

**PARISH** South Normanton

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**APPLICATION** Frontage part of a mixed use retail, leisure and employment development comprising the demolition of existing dwellings and farm buildings and the erection of Class A1 Retail Class A3/A4 food and drink units, and Class C1 hotel with associated car parking, landscaping and service areas (on land also known as Wincobank Farm, North of Cartwright Lane)

**LOCATION** Land To The North And West Of Berristow Farm Mansfield Road South Normanton

**APPLICANT** Mr Marcus Jolly, Limes Developments Ltd.

**APPLICATION NO.** 18/00470/FUL **FILE NO.** PP-07262649

**CASE OFFICER** Mr T Ball

**DATE RECEIVED** 13th September 2018

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## SUMMARY

This application has been brought to the planning committee for determination because it is contrary to the development plan and because of the significant public interest in these proposals, which are often referred to as 'Park 38'.

### Park 38



The Park 38 proposals comprise

- An L-shaped 'terrace' of retail stores (Class A1), expected to be divided into ten individual units and with some stores providing space over two levels plus a small coffee shop unit. This provides a total retail floorspace of 19,705 sq m (including mezzanine at 40% of ground floor area) plus 167 sq m coffee shop.
- A 'pod' of food and drink uses (Classes A3/A4) including the option of restaurant

- and/or wine bar uses to serve evening as well as daytime customers (1,227 sq m); and
- A hotel (Class C1) together with ancillary restaurant/café/bar type use (Class A3) on the ground floor; six storey building with 95 bedrooms and 370 sq m A3 use to ground floor

## Hotel



However, the proposals are not compliant with either the adopted Local Plan or emerging policies in the new Local Plan because the application site is on land to the east of South Normanton that is outside the existing settlement framework and allocated for employment uses in the emerging Local Plan.

In this case, there are no other relevant planning considerations that outweigh or offset the identified conflict with adopted Local Plan or the finding that the proposals do not comply with emerging policies in the new Local Plan.

In particular, the employment uses (as envisaged by emerging policy WC1) on this land would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B2 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality other local town centres.

Therefore, although the proposals are considered to be able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; any benefits of granting planning permission would be significantly and demonstrably offset and outweighed by the adverse impacts of doing so.

Accordingly, officers are recommending that the current application be refused for the following reasons:

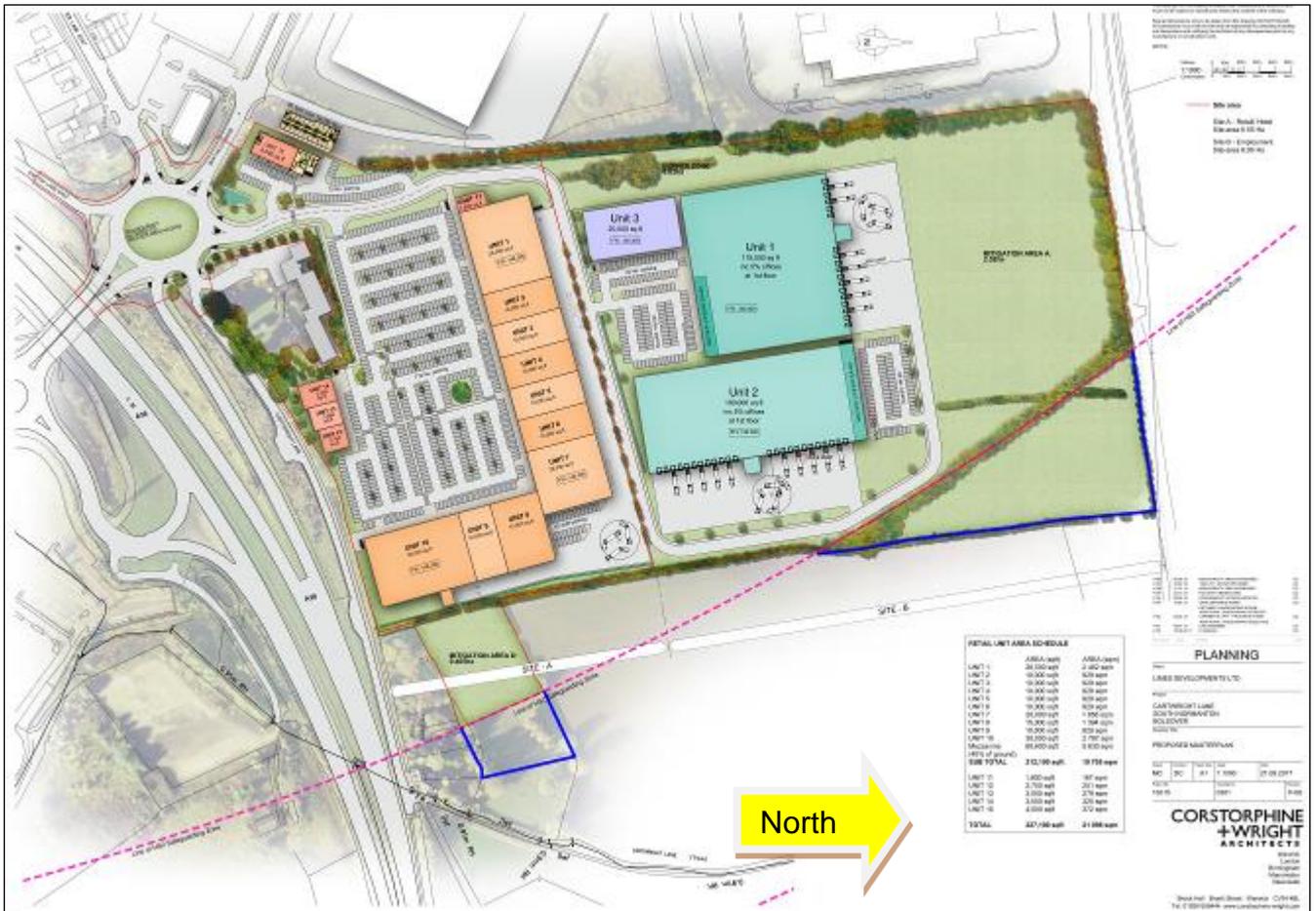
- The application site is outside the settlement framework and within the countryside as defined by the adopted Bolsover District Local Plan where development is subject to saved policy ENV3: Development in the Countryside. The proposal fails to comply with any of the criteria within that policy which would allow development in the countryside. Therefore the proposal is contrary to the saved policies of the adopted Local Plan.
- The emerging Local Plan for Bolsover District is at a very advanced stage. The application site is part of an allocation for employment land (B2 and B8 Uses) under policy WC1: Employment Land Allocations. The policy has been tested at the Local examination and is not the subject of any Main modifications. It therefore carries significant weight. The proposal for A1 shops including a C1 hotel use and A3/A4 restaurant and drinking establishments is on land allocated solely for B2/B8 uses under policy WC1 of the emerging Local Plan.
- On balance it is considered that the proposal passes the sequential and retail impact tests set out in the National Planning Policy Framework. However it is not considered that any benefits of the proposed development offset and outweigh its adverse impacts. In particular, the employment uses (as envisaged by emerging policy WC1) on this land would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B2 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality of local town centres.
- Therefore, the proposals are contrary to saved policies in the adopted Local Plan, contrary to emerging policies in the new Local Plan and are not a form of sustainable development in accordance with the terms of the Framework.

# OFFICER REPORT ON APPLICATION NO. 18/00470/FUL

## SITE & SURROUNDINGS

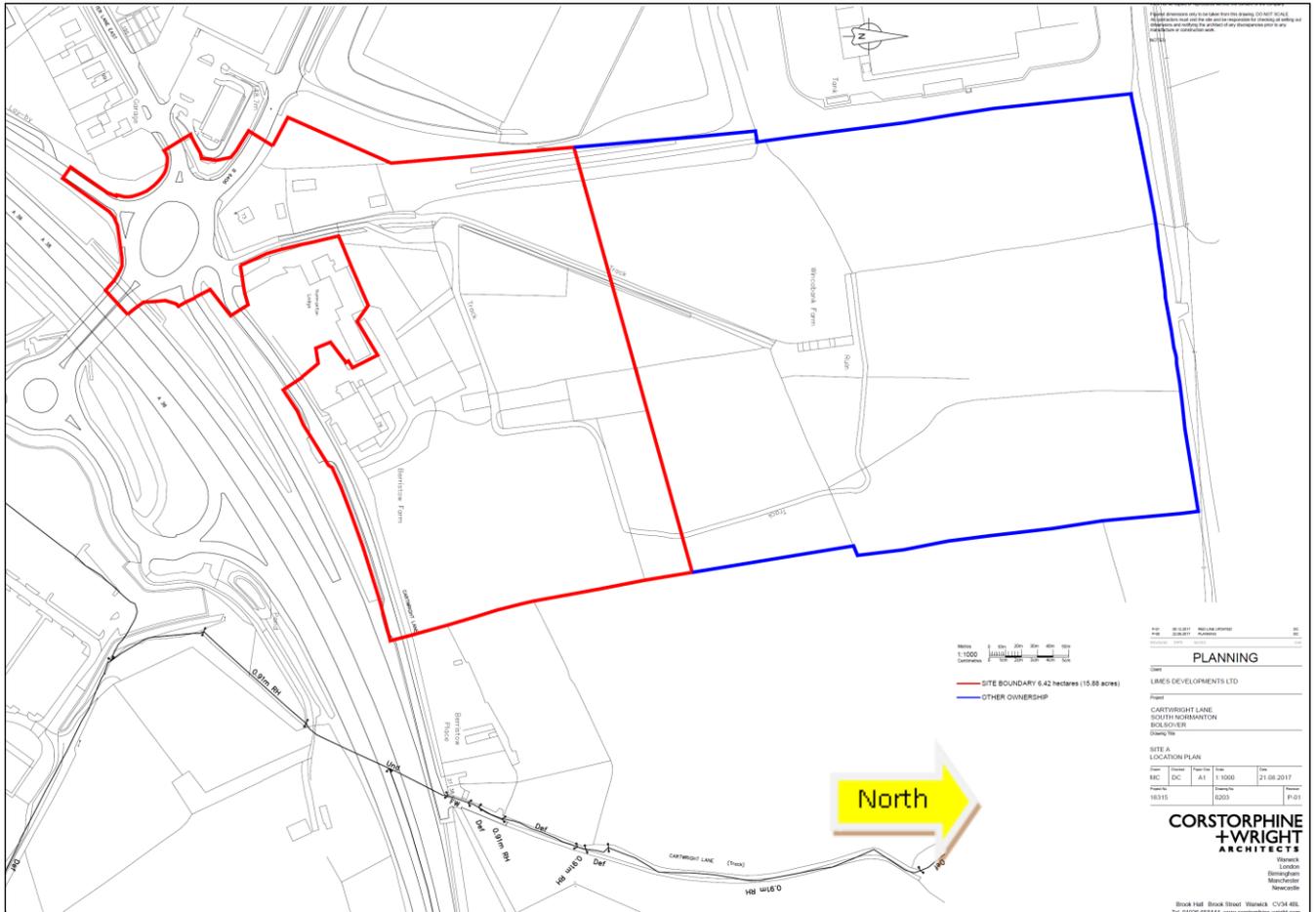
The current application is one of two parallel applications submitted together proposing a mixed-use development on 15.37ha of land on the eastern side of South Normanton. As illustrated on the masterplan below, this application seeks full planning permission for retail and hotel uses on the southern part of the site.

### Masterplan



The parallel application (application no. 18/00471/OUT) is seeking outline planning permission for employment uses on the northern part of the site. Application 18/00471/OUT will be dealt with separately once a decision has been made on the current application (18/00470/FUL).

## Application Site



The red-edged application site for the retail application (18/00740/FUL) comprises farm land, areas of which are also used for horse grazing, to the east of warehouse/industrial units along Berristow Lane. The application site includes Berristow Farm which fronts Cartwright Lane which is parallel to the A38 and opposite the East Midlands Designer Outlet Centre. The application site wraps round the western, northern and eastern sides of Normanton Lodge Care Home (now known as Normanton Lodge Care Village).

Berristow Farm comprises a detached rendered and slate hipped roof farmhouse, a range of rendered barns with cottage at its eastern end having a mix of slate and concrete tile roof coverings, a low red brick range of buildings with slate roof adjoining Cartwright Lane and behind and to the side of these most prominent buildings, various agricultural buildings of various styles plus stabling.

Also included in the site is the site of a house with related outbuildings and outside storage at the junction of Berristow Lane and Cartwright Lane (73 Mansfield Road), to the west of Normanton Ledge Care Village.

Field boundaries within the site generally comprise well maintained hawthorn based hedgerows with occasional mature hedgerow trees. A track with hedging and trees to its sides extends from Cartwright Lane (between Normanton Lodge and 73 Mansfield Road) and crosses part of the site diagonally (continuing into the outline planning application site). There are trees and overgrown hedgerow to the western side alongside existing industrial units off Berristow Lane.

The site rises gently away from Cartwright Lane before dropping away more steeply northwards through the outline planning application site. The full application site is therefore at the top of a hill which makes any built development prominent, particularly from the north and north-west.

To the east of the site is agricultural land which is identified as an Important Open Area in the adopted Local Plan and more recently is now identified as the route of HS2. Beyond is the Fulwood Industrial Estate in Nottinghamshire. To the north the outline planning application site is agricultural land which adjoins an access track from Berristow Lane serving an area of regenerating tipped land used for informal recreation.

## PROPOSALS

### Park 38



This full application seeks permission to construct a new retail development on the southern part of the site (6.42ha) aimed at providing:

- An L-shaped 'terrace' of retail stores (Class A1), expected to be divided into ten individual units and with some stores providing space over two levels plus a small coffee shop unit. This provides a total retail floorspace of 19,705 sq m (including mezzanine at 40% of ground floor area) plus 167 sq m coffee shop.
- A 'pod' of food and drink uses (Classes A3/A4) including the option of restaurant and/or wine bar uses to serve evening as well as daytime customers (1,227 sq m); and
- A hotel (Class C1) together with ancillary restaurant/café/bar type use (Class A3) on the ground floor; six storey building with 95 bedrooms and 370 sq m A3 use to ground floor.

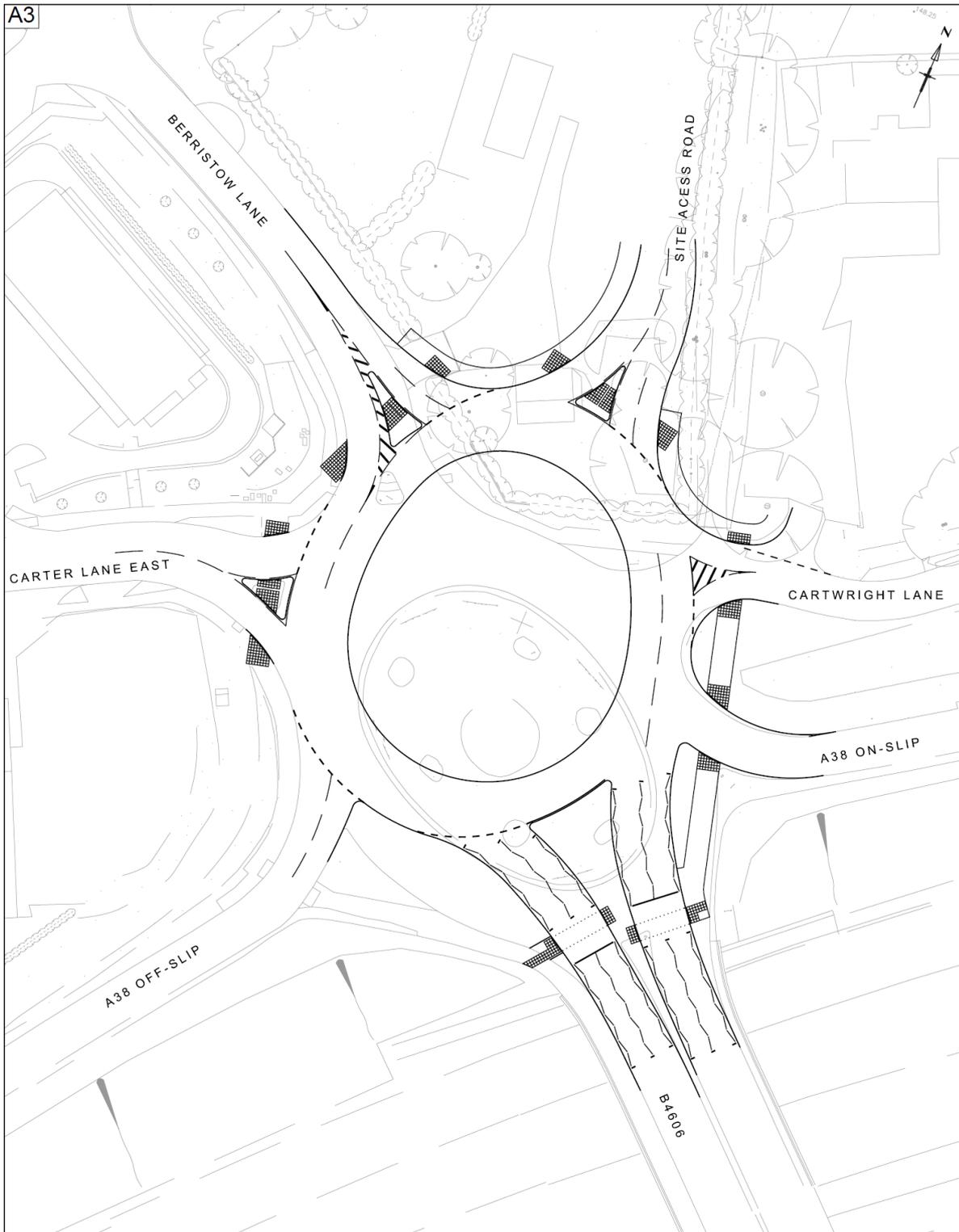
The proposed hotel and retail units will share the same access as the development proposed in the parallel application for the development on the northern part of the site (18/00471/OUT), which comprises:

- Employment development comprising units for warehousing and distribution activities (Class B8) with ancillary office floorspace; and
- A small group of trade counter type outlets, or alternatively, a gym or similar use.

## Access

To facilitate access to the site, the existing Carter Lane East/Berristow Lane/A38 junction roundabout will be enlarged to provide an additional arm to serve the proposed development using the site of 73 Mansfield Road. The access is adjacent to Normanton Lodge Care Village with the proposed hotel sited between the access and Berristow Lane.

## Layout of Proposed Roundabout



Berristow Farm (including the two houses and all the related farm buildings and stables), which is situated on the Cartwright Lane frontage to the east of Normanton Lodge, would be demolished to make way for the proposed retail development. The food and drink 'pod' would, in effect, be built on its site.

Normanton Lodge retains its current access from the Berristow Lane roundabout which is off Cartwright Lane a road which runs parallel to the A38. Normanton Lodge Care Village is situated to the south-western corner of the proposed retail park, with proposed retail car parking to its northern side and the food and drink 'pod' to its east (on the site of Berristow Farm complex).

An acoustic fence is shown on the landscape plans to the northern side of the original Nursing home.

### Car Parking

Car parking with 719 spaces is proposed to the front of the units with the main block of retail units along the northern boundary of the application site (at the highest point of the site) facing south and a smaller range along the eastern side facing west. The food and drink 'pod' back onto Cartwright Lane and face north into the car park. Servicing of the retail units is from their rear.

### External Appearance



The design of the buildings involves extensive glazing to the frontages, with additional glazing on the Cartwright Lane side of the food and drink 'pod'. These are to be clad in a mix of blue brick, stone rainscreen cladding (buff) and grey ceramic tile. The rear elevations (north and east facing) are microrib composite cladding panels laid vertically and randomly of different shades of green and buff to break up these extensive elevations.

## The Pod



## The Hotel



The hotel at 6 storeys has 95 bedrooms with at ground floor entrance and reception and a separate food and drink unit occupying approximately two thirds of the ground floor area. The building is to be clad in a mix of blue brick, stone rainscreen cladding (light grey), ceramic rainscreen cladding ((light grey) with flat roof. There are 70 parking spaces arranged around the hotel, the main retail car park is across the access road.

## Suggested Conditions

In the submitted Planning and Retail Statement the applicant suggests conditions to control the scope of the retail floorspace:

1. The total retail floorspace (Class A1) shall not exceed 13,800 sq.m. net sales area;
2. Floorspace at mezzanine level will not exceed 5,630 sq.m.;
3. No unit will be smaller than 929 sq.m. gross, and there shall be no sub-division of units;
4. The retail floorspace shall not be used for the sale of convenience goods, except for an ancillary element within individual units if required and in any event not to exceed five per cent of the net sales area in total;
5. No more than 40% (i.e. 5,520 sq.m.) of the net sales area to be devoted to clothing, footwear and accessories; and
6. The remainder of the sales floorspace to be restricted to the sale of the following only:

- a. Car parts and accessories
- b. Cycles and cycling equipment
- c. DIY, building and decoration products
- d. Electrical goods
- e. Floor coverings and carpets
- f. Furniture and furnishings
- g. Garden improvement products and accessories
- h. Homewares
- i. Pets Products
- j. Sports Goods and equipment (with any clothing included within such stores to be deducted from the 'fashion' total)

The applicant indicates that these suggested conditions are reflected in the results in the sequential and impact assessments undertaken prior to the submission of this application.

### Supporting Documents

The application as submitted is accompanied by the following documents:

- Planning and Retail Statement
- Design and Access Statement
- Distant View Analysis
- Transport Assessment
- Framework Travel Plan
- Flood Risk Assessment and Surface Water Drainage Strategy
- Ecological Appraisal
- Phase I Environmental Desktop Study
- Statement of Community Involvement
- Archaeological Desk-Based Assessment and Geophysical Survey
- Noise Impact Assessment
- Air Quality Assessment
- Tree Survey
- Coal Mining Risk Assessment
- Masterplan
- Ecological mitigation plan
- Landscape plan
- Plans and drawings showing the proposed buildings.

## AMENDMENTS

During the consideration of the application various amendments, revisions and additional information has been submitted which are described below.

Following concerns expressed by Derbyshire Wildlife Trust further work has been undertaken to address their concerns. A revised Masterplan has been produced showing greater areas retained for biodiversity mitigation, retaining some of the important hedgerows to the western side in a buffer zone, covering a total area of 3.73ha. Areas affected by the line of HS2 are also identified as additional biodiversity mitigation areas (1.28ha). The revised master plan also shows the retention of an existing tree within the car park area.

The Ecological Mitigation Compensation and Enhancement Plan included within the revised Ecological Appraisal sets out the principles of mitigation and retention. A biodiversity metric has been undertaken to give a base line value of 26.74 with the value of loss being 17.7. Overall the Biodiversity Impact Assessment Calculator predicts a Habitat Biodiversity Impact Score of +6.29 taking into account the proposed mitigation measures; there is a net loss to hedgerows.

The revised scheme is expected to generate Full Time Equivalent jobs as follows:

- Retail: 291
- Leisure (A3 and hotel uses): 82
- Total for this application of 373

The related outline application is expected to generate FTE jobs of 315 plus 24 for the trade/gym total 339.

Thus the complete development as proposed could generate 712 FTE jobs.

The applicant provides a comparison if the whole site were to be developed for Storage or distribution uses (class B8 uses) but including the hotel of 623 FTE jobs. A difference of 89 FTE jobs.

### Summary of Submissions

Response to Planning Policy comments. 19.09.19

Additional ecological information (extra climbed tree survey 16.08.19

Revised Proposed Masterplan (Rev P-08). 08.08.19

Response to Council's independent report on retail impact (Nexus Planning) and third party report by Williams Gallagher. 08.08.19

Revised Masterplan showing biodiversity areas. 05.08.19

Revised Ecological Appraisal taking account of comments made by DWT. 05.08.19

Employment Benefits, Scheme as amended from original submission and comparison with Class B use only. 02.08.19

Addendum to Planning and Retail Statement (Response to queries raised by Nexus Planning on behalf of the Council). 08.03.19

Air Quality Assessment Update (Response to request for additional analysis to address the Ministerial Direction). 13.12.18

Response to Mineral Planning Authority comments. 05.12.18

## HISTORY

17/00232/SCREEN	Environmental Assessment not required	Mixed use retail, leisure and employment development
17/00498/FUL	Withdrawn	Frontage part of a mixed use retail, leisure and employment development comprising the demolition of existing dwellings and farm buildings and the erection of Class A1 Retail Class A3/A4 food and drink units, and Class C1 hotel with associated car parking, landscaping and service areas (on land also known as Wincobank Farm, North of Cartwright Lane)
17/00499/OUT	Withdrawn	Rear part of a mixed use retail, leisure and employment development comprising the erection of Class B8 employment units with provision for trade counter and/or Class D2 gymnasium uses with all matters except for means of access reserved for subsequent approval (on land also known as Wincobank Farm, North of Cartwright Lane)
18/00471/OUT	Pending Consideration	Rear part of a mixed use retail, leisure and employment development comprising the erection of Class B8 employment units with provision for trade counter and/or Class D2 gymnasium uses with all matters except for means of access reserved for subsequent approval (on land also known as Wincobank Farm, North of Cartwright Lane)

## CONSULTATIONS

### Environmental Protection Officer (Environmental Health):

- *Contaminated Land:* Agree with recommendations of phase1 desk based study that the site has had a range of previous industrial uses and that a further intrusive investigation is required to ensure suitability of the site for the intended use including a gas risk assessment. Therefore recommends condition requiring such an assessment and submission/implementation of any necessary remediation scheme.
- *Noise:* Appreciate that the noise levels within the area are already fairly elevated due to the road network and existing industrial park and retail activities. However, do not wish to increase overall noise levels with this development. Concerns on a number of aspects in particular impacts on the adjacent nursing home; noise limits may need to be imposed on the industrial units. Peak time for the retail development noise is different to that of the traffic assessment. Proposed acoustic fence provides limited protection from HGV's approaching the site. No night time assessment for the restaurant/wine bar/food outlets, assume they close at 11pm. No assessment of cumulative impact of noise emissions from plant and equipment. Would be seeking to achieve noise levels lower than current background levels to minimise overall noise levels being increased. Agree that a construction environmental management plan be submitted. No assessment of extraction systems for the A3/A4 uses next to the Nursing Home (odour may also be a factor).

Conclusion that more can be done to improve the acoustic impact of the development. It is likely that suitable solutions can be found although this may place additional restrictions on the flexibility of the development. Therefore recommend conditions requiring further acoustic assessment with updated provisions to control sound, submission of site specific construction environmental management plan (CEMP), scheme for extraction of odours to all food premises before occupation, no food/retail unit open between 23:00 to 07:00 unless a night-time assessment demonstrated there will be no impact on night time amenity.

- *Air Quality:* Significant concerns regarding the air quality assessment in view of the Ministerial Direction that was served on Bolsover District Council under the Environment Act 1995 as part of the Ambient Air Directive with respect to the A38 directly leading up to and away from the proposed development. The submitted updated air quality assessment identified that there would be negligible impact as a result of the development although the modelling results differed in conclusion from our own modelled data carried out as part of the work required by Defra. Independent peer review concluded that the differences in model output related to technical differences in terms of the heights of the roads and the heights of the receptors. This was unlikely to significantly affect the conclusions of the assessment although the peer review identified that the report is robust and in line with current guidance, but it may not represent a clear worst case scenario; we remain cautious of the impact within this area as this is a significant development. It is calculated that by the time that this development is completed, the area should be in compliance with air quality standards for NOx as a result of several factors, including improvements to the designs of vehicles. However, the potential impact of HS2 is not included within either of these reviews. In view of the concerns regarding air quality within this area, we would like the applicant to consider proactive measures to provide further reassurance that the development will not jeopardise the work that is currently being undertaken to improve

levels within this area. This could include measures such as alternative low emission energy sources for the site, requirements for low emission vehicle fleets for the commercial units, charging points for electric vehicles throughout the site, improved public transport arrangements for the retail units etc. Therefore recommend conditions to cover these aspects. 04/08/19

Derbyshire Wildlife Trust (DWT):

Comments on Revised Ecological Appraisal with Biodiversity Metric and Revised Masterplan showing biodiversity areas, which have been prepared to address the concerns previously raised by DWT:

Satisfied that the ecological appraisal provides a thorough assessment that has addressed the issues identified in our previous responses.

Welcome the details of the change in biodiversity value as set out in the ecological report. Mitigation proposals for Mitigation Area are broadly acceptable, but we have concerns that transforming the species poor grassland to species rich grassland solely through sympathetic management is unlikely to be successful. Recommend that suitable enhancement measures are explicitly set out within the body of the EMMP.

Proposals in relation to protected species are considered to be acceptable.

It remains unclear how the long term management of the mitigation areas will be funded and secured and how long a period of management there will be. In order to ensure that the biodiversity gains outlined in the ecological report are realised we advise that the LPA should be satisfied that it can secure a period of management of ideally 25 years and/or in perpetuity for the land management.

Recommend conditions:

- Detailed bat mitigation strategy;
- The mitigation and habitat enhancement measures for great crested newt outlined in the ecological report should be implemented in full;
- No removal of hedgerows, trees, shrubs or brambles shall take place between 1st March and 31st August inclusive;
- No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority.
- The Ecological Mitigation and Management Plan (EMMP) described in the Ecological Report shall be submitted to, and approved in writing by, the LPA prior to the commencement of the development. 28.08.19

DCC County Archaeologist:

The applicant has provided the results of a revised archaeological desk-based assessment and geophysical survey which address the requirement for heritage information at NPPF paras 189/190.

The desk-based assessment, walkover and geophysical survey have identified several strands of archaeological interest within the site:

- Remains of two colliery tramways survive;
- The site of a former colliery, this was a small operation originating in the mid 19th century and closed in 1889;
- an area of activity associated with the former colliery, plus medieval ridge and furrow across the site; underlying this is an early field system on a different alignment, possibly of prehistoric or Romano-British date.;
- The site of Berristow Farm may be of early date, with buildings shown in this approximate location on a map of 1699.

The archaeological interest outlined above is of local/regional significance and is most appropriately addressed through a conditioned scheme of work in line with NPPF para 199 to comprise:

- 1) pre-demolition recording of the historic Berristow Farm complex;
  - 2) archaeological trial trenching to assess below-ground remains across the site as identified above;
  - 3) mitigation excavation/recording of significant archaeological remains within the footprint of the development.
- Parts 1) and 2) should take place at an early stage to enable delivery of part 3) before commencement of development work on site.

Recommends detail condition to cover these aspects. 22.10.18

#### Mineral Planning Authority (DCC):

Site is underlain by coal reserves. Coal Mining Risk Assessment submitted with the application states that they are of good quality and potentially of economic value, concluding that further investigation is necessary before development takes place.

Saved Policy MP17 of the Derby and Derbyshire Minerals Local Plan should, therefore, be taken into account in the assessment of this proposal. This states that the mineral planning authority will resist proposals for development which would sterilise economically workable mineral deposits, except where it is shown that there is an overriding need for the development and where prior extraction of the mineral cannot reasonably be undertaken or is unlikely to be practicable or environmentally acceptable.

More recent policy in the NPPF at paragraph 204 continues to encourage the prior extraction of minerals where practical and environmentally feasible, if it is considered necessary for non-mineral development to take place on the site. Policies in the emerging Derbyshire and Derby Minerals Local Plan Review will seek to safeguard the full extent of the surface coal resource in Derbyshire and this will ensure that the presence of workable minerals are taken into account in the consideration of proposals for non-mineral development.

The developer to provide a report which determines the practicality and viability of extracting the coal resource as part of the development. 08.11.18

### Coal Authority:

The site is likely to have been subject to historic unrecorded underground coal mining at shallow depth and that a thick coal seam outcropped across the site.

The Coal Authority concurs with the recommendations of the Report on a Coal Mining Risk Assessment (December 2017, prepared by Rogers Geotechnical Services Ltd); that coal mining legacy potentially poses a risk to the proposed development and that intrusive site investigation works should be undertaken prior to development in order to establish the exact situation regarding coal mining legacy issues on the site. Accordingly, no objection to the development subject to a pre-commencement condition requiring such works. 09.11.18

### HS2:

No objections. Given interfaces between respective works programmes in that location it will come as no surprise that discussions are ongoing between HS2 and the applicant regarding the construction, logistics and proposed environmental mitigation. In that regard HS2 Ltd stresses the importance of such dialogue and collaboration continuing to ensure that the proposed scheme and HS2 can operate without conflict and work to mitigate any potential conflicts that may arise. 02.01.19

### Highways England:

In April 2018 Highways England reviewed the original applications (17/00498/FUL and 17/00499/OUT), recommending that these not be approved until further information to determine the impacts of the proposed development on M1 J28 had been provided. We provided the applicant with our VISSIM model of the junction (validated to a 2017 base year) to support their impact assessment work, for which the modelling results were subsequently submitted for review.

In the AM peak period we expect an increase of approximately 40 vehicle trips at M1 J28. We have no concerns regarding junction operation in this peak as a result of the development, and a review of the VISSIM model confirms no change to queue lengths.

We expect a net increase of approximately 200 vehicle trips through the junction in the PM peak as a result of the development, which we note could result in the queue length on the M1 northbound off-slip increasing by 120m. This takes the maximum queue length on this approach to approximately 300m, although this can be accommodated within the stacking capacity of the existing off-slip link.

Although the operation of the M1 southbound off-slip is currently a significant safety concern due to queues reaching back to the M1 mainline, the addition of development traffic does not affect queues on this approach.

Considering these impacts, we do not consider there to be mitigation that can be provided which is fair and proportionate to the scale of impact on the operation of the junction. We therefore issued a no objections response in May 2018. Daily fluctuations for example, in traffic levels could mirror the impact of the additional development traffic.

As applications 17/00498/FUL and 17/00499/OUT were withdrawn, proposals were resubmitted in October 2018 under respective application references 18/00470/FUL and 18/00471/OUT. With the only change being that the overall quantum of development had been reduced by 5,574sqm we would expect a reduction in trips compared to previous proposals and therefore our previous no objections response remains unchanged. 11.01.19

#### Local Highway Authority (DCC):

Detail comments on the submitted Travel Plan. 15.11.19

Access proposals acceptable in principle. Some concerns about the level of parking provision. However a parking accumulation analysis indicates that overall within the site capacity will be available. As any shortfall in parking would be likely to cause congestion and on-street parking within the site rather than on the public highway an objection cannot be sustained.

No objections subject to conditions:

- Construction management plan;
- Detailed scheme for offsite highway works;
- Detailed phasing programme for the off-site highway works;
- Access gradient;
- Design of temporary access off Cartwright Lane;
- Access, parking, servicing etc areas before first occupation;
- Travel Plan to be revised. 14.11.18

#### Severn Trent Water:

Requests condition requiring drainage plans for the disposal of surface water and foul sewage prior to commencement. 14.12.18

#### Local Lead Flood Authority (DCC):

Majority of site drains to the north-west, to Normanton Brook. Part of the site drains to the south east.

To avoid any catchment transfer into the north west catchment, the applicant is proposing to drain the whole of the proposed sites impermeable area to the greenfield run-off rates for the north west catchment of the site alone, which the Lead Local Flood Authority (LLFA) strongly welcomes.

The applicant as per the submitted Flood Risk Assessment has considered and shall incorporate a range of SuDS features within the proposed development, this is in line with the National Planning Policy Framework.

The LLFA will require the production and submission of details of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development.

Therefore recommends conditions requiring detailed design and management plan for the surface water drainage of the site; assessment to demonstrate that the proposed destination accords with the drainage hierarchy; and details of surface water management during construction. Also provides detailed advisory notes. 09.11.18

### Senior Engineer (BDC):

Subject to acceptance of SuDS by the LLFA must ensure that an Operation and Maintenance Plan is in place. Any temporary drainage during construction must give due consideration to the prevention of surface water run-off onto the highway and neighbouring properties.

12.11.18

### Economic Development (BDC):

If Planning is minded to approve the planning applications that the local jobs planning condition should be applied and also for support to be given for the Regeneration Framework's plans for South Normanton town centre.

The number of jobs proposed under the two alternatives are noted. The jobs figures are employment density derived figures using information from the publically available `HCA Employment Density Guide 3<sup>rd</sup> Edition`. The applicant has reflected construction jobs in the response. It is noted the GVA data is based on the UK National Accounts Blue Book. No information is provided about the skills levels of jobs provided under either scheme.

The Council has strategies and plans to promote economic growth and skills across Bolsover District. The strategies support business growth and recognise the role of the market towns. From an Economic Development perspective, Retail and Business/Professional/Financial Services and Manufacturing/Advanced Manufacturing and Transport/Storage/Logistics are identified as priority sectors in the District (amongst other sectors). It is noted the two alternative schemes make different contributions to meeting these priorities. It is recognised that different development types will result in different jobs and skills levels depending on the end occupier for a scheme. No skills information has been made available about the schemes. We have no evidence currently available to prioritise one sector over another. Economic Development would request the inclusion of a planning condition to secure local opportunities for skills, training and employment in the District. 16.09.19

### Planning Policy (BDC):

Detailed assessment against policies of the adopted development plan, the emerging Local plan and the Framework.

Concludes in relation to retail use that the proposed new retail units (under application ref. 18/00470/FUL) is considered to be contrary to the Development Plan. On this basis, application ref. 18/00470/FUL should be refused unless material considerations indicate otherwise.

In relation to the emerging Local Plan for Bolsover District as a potential material consideration that could indicate otherwise, it is noted that the emerging Local Plan allocates the two application sites as one allocation for 14 hectares of B2 / B8 uses only. As such, the detailed proposals for the retail units do not accord with the emerging Local Plan's allocation and thus the emerging Local Plan cannot be treated as a material consideration to depart from the Development Plan in this case.

Finally, in relation to the NPPF as a potential material consideration that could indicate otherwise, the above assessment concludes that the application does not fail to satisfy the sequential test nor is likely to have significant adverse impact on existing town centres.

However, whilst a negative assessment would provide a further reason to refuse the application, this positive or neutral outcome is considered to not represent a material consideration that would indicate the application should be approved contrary to the Development Plan and emerging Local Plan.

Considers the hotel element of the proposal separately and concludes that it does not comply with the relevant policies of the adopted Local Plan.

Consider the stated employment benefits from the proposal and concludes that at face value the proposal could deliver 89FTE more jobs than just B Class employment.

From an assessment of this proposal, it is considered that the:

- retail element of the proposal is contrary to policy ENV 3 - Development in the Countryside of the adopted Bolsover District Local Plan as it is within the countryside and is none of the types of development permitted by the policy;
- hotel element of the proposal is contrary to policy ENV 3 - Development in the Countryside of the adopted Bolsover District Local Plan as it is within the countryside and is not in the locations permitted by policy CLT 14 - Hotel Development of the adopted Bolsover District Local Plan
- employment element of the proposal is contrary to policy ENV 3 - Development in the Countryside of the adopted Bolsover District Local Plan as it is within the countryside and is none of the types of development permitted by the policy;

In terms of material considerations that could indicate that the proposal should be approved, the emerging Local Plan allocates the two application sites as one allocation for 14 hectares of B2 / B8 uses only under policy WC1: Employment Land Allocations. This employment allocation has been tested at the Local Plan Examination and the Inspector has judged that it does not need to be modified to make the Local Plan sound or legally compliant. As such, the outline proposals for employment use on the northernmost part of the allocation are largely in conformity with the emerging Local Plan and this is considered to represent a material consideration that could indicate that this part of the proposals could be approved.

It is noted that the retail elements of the proposal are found to largely pass the sequential test. Furthermore, despite the identified impact of the retail elements on the turnover and trade draw of the surrounding town centres, particularly those of Mansfield and Sutton-in-Ashfield, based on the expert advice provided by Nexus Planning have to conclude that the impact of the proposal is unlikely to represent a significant adverse impact as interpreted in the NPPF. However, this positive or neutral outcome is considered to not represent a material consideration that would indicate the application should be approved contrary to the Development Plan and emerging Local Plan.

Finally, the stated employment benefits of the applicant's development proposal in comparison to the Council's allocation of the whole site for Class B use employment only, namely 89 more FTE jobs (or 222 more gross jobs), are not considered from a policy perspective to represent a material consideration that would indicate the application should be approved contrary to the Development Plan and emerging Local Plan.

Therefore, a decision to refuse the application is recommended from a policy perspective.

29.08.19

### South Normanton Parish Council:

The Council is very concerned with the following issues should the development go ahead: -

1. The increased level of traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
2. The increased levels of air pollution due to extra traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
3. The increased noise levels due to the increased level of traffic and extra congestion around the M1 Junction 28, and the roundabouts off the A38 to McArthur Glen.
4. The increased level of commercial vehicles that will travel through the centre of South Normanton to access the proposed development.
5. The increased danger to pedestrians on the roads around the proposed development from additional traffic and additional air pollution. 27.09.19

### Mansfield District Council:

Strongly Object. Detailed 28 page letter submitted explaining the objection. In summary the objection issues are:

- Contrary to Bolsover District Council adopted Local plan and emerging Local Plan policies which are consistent with the Framework (NPPF).
- Strongly disagree that there are no alternative sites that meet the requirements of the sequential test having assessed all possible sites in Mansfield. There are two superior sequential sites in Mansfield capable of accommodating the proposal that need much more detailed consideration as to whether they are available, suitable and viable for the broad type of development proposed. The sequential assessment to site selection has not been satisfied.
- The impact on the overall vitality and viability of Mansfield town centre will be adverse but it is uncertain whether this will be significant adverse. Clearly there will be an adverse impact upon trade and turnover in other centres in the local retail hierarchy as well as an impact upon investment there and local consumer choice. Mansfield District Council's overall conclusion is that the impact on the overall vitality and viability of town centres in the catchment area will be adverse and potentially significant adverse particularly if it is developed as a fashion park which must form the worst case scenario.
- The loss of a greenfield employment land doesn't represent an efficient use of land; like the EMDO the development it is almost entirely reliant on car-borne customers therefore it will not discourage the need to travel or contribute to sustainable travel patterns.
- The predominantly low wage and part time jobs in the retail and leisure element will not contribute towards reducing social disadvantage particularly in comparison to the higher wage full time industrial and distribution jobs that the site is designated to provide.
- Even if the sequential assessment can be satisfied and impacts are deemed to be adverse rather than significantly adverse, in the planning balance these adverse impacts significantly and demonstrably outweigh the benefits of the proposal. This is not a sustainable development in a sustainable location. Like nearby EMDO, it is not accessible by a choice of means of transport and is almost entirely reliant upon car-borne transport and custom.
- There would be far greater economic benefits to the local economy in developing the site for B Class employment uses which would achieve most of the claimed benefits for

the development and would be compliant with the emerging development plan. This must be one of the most attractive greenfield employment sites close to the M1 that doesn't require enabling development.

The proposal is contrary to NPPF and NPPG policy guidance as it fails the sequential approach to site selection and it has not been demonstrated that the impact is unlikely *'to be significant adverse.'* The proposal could impact on future investment in nearby shopping centres in the local retail hierarchy. There is an adverse impact on town centre trade and turnover, choice and competition in several town centres and on the overall vitality and viability of these centres. In at least one centre the impact on overall vitality and viability is likely to be significant adverse and even if these impacts were only deemed to be adverse, in the overall planning balance they significantly outweigh the benefits of the proposal which fails to satisfy the NPPF policy tests that out-of-centre retail proposals such as this must address. The proposal is contrary to the existing and emerging development plan and national planning guidance and should be refused. 18.02.19

#### Amber Valley Borough Council:

Given the nature of the proposals, Amber Valley Borough Council has no comments to make in connection with the above application. Officers are of the opinion that the proposed development is not of a sufficient scale to be likely to have any significant adverse impact on Amber Valley, despite the proposed A1 retail element of the proposals in application 17/00498 being in an out of centre location. Bolsover District Council will need to satisfy themselves that the application proposals, by virtue of the inclusion of A1 retail uses in an out of centre location, are acceptable having regard to the relevant national and local planning policies. 02.01.19

#### Ashfield District Council:

Objects, 18 page letter setting out reasons:

- Proposal is not supported by the Bolsover District Local Plan policies EMP10 Sites for Large Firms and GEN10 (Important Open Areas). No evidence that the site is unviable as an employment site. Policies support the town centre first principle which is consistent with the National Planning Policy Framework. Application fails to meet criteria of policies SAC10 (Retail Development at Industrial or Warehousing Sites), SAC13 (Retail Development Outside Defined Town and Local Centres), CLT13 (Location of Major New Leisure and Entertainment Developments) and CLT14 (Hotel Development). The site is required for other uses (employment) and is taken forward in the emerging Local Plan for employment uses, it is not easily accessible by a choice of means of transport and will add to the number of car trips generating additional traffic to which concerns have been expressed by Nottinghamshire County Council. It is not a sustainable option particularly when combined with the potential impact on town centres.

- Sequential test is not satisfied, suitable sites at Stockwell Gate North in Mansfield and at Northern Bridge/Outram Street Sutton in Ashfield (1.2ha) where retail development would be welcome.
- Significant concerns regarding the submitted Impact Assessment. 70% figure for retail sales floorspace area is too low, 80% is often used. No evidence that an allowance in floorspace calculations for 40% mezzanine is reasonable, likely to be exceeded. Only one scenario examined in the applicants submission, at the broad comparison goods level, with the speculative nature of the development it should consider bulky goods, non-bulky goods and, given the proximity and claimed synergy with EMDO a third scenario of predominantly fashion and clothing retailers. A fashion led development will have a much more extensive draw than a bulky goods retail park with different trade diversions. Detailed issues with the catchment area, population and expenditure sources, market share expenditure, turnover, trade draw and trade diversion.
- The forecast retail impact does not reflect the impact on Sutton. Proposed retail element is in excess of the comparison floorspace in Sutton Town Centre. Ashfield's Local Plan strategic objective is to promote and develop the town centre as a vibrant and successful sub-regional centre with the ability to compete with other such centres. Substantial sums invested to improve the attractiveness of the town centre, in excess of £2million on refurbishment of the Market Hall, environmental improvements, acquisition of derelict buildings to facilitate development and grant support for shop fronts. Applicant has not undertaken new health checks of town centres but use data from 2016, whilst recent, retailing is a dynamic sector and the effects of reduced spending, increased on line competition mean the studies need updating particularly on vacancy rates. Particular concerns about attracting current tenants away from the town centre. The loss of retailers would diminish the already limited national multiple fashion offer. Sutton has increasing vacancy levels and limited retailer demand demonstrated by the failure to reoccupy key long term vacancies in the primary frontages. The town centre currently performs poorly on two key indicators, vacancy rate and limited diversity. Overall impact on Sutton is likely to be significant adverse.
- Forecast retail impact does not reflect the potential impact on Kirkby in Ashfield. Kirkby has several shops selling homewares, whilst unlikely to relocate they may suffer trade diversion to bring their continued presence into question.
- Substantial concerns regarding the impact on highways. The Framework seeks to reduce the need to travel by car. Proposal contrary to this objective. A transport study carried out for the Council identifies that the junctions along the A38 are all predicted to be significantly over capacity, the proposal would create a further cumulative impact. Proposal does not take account of proposed allocations in the Local Plan. Proposal is poorly served by buses with bus stops some distance away (more than 400m) across busy roads. Centres from which trade will be diverted are genuinely accessible by a choice of transport hence the claim of mileage/emission savings have to be treated with caution. Trip type proportions are disputed as these show no primary trips, with no justification. The highway authority currently object until such a time as the Transport Assessment had been amended to reflect reasonable trip proportions and the impact on the A38/Common Road junction has been assessed. The additional traffic on the A38 will add to air quality issues in this area.

- The economic benefits will not be realised. Greater benefits would be achieved by the development of the site for employment use. The number of retail jobs are exaggerated; the Next store company average (1/33sq m) rather than the HCA level of 1/90sq m is used. Part time low paid nature of retail jobs has to be contrasted with the predominantly higher paid full time jobs from employment use. Also loss of jobs from existing centres. No evidence submitted to show that the site needs enabling development for employment uses. It is one of the best located sites for employment purposes given its strategic location close to the M1.
- If Bolsover DC had intended for this retail proposal it should have come forward through the Local Plan process with consultation and reflecting the duty to cooperate. It has not been proposed in the Local Plan, Ashfield DC objects to the proposal.
- As a departure to the Local Plan it is assumed that it will be referred, if minded to grant permission, to the Secretary of State. 14.12.18

## **PUBLICITY**

Advertised in press as a departure to the Local Plan. 3 site notices posted. 15 Neighbours notified.

### Support:

Letter of support in the absence of car park construction in Amber Valley Borough Council centres.

### Representation:

From Normanton Lodge Care Village situated adjacent to the application site. Concern about noise from the supply of goods to the development, from vehicles entering the roundabout, from the development adjacent to where 80 residents will live. Hours for deliveries and shopping should be restricted to help contain this problem. Lights to the retail car park need to point away from the care village. Wishes to shape the proposal so that it works for all that have to live as neighbours.

### Objections:

Pro-forma letters of objection received giving the following reasons for objection:

- Proposal to restrict the types of goods sold does little to allay concerns that the development will have a significant adverse impact on Sutton-in-Ashfield, Mansfield and Alfreton town centres; 40% of the retail floorspace can be used for fashion retailing, there would be relatively few items that could not be sold from the remaining 60% and would therefore compete directly with existing retailers in the neighbouring town centres.
- The applicant has overstated the number of jobs to be created and overlooks the job losses that would ensure as a result of the trade draw impacts;
- There will be a significant adverse impact on the vitality and viability of nearby town centres including Sutton, Mansfield and Alfreton, and is a serious threat to investment already made in these town centres;

- There are sites available in the surrounding town centres that are more suitable to accommodate the retail and leisure elements of the proposal;
- The proposal will have a major impact on road infrastructure and lead to traffic problems surrounding the A38;
- Unsustainable out of centre location;
- Conflicts with policies of the BDC adopted plan and emerging Local Plan, the site is not identified for mixed retail use development.

78 copies of the letter representing 78 businesses in Sutton-in-Ashfield have been received.

103 copies of the letter representing approximately 89 businesses in Mansfield have been received.

In addition a further 13 copies of the letter have been received from other interested parties (no business details or remote to the area)

An objection has been received from the Chief Executive Officer of Mansfield Business Improvement District giving the following reasons:

- Threat to local economy which could see a retail impact of at least 8% on Mansfield and 15% on Sutton-in-Ashfield centres; likely to have a significant adverse impact on businesses' ability to continue trading.
- This will impact on existing and planned investments for the nearby towns.
- Retail occupiers likely to be secured for Park 38 are already represented in Mansfield and Sutton.
- Vacancy rates will increase due to anticipated loss of trade and loss of retailers to the proposed Park 38 impacting on town centre vitality and viability.
- No material considerations or benefits which outweigh the non-compliance with adopted and emerging development plans and the NPPF.
- Jobs created will be offset by jobs lost and displaced from town centres as stores close and relocate.
- Town centres nearby are improving but remain vulnerable and need time to recover and benefit from the positive steps being made by various stakeholders towards improving vitality and viability.
- More out of town retail leisure offer dilutes the town centre offer in nearby towns.
- Will increase demand on the main highways, increased traffic on already congested routes A38 and M1 junction 28. As a result there will be increased air pollution impacting on the natural environment.
- Could cause harm to the ongoing and continued development of Mansfield town centre and the town Centre Strategic Plan currently in draft format. This includes Heritage Lottery funded development of Leeming Street and the proposed development of the Rosemary Street bus interchange currently at pre planning stage, as well as earmarked development at Church Street.

3 other letters of objection received, referring to highway infrastructure being barely able to cope with current traffic levels; that business will be taken away from existing nearby town centres including South Normanton; any jobs will be at the expense of jobs in existing centres which have good public transport links.

More recently a further 8 letters of objection have been received from residents of South Normanton raising the following points:

- Cumulative negative impact of additional traffic from this development combined with proposed HGV traffic and recent approved 500 space extension to East Midlands Designer Outlet car park will add to congestion at roundabouts, increase rat run traffic through the village and create further delays for residents entering and leaving the village.
- Adding this development with others already approved will delay compliance with the Ministerial Direction to reduce nitrogen dioxide pollution and particulate matter levels on the A38.
- The entrance to Park 38 will expose residents of Normanton Lodge Care Home, recently extended, to traffic related pollution.
- Refusal on traffic and pollution grounds should be given serious consideration in addition to refusal on policy grounds.
- Share reasons for objections from surrounding businesses; however there will be further environmental impacts from the development including loss of green space.
- South Normanton is an old village, as such the roads are not laid out or suitable for the increased heavy use.
- Nationally we are trying to re-generate the High Street shopping in our towns, this type of development does the opposite.

Also a recent letter from the Chair of SoNAR (South Normanton Active Residents):

Whilst SoNAR has not held a Public Meeting on this specific application I am confident, from comments received, together with our links with other local organisations and councillors (at Parish District and County level) that residents, and their representatives in the village, are extremely concerned and wish to object in the strongest possible terms, with specific reference to traffic issues:

1. As BDC Planners and Environmental Health Officers are aware the stretch of the A38, adjacent to this application is subject to a Ministerial Direction to (for BDC and ADC) to "seek measures to reduce Nitrogen Dioxide pollution" as the current levels are deemed above legal limits.  
Can I ask that, in considering this application, the Planning Committee ask the applicant and themselves, "In what ways can accepting this application meet the requirements of the Ministerial Directive?"
2. As BDC and DCC Highways are fully aware there are regular and significant tailbacks on the A38, adjacent to the application site, as well as safety concerns related to the "Rat-Run" through South Normanton village, via Carter Lane east and Ball Hill. These are due to increased traffic build up at peak times and during busy periods at McArthur Glen. So, distinct from, but linked to pollution issues, there is a real threat of significantly increased traffic from this application.  
Can I ask that, in considering this application, the Planning Committee ask the applicant, themselves and DCC Highways, "In what ways can accepting this application ameliorate current pressure on the, already congested, road structure on the A38, M1 and local roads?"

I therefore request that, purely on these traffic issues, this application is refused.

Objections have also been received from Agents acting for owners of retail estates as follows:

Williams Gallagher on behalf of Eisinger Limited, owners of the Idlewells Shopping Centre, Sutton-in-Ashfield.

Submission of a 155 page detailed assessment of the proposal and its impacts.

The challenges facing the high street are well documented, but as seasoned investors, we understand that all markets are cyclical and despite the perceived threat of the internet, town centres such as Sutton-in-Ashfield can thrive based on a mixture of vibrant uses anchored by a rejuvenated retail offer.

One of the biggest threats to our ability to invest in centres such as Sutton however is the threat of uncontrolled, speculative out-of-centre development such as that proposed. These proposals serve to divert trade away from these sustainable locations, undermine attempts to attract new tenants and lead to the relocation of existing stores and facilities.

The proposed conditions offer very little reassurance as to the intentions of the applicant and in practice simply support our client's concerns that the Park 38 is intended to provide an out-of-centre retail development that will compete directly with existing town centres, including our client's own asset in Sutton-in-Ashfield town centre.

Up to 40% of the floorspace (5,520 sq.m. net) is proposed for the sale of clothing and footwear. This is a considerable amount of floorspace and, whilst it may not be the majority, it remains the case that it is likely to be the main offer within the development. Similarly, the sale of goods that would be permitted from the remaining floorspace is not restricted to 'bulky goods' as the Applicant seeks to suggest and in practice there would be very few items normally sold in town centre outlets that could not be sold at Park 38.

Idlewells Shopping Centre comprises 44 retail units, 250 car parking spaces, library and the town's indoor market. It is an integral part of the town centres retail offer and includes Specsavers, New Look, B&M Bargains, Boots, Argos, Superdrug, Bon Marche, and Holland & Barrett. The Centre owner works proactively to transform towns to ensure it has a successful and vibrant role for the local community. This can only be achieved where there is a combined effort on the part of local planning authorities within the sub region to protect and enhance the vitality and viability of its centres and defend against harmful speculative development.

The findings of their detailed assessment are summarised as follows:

- The applicant has failed to undertake a robust assessment of adopted development plan policies and their compliance/consistency with policies of the NPPF.
- The relevant policies of the adopted Local Plan are sufficiently consistent with the aims of the NPPF so as not to be rendered automatically out of date (with the exception of the needs test identified in Policy SAC12 which can be ignored)..
- There are significant adverse impacts associated with the proposal (either individually or cumulatively) which justify refusal:
  - The applicant has failed to undertake a robust sequential test in accordance with adopted and national planning policy requirements. Indeed the applicant's assessment is both incomplete and inaccurate in its assessment of potential sites - sufficient flexibility has not been demonstrated, and potential sites that are clearly sequentially preferable have been dismissed without sufficient investigation. There

are sites available in both Mansfield and Sutton that would be suitable for the retail and town centre uses elements of the scheme currently being proposed. Smaller sites are also available in the other centres and these would be suitable for elements of the scheme such as the hotel and food and beverage offer and the gymnasium, all of which can be developed separately from the retail park.

- Our interrogation of the applicant's retail impact assessment reveals that it fails to present a 'worst case' quantitative impact and that the actual impacts on nearby allocated town centres could be significantly higher than set out in the applicant's planning submission. To illustrate this point, Williams Gallagher has undertaken and submitted its own retail impact assessment. This demonstrates that the level of impact experienced by nearby allocated centres will be significantly adverse. Paragraph 90 of The Framework makes clear that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact, it should be refused.
- The applicant's assessment of the economic benefits of the proposed development are overstated. Moreover, the loss of this key employment site to retail would significantly reduce the employment-generating potential of the site. It will not create employment opportunities in key growth sectors that have higher levels of GVA as is envisaged through the emerging allocation of the site for B Class uses and for which there is demand (a point which is conceded by the applicant in its PRS). It will simply bring about the displacement of existing retail jobs which are currently located in far more accessible and sustainable town centre locations. In brief, there will be a significant opportunity cost associated with assigning B-class land to a retail and leisure development. This cost amounts to non-compliance with the National Planning Policy Framework objective of securing economic growth in order to secure jobs and prosperity (para 80).
- The proposal will have the effect of increasing car trips to an unsustainable location - the labour force required to serve the retail and town centre uses of the development will be mainly drawn from adjacent districts, it will pull employees out of town centre locations requiring them to travel to a location which is far less accessible by sustainable transport modes. There have also been significant concerns raised about highway capacity and safety by statutory consultees - clearly, a major retail development with 1,000 car parking spaces will have a much greater level of highway movements in comparison to a B2 or B8 use. These issues amount to a conflict with Paragraph 108 of the NPPF which requires developments to take account of whether opportunities for sustainable transport modes have been taken up given the type of development and its location, that safe and suitable access to the site can be achieved for all people, and any significant impacts on the transport network or highway safety can be effectively mitigated to an acceptable degree.

The following negative impacts also weigh against the proposal:

- the fact that the application site is outside of the current settlement boundary and is within the open countryside;
- the agricultural classification of the site;
- the loss of protected hedgerows and impact on biodiversity;
- the degree of heritage loss;
- significant traffic generation which will negatively impact on an Air Quality Management Area.

These factors amount to the applicant failing to demonstrate that the proposed development will address the NPPF objective to conserve and enhance the natural and historic

environment.

Based on the above analysis, the proposed development fails to meet the overarching objective of the NPPF which is to achieve sustainable development (para 7). There are no overwhelming economic, social and environmental benefits associated with the proposed development which would outweigh the adverse impacts identified within this report.

No justification is given to explain why the site has not been developed for employment purposes. Suggest that if put on the market for B Class uses there would be very strong demand.

On the evidence the local authority has at present, there is a clear weighting of all material policy considerations for a refusal of this application. Should Bolsover Council be minded to approve the application, it will of course be referred to the Secretary of State given its scale and issues of beyond local importance.

This objection in addition to providing a detailed analysis and assessment upon which the above conclusions are drawn, is also accompanied by a separate economic impact assessment which includes analysis of the economic benefits of the proposal, considers labour and economic output displacement and the impact on local centres.

*Further representations following consideration of the Addendum to the applicants Planning & Retail Statement and the Retail Audit prepared for the Council by Nexus Planning. This contains 21 pages of detailed comment and analysis.*

It is clear that the retail impacts on Sutton and other surrounding centres will be substantial and harmful to the centres. At present it is a scheme that does not meet the economic potential of the site as being planned for in the soon to be adopted Local Plan.

The Nexus report only considers the impact of A1 uses, dismisses A3/A4, C1 (hotel) and D2 (Gym) uses all of which are town centre uses. The cumulative effect of these uses in addition to the retail element will have the effect of increasing the overall attractiveness and draw which will increase the impact of the scheme.

The retail policy considered by Nexus contains no assessment of policy SAC13 the only relevant policy in the adopted local plan; there is only passing reference to the emerging local plan which should have greater weight and consideration given its advanced stage (policy WC5).

Identify a number of 'technical' points that significantly affect the conclusions drawn by Nexus in their commentary on the submitted Quantitative Impact Assessment. Any market share and current turnover estimates that are 'derived' from the household survey need to be treated with caution, as the survey error risks are greater than would normally be expected. This in turn means that any forecast impacts will also be subject to greater variation. Given the relatively small increases in town centre turnovers that are forecast there could easily be a significant adverse impact with different market share and trade draw estimates.

Information relating to the health of Sutton and other centres is becoming dated. An overly optimistic outlook is misplaced; the problems being faced by the High Street are not restricted to the recession as was perhaps thought but represents a more fundamental challenge threatens both town centres and retailers in them. The overall picture is of a centre that, however healthy in 2016, has since experienced a decline in its overall retail offer and a rise in

vacancies for which there is limited occupier demand in the foreseeable future. National multiples have closed outlets and identified qualitative needs for better provision of quality clothing and shoe shops and a better food and beverage offer has not been realised. This will increase the importance of retaining the remaining national multiples in the Centre. Any further closures as a result of relocation or increased competition will have a proportionally greater impact than on a centre that has low vacancies and good retailer demand. Further losses particularly to the comparison offer risks prejudicing the Centre's status as the main town centre for Ashfield District and the Centre is therefore clearly vulnerable to increased out-of-centre competition.

Nexus seem to accept that the proposal will lead to a number of store closures. If so, it is not how extensive they are that will be the determining factor in assessing the severity of the impact, but which retailers will be affected. If, as we consider possible, some of the key anchors of the centres are at greatest risk of closure, either as a result of relocation or impact, then even one or two closures would have a significantly adverse effect in the short-term. Longer term, the indirect impacts would also be significantly adverse as other businesses that rely on the footfall generated by the main attractors will also lose trade.

Makes suggestions about the suggested conditions as proposed by the applicant, would be simpler and easier to enforce a restriction on convenience floorspace to 5% of any individual unit rather than an overall total, or more specifically restrict convenience floorspace to a number of specific units with maximum convenience floorspaces specified for each. A condition requiring further impact assessment for any alterations to the scheme or conditions must be included otherwise there is no mechanism for reviewing incremental impacts as a result of 'creep' in the operation of the scheme through ongoing changes.

*Additional comments in relation to the recently published Planning Policy response and additional material submitted by the applicant* (comparison of employment benefits between the application proposals and the use of the site for B Class employment uses only, and the additional note of retail planning policy matters by the applicant.

Continue to object and consider that:

The reliance on the Nexus advice in concluding that the impact of the proposals will be adverse but not significantly adverse is misplaced - the information that informed the Nexus advice has been superseded by more up-to-date information on the health of Sutton-in-Ashfield Town Centre and recent appeal decisions; and the conclusion that the retail application would result in a slightly greater number of jobs than if the site were developed for employment uses only, is overly optimistic with regards to the potential benefits of the application proposals. In practice, the proposed retail development is likely to create less jobs than Q+A suggests, and 'B' Class employment uses would create more, reducing even further any positive benefits of the retail application.

Detailed justification provided to justify these comments including reference to their own updated health check of Sutton-in-Ashfield town centre, and reference and analysis of a recent appeal decision including that a reliance on town centre turnover increasing over time to indicate that an impact will not be significant adverse cannot be relied upon to indicate that an impact will not be significantly adverse; the correct approach is to consider each change in the context of the health of the centres concerned. If this approach is applied to Sutton-in-Ashfield, it is clear that the small monetary increase in turnover expected over the 5 year period (based on Q+A's figures), would be insufficient to offset the very harmful impact that would be experienced.

The recent health check shows that the Sutton centre is not as healthy as Nexus assume and that recent changes have made it more vulnerable to impact. This has recently been recognised by Central Government who have included both Sutton-in-Ashfield and Mansfield within the 100 centres invited to develop proposals for town centre regeneration, as part of the Town Deals initiative. This recognises that neither town centre can be considered to be healthy and both clearly require investment.

As a result, the levels of impact accepted by Nexus will in practice be more damaging than previously assessed. As both Q+A and Nexus acknowledge, the application proposals will have a substantial impact on the vitality and viability of both centres and, in the context of this clear evidence of the vulnerability of Sutton Town Centre, it must now be considered to be significantly adverse. The proposal will also directly impact on evolving investment plans for both town centres that Central Government recognise are in need of intervention and regeneration.

Detailed analysis of a series of appeal decisions which supports a different approach to assessing the impact of a proposal on town centre investment. Impact can be significantly adverse even if there are no specific investment proposals in an area at the time of assessment.

Consider that there is clear evidence that the application would have a significant adverse impact on both the vitality and viability of Sutton-in-Ashfield Town Centre and that, in addition to the recommended reasons for refusing the applications, a refusal on the basis of conflict with retail planning policy would be appropriate and can be justified.

The Q+A analysis only considers B1 and B8 uses on the site, despite the allocation in the emerging plan which would also support B2 uses on the site. Such a use would be likely to generate a higher level of employment than Q+A suggests.

As a result, the difference in gross job creation between the two schemes will be extremely limited and, in practice, the use of the site for employment purposes, in accordance with policy, may create more jobs than the proposed retail development. However, when job displacement is also factored in, the benefits of the allocated use are clear. We therefore agree with the Planning Policy conclusion that the employment benefits claimed for the development are not justified and cannot be considered a material consideration in favour of the proposed development.

NTR Planning on behalf of the owner of the East Midlands Designer Outlet (EMDO) Aviva Life and Pensions UK Limited and McArthur Glen who are the property managers.

Consider that the Transport Assessment is deficient and additional information is required in respect of:

- car parking demand analysis (in particular its management at peak times and relationship to the outlet centre);
- service arrangement demand assessment (whether the number of service vehicles at any one time can be catered for without impinging on each other or the operation of the car park);
- additional trip analysis to cater for the differing retail elements of the proposal;
- further information regarding the linked trip assessment;
- additional junction capacity analysis in the retail peak;

- additional junction analysis for the M1 slip road/A38/Mansfield Road junction and the Common Road/A38 signal junction and additional information to confirm the proposed access design is feasible.
- Also consider that the proposal does not comply with the existing or emerging local plan policy. Policies show an allocation for employment development.

Aldergate Property Group (owner of site included in sequential test):

We are aware of the further applications submitted on this site. They both include town centres uses as defined by the National Policy Framework and we must object to both proposals. We objected to the previous retail application and for ease of reference this email is a forwarding of that objection with its attachments.

Our position remains that the current applications should be refused.

May we also add that we wholeheartedly agree with the many retailers & businesses who have already voiced their concerns.

This proposal, if permitted, would be damaging to nearby centres and will adversely affect investments already made, investments already committed and future investment proposals in those towns. Own one of the sites included in the sequential test, with consent to develop, the proposal would affect this investment and our future investment. This site at Belvedere Street known as Stockwell Gate South, Mansfield is available and readily developable for a Park 38 development if appropriate flexibility is shown. It has an extant permission for A1 & other uses. The proposal will therefore affect investment in Mansfield Town Centre and the applicant has not adequately addressed this issue. Considers that there is misleading information in relation to the impacts of the proposal on existing centres, Mansfield District Council and the objector have invested in the town centre, to bring forward in particular the Stockwell Gate North and South sites, contrary to the applicants claim.

The retail impact appears to be understated but is nevertheless still substantial & is likely to send shock waves through the much needed regeneration proposals for such as Mansfield town centre.

The “sequential” assessments are flawed and in our view there is nothing offered by this scheme which can amount to a material consideration to outweigh its harm and failure to comply with National or local policy. Do not consider that sufficient flexibility as to the scale and format of the development has been demonstrated. Notes that many sites are deemed unsuitable on the grounds of undefined remediation/contamination and lack of viability without evidence to support such assertions.

***Finally, it should be noted that the full text of all the above consultee responses and representations is also available to view on the Council’s web pages.***

## **POLICY**

### Bolsover District Local Plan (“the adopted Local Plan”)

Planning law requires that applications for planning permission be determined in accordance with saved policies in the adopted Local Plan, unless material considerations indicate otherwise.

In this case, the proposals map for the BDLP shows the majority of the site as a site for large firms along with the area to the west, now occupied by various large warehouse units along Berristow Lane and subject of policy EMP9. However, EMP9 is not a saved policy of the adopted Local Plan because the site was originally allocated as a reserve site in case the Castlewood Business Park across the A38 was delayed or not developed. Large firms developed plots along Berristow Lane pending the Castlewood development. Subsequently the Castlewood development has now progressed and the allocation on the remaining land, now the subject of the current applications, was not saved (saving direction September 2007). Therefore, the allocation has been deleted and the policy is no longer relevant.

As a consequence, the site is now considered to lie outside the settlement framework for the purposes of the adopted Local Plan and in the countryside where the main applicable saved policy is ENV3: Development in the Countryside.

Other relevant and applicable saved policies include:

GEN 1: Minimum Requirements for Development

GEN 2: Impact of Development on the Environment

CLT14: Hotel Development

ENV 5: Nature Conservation Interests throughout the District

ENV 8: Development affecting Trees and Hedgerows

Part of the site frontage (an area along Cartwright Lane to the east of the farm buildings), extends into the protected open break between the Fullwood Industrial area in Nottinghamshire and this area of South Normanton Parish.

Policy GEN10: Important Open Areas is therefore also applicable.

### National Planning Policy Framework (‘The Framework’)

The National Planning Policy Framework sets out the Government’s planning policies for England and how these should be applied. The Framework is therefore a material consideration in the determination of this application and contains a presumption in favour of sustainable development and says decisions on planning applications should secure development which will improve the economic, social and environmental conditions of the area.

Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework are of particular relevant to this application.

Paragraph 86 says local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

Paragraph 87 goes on to say when considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

Paragraph 89 says when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> of gross floorspace). This should include assessment of:

- a) 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
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

Paragraph 90 goes on to say where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused.

National Planning Practice Guidance offers further advice on the assessment of retail applications.

Publication Version of the Local Plan for Bolsover District (May 2018) (“the emerging Local Plan”):

Paragraph 48 of the National Planning Policy Framework says local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- c) the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)

The Publication Version of the Local Plan for Bolsover District (May 2018) is currently undergoing examination. Following the hearings the Inspector has provided her judgement on the necessary Main Modifications required to make the new Local Plan legally compliant and sound. Consultation has taken place on these modifications and the result sent to the Inspector. The final Inspectors report is expected soon. As such the plan is therefore at a very advanced stage.

Within the Submitted Local Plan for Bolsover District, the application site is allocated under policy WC1: Employment Land Allocations on which the Council will support the development of the site for 14 hectares of B2 / B8 uses only. This restriction to B2 / B8 uses only formed a matter of discussion at the Examination and the applicant, who was objecting to the restriction

to B2 / B8 uses only, and other objectors, who were objecting to any inclusion of retail uses on the Wincobank Farm site, were in attendance at the relevant Hearing session. The Inspector considered the arguments put forward by the Council and the objectors and the Inspector has essentially ruled within her judgement on the necessary Main Modifications that the restriction to B2 / B8 uses only does not need to be modified to make the Local Plan sound or legally compliant.

WC5 also contains a requirement for a sequential and retail impact assessment for large retail outlets proposed in 'out of town' locations.

Accordingly, significant weight should be afforded to the most relevant applicable policies, which are:

WC1: Employment Land Allocations;

WC5: Retail, Town Centre and Local Centre Development.

### Other

Adjoining the application site to the east is the safeguarded corridor for HS2.



## **Principle of Development**

### ***Compliance with saved policies of the adopted Local Plan***

The principal policy in the adopted Local Plan relevant to the general location of the proposed new retail units is policy ENV 3 - Development in the Countryside.

Policy ENV3 states that outside settlement frameworks planning permission will only be granted for development which:

- 1) Is necessary in such a location; or
- 2) Is required for the exploitation of sources of renewable energy; or
- 3) Would result in a significant improvement to the rural environment; or
- 4) Would benefit the local community through the reclamation or re-use of land.

It is considered that the proposed retail development fails to meet any of these four criteria and is therefore contrary to the adopted Local Plan. The proposal relates to main town centre uses (as defined in The Framework) which are not normally 'necessary' in a countryside location; the proposal does not involve the exploitation of sources of renewable energy; would not improve the rural environment as it would introduce buildings of an urban character; and, does not involve the reclamation or re-use of land – the land is currently in productive agricultural use (and related discipline of the keeping of horses).

The proposal also involves the loss of small part of the protected open area covered by saved policy GEN10 – Important Open areas. This policy protects such areas from development which would impact on their open character. Taking into account that the proposal only involves a frontage part of this designation rather than part of its substantive area adjoining the application site along its entire eastern boundary, that the route of HS2 passes through this Protected Open Area, and the emerging Local Plan as a result disposes of this designation, the application of this policy is not considered to be significant nor material to the assessment of the proposal.

In addition, the saved policies of the adopted local plan also include SAC13: Retail Development outside Defined Town and Local Centres which lists 9 criteria with which the development proposal should comply. However it is considered that this policy is not consistent with the policies of the Framework and little weight can be given to its consideration.

Therefore, in terms of compliance with the adopted Local Plan, it is considered that the main issue is that the proposals are contrary to saved policy ENV3: Development in the Countryside. However, the site is allocated for employment land in emerging Local Plan policies, which diminishes the extent to which the Council can object to the application based solely on the identified conflict with saved policy ENV3.

### ***Compliance with emerging Policies in the new Local Plan***

The current proposals for A1 shops includes a C1 hotel use and A3/A4 restaurant and drinking establishments uses on land allocated solely for B2/B8 only uses under policy WC1 of the new Local Plan.

This employment allocation has been tested at the Local Plan Examination and the Inspector has judged that it does not need to be modified to make the emerging Local Plan sound or legally compliant.

As such, the detailed proposals for the retail units do not accord with the allocation in the new Local Plan and this conflict with policy WC1 is considered to carry significant weight in the determination of this application.

The Bolsover District Local Plan had allocated this site (and the land within the accompanying outline planning application) as a site for large firms along with the land to the west which is now developed with various large warehouse units. The site was originally allocated as a reserve site in case the Castlewood Business Park across the A38 was delayed or not developed. As that site has progressed the allocation on the remaining land, now the subject of the current applications, was not saved. As a result there has been no pressure for the site to come forward for development being beyond the settlement framework and in the countryside.

The site is now shown in the emerging Local Plan for B2 and B8 employment uses, but has not been marketed as far as we know, i.e. the proposed allocated use has not been tested on the market (which would in some respects be premature as the emerging plan has not yet reached adoption). Development take up in the area of M1 Junction28 would imply a demand for B8 units on this land, there is no evidence to suggest there would not be market demand for the allocated uses.

The applicant has suggested that policy WC2 of the emerging Local Plan would apply which could allow alternative employment generating uses on allocated employment land. However this policy relates to the sites listed within it which does not include this site, and if it did, WC2 requires evidence to support an argument that the site is not suitable for the protected allocated use. As the site is greenfield and has not yet been developed it cannot be argued that the land is no longer suitable for employment uses. Policy WC2 is therefore not relevant and the land should be safeguarded for B2 and B8 uses as required by policy WC1.

Therefore, as the proposals in this application do not include B2 and B8 uses; the current application is contrary to policy WC1 in the new Local Plan.

## ***Key Issues***

In summary, the proposals are not compliant with either the adopted Local Plan or emerging policies in the new Local Plan.

Therefore, the proposals are not considered to be 'acceptable in principle' and these proposals should be refused planning permission unless

- (i) the proposals are able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; **and**
- (ii) the benefits of granting planning permission significantly and demonstrably offset and outweigh the adverse impacts of doing so.

## **The Sequential Test**

In the new Local Plan, Policy WC5: Retail, Town Centres and Local Centre Development encourages retail and other town centre development (which would include hotels) in the established town and local centres of the District. For out-of-centre proposals a sequential and retail impact assessment are required while stating that preference will be given to accessible sites that are well connected to the town centre. It is not considered that the proposal is well connected to any town centre due to its remoteness from the town centre of South Normanton and other larger town centres nearby and as such, the proposals conflict with the basic criteria of WC5.

WC5 is consistent with Section 7 of The Framework, which establishes policies to ensure the vitality of town centres. Planning decisions should support the role that town centres play at the heart of local communities by taking a positive approach to their growth, management and adaptation. (Paragraph 85).

Section 7 of The Framework also says that a sequential test should be applied to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan such as the current proposals. Main town centre uses as proposed in this application should be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered (para 86).

When considering out of centre proposals, like the current proposals, preference should be given to accessible sites which are well connected to the town centre. Flexibility on issues such as format and scale should be demonstrated so that opportunities to utilise suitable town or edge of centre site are fully explored. (Para 87).

National Planning Guidance provides the following information:

The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of centre locations (with preference for accessible sites which are well connected to the town centre). It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking.

### ***Analysis of the Sequential Test:***

The applicant has submitted a sequential test to support the proposal. This is similar to that submitted with the withdrawn application and considered on behalf of the Council by external consultants (Urban Shape) at that time. It is considered that their conclusion on this aspect remains valid:

*“We consider that the sequential assessment has robustly demonstrated a flexible approach to format and scale, and that there are no suitable and available sites over 2ha within the principal centres in the catchment area. On this basis, we are satisfied that the application passes the sequential test.”*

Derbyshire County Council consider that there are no sequentially preferable sites within South Normanton, Alfreton or Ripley town centres which would be available, suitable or viable to accommodate the retail proposals. They do not comment on sites outside the county.

However various objectors representing various interests disagree. There is concern that the test does not show sufficient flexibility on scale and format.

The applicant in citing case law states that it is important to recognise the commercial rationale and the intended catchment of the scheme as these are important characteristics of the broad type of development proposed. The development must therefore, the applicant states, be located on a site which can provide a significant and appropriately sized mixed-use commercial scheme, attractive to national operators in a prominent location, together with easy access to a sufficient volume of customers with appropriate scope for both extensive surface level parking and dedicated servicing facilities. Disaggregating the scheme including the A3 restaurant and hotel use into constituent parts is not appropriate. As a result in undertaking the sequential assessment the applicant has not considered sites below 2ha. This represents less than 50% of the area of the scheme but the applicant states it is evident that sites of such a smaller size would not be able to accommodate the application scheme or a reasonable alternative.

Mansfield District Council strongly disagree with the applicants conclusions on identified alternative sites. They indicate that there are two superior sequential sites in Mansfield capable of accommodating the proposal that need much more detailed consideration as to whether they are available, suitable and viable for the broad type of development proposed. The applicant does not provide such a detailed assessment of these sites. In addition Mansfield District Council considers that there are likely to be sites elsewhere in the catchment area that are more accessible than the application site and better connect to shopping centres in the local retail hierarchy. Only two other out-of-centre sites in Mansfield have been considered, none elsewhere in the area of search.

Ashfield District Council make similar points to those of Mansfield DC and also state that given more realistic floor area and flexibility there is a site available in Sutton-in-Ashfield Town Centre where retail development would be welcome.

Williams Gallagher on behalf of the owners of the Idlewells Shopping Centre in Sutton-in-Ashfield similarly consider that the sequential test has not been satisfied as sufficient flexibility has not been demonstrated and potential sites have been dismissed without sufficient investigation. There are sites available in both Mansfield and Sutton that would be suitable for the retail and town centre uses of the scheme.

Aldergate Properties who own a site in Mansfield included within the sequential test has permission for retail uses. Sufficient flexibility on scale and format has not been demonstrated. The site is available and readily developable for a Park 38 development if sufficient flexibility is shown. Notes that many sites considered by the applicant are deemed unsuitable on the grounds of undefined remediation/contamination and lack of viability without evidence to support such assertions. An inflexible attitude is shown by insisting on extensive surface level car parking, failure to adjust to the scale of floorspace proposed and refusing to disaggregate different elements of the shops use class (Class A) such as restaurant/café etc. uses.

A problem with the objectors comments, which while being valid in terms of a lack of investigation into the availability/suitability/viability of the sites in Mansfield and Sutton is that there is a reliance on a level of disaggregation (accommodating elements of the proposal on smaller sites) which is not acceptable to the applicant nor is required within the policies of and guidance to the Framework.

There are vacant retail units in the adjacent towns in particular Mansfield and Ashfield of various sizes. In addition there are identified sites (shown in the Local Plan and Masterplan) within these centres which potentially could accommodate modern format shops. However this logic runs counter to policy and advice given in the Framework and Planning Policy Guidance and supported by legal cases as it relates to substantial disaggregation of the proposal.

Therefore, officers (as advised by one of the councils retail consultants) consider that the current application does pass the sequential test required by WC5 and set out in paragraphs 87 and 88 of the Framework because the applicant is able to demonstrate there are no other suitable sites for the proposals in a town centre or edge of centre location.

### **The Retail Impact Assessment**

Paragraph 90 of the Framework says where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused. For the above reasons, officers consider that the application passes the sequential test despite a significant number of contrary objections.

The potential retail impact of the development is equally contended and Paragraph 89 of the Framework says when assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, like the current proposals, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> of gross floorspace).

This should include assessment of:

- a) 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
- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).

National Planning Practice Guidance offers further advice on the assessment of retail applications.

The purpose of the impact test is to consider the impact over time of certain out of centre and edge of centre proposals on town centre vitality/viability and investment. The test relates to retail and leisure developments (not all main town centre uses) which are not in accordance with up to date plan policies and which would be located outside existing town centres.

A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.

Where evidence shows that there would be no likely significant impact on a town centre from an edge of centre or out of centre proposal, the local planning authority must then consider all other material considerations in determining the application, as it would for any other development.

### ***Analysis of retail impact:***

The applicant has submitted a retail impact assessment to support the application. This has been the subject of updates and Sensitivity Tests to clarify queries raised by the Council's external consultants (Nexus Planning) who have carried out a retail audit of the submission as revised.

Their conclusion is that on balance taking account of the findings that the forecast trade impacts would be offset by the projected growth in turnover and the applicant's suggested restriction on items sold, the development proposed will result in an adverse, but not significantly adverse, impact on the relevant identified centres (South Normanton, Sutton-on-Ashfield, Kirby-in-Ashfield, Alferton, Ripley and Mansfield).

In considering the potential impact on investment in the nearby town centres Nexus, having reviewed the applicant's submission, considers that the application accords with the requirements of the investment part of the impact test and that they were unaware of any in-centre investment that would be materially impacted by implementation of the application proposal.

Again objectors disagree and consider that impacts are more likely to be significantly adverse at various town centres.

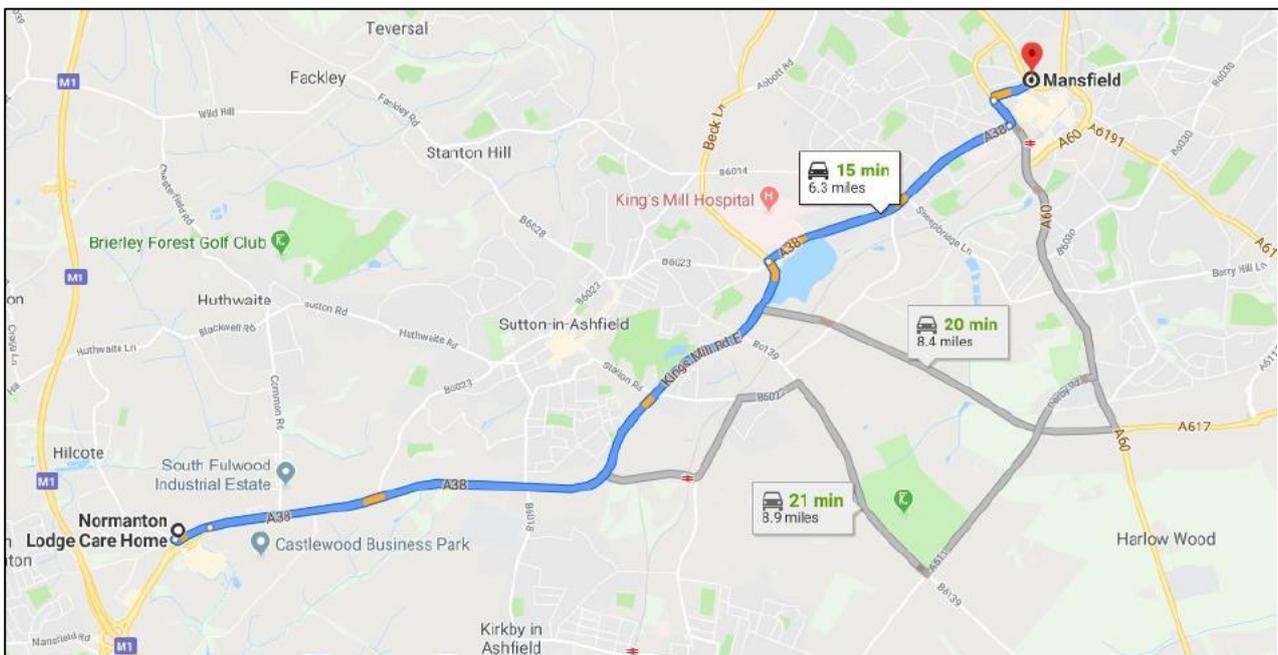
Mansfield District Council in their detailed consideration of the submitted retail impact assessment consider that the impact on investment in Mansfield Town Centre and in key development sites in and around the centre could be significant adverse. The impact on consumer choice in the centre itself could also be significant adverse. The town centre performs badly on two key indicators namely vacancy rate and limited diversity. If Park 38 is developed it is likely to have an adverse impact, particularly cumulative impact on the trade and turnover of comparison stores in Mansfield Town Centre but whether the impact on the overall vitality and viability of the town centre is likely to be significant adverse is uncertain.

The impact assessment cannot be relied upon to demonstrate the impact of the proposal on shopping centres within the catchment won't be significantly adverse, particularly Mansfield

Town Centre (which includes St Peter's Retail Park, excluded from the assessment of the town centre and considered as a separate entity in the submitted assessment).

The applicant's composite comparison goods assessment is based on erroneous weightings and their trade draw and trade diversions are largely based on their own estimates which appear to be self-serving in terms of the subsequent impacts upon shopping centres in the local retail hierarchy.

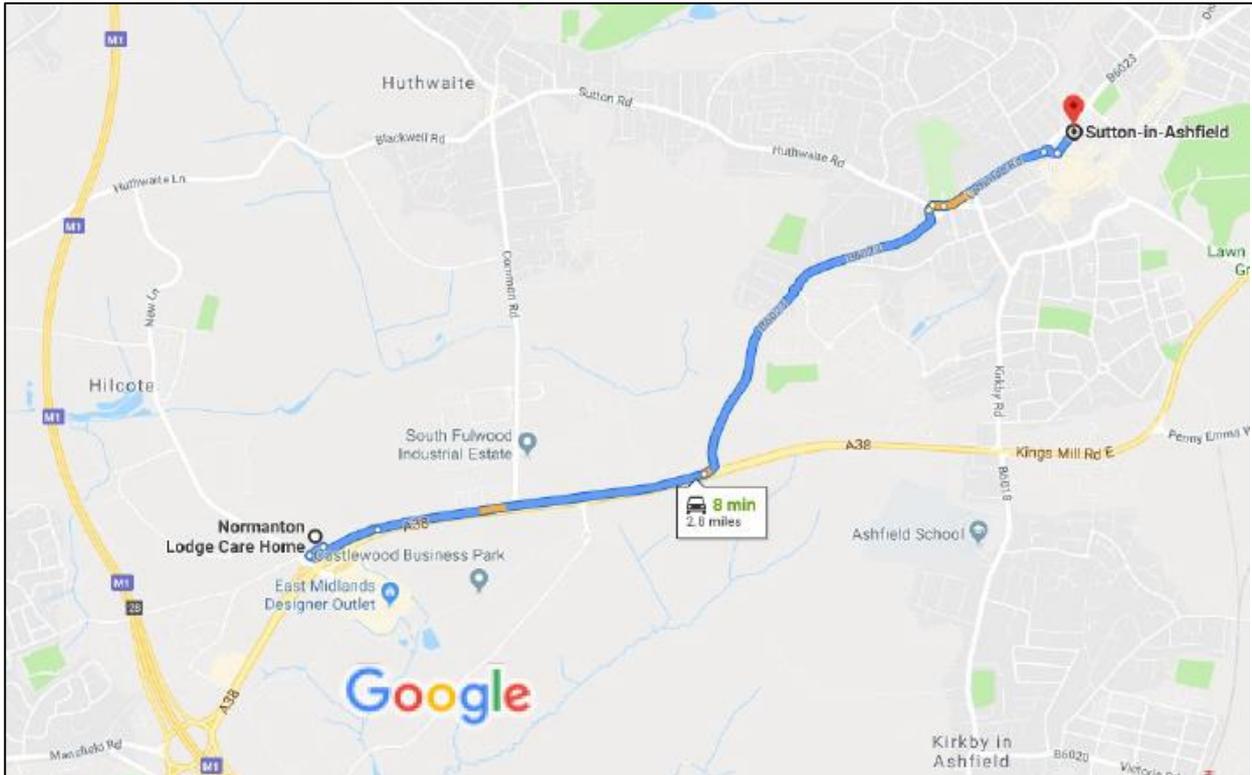
## Mansfield



Ashfield District Council considers that the impacts on Sutton are likely to be significant adverse. There are particular concerns about Park 38 attracting current tenants away from the centre, the loss of any of the key anchors would particularly diminish the limited national multiple fashion offer in the town. The impact on comparison goods turnover of over 13% and the cumulative impact of other commitments in the catchment area further increases the adverse impacts. Sutton centre has increasing vacancy levels and limited retailer demand as illustrated by the failure to re-occupy key long term vacancies in primary frontages. If Park 38 is developed as a fashion park it will have an adverse impact on the trade and turnover of comparison stores in Sutton. If Park 38 is developed as a mixed retail park it will still have an impact on the town centre's fashion offer as well as homeware shops. Given the uncertainty of the future occupiers of Park 38 the overall impact on the vitality of Sutton is likely to be significant adverse.

Ashfield DC also have concerns regarding Kirby-in-Ashfield centre; a mixed retail warehouse development is likely to impact Kirby which has several shops selling homewares. These may suffer sufficient trade diversion to bring their continued presence in the town centre into question.

## Sutton-in-Ashfield



Williams Gallagher on behalf of the owners of the Idlewells Shopping Centre in Sutton-in-Ashfield consider that the Nexus report is flawed as it only considers the A1 retail uses and not all the town centre uses proposed, i.e. A3/A4 (food and drink) uses together with the hotel. Also they question the applicant's household survey and the application of its results. They conclude that market share and current turnover estimates need to be treated with caution as the survey error risks are greater than would normally be expected. This means that forecast impacts will be subject to greater variation and this needs to be considered when seeking to determine the significance of impact.

The growth in centre turnover to offset impacts may be a consideration but is certainly not a definitive indicator that an impact will not be significant adverse. In any case the very small increase in turnover suggested by the applicant's analysis would be insufficient to maintain successful businesses.

The updated health check by the applicants for Sutton centre is limited to vacancy rates, however, a low vacancy rate does not necessarily mean a town centre is performing well as the quality and performance of occupied units may be relatively poor.

Williams Gallagher have undertaken a review of the health of Sutton town centre: there is a higher vacancy rate than the UK average; vacancies have arisen as a result of the loss of national multiples; as a result units suitable for modern retailer requirements remain empty being detrimental to the overall vitality and viability of the town centre; key retailers have closed and not been replaced by ones with equivalent draw; the overall offer is becoming convenience orientated. This increases the importance of retaining the remaining multiples. Any further closure as a result of relocation or competition will have greater impact than a centre with low vacancies and good retailer demand. Sutton is clearly vulnerable to increased out of town competition.

### ***Further analysis on retail impact***

Concerns about the health of Sutton-in-Ashfield town centre are recognised nationally by its recent inclusion (during the consideration of this application) in the Governments High Street Fund shortlist to develop plans to reinvent the High Street; Mansfield town centre is already included within that scheme. The inclusion of Ashfield and Mansfield in this process illustrates that these town centres are facing significant challenges now. Development of Park 38 will have further impacts on these centres (as shown in the various retail Impact documents) and could impact on investment opportunities shown for instance in the Sutton Town Centre Management Plan (March 2019). The Fund should not be relied on to address the adverse impacts of Park 38. Indeed by taking away trade Park 38 may prejudice implementation of the Masterplan and its funding as a result of its impact on an already struggling town centre.

The proposal is likely to discourage investment in shopping centres within the catchment area. Combined with East Midlands Designer Outlet it will become a much more attractive retail destination to investors and existing retailers in town centres within the catchment area. Some of these retailers are likely to relocate to Park 38 with all the trading advantages of its out-of-town location. In addition, prospective retailers who might otherwise have located within the local retail hierarchy will also be attracted to Park 38 instead and this will also decrease future consumer choice in the existing town centres.

Whilst there appear to be no definite investment commitments in the nearby town centres, there are local plans and masterplans which identify potential development sites and other ways for improvement of the town centres (particularly Sutton and Mansfield). The High Streets fund, if the local authorities are successful in their bids, may well secure the necessary investment in such proposals and will at least provide more detailed proposals for town centre development.

The applicant argues that the overall trade impact on Mansfield and Ashfield effectively equates to the expected growth in trade over the same period, and therefore there is no significant adverse impact. However this would mean that as a result of the development of Park 38 over the period of time examined, the centres would effectively experience no growth in trade. More recent appeal cases than used by the applicant to provide support for the development, take into account the impact of the development on existing town centres alongside the forecast trade diversion in relation to overall forecast trade growth and the overall health of the centre in weighing the balance between adverse and significant adverse impact.

A loss of trade to existing centres will mean less footfall. Many of the traders who have objected to the development are small private businesses who are likely to suffer disproportionately when compared to national or regional retailers to such a loss of footfall from trade diversion particular in current trading conditions.

### ***Use of planning conditions***

The sequential and retail impact assessments are based on the restricting conditions suggested by the applicant (see proposal description above). Clearly any conditions imposed could in the future be the subject of variation applications. The conditions need to be enforceable and easily monitored for compliance. It would be more practical for instance for convenience floorspace to be restricted to 5% of any individual unit rather than 5% overall. A condition requiring further impact assessments with any future changes to a permission (if it were to be granted) may also be appropriate to allow full assessment of any cumulative

incremental changes to floorspace usage beyond that in the current application (e.g. if the floorspace restriction on clothing, footwear and accessories were to be exceeded or the proportion of convenience goods floorspace were to be increased).

The applicant has submitted a sequential test and retail impact assessment which conclude that there will be no significant adverse impact on nearby town centres, in particular Sutton-in-Ashfield, Mansfield, Kirkby-in-Ashfield, Alfreton, Ripley and South Normanton subject to the use of restrictive conditions as proposed in this application. An objector has submitted their own assessment and concluded differently, i.e. there will be a significant adverse impact on Sutton-in-Ashfield centre.

## **Conclusions**

Taking into account the detailed information submitted and the comments received, it is clearly debatable as to whether the proposal will have a significant adverse impact or “just” an adverse impact on nearby town centres. If the application is approved and developed it is clear that there will be adverse impacts, in particular to Sutton-in-Ashfield and Mansfield town centres and possibly Alfreton but national policies only allow this application to be refused on retail impact grounds where there are demonstrable significant adverse impacts.

In the applicant’s submissions, it is considered that growth in trade overall will mitigate the impacts of the proposed development, but this would in effect mean little or no growth in the town centres, which is at a time when the future pattern of trading in town centres is increasingly uncertain and changing rapidly.

This rapid change implies that the information used to compile the various reports is quickly out of date. It seems ill-advised at the present time to approve development which will impact on town centres which are already struggling, as expressed by local businesses, owners of retail property and the relevant local planning authorities, at a time when national and local policy is to regenerate town centres. The inclusion of Mansfield and Ashfield town centres in the Governments High Street Fund shortlist to develop plans to reinvent the High Street is a recognition that these centres are experiencing problems.

However, the Council’s independent consultant has reviewed the information submitted in relation to retail impact and should be considered to be impartial. Therefore, on a fine balance, officers accept their independent consultant’s conclusions that the application proposals are acceptable under the impact considerations of paragraphs 89 & 90 of the Framework.

The reason officers consider that the issues are finely balanced is because Nexus’ conclusion is based on an acceptance that the forecast impacts would be offset by the projected growth in turnover of the local town centres based on forecasting by Experian. As explained above, this issue should be carefully noted when assessing the impacts of the proposed development not least because a relatively small change in projected growth could tip the balance towards a significant adverse impact to Sutton-in-Ashfield and Mansfield town centres.

## **The Planning Balance**

As set out in earlier sections of this report, the proposals are not compliant with either the adopted Local Plan or emerging policies in the new Local Plan. Therefore, the proposals are not considered to be 'acceptable in principle' and these proposals should be refused planning permission unless

- i. the proposals are able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; and
- ii. the benefits of granting planning permission significantly and demonstrably offset and outweigh the adverse impacts of doing so.

For the above reasons, officer consider that the proposals are able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework. As a consequence, officers consider that the planning balance now rests on whether the benefits of granting planning permission significantly and demonstrably offset and outweigh the adverse impacts of doing so.

The following sections of this report set out how the applicant has addressed various other technical matters and how the current proposals could be made acceptable in planning terms in all other respects. Therefore, the main issue to now weigh in the planning balance is considered to be the potential socio-economic benefits of granting town centre uses on a site allocated for B1 and B8 uses. This issue is looked at in the next section of this report.

### ***Economic benefits***

For the above reasons, the determinative issue in any decision on this application is considered to be whether other social, economic or environmental benefits that could be achieved by granting permission for this application would offset or outweigh the adverse impacts of doing so on other town centres and offset or outweigh the identified conflict with the adopted Local Plan and emerging policies in the new Local Plan.

In summary, if the current proposals were to offer better local employment opportunities through a development that is likely to come forward quicker than the B1 and B8 uses anticipated by the allocation of this land for employment uses in the new Local Plan then there may be good planning reasons to approve this application.

Objectors and the applicant have considered the employment generating potential of the site for the proposed uses and the allocated B2/B8 uses.

The applicant as part of their submission seeks to draw attention to the employment benefits of their development proposal so that this can be added to the considered balance of the proposal's benefits and adverse impacts. Their updated Planning and Retail Statement sets out the following employment benefits for the amended mixed retail, hotel and B-class use employment proposal and an alternative Class B use employment only concept:

Mixed retail, hotel and Class B use employment proposal:	712 FTE jobs (921 gross jobs)
Alternative Class B use employment only:	623 FTE jobs (699 gross jobs)

The applicant states that the proposed development will, by significant margins:

- Create more jobs;
- Generate higher GVA (Gross Value Added) for the local economy; and
- Generate higher business rates.

In addition, the applicant states, the application schemes will still provide the range of other benefits previously identified, including local employment and training opportunities through both the construction and operation of the proposed development.

It should be noted that generating higher business rates is not a material consideration in the determination of planning applications, but clearly a positive impact on the local economy (higher GVA) can be a benefit that can be added to the planning balance.

Taking this job creation information at face value, it is noted that the proposed development would be expected to deliver 89 more FTE jobs (or 222 more gross jobs) than the allocated employment use. Whilst the slightly greater number of jobs would appear to be a positive outcome, it should be noted that the Council is already planning for a high level of employment growth within its emerging Local Plan.

Indeed, to boost job creation the Council has justified through its plan making the pursuit of an employment land target at the higher end of the evidence range between 65 and 100 hectares, namely 92 hectares. Development of the application proposal would result in a reduced employment growth potential encompassed by the emerging local plan policies. In addition employment land jobs (class B uses) potentially are likely to involve the creation of a greater number and range of skilled jobs than found in the retail sector.

As pointed out by objectors these job creation figures also do not take into account job losses as a result of the adverse economic impacts on nearby town centres through the loss of businesses by closure or the displacement of jobs.

The creation of retail jobs as a result of the proposal will to a certain extent replace any lost as a result of the adverse impacts on nearby centres although accessibility to the new jobs is not clear. Developing the site for B2 & B8 uses as allocated, which may be over a longer period of time, would however avoid the socio-economic impacts that the retail development will cause to nearby town centres through fewer retail and related jobs, reduced footfall and available expenditure.

Taking all these issues into account; officers consider the employment uses (as envisaged by emerging policy WC1 on this land) would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B1 and B8 uses on this land could be achieved without any resulting adverse impacts on the viability or vitality of other local town centres.

Consequently, the socio-economic benefits of bringing forward Park 38 do not outweigh or offset the main conclusions that the proposals are contrary to the adopted Local Plan, contrary to the new Local Plan and would have a harmful impact on the future viability and vitality of other local town centres.

Therefore, officers consider the application should be refused planning permission taking into account there are no other issues that weigh heavily in the determination of this application for the following reasons:

## **Other Relevant Considerations**

### ***Traffic Impacts***

Many objectors and several consultees raise traffic issues, particularly the extra traffic which will be drawn to the area and the consequent additional congestion, noise and air pollution. A development of this nature will inevitably increase traffic in the area, including on the M1 and the operation of junction 28. There are local concerns about extra 'rat running' traffic through the village and issues of 'grid-lock' on the current Berristow Lane/A38 roundabouts at peak EMDO shopping times causing problems and delays for residents which will be made worse as a result of the traffic impacts from the development.

Highways England (the Highways Agency) do not consider there to be mitigation that can be provided which is fair and proportionate to the scale of impact on the operation of the motorway junction. Daily fluctuations, for example, in traffic levels could mirror the impact of the additional development traffic. They therefore offered no objections.

Derbyshire County Council (Local Highway Authority) consider that the access proposals into the site are acceptable in principle. They have some concerns about the level of parking provision, however as any shortfall in parking would be likely to cause congestion and on-street parking within the site rather than on the public highway do not consider that an objection could be sustained. They raise no concerns in relation to the operation of the local highway network. Various conditions are recommended (see consultation response above).

### ***Air Quality***

Many objectors and several consultees similarly, as a result of the additional traffic, raise issues of pollution and impact on air quality, particularly given the Ministerial direction in relation to air quality along the A38. The Council's Environmental Protection Officer has given detailed consideration to this issue (see Consultation response above) and does not object to the development while retaining concerns. In view of their concerns they recommend a condition requiring a scheme of Air Quality Improvement Measures. Proactive measures from the applicant would provide reassurance that the development would not jeopardise the work that is currently being undertaken to improve air quality within this area.

### ***Landscape Impact***

The development involves the creation of a plateau for the development. It is not clear from the information submitted whether this involves construction of the retail development with a floor level set at roughly the same level as the top of the hill (as shown on the site sections at 150m) or at a lower level (as indicated by finished floor levels on the masterplan of 146.3m). The former could involve infill of up to 8m at the rear of the site whilst the latter would involve removal of the hill top and levels more compatible with Cartwright Lane to the front although still involving some 4m of fill in places. The hotel is shown at a 2m lower ground level on the site sections with a top height of just under 170m.

## Visualisation



It is also not clear which ground level has been used for the 'Distant View Analysis' of the hotel. This analysis shows that the hotel would be a feature of the landscape on the top of the ridge line, when seen from the distance, e.g. from the M1 when approaching in either direction.

Therefore, if this application were to be approved further information about levels needs to be submitted and agreed and such levels need to be set as low as reasonably possible, which could be done by condition. The hotel would remain a feature on the ridge, but clearly the lower the level the less its impact.

The rear elevation of the main retail block will also be prominent (whichever ground level is used) when viewed for the north, particularly from Hilcote. The elevation has been designed to reduce its visual impact as a large building by vertically breaking up the cladding and applying a range of related colours, although exact details will need to be agreed which can be done by condition.

## **Ecology**

Derbyshire Wildlife trust have indicated that a thorough assessment has taken place and that the mitigation proposal are broadly acceptable. The assessment and comments are based on the development of both phases of the site and a requirement for conditions relating to matters of detail and future maintenance (see DWT consultation response above).

The current application involves the loss of areas of important hedgerows including trees. The main mitigation proposals take place on land within the outline planning application site apart from an area (0.4ha) of enhanced grassland with new hedgerow to the east of the application site in an area between the application site and the HS2 corridor.

As the areas outside the current full application site are controlled by the applicant it should be possible to require appropriate mitigation by condition.

### ***Mineral Safeguarding***

The Mineral Planning Authority (DCC) raised objection to the proposal as the site is underlain by coal reserves. A report which determines the practicality and viability of extracting the coal resource as part of the development is requested.

In response the applicant states:

- a) It is considered that the proposed development, which includes retail food and drink units, hotel, car parking, landscaping and service areas, will create significant employment, thus benefiting the local area. It is argued that this creates an overriding need for the development.
- b) It is considered that prior extraction of the mineral cannot reasonably be undertaken for the following reasons:
  - The site was formerly a part of a colliery, with two shafts being present within the development area. Therefore, it is likely the coal seams have been worked beneath the site. Re-opening old workings would not be feasible due to the health and safety risk to operatives. Moreover, as the area has been previously worked, there would be limited reserves and there would be a risk of collapse if further extraction by mining was permitted.
  - Open cast mining of the shallower seam could not be reasonably undertaken due to the potential dangers of excavating down to potentially worked seams. In addition, there would be adverse environmental impacts on the surrounding commercial properties.
  - The extraction of coal would result in a significant increase in traffic movements, hence pollution, on the A38 and at its junction with the M1.
- c) Insistence on extracting the limited reserves of coal beneath the site would prejudice the timing, hence viability of the proposed development.

The Minerals Planning Authority has provide no further comment. It is likely that the intrusive site investigation required by the Coal Authority will establish the situation regarding the coal mining legacy and presence of workable minerals. Such an investigation can be required by condition.

### ***Other considerations:***

Issues relating to the potential for contaminated land, protection/recording of archaeological interest, drainage of the site, noise (particularly in relation to impacts on Normanton Lodge Care Home) can all be controlled by appropriate conditions so that their impacts are addressed.

## **Conclusions**

In conclusion, there are no other relevant planning considerations that outweigh or offset the identified conflict with adopted Local Plan or the finding that the proposals do not comply with emerging policies in the new Local Plan.

In addition, the employment uses (as envisaged by emerging policy WC1 on this land) would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B1 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality other local town centres.

Therefore, although the proposals are considered to be able to pass the sequential and retail impact tests set out in Paragraphs 86-87 (the sequential test) and 89-90 (retail impact assessment) of the Framework; any benefits of granting planning permission would be significantly and demonstrably offset and outweighed by the adverse impacts of doing so.

Accordingly, the current application is recommended for refusal.

## **RECOMMENDATION**

**The current application be REFUSED for the following reasons:**

- **The application site is outside the settlement framework and within the countryside as defined by the adopted Bolsover District Local Plan where development is subject to saved policy ENV3: Development in the Countryside. The proposal fails to comply with any of the criteria within that policy which would allow development in the countryside. Therefore the proposal is contrary to the saved polices of the adopted Local Plan.**
- **The emerging Local Plan for Bolsover District is at a very advanced stage. The application site is part of an allocation for employment land (B2 and B8 Uses) under policy WC1: Employment Land Allocations. The policy has been tested at the Local examination and is not the subject of any Main modifications. It therefore carries significant weight. The proposal for A1 shops including a C1 hotel use and A3/A4 restaurant and drinking establishments is on land allocated solely for B2/B8 uses under policy WC1 of the emerging Local Plan.**
- **On balance it is considered that the proposal passes the sequential and retail impact tests set out in the National Planning Policy Framework. However it is not considered that any benefits of the proposed development offset and outweigh its adverse impacts. In particular, the employment uses (as envisaged by emerging policy WC1) on this land would provide equal if not better local employment opportunities compared to that which could be achieved by granting town centre uses on this site; and the socio-economic benefits of promoting and encouraging B2 and B8 uses on this land could be achieved without resulting in adverse impacts on the viability or vitality of local town centres.**
- **Accordingly the proposal is not sustainable development in accordance with the terms of the Framework.**

### Statement of Decision Process

Officers have worked positively and pro-actively with the applicant to address issues raised during the consideration of the application. The proposal has been considered against the policies and guidelines adopted by the Council and the decision has been taken in accordance with the guidelines of the Framework.

### Equalities Statement

Section 149 of the Equality Act 2010 places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it (i.e. “the Public Sector Equality Duty”).

In this case, there is no evidence to suggest that the development proposals would have any direct or indirect negative impacts on any person with a protected characteristic or any group of people with a shared protected characteristic

### Human Rights Statement

The specific Articles of the European Commission on Human Rights (‘the ECHR’) relevant to planning include Article 6 (Right to a fair and public trial within a reasonable time), Article 8 (Right to respect for private and family life, home and correspondence), Article 14 (Prohibition of discrimination) and Article 1 of Protocol 1 (Right to peaceful enjoyment of possessions and protection of property).

It is considered that assessing the effects that a proposal will have on individuals and weighing these against the wider public interest in determining whether development should be allowed to proceed is an inherent part of the decision-making process. In carrying out this ‘balancing exercise’ in the above report, officers are satisfied that the potential for these proposals to affect any individual’s (or any group of individuals’) human rights has been addressed proportionately and in accordance with the requirements of the ECHR.