by the LAC or Legal & General. NCC has stated that it does not agree with paragraph 16.8 of the SoCG. It was suggested that Mr Bird had failed to take into account of some trips that would be generated by Rushden Lakes e.g. current trips to Northampton by bus that would be replaced by a trip to Rushden Lakes by car but these do no more than chip away at the edges of the savings. There is currently not an attractive bus service to Northampton town centre from Rushden. Residents in zones 9 to 11 shopping in Northampton have no real choice other than to travel by car. Even on the LAC's retail draw figures, there would be a substantial saving amounting to some one quarter to one third of what Mr Bird predicts based on Mr Burnett's retail assessment. The proposal would reduce the outflow of money (and thus trips by car) to Northampton town centre and retail parks and other distant locations, thereby reducing trip lengths and consequent savings of carbon [2.139, 3.69, 5.109-5.113].

- 8.103 Overall in relation to issue (c) I conclude that the proposal would be consistent with Government advice promoting more sustainable transport as set out in section 4 of the NPPF.

***Issue (c) the extent to which the proposed development is consistent with Government advice, particularly in relation to giving appropriate weight to protected species and to biodiversity interests within the wider environment (Section 11 of the NPPF).***

- 8.104 Section 11 of the NPPF requires valued landscapes to be protected and enhanced, the provision of net gains in biodiversity where possible, despoiled and degraded land to be remediated [109], previously developed land to be effectively re-used [111] and weight to given to the contribution made to wider ecological networks [113] [3.71, 4.95-4.97, 5.133].
- 8.105 The application site is previously developed land as defined in Annex 2 of the NPPF and as such the NPPF encourages its effective use. The proposed development would bring very substantial environmental benefits to which significant weight should be attached. Additionally, the scheme would deliver tourism and leisure benefits. Mr Lewin agreed that the scheme would be beneficial and that if the LAC's evidence on retail issues is rejected, planning permission should be granted. Mr Jones for Legal & General accepts that the proposals would provide significant benefits that are welcomed by the Wildlife Trust and the RSPB [2.142, 4.95-4.97, 5.133].
- 8.106 In terms of the environmental benefits, it is important to appreciate the significance of the application site and its surroundings. The Nene Valley has the highest level of national and European nature conservation designations. It is also one of only 12 Nature Improvement Areas designated by Natural England in the country and the RSBP described the area as "*one of the most important wildlife sites in the UK*" [2.143, 4.95-4.97, 5.133].

- 8.107 There would be extensive environmental benefits arising from the proposals. In summary, key benefits are: (i) stopping the heavy damage that has occurred through trespass and disturbance; (ii) designing the scheme in a way which is sensitive to the site; (iii) enhancement through investment in habitat improvements and management (Access and Habitat Management Plan) – management which would be “joined up” and cover a large area of important habitat; (v) the visitor centre providing a base for the Wildlife Trust which together with the other physical and management measures would truly enable the public to access, enjoy and be inspired by the importance of the wildlife along the Nene Valley [2.144, 4.95-4.97, 5.133, 6.1-7.30].
- 8.108 It is important to record that Natural England, the Government’s statutory consultee on ecological matters, has signed up to the SoCG to record its view that the proposals would bring “*significant benefits*”, represent a “*unique opportunity to enhance the site’s potential*” and that “*significant weight*” should be attached to the scheme’s environmental benefits. It is also important to note the RSPB’s view that: “*the management proposals linked to the redevelopment will enable the linking up of various nature reserves in this area, including Wilson’s pits, Ditchford Lakes and Meadows, Higham Ferrers Pits and Irthlingborough Lakes and Meadows. It will also link to the adjacent Stanwick Lakes site, producing a total area under nature conservation management of about 500 hectares - extremely significant in the context of a heavily developed, inland county like Northamptonshire*” [2.145, 4.95-4.97, 5.133].
- 8.109 Moreover, the Wildlife Trust has stated that it would manage the proposed visitor centre, the 32ha of land within the application site and a further 60ha of land controlled by the Applicant. This land includes SSSI, SPA and a Ramsar site. It also lies in the Nene Valley Improvement Area where ecological awareness and access is to be encouraged. It confirms that unmanaged access and trespass on the land is a “*key issue in the current decline in the condition of the SPA*”. It further confirms that the nature conservation value of the site would be enhanced by the proactive ecological management that it would undertake. By taking responsibility for LXB controlled land, the Wildlife Trust confirms it would be able to link up with its other nature reserves in the area to give a total integrated reserve area managed for people and wildlife of around 500ha. The visitor centre would be a vital base from which to manage conservation activities and provide outreach education to school children and visitors [3.73, 4.95-4.97, 5.133, 6.1-7.30].
- 8.110 The RSPB states that it works closely with the Wildlife Trust in the Nene Valley and endorses its views. This is particularly important because the area is important for protected over-wintering birds. Miss Garbutt’s lack of enthusiasm for the proposals was based on her reading the ES, nothing more. Her judgment is at odds with that of the RSPB, the Wildlife Trust, Natural England and hundreds of letters of support which specifically highlight the environmental benefits of the scheme. Overall it is clear that these proposals would bring significant nature conservation benefits [3.74, 4.95-4.97, 5.133, 6.1-7.30].

- 8.111 The courts have consistently held that the views of expert statutory consultees in the field of nature conservation are to be given weight by decision-makers and that cogent and compelling reasons are required for departing from such advice. In this case Natural England's view is clear: the proposals would bring environmental benefits which are significant material considerations in favour of the application. There is no reason, let alone a cogent or compelling reason to disagree with Natural England's judgement. In all circumstances, applying the policy in section 11 of the NPPF substantial weight should be given to these benefits in the planning balance [2.147, 4.95-4.97, 5.133].

### Other benefits

- 8.112 The proposals would also result in significant **tourism and recreation benefits**, as well as in the creation of a significant **number of jobs**. These are important material considerations in this case [2.148-2.158, 3.81-3.90, 4.95-4.100, 5.133-5.138, 6.1-7.30].
- 8.113 First, with regard to the tourism and recreation benefits there are clearly local policy aspirations for the Nene Valley which represent a resource of strategic importance to East Northants. The SoS should note the key aspects of the Nene Valley Strategic Plan which are set out in paragraph 2.149 of this Report. The Rushden Lakes scheme would be wholly consistent with this Plan in the following ways: (i) the proposal would deliver 2 waterside restaurants, a coffee shop in the proposed visitor centre, a drive in restaurant and also catering could be expected in the garden centre; (ii) the retail development would provide a particular waterside attraction differing in character from any other facility along the Nene; (iii) the boathouse is to be constructed, fitted out and let to Canoe2 on a peppercorn, enabling them to provide an expected 2,500 canoe trips/breaks and attract hundreds of overnight stays every year; (iv) under the management agreement, the boathouse would be available to the Scouts and other community groups; (v) the Bailey Bridge is an important link. The reinstatement of the bridge would connect directly with the Nene Way and open up considerably enhanced connectivity; (vi) the new bridge to Rushden is important, the nearest footbridge currently is in Higham Ferrers some 2km away [2.148-2.158, 3.81-3.90, 4.95-4.100, 5.133-5.138, 6.1-7.30].
- 8.114 It was evident from the site visit that there is no formal public access to the application site, which is in poor condition and functions as a barrier between the town of Rushden and the Nene Valley corridor. The boathouse, visitor centre, restaurants, hotel and retail facilities would add enormously to the attraction of the valley, complementing other gateways into the valley. The benefits listed in paragraph 8.112 above should be given significant weight, especially when considered against the backdrop of the current situation [2.148-2.158, 3.81-3.90, 4.95-4.100, 5.133-5.138, 6.1-7.30].
- 8.115 Secondly, turning to the employment benefits, Bridget Rosewell's evidence is that a significant number of jobs (some 1,714 FTE) would be created by the proposals. Her evidence also identifies the need for this type of employment locally, the fact that East Northamptonshire has a higher unemployment

count than the rest of North Northamptonshire, and the fact that in this respect the Applicant has pursued an exemplary path by working with the appropriate stakeholders to commit to workforce training to maximise the benefits of these jobs. ENC accepts and supports this view [2.148-2.158, 3.81-3.90, 4.95-4.100, 5.133-5.138, 6.1-7.30].

- 8.116 The LAC and Legal & General have sought to argue that jobs would be lost elsewhere and therefore there would be no net gain. Their methodology is not supported by any study or proper empirical evidence. The LAC/Legal & General approach is mistaken for the reasons given by Bridget Rosewell because it ignores the growth in spending which would support net new retail jobs on a scale greater than the impact of the Rushden Lakes proposal. It is also inconsistent with the way in which NBC considered the Barrack Road Tesco application. Mr Lewin accepted that in that case the Council did not look at net job creation even though the application would result in a town centre anchor trading significantly below its benchmark. Moreover, the evening session of the Inquiry demonstrated evocatively and forcefully just how significant these employment opportunities are to the local communities. Overall the evidence of Bridget Rosewell is compelling in the present case [2.148-2.158, 3.81-3.90, 4.95-4.100, 5.133-5.138, 6.1-7.30].
- 8.117 The SoS should be aware that there is considerable public support for the proposals not simply "in terms of the size of the postbag", but rather because the substance of the public representations squarely relate to material planning considerations. The considerable ecological, recreational and leisure benefits of the scheme are very clearly highlighted in the extensive local support. There is a genuine recognition that Rushden Lakes has been very carefully developed in partnership with all relevant stakeholders to maximise its contribution to meeting multiple local needs and enhancing the way that people feel about their own town. The local communities have understood the planning issues raised by this case, and they have made sensible, well-thought out representations engaging with the planning merits. The substance of what they said should be given significant weight. The LAC raised a design concern that the scheme would face the Lakes rather than the A45. However, the layout would maximise the enjoyment of the Lakes and there would be no conflict with Policy 5 of the NNJCS in relation to design. In short, local people, local businesses and local conservation groups all support the planning merits of the scheme. The benefits of the scheme are clear and they should be given significant weight in the determination of this case [2.148-2.158, 3.81-3.90, 4.95-4.100, 5.133-5.138, 6.1-7.30].

***Issue (e) whether any permission should be subject to any conditions and, if so, the form these should take.***

- 8.118 ENC submitted a list of suggested conditions which were discussed in detail at the Inquiry. These conditions were subsequently revised and document EN14 represents a high level of agreement between the Applicant and ENC as to the conditions which should be imposed in the event that planning permission is granted. I have considered the suggested conditions in the light of the tests of Circular 11/95. The comments in this section and the condition

numbers referred to below support and reflect the list produced in the Annex to this Report [2.159, 3.76-3.77, 4.101].

- 8.119 Conditions 1-4 are necessary as they relate to time limits and to the approval of reserved matters. Conditions 5-8 are necessary for the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans, drawings and documents. Condition 9 is necessary to ensure and safeguard the recording of any archaeological deposits. Conditions 10-14 deal with requirements to submit further details in relation to foul and surface water drainage and are necessary to reduce the risk to controlled waters and pollution. Condition 15 is necessary to ensure that specific highway schemes are provided in the interests of highway and pedestrian safety. Conditions 16-20 specifically relate to Travel Plans and involve a series of measures which will encourage employees as well as visitors to walk, cycle and use public transport services. These conditions are necessary to ensure the implementation, monitoring and review of the measures included in the Travel Plans and in the interests of a sustainable development [2.159, 3.76-3.77, 4.101].
- 8.120 Condition 21 requires a landscaping scheme to be submitted for the site to ensure a satisfactory development and in the interests of visual amenity. Condition 22 is necessary to secure improvements to the "Bailey Bridge" and Condition 23 is required to safeguard a gas pipeline on the site. Condition 24 is necessary in the interests of fire safety. Conditions 25-33 are necessary in the interests of visual amenity and biodiversity, to protect the ecological character of the area and to ensure that protected species/habitat are not harmed by the proposed development. Condition 34 is necessary to ensure the submission of a scheme for external lighting. Conditions 35-36 are necessary to ensure that risks from land contamination and landfill gas are minimised and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors. Condition 37 is necessary and requires the submission of a waste management strategy. Conditions 38-40 are necessary in order to reduce the risk of flooding. Condition 41 is necessary to mitigate the impact of construction works. Conditions 42-47 impose restrictions in relation to the retail units and are necessary to ensure that the development is carried out in accordance with the approved plans and that the impact of these components does not exceed those assessed in the application. Conditions 48-49 are required to ensure a sustainable development [2.159, 3.76-3.77, 4.101].

***Issue (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.***

- 8.121 Regulation 122 of the CIL Regulations provides that for an individual obligation to be a lawful reason for granting planning permission, it must be necessary to make the development acceptable in planning terms, directly related to the development, and fairly and reasonably related to the scale and

kind of the development. In this case there is a Planning Obligation Agreement [INQ5] and a Planning Obligation by Unilateral Undertaking [INQ6] proffered. LXB has also provided a Statement of Compliance to explain how each meets the Regulation 122 tests [APP41]. Both Planning Obligations are considered fit for purpose [2.160, 3.78-3.80, 4.102, 7.7, 7.20].

- 8.122 In terms of the Planning Obligation Agreement there can be no objection in principle to the making of a Rushden Town Centre Manager (TCM) Contribution of £150,000 over three years. This would mitigate the impact of the proposal and would foster links between Rushden Lakes and Rushden/Higham Ferrers town centres. It would enable support, advice and guidance to many traders in the town centres and facilitate the co-ordination of bids for future improvement funds so that at the end of the funding period voluntary and/or business bodies would be in a position to ensure the future health of both town centres. In terms of the Regulation 122 tests the TCM contribution would make the development acceptable in planning terms, would be directly related to the development, and would be fairly and reasonably related in scale and kind to the development [2.160, 3.78-3.80, 4.102, 7.7, 7.20].
- 8.123 The Planning Obligation Agreement makes provision for a contribution of £50,000 and requires the head contractor to comply with the Construction Futures Strategy to deliver apprenticeships and training to skill the local workforce which is intended to secure 547 training weeks in conjunction with a local provider. The Construction Futures approach would secure apprenticeships and other training and learning opportunities arising from the construction. This provision meets the 3 tests of Regulation 122 of the CIL Regulations 2010 and paragraph 204 of the NPPF [2.160, 3.78-3.80, 4.102, 7.7, 7.20].
- 8.124 The Planning Obligation Agreement includes a provision to appoint a Travel Plan Manager. LXB would secure such appointment for at least 5 years. Thereafter good practice would be likely to be embedded, and if it is, the need for LXB to provide continuing support. If such support is needed, it would continue as necessary. No objection to this proposal has been received from the Highway Authority. This provision meets the 3 tests of Regulation 122 of the CIL Regulations 2010 and paragraph 204 of the NPPF [2.160, 3.78-3.80, 4.102, 7.7, 7.20].
- 8.125 The Planning Obligation Agreement includes a provision that the visitor centre and boathouse would be provided before any part of the retail floorspace is open for trading [2.160, 3.78-3.80, 4.102, 7.7, 7.20].
- 8.126 The Planning Obligation Agreement includes a provision to pay the County Council a contribution of £44,115 for improvement works to the Chowns Mill Roundabout. These improvement works are intended to achieve a nil detriment solution that the Highways Agency, County Council and LPA consider to be necessary for a planning purpose that is directly, reasonably and fairly related to the development. I agree [2.160, 3.78-3.80, 4.102, 7.7, 7.20].

- 8.127 The Planning Obligation Agreement makes provision for a contribution of £375,000 to the County Highways Authority for the provision of a new hourly bus service linking the town centres of Wellingborough, Rushden and Higham Ferrers Monday to Saturday between 0700 and 1900 hours. That would provide a base level of access to the development by public transport. The provision for repayment of any unspent public transport contributions 2 years after they are made is reasonable. Public transport subsidy would cease after 3 years at which time both the operator, Stagecoach, and the Highway Authority are satisfied that the bus services would be viable. If that is in any doubt, remaining funds can be expended for a further 2 years before final repayment is due [2.160, 3.78-3.80, 4.102, 7.7, 7.20].
- 8.128 The Unilateral Planning Obligation includes a provision to procure the extension of the existing No 49 bus service into the development on an hourly basis. It also includes provision for a new hourly Sunday bus service (0900 to 1700 hours). Moreover, if the SoS considers it necessary and compliant with the CIL s122 Regulations, the Unilateral Planning Obligation also provides for the procurement of a half hourly bus service seven days a week. The hourly Sunday service would be superseded by this obligation. The No 49 extension would still be provided [2.160, 3.78-3.80, 4.102, 7.7, 7.20].
- 8.129 Legal & General considers that the viability of the proposed new bus services has not been tested or proven. However, from all the evidence that is before me, including that from Stagecoach, the No 49 extension would be achieved at no extra cost, the Monday-Saturday package would be sustainable commercially after the subsidy is removed and the Sunday service looks credibly likely to become commercially sustainable. The County Highway Authority agrees. The improved bus services are necessary in order to make the site sufficiently accessible. It is necessary to provide a new half hourly bus service seven days a week as provided in the Unilateral Planning Obligation as this is more likely to activate modal shift from cars to public transport in accordance with national and local policy. Therefore I consider that all of the provisions of the Planning Obligation Agreement and the Unilateral Planning Obligation are necessary and meet the 3 tests of Regulation 122 of the CIL Regulations 2010 and paragraph 204 of the NPPF. I consider both should be accorded weight and I have had regard to them as material considerations in my conclusions [2.160, 3.78-3.80, 4.102, 5.129-5.131, 7.7, 7.20].

## Overall Conclusion

- 8.130 From all the evidence submitted to the Inquiry, it is clear that there would be a number of benefits as a result of the proposed development. It is estimated that some 1,714 (FTE) jobs would be created by the proposals. The provision of the boathouse and recreational access to the Lakes is plainly a recreational benefit of the proposed development including to youth organisations. These are important community benefits and the boathouse would contribute to the development of tourism in the Nene Valley. The Wildlife Trust has confirmed

that its involvement would secure improved opportunities for bird-watching, walking, angling and boating. Access would be managed and provided through the land it manages to link up with the greenways of the wider Nene Valley. All of this would accord with Policy 5 of the NNJCS and the Nene Valley Strategic Plan.

- 8.131 At paragraph 8.34 of this Report I said that I would give further consideration to the planning balance and the presumption in favour of sustainable development. The NPPF identifies three dimensions to sustainable development – economic, social and environmental. The application proposal would be immediately deliverable. It is plain that the jobs, environmental and recreational benefits of this proposal all fall squarely within the economic, social and environmental roles of sustainable development set out at NPPF [7]. These are benefits which are clearly welcomed by the local community. I have concluded that in the context of NPPF [7] that this proposal is sustainable development. The SoS should ascribe significant weight to these matters in the planning balance <sup>[6.33]</sup>.
- 8.132 The benefits that fall to be considered in the NPPF [14] balance include the regeneration of the previously developed site to the benefit of the self-sufficiency of the town and surrounding areas, the provision of jobs and benefit to the local economy, the enhancement of the environment and ecological benefit, the provision of leisure and recreation facilities, enhanced tourist facilities, connection of the town with the countryside via the new pedestrian and cycle links to the Greenway and Blueway networks including the provision of a bridge over the busy A45, considerable vehicle mileage savings by access to a quality local shopping destination in circumstances where currently long journeys are needed thereby minimising the need to travel, and improved public transport provision.
- 8.133 None of the main alleged retail adverse impacts (failure to apply the sequential test and significantly adverse impact on investment in town centres or the vitality and viability of those centres) has been made out. Access by non-car modes has been reasonably maximised. While this proposal would not wholly accord with an out-of-date element of the adopted development plan, Rushden Lakes is truly a proposal for sustainable development in planning policy terms. The benefits are plainly not clearly and demonstrably outweighed by adverse impacts. There are no other material considerations that indicate that planning permission should not be granted. In all circumstances the case for approving the proposal is overwhelming.

## **9. INSPECTOR'S RECOMMENDATION**

- 9.1 I recommend that planning permission be granted subject to conditions.

*Harold Stephens*  
INSPECTOR

## APPEARANCES

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### FOR THE APPLICANT:

Christopher Katkowski QC and  
Richard Moules of Counsel

Instructed by Denton UKMEA LLP

He called

David Bird BSc CEng MICE  
Graham Chase FRICS FCIARB FRSA FINST CPD  
Colin Burnett BA(Hons) MRTPI  
John Rhodes BSc MRICS

### FOR THE LOCAL PLANNING AUTHORITY:

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Instructed by East Northamptonshire Council

He called

James Wilson BA (Hons) DipTP DMS MRTPI  
Keith Nutter BSc (Hons) DipTP MRTPI

### FOR THE CONSORTIUM OF OBJECTING LOCAL AUTHORITIES:

Morag Ellis QC and Hugh  
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She called

Matthew Whiteley BA (Hons) DipTP MRTPI  
Paul Lewin BA (Hons) DipTP MRTPI  
Susan Garbutt BA (Hons) DipTP MRTPI  
Chris Goddard BA (Hons) BPI MRTPI

### FOR LEGAL AND GENERAL PROPERTY

Russell Harris QC and  
Reuben Taylor of Counsel

Instructed by Deloitte

He called

David Hunter-Yeats BEng CEng MICE FCIHT  
CMILT  
Robin Denness FRICS  
Matthew Jones BSc (Hons) DipTP MRTPI AIEMA

### INTERESTED PERSONS:

Peter Bone MP  
Derek Clark MEP  
Philip Hollobone MP

MP for Wellingborough  
MEP for East Midlands  
MP for Kettering

Andy Sawford MP	MP for Corby
Cllr Glenn Harwood MBE	East Northants Council (Deputy Leader)
Cllr Thomas Pursglove	Corby Conservative Club Ltd
Cllr Sarah Peacock	Rushden Town Council
Adrian House	Rushden Chamber of Commerce
Rev Philip Evans	Rushden & Higham Ferrers Churches
Cllr Derek Lawson	Higham Ferrers Town Council
Kiran Williams BA DipTP MRTPI	BNP Paribas
Thom Collins	Member of the public
Cllr David Jenney	Wellingborough Conservative Association
Cllr Andrew Scarborough	Borough Council of Wellingborough
Andrew Langley	Destination Nene Valley Board
Gill Mercer	Rushden Twinning Association
Alyson Alfree	Rockingham Forest Trust/Stanwick Lakes
Debbie Jackson	Canoe England
Ian Blackwell	Canoe2
Tony Knott	Scouts
Chris Read	Sea Cadets
Maurice Weight	Maritime Volunteer Service
Cllr Helen Howell	Raunds Town Council
Cllr John Farrar	Irthlingborough Town Council
Cllr Richard Lewis	Rushden Town Council
Cllr Bob Nightingale	East Northants Council
Cllr Tim Maguire	Borough Council of Wellingborough
Andrew Hutchison	Member of the public
Cllr Andy Mercer	East Northants Council
Lorna Wiltshire	Rushden Town Centre Partnership
Alan Piggott	Wellingborough Chamber of Commerce
Harry Graham	Rushden Pensioners Forum
Jack Spriggs	Young people in Rushden
Helen Danzig	Yes 2 Rushden Lakes

## INQUIRY DOCUMENTS

INQ1	Notification Letter
INQ2	Written representations submitted following the issue of the SoS's Direction to call-in the application
INQ3	Statement of Common Ground
INQ4	Notes of Pre Inquiry Meeting 1 March 2013
INQ5	Section 106 Planning Obligation Agreement
INQ6	Section 106 Unilateral Planning Obligation

## CORE DOCUMENTS

<b>A</b>	<b>Government and Regional Local policy documents</b>
1	NPPF (March 2012)
1A	Draft NPPF(July2011)
1B	Milton Keynes and South Midlands Sub – Regional Strategy (March 2005) (extracts: title page and pp.1-21 and 35-42)
1C	Tesco Stores Ltd v Dundee City Council [2012] 2 P&CR9
1D	R (on the application of Zurich Assurance Limited trading as Threadneedle Property Investments ) v North Lincolnshire Council [2012] EWHC 3708 (Admin)
1E	DfT – Good Practice Guidelines: Delivering travel plans through the planning system (April 2009)
2	PPS4 – Practice Guide on need, impact and the sequential approach (December 2009)
3	East Midlands Tourism Strategic Plan 2008-2011
4	Nene Valley Strategic Plan (October 2010)
5	Wildlife Trust ‘Vision for Biodiversity in the Nene Valley’
6	<b><i>East Northamptonshire</i></b>
6.1	East Northamptonshire Council – Land at Skew Bridge, Rushden: development brief – site development and design principles – consultation draft (17 July 2000)
6.2	East Northamptonshire Economic Development Strategy (12 January 2009)
6.3	East Northamptonshire Tourism Strategy 2010-2015 (March 2010)
6.4	East Northamptonshire Council – Regeneration Strategy for Rushden (June 2010)
6.5	East Northamptonshire Council - Three Towns Plan – Preferred Options
6.6	Schedule of saved Local Plan policies following adoption of the Rural North, Oundle and Thrapston Plan (18 July 2011), with Policies GEN3, EN8, EN9 & S5
6.7	East Northamptonshire Council – Policy and Resources Committee report considering the draft Economic Development and Tourism Strategy for consultation (8 April 2013)
6.8	East Northamptonshire Four Towns Site Specific Development Plan (November 2012)
6.9	East Northamptonshire Council Planning Policy committee report (14 June

<b>A</b>	<b>Government and Regional Local policy documents</b>
	2010) regarding the Rushden Town Centre Regeneration Strategy
6.10	DCLG: Strategic Environmental Assessment of the Revocation of the East Midlands Regional Strategy Post-Adoption Statement (March 2013) ( <i>Extracts: front cover, pp.163-164</i> )
6.11	DCLG: High Streets at the Heart of our Communities: the Government's Response to the Mary Portas Review (March 2012)
6.12	DCLG: Letter to Chief Planning Officers: Planning for Growth (31 March 2011)
6.13	East Northamptonshire Council Developer Contributions Supplementary Planning Document (June 2006)
<b>7</b>	<b>North Northamptonshire</b>
7.1	North Northamptonshire Joint Planning Unit – North Northamptonshire Town Centres – roles and relationships study: main report (August 2005)
7.2	North Northamptonshire Joint Planning Unit – North Northamptonshire Town Centres – roles and relationships study: update of retail capacity forecasts (July 2006)
7.3	North Northamptonshire Core Spatial Strategy (June 2008)
7.4	North Northamptonshire Core Spatial Strategy – Inspector's Report (12 May 2008)
7.5	Not used
7.6	North Northamptonshire Joint Planning Unit – Retail Capacity Update, with Appendix 2 (February 2011)
7.7	North Northamptonshire Joint Planning Unit Independent Assessment of the Retail Strategy for North Northamptonshire and the implications of the Rushden Lakes proposals (April 2012)
7.8	North Northamptonshire Joint Planning Unit – Retail Capacity Study – 2012 Update (May 2012)
7.9	North Northamptonshire Joint Planning Unit – Developing a settlement hierarchy for the North Northamptonshire Joint Core Strategy – Background Paper (July 2012)
7.10	North Northamptonshire Joint Planning Unit – Emerging Plan Consultation – Rushden Background Paper (August 2012)
7.11	North Northamptonshire Joint Core Strategy 2011-2031 - Emerging Draft for Consultation (August 2012)
7.12	North Northamptonshire Joint Planning Unit – Population Forecasts (2012)
7.13	North Northamptonshire Joint Planning Unit – Planning Committee dated 31 January 2013 (item 4, North Northamptonshire Joint Core Strategy – Update)

<b>A</b>	<b>Government and Regional Local policy documents</b>
7.14	North Northamptonshire Joint Planning Unit – Planning Committee dated 14 March 2013 (item 4, approach to the North Northamptonshire Joint Core Strategy and Interim Housing Policy Statement)
7.15	North Northamptonshire Joint Planning Unit – North Northamptonshire Annual Monitoring Report 1 <sup>st</sup> April 2011 – 31 <sup>st</sup> March 2012, January 2013 ( <i>Extracts: front cover, pages 1-6 and pages 16-18</i> )
7.16	North Northamptonshire Sustainable Design Supplementary Planning Document (2009) ( <i>Extracts: front cover and Appendix 5</i> )
7.17	North Northamptonshire Biodiversity Supplementary Planning Document (July 2011)
7.18	North Northamptonshire JPU minute and committee report regarding the emerging Joint Core Strategy, Item 4 (29 November 2012)
7.19	North Northamptonshire JPU committee report regarding the consultation responses to the Joint Core Strategy issues consultation, Item 5 (23 June 2011)
7.20	North Northamptonshire JPU Technical note for partner LPAs on translation of job numbers into employment land requirements (January 2008)
7.21	Wellingborough Chamber of Commerce - Response to the North Northamptonshire August 2012 Joint Core Strategy Consultation (August 2012)
7.22	North Northamptonshire JPU minute and committee report (item 5 – assessment of compatibility with NPPF) and Appendix (14 March 2013)
7.23	North Northamptonshire Core Spatial Strategy submission version (February 2007) ( extracts : title page and pp.1-29 and 50-63)
<b>8</b>	<b>West Northamptonshire</b>
8.1	West Northamptonshire Employment Land Study (2010) ( <i>Extracts: Northampton Central Area pages 28-43; Conclusions pages 66-67</i> )
8.2	West Northamptonshire Retail Study Update (February 2011)
8.3	West Northamptonshire Retail Study Capacity 2012 – update with appendix 1 and 2 (July 2012)
8.4	West Northamptonshire Joint Core Strategy – Submission version (January 2013) ( <i>Extracts: Chapter 4 Spatial Portrait, Vision and Objectives pages 11-23; Chapter 5 Spatial Strategy pages 23-28 (including Policies S1 and S2); Policy S9 pages 42-44; Chapter 12 Northampton, pages 123-127</i> )
<b>9</b>	<b>Northampton</b>
9.1	Northampton Central Area Action Plan Delivery Strategy (August 2012)
9.2	Northampton Central Area Action Plan Inspectors Report (November 2012)

<b>A</b>	<b>Government and Regional Local policy documents</b>
9.3	Northampton Central Area Action Plan (January 2013)
9.4	Northamptonshire Minerals and Waste Development Framework Document - Core Strategy Development Plan Document (May 2010) ( <i>Extracts: front cover and pages 37-39</i> )
9.5	Northamptonshire Minerals and Waste Development Framework - Development Implementation Principles Supplementary Planning Document (September 2011) ( <i>Extracts: front cover and pages 7-14</i> )
9.6	Northampton Town Centre Health Check (October 2009) (extracts: Title page, index and extract pages 51-58)
<b>10</b>	<b>Corby</b>
10.1	Corby Town Centre Masterplan (working draft) (2006) ( <i>Extracts: Chapter 6 pages 46-56</i> )
10.2	Regeneration Framework by Catalyst Corby (January 2003)
10.3	Schedule of saved policies following of Corby Borough Local Plan June 1997, with schedule of policies replaced by Core Spatial Strategy Development Plan Documents, and Corby Borough Local Plan (June 1997) ( <i>Extracts: town centre inset map and chapter 4</i> )
10.4	North Northamptonshire - Corby Town Centre Area Action Plan Preferred Options (May 2006) ( <i>Extracts: front cover, pages 3-11 &amp; 6-19 - 6-27</i> )
10.5	Corby Draft Retail Background Paper - redefining the Primary Shopping Area and shopping frontage destinations (December 2008)
10.6	North Northamptonshire - Corby Borough Council - A consultation document for the proposed Site Specific Allocations Development Plan Document for Corby Borough (September 2009) ( <i>Extracts: front cover, pages 96-122</i> )
<b>11</b>	<b>Kettering</b>
11.1	Kettering Town Centre Area Action Plan Inspector's Report (May 2011)
11.2	Kettering Town Centre Area Action Plan (July 2011)
<b>12</b>	<b>Wellingborough</b>
12.1	Wellingborough Town Centre AAP Inspector's Report (27 May 2009)
12.2	Not used
12.3	Wellingborough Town Centre Area Action Plan (AAP) (21 July 2009) ( <i>Extracts: front covers, pages 16-18 &amp; 60-77</i> )
12.4	Wellingborough Borough Council Full Council report (16 April 2013)
<b>13</b>	<b>Bedford</b>
13.1	Bedford Town Centre Area Action Plan (October 2008) ( <i>Extracts: front cover, pp. 12-14, 38-43, 55, 58-59</i> )

<b>B</b>	<b>Application documents (ref: 12/00010/FUL)</b>
1	Planning Statement (December 2011)
2	Design and Access Statement (December 2011)
3	ES - Non Technical Summary (December 2011)
4	Environmental Statement ( <i>main text only - 1 hard copy available from ENC</i> )
5	PPS4 Assessment (December 2011)
6	Supplementary Planning Statement (June 2012)
7	Clarification Statement of Retail Floorspace (June 2012)
8	Addendum to the Environmental Statement (June 2012)
9	Response to GVA's "Independent Assessment of the Retail Strategy for North Northamptonshire and the Implications of the Rushden Lakes Proposals" with appendices (June 2012)
10	WYG (on behalf of East Northamptonshire Council) Appraisal of Retail Planning Issues (September 2012)
11	Economic Benefits Study - Nortoft (December 2011)
12	Employment Charter - Nortoft (November 2011)
13	Natural England confirmation that no Appropriate Assessment is required (12 July 2012)
14	East Northamptonshire Council Development Control Committee report (10 October 2012)
15	East Northamptonshire Council Development Control Committee update report (10 October 2012)
16	East Northamptonshire Council Development Control Committee minutes (10 October 2012)
17	DCLG letter calling-in application (20 December 2012)
18	Transport Assessment (text only and Appendix F, G, H, I & M (Travel Plan), no other appendices) (December 2011)
19	Addendum to Transport Assessment - Highways Agency (March 2012)
20	Addendum to Transport Assessment - Northamptonshire County Council (March 2012)
21	Addendum (Issue 2) to Transport Assessment - Northamptonshire County Council (June 2012)
22	Flood Risk Assessment (May 2012)

<b>B</b>	<b>Application documents (ref: 12/00010/FUL)</b>
23	East Northamptonshire Development Control Committee minute and report (22 May 2013)

<b>C</b>	<b>Application Response Documents</b>
1	Highways Agency letter dated 7 February 2012 with direction and technical note dated 31 January 2011
2	Natural England representations on application dated 21 February and 5 April 2012
3	Environment Agency representations on application dated 26 March 2012, 23 April 2012 (with response from Campbell Reith), and 4 May 2012
4	Jones Lang LaSalle (on behalf of Helical (Corby) Ltd) letter of representation dated 2 April 2012
5	Legal & General representations dated 20 March 2012
6	Legal & General Addendum representations dated 4 April 2012
7	Bedford Borough Council letter of representation on the application dated 20 April 2012
8	Wellingborough Borough Council Planning Committee report and minute dated 9 May 2012
9	Ellandi (on behalf of PR Kettering Ltd) letter of representation on the application dated 10 May 2012
10	Turley Associates (Ropemaker Properties) letter of representation dated 16 May 2012
11	BNP Paribas (on behalf of CBRE Britannia Fund) letter of representation dated 16 July 2012
12	Environment Agency representations on application dated 9 August 2012
13	Ellandi (on behalf of PR Kettering Ltd) letter of representation on the application dated 17 August 2012
14	Kettering Borough Council letter of representation dated 4 October 2012
15	Northampton Borough Council letter of representation dated 5 October 2012
16	Bedford Borough Council letter of representation dated 5 October 2012
17	Kettering Borough Council letter of representation dated 5 October 2012 with GVA supplementary advice on retail planning matters (September 2012)
18	Turley Associates (Ropemaker Properties) letter of representation dated 8 October 2012

<b>C</b>	<b>Application Response Documents</b>
19	Drivers Jonas Deloitte (on behalf of Legal & General) letter of representation dated 9 October 2012
20	Corby Borough Council Development Control Committee report for meeting 24 April 2012
21	Kettering Borough Council Planning Policy Committee report (item 6) dated 8 May 2012

<b>D</b>	<b>Related scheme documents</b>
1	Committee report into original permission on the site (2002)
2	Committee report for renewal application (2012)
3	Committee report for ASDA supermarket (2003)
4	Committee report for Waitrose (1992)

<b>E</b>	<b>Inquiry documents</b>
1	Bedford Borough Council written representations

#### **ADDITIONAL DOCUMENTS SUBMITTED ON BEHALF OF THE APPLICANT**

APP1	LXB Statement of Case (prepared by SNR Denton)
APP2	John Rhodes (Quod) summary proof of evidence
APP3	John Rhodes (Quod) proof of evidence
APP4	John Rhodes (Quod) appendices to proof of evidence
APP5	Colin Burnett (Burnett Planning & Development) proof of evidence
APP6	Colin Burnett (Burnett Planning & Development) appendices to proof of evidence
APP7	David Bird (Vectos) proof of evidence (volume 1)
APP8	David Bird (Vectos) figures and appendices to proof of evidence (volume 2)
APP9	John Rhodes (Quod) rebuttal proof of evidence with appendices
APP10	Colin Burnett (Burnett Planning & Development) rebuttal proof of evidence
APP11	Colin Burnett (Burnett Planning & Development) appendices to rebuttal proof of evidence

APP12	David Bird (Vectos) rebuttal proof of evidence with appendices
APP13	Witness list (submitted on 25 June 2013)
APP14	Christopher Katkowski QC opening submissions (submitted 25 June 2013)
APP15	Census data submitted by David Bird of Vectos (25 June 2013)
APP16	Summary of proof and rebuttal with figures and appendices submitted by David Bird of Vectos (25 June 2013)
APP17	Newlands Shopping Centre, Kettering - Newlands is changing brochure submitted by Graham Chase of Chase & Partners (26 June 2013)
APP18	Table BPD1 - Trade Draw Analysis submitted by Colin Burnett of Burnett Planning and Development (26 June 2013)
APP19	Telford and Wrekin Council and another company v SoS CLG [2013] EWHC 1638 (Admin) (14 June 2013) (submitted 27 June 2013)
APP20	Northampton Borough Council Planning Committee report 10 July 2012 (submitted 2 July 2013)
APP21	Note from Vectos on retail park visitation - Fosse Park survey (submitted 2 July 2013)
APP22	John Rhodes speaking note submitted by John Rhodes of Quod (2 July 2013)
APP23	Peter Brett Associates - Next, Riverside Retail Park, Northampton - Planning and Retail Statement (May 2013) (extracts) (submitted 2 July 2013)
APP24	Northampton Chronicle article "Northampton shops 'to take 18 per cent' hit if Rushden Lakes approved" dated 21 June 2013 (submitted 3 July 2013)
APP25	List of application plans/drawings (submitted 3 July 2013)
APP26	List of application documents (submitted 3 July 2013)
APP27	Mintel UK Retail Rankings 2013 (extracts: front cover, pp.215 & 218) (submitted 4 July 2013)
APP28	Retail Planner Briefing Note 10.1 (September 2012) (extracts: front page and p.14) (submitted 4 July 2013)
APP29	Chris Goddard Appendix 13, table 10 and table 14 analysis (submitted 4 July 2013)
APP30	Map of Northampton retail parks (submitted 4 July 2013)
APP31	Northampton Riverside Retail Park: tenants list (submitted 4 July 2013)
APP32	Chris Goddard Appendix 17, table 10 and table 14a analysis (submitted 4 July 2013)

APP33	Suggested conditions: anchor units and clothing/ footwear restriction (submitted 4 July 2013)
APP34	DJD for L&G Hearing Statement for CAAP21 (submitted 10 July 2013)
APP35	West Northamptonshire Development Corporation Planning Committee papers on application ref: 09/0119/FULWNN, Sainsbury's Gambrel Road (14/06/2011) (submitted 10 July 2013)
APP36	Northampton Herald & Post article "Council calls for urgent talks" dated 12 June 2012 (submitted on 10 July 2013)
APP37	Northampton Herald & Post article "Shopping centre delay has left town in limbo" dated 28 February 2013 (submitted 10 July 2013)
APP38	Northampton Borough Council minutes of Planning Committee (2 July 2012) (submitted 10 July 2013)
APP39	Response to Susan Garbutt comments on Colin Burnett's paragraph 2.39 (submitted 10 July 2013)
APP40	Out of town retail applications approved in Northampton - 10 July 2013)
APP41	Regulation 122 CIL - Statement of Compliance - submitted 10 July 2013
APP42	Additional Transport note from David Bird (Vectos) with plan (ref: 12077/A/54 (submitted 10 July 2013)
APP43	Draft unilateral undertaking (submitted 10 July 2013)
APP44	Table 1 - figure work drawn from CDA8.3 (submitted 10 July 2013)
APP45	Table 2 - figure work drawn from CDA8.3 (submitted 10 July 2013)
APP46	Email from Stagecoach UK Bus (Nick Small) to Vectos (David Bird) regarding bus services dated 10 July 2013 (submitted 10 July 2013)
APP47	Email from Dentons (Roy Pinnock) to Northamptonshire County Council (Debbie Carter Hughes and Chris Bond) regarding SoCG with attachment dated 20 May 2013 (submitted 10 July 2013)
APP48	Email from Dentons (Roy Pinnock) to Northamptonshire County Council (Debbie Carter Hughes, Richard Hall and Chris Bond) regarding SoCG with attachment dated 28 May 2013 (submitted 10 July 2013)
APP49	Note on Asda and Waitrose stores in Rushden by Colin Burnett (Burnett Planning & Development) (submitted 11 July 2013)
APP50	Transport note by Richard Hall (Northamptonshire County Council) (submitted 11 July 2013)
APP51	Closing submissions (submitted 12 July 2013)

## **ADDITIONAL DOCUMENTS SUBMITTED BY EAST NORTHAMPTONSHIRE COUNCIL**

ENC1	Statement of Case
ENC2	Summary proof of evidence of Keith Nutter
ENC3	Proof of evidence of Keith Nutter
ENC4	Appendices to proof of evidence of Keith Nutter
ENC5	Summary proof of evidence of James Wilson
ENC6	Proof of evidence of James Wilson
ENC7	Appendices to proof of evidence of James Wilson
ENC8	Opening Submissions on behalf of East Northamptonshire Council
ENC9	Letter from WNJPU to NNJPU regarding consultation on North Northamptonshire Joint Core Strategy Emerging Draft for Consultation
ENC10	Retail Figures submitted by Ian Dove QC
ENC11	Hearing Statement by DJD for L&G – Northampton CAAP Matter 8 Infrastructure, Delivery & Monitoring
ENC12	Northampton Borough Council – Northampton Shopping Study Update 2004, Interim Report Retail Demand & Capacity Analysis April 2004
ENC13	Chronicle & Echo article 'Alarm at centre's delay' published 04.05.2004
ENC14	Revised Conditions
ENC15	Further Revised Conditions
ENC16	Closing Submissions

## **ADDITIONAL DOCUMENTS SUBMITTED BY THE CONSORTIUM OF OBJECTING LOCAL AUTHORITIES**

LAC1	Statement of Case
LAC2	Proof of evidence of Susan Garbutt
LAC3	Proof of evidence of Paul Lewin
LAC4	Proof of evidence of Matthew Whiteley
LAC5	Proof of evidence of CJB Goddard
LAC6	Plans and Appendices of CJB Goddard
LAC7	Rebuttal proof of evidence of CJB Goddard
LAC8	Rebuttal proof of evidence of Matthew Whiteley
LAC9	Rebuttal proof of evidence of Susan Garbutt

LAC10	Opening Submissions
LAC11	List of Appearances
LAC12	NNCSS Review Preferred Options Evidence Base LXB Reps
LAC13	Mr Goddard Appendix 15 GVA Turnover Assumptions CG 27.06.13
LAC14	Matthew Whiteley speaking note
LAC15	Susan Garbutt speaking note
LAC16	Chris Goddard speaking note
LAC17	Erratum Note of Matthew Whiteley
LAC18	Not used
LAC19	Note on Five Year Land Supply Position North Northamptonshire
LAC20	Northfield Avenue, Kettering – Planning History
LAC21	Closing Submissions

#### **ADDITIONAL DOCUMENTS SUBMITTED BY LEGAL AND GENERAL PROPERTY**

LG1	Statement of case
LG2	Proof of evidence of Matthew Jones
LG3	Appendices to proof of evidence of Matthew Jones
LG4	Proof of evidence of David Hunter-Yeats
LG5	Figures and appendices of David Hunter-Yeats
LG6	Proof of evidence and appendices of Robin Denness
LG7	Rebuttal proof of evidence of Matthew Jones
LG8	Opening Submissions
LG9	Bus Route 49 – Walking Route
LG10	Photographs of Greenway submitted by David Hunter-Yeats
LG11	DfT/DCLG Good Practice Guidelines: Delivering Travel Plans through the Planning Process, April 2009
LG12a	Goad Plan – Northampton Town Centre
LG12b	Goad Plan – Upper Floor Grosvenor Centre
LG13	L&G Letter to the Inquiry dated 10.07.2013
LG14	Plan showing land ownership not in the control of L&G or NBC in vicinity of the site of the Grosvenor Centre extension
LG15	Email from Nick Small to David Bird dated 10 July 2013

LG16	Closing Submissions
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## **DOCUMENTS SUBMITTED BY OTHER RULE 6 PARTIES**

PRK1	Statement of case by PR Kettering Limited
PRK2	Written Submissions of Mark Robinson on behalf of PR Kettering Limited
PRK3	Letter dated 26 June 2013 to PINS enclosing copy correspondence with WYG
RM1	Statement of case by Ropemaker Properties
RM2	Proof of Evidence of G J Warriner on behalf of Ropemaker Properties

## **INTERESTED PERSONS' DOCUMENTS**

IP1	Statement of Peter Bone MP
IP2	Statement of Philip Hollobone MP
IP3	Statement of Andy Sawford MP
IP4	Statement of Cllr Glenn Harwood MBE
IP5	Statement of Cllr Thomas Pursglove
IP6	Statement of Cllr Sarah Peacock
IP7	Statement of Adrian House
IP8	Statement of Rev Philip Evans
IP9	Statement of Cllr Derek Lawson
IP10	Statement of Kiran Williams
IP11	Statement of Thom Collins
IP12	Statement of Cllr David Jenney
IP13	Statement of Cllr Andrew Scarborough
IP14	Statement of Andrew Langley
IP15	Statement of Gill Mercer
IP16	Statement of Alyson Alfree
IP17	Statement of Debbie Jackson
IP18	Statement of Ian Blackwell/Richard Nilson
IP19	Statement of Tony Knott
IP20	Statement of Chris Read/John Webb
IP21	Statement of Maurice Weight
IP22	Statement of Cllr Helen Howell
IP23	Statement of Cllr John Farrar
IP24	Statement of Cllr Richard Lewis
IP25	Statement of Cllr Bob Nightingale
IP26	Statement of Cllr Tim Maguire
IP27	Statement of Andrew Hutchison
IP28	Statement of Cllr Andy Mercer
IP29	Statement of Lorna Wiltshire
IP30	Statement of Alan Piggott
IP31	Statement of Harry Graham
IP32	Statement of Jack Spriggs
IP33	Statement of Helen Danzig

## **ANNEX: CONDITIONS**

### **Time limits**

- 1) Application for approval of details of the appearance (hereinafter called "the reserved matters") in relation to the part of the site edged yellow on Drawing 2654-70 Rev A , (hereinafter called "the outline development") must be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 2) The outline development shall be begun before the expiry of two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development of the site (other than the outline development) for which detailed permission is hereby granted shall be begun before the expiration of three years from the date of this permission.
- 4) The application for the approval of the reserved matters shall be submitted to the Local Planning Authority before the expiry of 3 years from the date of this permission.

### **Plans, Drawings and Documents**

- 5) The development hereby permitted shall not be carried out except in accordance with the following approved drawings and plans:

Plan 1 (Rev A) Site Plan 1:5000; Plan 2: Blue Land Site Location Plan 1:12500; Plan 3: General Location 1:2500; 10714-C106-D5 Levels Strategy Plan (FRA); 10714-C120-D2 Existing Levels (FRA); 2654-50 Rev B Proposed site plan; 2654-51 Garden Centre Elevations; 2654-52 Garden Centre Section; 2654-53 Retail Terrace A Elevations; 2654-54 Retail Terrace B Elevations; 2654-55 Retail Terrace C Elevations; 2654-56 Retail Detail Elevations; 2654-57 Anchor Store Typical Section; 2654-58 Retail Terrace Typical Section; 2654-59 Retail Terrace C Elevation in context; 2654-60 Restaurant Plan, Elevations, Section; 2654-61 Drive-thru Plan, Elevations, Section; 2654-62 Visitor Centre Floor Plan; 2654-63 Visitor Centre Elevations; 2654-64 Rev A Boathouse Floor Plan; 2654-65 Boathouse Elevations; 2654-66 Gatehouse Building Floor Plan; 2654-67 Gatehouse Building Elevations; 2654-70 Rev A Parts subject to Outline Application; 2654-71 Garden Centre Plan; 2654-72 Retail Terrace A Plans; 2654-73 Retail Terrace B Plans; 2654-74 Retail Terrace C Plans;

- 6) All reserved matters and other schemes and details that are required to be submitted pursuant to the conditions attached to this planning permission shall accord substantially with: the submitted Environment Statement [dated 20.12.11]; Environment Statement Addendum (June 2012); Flood Risk Assessment [version F4] [dated May 2012]; Transport Assessment [dated Dec

2011]; Addendum to TA - Highways Agency (March 2012); Addendum to TA – NCC (March 2012); Design and Access Statement (amended) with Addendum; Waste Management Strategy and Waste Audit.

- 7) Development shall not commence until a delivery strategy and phasing plan have been submitted to and approved in writing by the Local Planning Authority for the development. The development shall be carried out in accordance with the approved delivery strategy and phasing plan.
- 8) The development floorspace shall not exceed:
  - (a) 43,289 square metres gross internal floorspace (inclusive of the external sales and display space associated with the garden centre) within Use Class A1 of the Town and Country Planning Use Classes Order
  - (b) 26,747 square metres net sales area (of which no more than 929 sqm shall be used for the sale of convenience goods)
  - (c) a 112 bed hotel, a creche (181 square metres gross internal floorspace) and a Leisure Club (1,456 square metres gross internal floorspace)
  - (d) two lakeside restaurants (each being 464 square metres gross internal floorspace) and a drive-thru restaurant/coffee shop (186 square metres gross internal floorspace)
  - (e) a lakeside visitor centre and a boathouse (each being 289 square metres gross internal floorspace).
  - (f) 12 metres in height from finished floor level to parapet level (and 14m including rooftop plant enclosure).

## **Archaeology**

- 9) Development shall not take place on any phase approved under condition 7 of this permission until a scheme for the implementation of a programme of archaeological recording has been submitted to and approved in writing by the Local Planning Authority for that phase. The recording must be carried out by an appropriately qualified and experienced archaeological consultant or organisation. The scheme shall be implemented before construction commences at the site on any phase approved by condition 7 of this permission.

## **Drainage**

- 10) No development shall commence until a foul water strategy has been submitted to and approved in writing by the Local Planning Authority. No

building shall be occupied until the works have been carried out in accordance with the foul water strategy so approved.

- 11) No infiltration of surface water into the ground shall be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to controlled waters. The development shall be carried out in accordance with the approved details.
- 12) Prior to being discharged into any watercourse, surface water sewer or soakaway system, all surface water from parking areas and vehicle manoeuvring areas shall be passed through an oil separator designed and constructed to have a capacity and details compatible with the site being drained or other approved pollution prevention device, e.g. porous paving. Roof water shall not pass through the interceptor(s).
- 13) No development shall take place until a detailed surface water drainage scheme for the site, including phasing, based on the submitted drainage strategy has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate that the surface water run-off generated up to and including the 1% critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. Any attenuation required shall include an allowance for climate change. The scheme shall subsequently be implemented for each phase of the site in accordance with the approved details and accompanying phasing plan. The scheme shall also include:
  - (a) Demonstration that the NPPF and CIRIA hierarchy of drainage has been followed
  - (b) Detailed surface water design drawings and supporting calculations
  - (c) Consideration of overland flood flows
  - (d) Overland floodwater should be routed away from vulnerable areas.
- 14) No development shall take place in any phase of the development under condition 7 until a detailed scheme for the ownership and maintenance of the surface water drainage assets, for the lifetime of the development, relating to that phase has been submitted to and approved in writing by the Local Planning Authority and the maintenance plan shall be carried out in full thereafter.

## Highways

- 15) No development hereby permitted shall take place until details of the following schemes have been submitted to and approved in writing by the Local Planning

Authority in consultation with Northamptonshire County Council (acting as Local Highway Authority) and the Highways Agency:

- (a) details of the form of the junctions/links at:
  - (i) the eastern end of the link road (which links Crown Way and Northampton Road) at its junction with Northampton Road;
  - (ii) the Northampton Road/Brindley Close junction; and
  - (iii) the Northampton Road exit from the A45 Skewbridge roundabout
- (b) details of a publicly adoptable pedestrian/cycle bridge over the A45 dual carriageway connecting the A5001 Northampton Road, Rushden with the new adoptable site access road as shown on drawing 110277/SK/46 Rev A
- (c) details of the improvements to the A45/Northampton Road/Crown Way junction (Skew bridge) as shown on drawing 110277/SK/46 Rev A
- (d) details of improvements to the footways of the A5001 Northampton Road and the U35247 Crown Way, Rushden to form a shared use footway/cycle track with appropriate dropped crossings between the proposed Toucan crossing on Northampton Road and the East Northamptonshire Greenway access off Crown Way, Rushden

and no part of the development hereby permitted shall be brought into use until the schemes listed at (a) to (d) have been completed in accordance with the approved plans. The works shall be retained as approved thereafter.

## Travel Plans

- 16) The development hereby permitted shall be operated at all times in accordance with the submitted Draft Framework Travel Plan forming part of the Transportation Assessment.
- 17) No unit shall be occupied until a Travel Plan for that unit has been submitted to and approved in writing by the Local Planning Authority in accordance with the Draft Framework Travel Plan forming part of the Transportation Assessment. The unit shall thereafter be operated in accordance with the approved travel plan and agreed actions under condition 19.
- 18) The development shall not be occupied until the expiry of 3 months from the date on which notice has been given in writing to the Local Planning Authority and Northamptonshire County Council (as Local Highway Authority) of the appointment of a Travel Plan Manager.

- 19) An annual Travel Plan review, identifying performance against the objectives of the Draft Framework Travel Plan and Travel Plans approved under condition 17, shall be submitted in writing to the Local Planning Authority every year for 5 years, beginning 12 months from first retail occupation, to be approved in writing. Any agreed actions shall be implemented by the Travel Plan Manager.
- 20) If the last Travel Plan review under condition 19 identifies that the targets in the approved Draft Framework Travel Plan are not being achieved, the Travel Plan review period under condition 19 shall be extended by a further 12 months, during which the Travel Plan Manager will work with the Local Planning Authority to agree measures that will secure improved performance against those targets and the timescale for implementing and monitoring them. The agreed measures shall be implemented by the Travel Plan Manager thereafter.

### **Landscaping**

- 21) No development shall take place until a landscaping scheme for the site (including boundary treatment) has been submitted to and approved in writing by the Local Planning Authority. This landscaping scheme shall be implemented in accordance with the approved details in the first planting season following the occupation of the development. Any trees or plants which within a period of five years of planting die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species (or as otherwise agreed in writing by the Local Planning Authority). The submitted landscaping scheme shall include details of how the landscaping will be phased to reflect the phasing of development under condition 7).

### **Miscellaneous**

- 22) No development shall take place until full details of the repair works to the "Bailey Bridge" and the programming of such works shall be submitted to and approved by the Local Planning Authority in writing. The repair works shall be completed before any part of the development hereby permitted is brought into use.
- 23) An easement of 3 metres should be provided either side of the pipeline as shown on the Gas Main Survey Drawing 17469 dated August 2012. At no time shall any non demountable buildings or structures be erected within this corridor.
- 24) No development shall take place until a scheme and timetable for the provision of 12 fire hydrants has been submitted to and approved in writing by the Local Planning Authority. The provision of fire hydrants shall be made in accordance with the approved scheme and timetable and retained thereafter.

## Biodiversity

- 25) No ground clearance works, tree felling, or vegetation removal shall take place during the main bird breeding season (April – June inclusive). If any such works are scheduled for March, July or August, a suitably qualified ecologist must carry out a comprehensive search of the affected area for nesting birds before the works commence. If active nests are found, ground clearance, tree felling or vegetation clearance around the nest (including a buffer area determined by the ecologist), shall not be permitted until the breeding attempt has ended as confirmed by the ecologist in writing to the Local Planning Authority.
- 26) No ground clearance works shall be undertaken within 100 metres of the heronry in the SSSI shown on plan GIS034A Ecological Constraints Drawing between the period January – June each year. If any such works are scheduled for July and August a suitably qualified ecologist must carry out a comprehensive search of the affected area for nesting herons before the works commence. If active nests are found, ground clearance, tree felling or vegetation clearance within 100 metres of the heronry shall not be permitted until the breeding attempt has ended as confirmed by the ecologist in writing.
- 27) The Skew Bridge Lake contained in the application site shall not be used by motorised craft at anytime except for safety boats. Within the Skew Bridge Lake, boating shall be limited to the area shaded green shown on plan GIS034A Ecological Constraints Drawing between the 1st November and 31st March in any year.
- 28) No watercraft shall be permitted in a 30 metre watercraft exclusion zone around the western island on Skew Bridge Lake shown on plan GIS034A Ecological Constraints Drawing either during the construction phase or the ongoing operational phase of the development, to avoid disturbance to places of rest and shelter used by otters. No boating activity shall be permitted on Delta Lake, to avoid disturbance of the bird interest of the SSSI/SPA/Ramsar site.
- 29) No development shall take place until a detailed Access and Habitat Management Plan related to Skew Bridge Lake and Delta Pit Lake, (based on the submitted outline access and habitat management plan) including access to the land around these lakes, has been submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The approved Plan shall be implemented before any part of the development becomes operational and implemented and maintained thereafter in accordance with the approved details.
- 30) No development shall take place until a detailed plan of the measures to be taken to avoid harm to reptiles during the development and to provide

appropriate mitigation measures shall be submitted to and approved in writing by the Local Planning Authority.

- 31) A clerk of works with appropriate ecological qualifications and experience (as agreed with the Local Planning Authority) shall be appointed to ensure development is undertaken in compliance with the Construction and Environment Management Plan and Access and Habitat Management Plan. The clerk of works shall be in attendance at the site during all working hours during which construction is being carried out.
- 32) No development shall take place until a list of construction operations that could cause disturbance to the wintering bird interest of the SSSI/SPA/Ramsar site has been provided to and approved in writing by the Local Planning Authority in consultation with Natural England. Such construction operations shall not be undertaken during the October to March (inclusive) period without prior agreement in writing by the Local Planning Authority (in consultation with Natural England) of suitable methodologies and mitigation to minimise disturbance to the wintering bird interest of the SSSI/SPA/Ramsar site and the subsequent implementation of agreed measures.
- 33) From the commencement of development there will be an annual monitoring survey in the area covered by the Access and Habitat Management Plan for reptiles, bats, otters, wintering and breeding birds which will continue on an annual basis until 5 years after the completion of all the development hereby permitted. The results of the monitoring survey shall be submitted to and approved in writing by the Local Planning Authority in consultation with the Natural England. Should the monitoring survey show any significant decline in the populations on any of the above species due to the development then an additional management action plan to rectify the position shall be submitted to and approved in writing by the Local Planning Authority in consultation with Natural England. The approved additional management action plan shall be implemented in full from the date of approval.

## Lighting

- 34) Before the commencement of development a scheme for the external lighting of the development (both for the construction and operational phases) shall be submitted to and approved in writing by the Local Planning Authority, to include a layout plan with beam orientation and schedule of equipment in the design (luminaire type; mounting height; aiming angles, luminaire profiles, a lighting contour map, and details of the timer controls including proposed hours of use) on the basis that:
  - (a) all external lighting shall be of a type, fixed in a location and directed in a manner that avoids glare being directed towards the designated areas of wildlife especially to the SSSI and SPA/Ramsar Site;

- (b) light trespass shall not exceed a level of 5 Lux beyond 5 metres from the boundary of the site;
- (c) the means of illumination of the subject of this consent shall not be of a flashing or intermittent nature.

The approved scheme shall be installed, maintained and operated in accordance with the approved details. There shall be no other external lighting at the development other than as so approved.

### **Contamination**

- 35) Development shall not commence on any phase approved under condition 7 of this permission until that phase has been subject to a detailed scheme for investigation and recording of contamination of the land and risks to the development, its future uses and surrounding environment. A detailed written report on the findings including proposals and a programme for the remediation of any contaminated areas and protective measures to be incorporated into the buildings shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include proposals for the disposal of surface water during remediation. The remediation works shall be carried out and a validation report shall be submitted to and approved in writing by the Local Planning Authority in accordance with the approved proposals and programme. If during the course of the development further evidence of any type relating to other contamination is revealed, work at the location will cease until such contamination is investigated and remediation measures, approved in writing by the Local Planning Authority have been implemented.
- 36) No development shall take place until a detailed scheme has been submitted to and approved in writing by the Local Planning Authority specifying the provisions to be made to protect the site from landfill gas arising from the development. No part of the development shall be brought into use until the approved scheme has been implemented and it shall be maintained thereafter.

### **Waste Management**

- 37) No occupation shall take place until a waste management strategy for the development has been submitted to and approved in writing by the Local Planning Authority. The strategy shall provide details (including accompanying layout and design plans) of the following:
  - (a) responsible person (including contact details);
  - (b) description of the development (proposed buildings, site area, curtilage, future use, and occupancy);

- (c) estimation of the type and quantity of wastes anticipated to be produced during occupation of the development;
- (d) identification of appropriate neighbourhood waste management design features (internal and /or external) and facilities;
- (e) how adequate space and access provisions for waste management features and facilities will be provided and maintained;
- (f) neighbourhood waste management facility capacity;
- (g) how the provision of facilities and design features
  - (i) complement and contribute towards existing waste management infrastructure network and sustainable waste management, and
  - (ii) the provision made for ongoing facility management and maintenance, including the collection and use of recycled and composted materials.

The development shall be carried out in accordance with the approved strategy.

## **Flood Risk**

- 38) The development hereby permitted permission shall be carried out in accordance with the approved Flood Risk Assessment (FRA) (dated May 2012, Rev F4) undertaken by Campbell Reith, including the following mitigation measures detailed within the FRA:

- (a) Provision of compensatory flood storage as set out on Drawing No. C102 (Rev D9) and Drawing No. C103 (Rev D8);
- (b) Finished floor levels are set no lower than 40.20 m above Ordnance Datum (AOD).

The mitigation measures for each phase of the development under condition 7 shall be fully implemented prior to occupation of such phase, and subsequently operated and maintained in accordance with the phasing arrangements set out within the FRA, or within any other period as may subsequently be approved, in writing, by the Local Planning Authority.

- 39) No development shall be carried out in the area of the site identified as pre-development flood zones 2 and 3 as shown in the approved FRA until a scheme for the phasing of the floodplain compensation has been submitted to and approved in writing by the Local Planning Authority. The floodplain compensation scheme as shown on the FRA Drawing No. C102 (Rev D9) and

Drawing No. C103 (Rev D8) shall be carried out in accordance with the approved phasing plan.

- 40) No development shall take place in each phase of the development under condition 7 until a detailed scheme for the maintenance of the areas of floodplain compensation, for the lifetime of the development, relating to that phase has been submitted to and approved in writing by the Local Planning Authority. The floodplain compensation shall be maintained in accordance with the approved details thereafter.

### **Construction and Environment Management**

- 41) No development shall take place on any phase approved under condition 7 of this permission until a Construction and Environment Management Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved statement shall be adhered to throughout the construction phase on any phase approved under condition 7 of this permission. The statement shall provide for:
- (a) The overall strategy for managing environmental impacts which are likely to arise during the construction phase
  - (b) The parking of site operatives and visitors vehicles
  - (c) Loading and unloading of plant and materials
  - (d) Management of construction traffic and access/haul routes
  - (e) Condition surveys and maintenance of all access/haul routes
  - (f) Storage of plant and materials used in constructing the development
  - (g) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - (h) Wheel cleaning facilities
  - (i) Measures to control the emission of water pollution, sediment, dust and dirt during construction
  - (j) A scheme for recycling/disposing of waste from demolition and construction works
  - (k) A signage strategy for construction traffic.

### **Unit size, subdivision and mezzanines**

- 42) The anchor unit 'B8' in Terrace B as identified on Plan 2654-50 Rev B shall not exceed a maximum floor area of 5,574 sqm gross internal area (including mezzanine floor area).
- 43) The anchor unit 'C1' in Terrace C as identified on Plan 2654-50 Rev B shall not exceed a maximum floor area of 5,574sqm gross internal area (including mezzanine floor area).
- 44) None of the units shown within Terraces A, B or C or the Garden Centre identified on Plan 2654-50 Rev B shall be amalgamated with other units (or subdivided to form separate units).
- 45) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting or amending that Order with or without modification), no mezzanine or other form of internal floor to create a first floor level shall be constructed in Terrace A or the Garden Centre as shown on Plan 2654-50 Rev B.

### **Range of goods**

- 46) Excluding Unit B8 and Unit C1 in Terrace B and Terrace C as identified on Plan 2654-50 Rev B:
  - (a) no more than 4,183 sqm gross internal ground floor area shall be occupied by retailers whose operation is predominantly the sale of clothing and footwear (but not so as to restrict the sale of sports clothing and footwear)
  - (b) prior to the occupation of any retail unit notice must be given to the Local Planning Authority in writing identifying the retailer and the predominant nature of the goods proposed to be sold, and the total internal ground floor area which will, upon occupation, then be occupied by retailers whose operation is predominantly the sale of clothing and footwear (not including sports clothing and footwear)
- 47) Notwithstanding the provisions of the Town and County Planning (Use Classes) Order 1987 (as amended), or any Order revoking and re-enacting that Order, the following shall apply
  - (a) The use of the Garden Centre and Retail Terrace A hereby approved shown on Plan No. 2654-50 rev B shall not be used for the sale of goods and services other than the following:

Core Garden Centre Goods and Services including:

- (i) Good and services related to gardens and gardening;
- (ii) Horticultural products, trees, plants, shrubs, house plants and flowers of any type;
- (iii) Garden equipment, tools and accessories;
- (iv) Barbeques and their accessories;
- (v) Outdoor garden furniture;
- (vi) Sheds, garden buildings and outdoor garden play equipment;
- (vii) Fencing, trellis and landscaping materials;
- (viii) Conservatories;
- (ix) Conservatory furniture, furnishing and accessories;
- (x) Swimming pools and associated equipment;
- (xi) Aquatics, water garden equipment and their accessories;
- (xii) Books – including gardening, leisure, hobby, travel, sports and coffee table books and other literature other than fiction;
- (xiii) Soft furnishings;
- (xiv) Restaurant, coffee shop and children's play area

Non-Core Garden Centre Goods and Services including:

- (xv) Pictures, frames and prints;
- (xvi) Pets, pet accessories, pet care and advice;
- (xvii) Hobbies, toys and crafts;
- (xviii) Baskets, wicker work and country crafts;
- (xix) Christmas decorations, trees and gifts;
- (xx) China, glass and gifts;
- (xxi) Home table top items and kitchen accessories;

- (xxii) Outdoor and country pursuits and equipment e.g. fishing, equestrian, hiking, climbing etc;
- (xxiii) Camping equipment and supplies;
- (xxiv) Outdoor clothing and footwear;
- (b) Within the Garden Centre hereby approved shown hatched in green on Plan No. 2654-50 rev B, the areas identified as 'Outside Plant Area' and 'Covered Plan Sales' shall not be used other than as the plant and external sales and display area for the Garden Centre. No more than 50% of the internal sales floorspace of the Garden Centre building shall be used for the sale of Non-Core Garden Centre Goods and Services.

## **Sustainability**

- 48) No building works shall start on any building until a scheme detailing measures to be incorporated into that building so as to achieve at least the Building Research Establishment (BREEAM) rating "very good" as set out in the Sustainable Design and Energy Statement December 2011 shall be submitted to and approved by the Local Planning Authority in writing. A post construction BREEAM assessment/report shall be submitted to and approved in writing by the Local Planning Authority, no later than 6 months after first occupation of each building, as constructed, to confirm the performance of that building against the BREEAM "very good" rating (including any necessary measures to ensure that each building secures BREEAM "very good" rating). The buildings shall be operated in accordance with the approved details thereafter.
- 49) No development shall take place until a Low Zero Carbon (LZC) Implementation Strategy has been submitted to and approved in writing by the Local Planning Authority. The submitted strategy shall be prepared by an independent energy specialist to demonstrate a combination of LZC energy sources for the development in accordance with the Energy Statement dated Nov 2011, in order to achieve a target of meeting at least 30% of the demand for energy on site. Reasons for excluding potential technologies should be given including technical and economic viability assessments supporting actual target if less than 30%. The development shall be implemented and operated in accordance with the approved strategy.



## Department for Communities and Local Government

### **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

#### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;**

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.