

SUPPLEMENTARY INFORMATION

Planning Committee

27 March 2014

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If you need any further information about the meeting please contact Natasha Clark / Aaron Hetherington, Democratic and Elections natasha.clark@cherwellandsouthnorthants.gov.uk, 01295 221589 / aaron.hetherington@cherwellandsouthnorthants.gov.uk, 01295 227956

Agenda Item 6

CHERWELL DISTRICT COUNCIL PLANNING COMMITTEE

27 March 2014

WRITTEN UPDATES

Agenda Item 5

13/01948/F

**Banbury Gateway, Acorn Way,
Banbury**

- Letter received from applicants agent dated 25.3.14 – see appendix 1

Officers acknowledge the error and that the conditions of the original permission should have been updated from those on 13/00227/F. It is **Recommended** that conditions 26, 34 39 and 42 should all be changed from how they appear in the written agenda to that set out in MDA's letter of 26th March 2014.

It is also **Recommended** that an additional condition (No.45) be added as requested

45. The total floorspace permitted in this development shall not exceed
26,507 sq. metres
(Reason ; as condition 39)

- Letter received from solicitors acting for Scottish Widows –see appendix 2
- Letter received from planning agents acting for Scottish Widows –see appendix 3
- Letter received from applicants agent dated 27.3.14 in reply to the above Turley letter attached

Our Ref: MD/LXB/02/01

25th March 2014

Bob Duxbury
Cherwell District Council
Bodicote House
Bodicote
Banbury
Oxfordshire OX15 4AA

Dear Bob

Application No: 13/01948/F; LXB RP (Banbury) Ltd & Prodrive Holdings Ltd

We have now had the opportunity to go through your report for the above application and I would like to raise some queries in relation to the proposed planning conditions. I think that this set of conditions has been taken directly from the original planning permission (ref 11/01870/F) and as a consequence has not been updated to reflect the current position.

- 1) Condition 26 - the car parking spaces should be 591 not 580.
- 2) Condition 34 - the correct list of plans is as follows with the red marking the necessary changes. Also the plans listed only refer to the changed drawings and not to the plans that remain the same. These should also be set out in the condition.

Changed drawings for 13/01948/F

- 8842-P147 A Site Plan
- 8842-P148 Existing & proposed Overlay
- 8842-P149 Proposed Aerial overlay
- 8842-P150 Block Plan
- 8842-P144 B Ground floor units 1, 2, 14 & 3
- 8842-P145 B First floor units 1, 2, 14 & 3
- 8842-P146 A Roof plan units 1, 2, 14 & 3
- 8842-E110 B Elevations units 1, 2, 14 & 3
- 8842-S108 B Section units 1, 2, 14 & 3
- 8842-P141 B Ground floor units 8-10
- 8842-P142 D First floor units 8-10
- 8842-P143 C Roof plan units 8-10
- 8842-E109 B Elevations units 8-10
- 8842-S107 A Section units 8-10
- 8842-P130 A Ground floor units 4-5
- 8842-P131 Roof plan units 4-5
- 8842-E108 A Elevations units 4-5
- 8842-S106 B Section units 4-5

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Drawings numbers unchanged from original approval but revised as part of submission:

- 8842-E100 D Elevations unit 11
- 8842-E105 D Elevations unit 12 & 13
- 8842-L001 F Site location plan
- 8842-L009 D Existing site survey
- 8842-P102 D Ground floor unit 11
- 8842-P103 C First floor unit 11
- 8842-P104 E Roof plan unit 11
- 8842-P111 F Ground floor unit 12 & 13
- 8842-P112 C First floor & Roof plan units 12 & 13
- 8842-S100 F Sections unit 11
- 8842-S104 A Section units 12-13

- 3) Condition 39 - this condition has been specifically varied to only create 2 x A3 units (Units 4 and 5) as shown on drawing number 8842-P147 A and instead of two A1 units not to exceed 1,800 sqm, this should now be three.
- 4) Condition 42 - the A3 units are now Units 4 and 5.

In addition I must draw your attention to my letter of 13th March which noted that we would accept a condition to cap the total floorspace (GIA) in the scheme. We suggested the following wording:-

“ The total floorspace permitted in this development shall be limited to 26,507 sq metres.”

Finally, the National Planning Practice Guidance has been issued since the previous grant of permission however, it is guidance rather than new policy and in any event does not give rise to any new issues in addition to those already considered in your report. This maybe something that you might like to draw to the Members attention at the Planning Committee.

Kind regards.

Yours sincerely,

Mary Davidson
Managing Director

Our Ref: RG/SJM/SCO350.0192
Your Ref: 13/01948/F

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26 March 2014

BY FIRST CLASS POST AND EMAIL
Bob.duxbury@cherwell-dc.gov.uk

Dear Sirs,

Planning Application (Reference: 13/01948/F) (the Application) to vary conditions 34 and 39 of the Planning Permission (Reference: 13/00227/F) dated 1 November 2013 (the Section 73 Permission)

Planning permission (ref: 11/01870/F) granted in December 2012 (the Original Permission)

As you are aware, we act for Scottish Widows Unit Funds Limited and Scottish Widows plc.

We write further to our letter of 28 February 2014, a copy of which is enclosed again for your assistance. This letter should be read together with that letter.

We have seen the amendments to the Application which have been proposed by the applicant and which, we understand, are to go to a special Planning Committee on 27 March 2014. Whilst the amendments propose a reduction in floorspace, they do not address our clients' concerns as set out in our letter of 28 February 2014. Therefore, our clients' objection to the Application remains and we consider that any decision to determine and approve a grant of permission for the Application would be unlawful. Any final decision would remain subject to challenge by way of judicial review.

Therefore, we reiterate our request that the Council refuse to consider the Application, and invalidate it. If the Application is to be determined by the Council, the only lawful decision would be to refuse permission.

Our clients' main objection to the Application is that the Application comprises development which is fundamentally and substantially different to that which the Council has previously considered, as the Application includes a significant increase in the level of permitted retail use, a significant decrease in the level of permitted A3 use and comprises a fundamentally different development by virtue of the nature formation and layout of the retail use. It would therefore be unlawful to grant permission for the Application using the procedure available under section 73 of the Town and Country Planning Act 1990 (the **TCPA**). An application of this nature should be made by way of a conventional application.

In addition, there is insufficient information to properly consider the retail impacts of the Application and the applicant has failed to comply with the requirements of the National Planning Policy Framework (**NPPF**), notably in respect of impact assessment and the sequential test.

Our clients' planning consultants, Turley Associates, have already submitted two letters which are annexed to the Committee Report. Turley Associates submitted a further letter by email on 26 March 2014 which highlights the retail impact, in light of the applicant's failure to do. It is important to note that in making its decision the Planning Committee must have available to it sufficient information to reach a decision. The Turley Associates letter of 26 March 2014 is the only comparison assessment available to the Council

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A list of members of Dundas & Wilson LLP is open to inspection at the registered office. The members are either solicitors or registered foreign lawyers.

The Use of Section 73 of the Town and Country Planning Act 1990

We do not propose to repeat the content of our letter of 28 February 2014, which discussed in some depth the appropriateness of using section 73 of the TCPA to make the Application. Please read the following in the context and against the background of the points made within that letter.

If the Officer's recommendation is followed permission would be granted for a fundamentally and substantially different development to that permitted under the detailed planning permissions granted by both the Original Permission and the Section 73 Permission.

The only amendment which has been made to the Application is to remove the additional 779sqm which was originally proposed. Whilst the effect of this is that the overall footprint of the development under the Application and the Section 73 Permission remain the same, this does not overcome the other issues which we drew the Council's attention to.

The following issues demonstrate why the Application should not be dealt with under section 73, in that:

- 1) the Original Permission and the Section 73 Permission comprised an anchor store and a secondary store. The Application proposes two anchor stores and a secondary store (by the amalgamation of three previous units to create an additional large anchor unit);
- 2) the Section 73 Permission comprised a total A1 use area of 25,846sqm (GIA). The Application proposes a total A1 use area of 26,227sqm (GIA). This would represent an increase in the total amount of A1 use permitted under the Application of 381sqm (GIA); and
- 3) the Section 73 Permission comprised a total A3 use area of 661 sqm (GIA). The Application proposes a total A3 use area of 280sqm. This represents a decrease of 381sqm.

The above points were raised in our initial letter of 28 February 2014, which prompted your Council to seek Counsel's opinion and defer the determination of the Application. These points remain relevant.

We previously drew your attention to the decision notice for the Section 73 Permission, which states that it grants "*planning permission for the development described in the above-mentioned application, the accompanying plans and drawings and any clarifying or amending information subject to the conditions set out in the attached schedule*". Therefore, permission under the Section 73 Permission was granted only for the specific floor area and the specific level of A1 and A3 use sought by the applicant in that application, which included only one anchor store and one secondary store.

We also drew your attention to the reasons for condition 34 of the Section 73 Permission which state that this condition was applied to "*ensure that the development is carried out **only as approved by the Local Planning Authority***" [emphasis added].

Under section 73 of the TCPA the Council's power is limited to a variation of the conditions under the Section 73 Permission. The Council cannot re-write the Section 73 Permission so as to grant permission for a fundamentally and substantially different development, and cannot vary the conditions so as to be fundamentally inconsistent with the Section 73 Permission. By granting permission for the Application, the Council would be doing just that.

NPPF

The effect of the amended Application would be to grant a new planning permission for 26,507sqm (GIA) of development. Therefore, we repeat our previous statement that paragraph 26 of the NPPF is engaged. Given retail impact is identified by the Council as being the principal issue, the Council should have required this.

Paragraph 5.9 of the Committee Report simply states that a "*full impact assessment has not been submitted*". This is clearly in contravention of the requirements of the NPPF. Therefore, the Application cannot be determined.

Even if the Application were made as a new application (rather than under section 73 of the TCPA) it should not be considered by the Council because the requisite information to allow a determination is simply not available.

Retail Impact Assessment

The issues which we raised in our previous letter in respect of the lack of a retail impact assessment remain valid.

We note that at paragraph 5.7 of the Committee Report the assessment of the *"increased impact that the changes to the authorised scheme would have upon the vitality and viability of the town centre"* is stated as being a *"principal issue"*. However, in spite of the Committee Report recognising that this scheme would have an impact on the vitality and viability of the town centre, no full assessment has been undertaken (despite being required under the NPPF) and no comparative analysis is available.

To determine the Application with no actual understanding of the impacts (which the Committee Report expressly recognises will occur but which are not identified/quantified) would be unlawful.

The only information up to date information available to the Council is that provided by Turley Associates which demonstrates a significant adverse effect on the vitality and viability of Banbury town centre.

The same point as with the failure to adhere to the NPPF applies. Even if this Application were made lawfully, it should not be considered as the requisite information to allow a determination is simply not available.

Request for Information/Disclosure

In our previous letter we requested the following information:

- 1) the agreement which is referred to at paragraph 5.2.2 of the applicant's Planning Statement; and
- 2) confirmation of when the Council was first notified of the Application and why it took the step of validating the Application when internal advice indicated that section 73 of the TCPA was inappropriate.

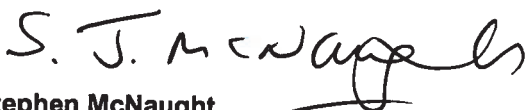
Would you please provide a response to this request?

Our position remains that the Council should refuse to consider the Application and invalidate it. For the reasons above and in our previous correspondence, if the Application is considered at Planning Committee on 27 March 2014, then it should be refused due to the lack of a retail impact assessment as required under the NPPF.

Please place a copy of this letter before the Planning Committee and ensure that it is dealt with by way of a written update to the Planning Committee so that members can give it full consideration.

This letter has been copied to Nigel Bell of the Council's legal department.

Yours faithfully,



Stephen McNaught
Partner, for and on behalf of Dundas & Wilson LLP

Enc.

cc: Nigel Bell, Cherwell District Council

26 March

Delivered by email

Bob Duxbury
Cherwell District Council
Bodicote House
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Dear Bob,

BANBURY GATEWAY, PLANNING APPLICATION FOR VARIATION OF CONDITION UNDER S73

We act for the owners of Castle Quay Shopping Centre “(Scottish Widows plc and Scottish Widows Unit Funds Limited)” and write further to our letters of objection dated 25 and 28 February 2014.

We note that the application is to be presented to a Special Planning Committee on 27 March recommended for approval, having been amended on 17 March to reduce the level of retail floorspace to that previously permitted. Due to the short timescale between the submission of this amendment (17 March) and the publication of your Committee report (19 March), we request that this letter is included in the written update to Committee. We request that the full content this letter is provided to Members for consideration.

In summary, permission should be refused on the basis of significant adverse retail impact, contrary to NPPF, as demonstrated by our comparative retail assessment. The applicant's data is insufficient and is out of date, and in any event the development is now materially different to that which was previously assessed (with the addition of a Primark there are two large anchor stores and a secondary store where previously there was one anchor store). Additionally, Primark has a greater propensity to impact on the town centre. For these reasons, the application should be refused.

The only proper assessment of impact on the town centre on which the Council can base a decision is our assessment included with this letter. This assessment shows that retail impacts on comparison retailing in Banbury town centre will be 10.1%, equivalent to a reduction in town centre comparison goods trading levels of £44.9 million.

Need for updated retail assessment

We have been provided with CBRE's initial response to the application (as retail advisor to your Council) dated 25 February and Ixb's response to CBRE's critique (undated but provided to us on 4 March). We have also been provided with CBRE's supplementary critique dated 5 March and updated floorspace schedules and a letter from Ixb (received 17 March).

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We are disappointed and concerned that the applicant has failed to update its impact assessment, following this latest change. This is fundamental to understanding the true impact of this substantially different scheme. Although some additional information has been submitted by WYG and MDA, the applicant is in effect relying on economic analysis contained in the Retail Planning Assessment (RPA) prepared by WYG in December 2011.

The RPA is more than two year's old and its analysis is directed to national retail policy tests (in PPS4) that have been superseded (by the NPPF). Importantly, it also relates to a form of retail development that is materially different from that determined originally (as outlined above).

The response from CBRE similarly fails to undertake any quantitative analysis of the retail impact issues and therefore has no substantive evidence on which to draw the conclusion that 'there will be no significant adverse impact' [on Banbury town centre]. Neither the 'Critique of Planning Statement' (CPS - 25 February 2013) nor the 'Critique of Supplementary Planning Statement' (CSPS- 5 March 2014) prepared by CBRE on behalf of the Council include any alternative quantitative analysis relating to the impact of the current proposal. CBRE's advice is based on a review of existing (historic) evidence, and a response to various assertions made by MDA. We note in any event CBRE's conclusion at paragraph 34 of the CSPS that 'some adverse impact, both on investment in the town centre and vitality and viability is likely' (our emphasis).

In our view the Council has insufficient information from the applicant on which to make a considered judgement about the impact of the current proposal on Banbury town centre and its compliance or otherwise with the NPPF. Retail impact analysis based on the scheme as currently proposed, and with the inclusion of Primark, is required.

Members' attention needs to be drawn to this fundamental flaw in the applicant's submission.

Alternative retail impact assessment

In order to fill the information vacuum, Turley has prepared an assessment of the impact of the current proposal drawing on the 2011 WYG RPA. The assessment follows a conventional step-by-step approach replicating elements of WYG's 2011 analysis, but incorporating assumptions that we consider to be more realistic and robust (than the WYG RPA), and which relate to scheme as now proposed.

The Council will also be aware that we consider the WYG RPA to contain retail analysis that is technically flawed, raising serious doubts about the predicted levels of impact on Banbury town centre associated with the original scheme. We consider that impacts have been underestimated by WYG and are likely to be severe. Our reasoning in support of this assessment is set out in our letter of objection dated 27 January 2012 (**Appendix 1**).

In preparing the assessment we have corrected the flaws identified previously and incorporated assumptions that more accurately reflect actual shopping patterns in the catchment area. We have also made appropriate allowance for the changing composition of the scheme which was assessed in 2011, It is now a significantly different scheme (with two large anchor stores and a secondary store as opposed to one anchor store and one secondary store) and it has a greater propensity (with Primark) to compete directly with the town centre. The scheme is now of a different nature to that assessed in 2011.

The assessment (presented as a series of tables) is appended to this letter (**Appendix 2**). Consistent with WYG all prices are expressed in a 2010 price base. We have retained 2011 as the base year and 2016 as the forecast year.

The analysis relates to the comparison sector only. This is on the basis that scheme principally comprises comparison retail floorspace and would include established non-food multiple retailers (Next, Marks and Spencer and Primark).

Turnover Estimates (Tables 1-2)

Turnover estimates for centres within the catchment area are set out in Tables 1 and 2. This analysis, which includes market shares and turnover by centre and zone in 2011 and 2016, is taken directly from WYG Tables 6-8, Appendix 9. The total estimated comparison goods turnover for Banbury town centre (£445.60 million in 2016 at 2010 prices – Table 5) is derived from ‘expenditure flows’ presented in Table 2.

Scheme Turnover and Draw by Zone (Table 3A and 3B)

The estimated turnover of the scheme in 2011 and 2016 is set out in Table 3A. This is based on gross and net floorspace taken from the s73 submissions (as further amended by the applicant in correspondence dated 13 March 2014). For unnamed operators/retail units, turnover has been calculated applying an average sales density of £4,250/sq. m. (the figure used by WYG). Sales densities for Marks and Spencer, Next and Primark are derived from published data (Intel Retail Rankings, 2013). The total estimated comparison goods turnover of the scheme is £85.7 million in 2011. With allowance for increases in turnover efficiency (+1.5% pa), this is projected to increase to £92.3 million in the design year (2016).

Table 3B shows the estimated draw of the scheme by zone from the household survey catchment area. This is a judgement, but guided by existing patterns of draw for Banbury town centre and out- of-centre retail floorspace taken from the household survey (as set out in Table 3B). Banbury town centre and Banbury out-of-town retail floorspace draw 53% and 62% of their catchment area turnover respectively from zone 1. With allowance for type of retailing now proposed at Banbury Gateway, we have assumed that 47% of scheme turnover will be drawn from zone 1. We have repeated this analysis across all nine zones; this assumed pattern of draw forms the basis for our impact calculation.

For comparison, we also show WYG’s trade draw assumptions in Table 3B. WYG has weighted scheme trade draw towards peripheral zones, notably zone 3 (Chipping Norton), zone 5 (Southam), and zone 7 (Brackley), and reduced the draw from zone 1 (Banbury). Draw is also assumed by WYG from zone 8 (Long Crendon), from which no trips to retail floorspace in Banbury are currently derived. These assumptions are at variance with established shopping patterns and do not provide a robust basis in our view for impact modelling. For example, an assumed 17% draw from zone 3 compares with an actual current draw of 9% for both town centre and out-of-centre floorspace. Our alternative 10% assumption is much more likely to reflect actual trading patterns.

The effect of WYG’s assumptions is to reduce both the draw from the Banbury zone and impacts on Banbury town centre. Impacts based on assumptions that are demonstrably flawed will significantly underestimate actual trading effects. Our alternative figures, which are grounded in the reality of current shopping patterns (taken from the household survey), provide a more realistic basis for the analysis.

Impact of Proposal in Design Year – 2016 (Tables 4 and 5)

Our impact assessment is set out in Tables 4 and 5. Table 4 sets out our detailed assumptions relating to turnover diversion by centre and zone, and this data is aggregated and presented in summary form in Table 5.

Our assessment is based on an understanding of actual shopping patterns (derived from the household survey) and individual judgements informed by the type and scale of development proposed, and the

extent to which it would compete with existing centres. This analysis is 'controlled' by the estimated draw from each zone taken from Table 3B.

The resulting analysis is aggregated and presented in Table 5. This shows the turnover of Banbury and other centres in the design year (2016); the proportion of scheme turnover estimated to be diverted from each retail destination; and the resultant (post-impact) turnover and percentage diversion. Impact on Banbury town centre in 2016 is estimated to be 10.1%, equivalent to a reduction in town centre comparison goods trading levels of £44.9 million. This is significantly greater impact than that predicted by WYG in 2011 (3.4%) (Table 10, Appendix 9).

The Council will be aware that we have consistently identified technical flaws and illogical assumptions in the 2011 WYG assessment. The lack of logic in WYG's assessment is clearly evident if the source of scheme turnover by destination is examined in detail. In Table 6A we set out the proportion of scheme turnover assumed by WYG to be derived from Banbury and other destinations, and our alternative assessment.

The current market share of Banbury out-of-town retailing (6.6%) bears no relation to WYG's assumption that 29.9% of scheme turnover would be derived from this 'destination'. The estimated draw from Banbury town centre is equally illogical: 25.8% current market share compares with an assumed 18% diversion. Taking into consideration the relative scale and type of retailing in Banbury town centre and the degree of trading overlap with the proposal, we consider it far more probable that the greater draw will be from the town centre. Hence, our analysis shows 51.2% of turnover drawn from the town centre and 10.6% from 'Banbury out-of-town'. We have also reduced the level of external draw from 44.5% (WYG's estimate) to a much more realistic 25.5%. This reduction in expenditure currently directed to facilities outside the Study Area reflects the fact that significant improvements in the retail offer are permitted in competing destinations elsewhere. These include planning permission being granted for approximately 110,000 sq m (gross) of retail floorspace in nearby Oxford city centre, which includes an anchor John Lewis store. Such a significant improvement in the retail offer will limit the level of expenditure that the Banbury proposal will be able to clawback from facilities elsewhere and the proportion of its turnover that is derived from outside the Study Area.

The correction of these errors combined with a higher scheme turnover (following the amendments now proposed and the inclusion of Primark) logically leads to significantly greater predicted impacts. We consider that outputs of our alternative assessment to provide a much more coherent and reliable basis for the Council's consideration of the current application. Our alternative assessment reflects the position of a materially different scheme.

Real world effects of granting permission

The proposal will divert fashion retailers from the town centre. The comment made by the application in the MDA response at paragraph 3.10 is particularly concerning to us in that the applicant confirms that 'Primark will replace three small units that could be taken up by fashion retailers who are currently already trading in Banbury.' The advice from our client's Commercial Agents is that fashion retailers in Banbury town centre are indeed already considering relocation to Banbury Gateway because of the Primark proposal. Further, the applicant recognises this in stating 'it is possible that those retailers will decide that they do not need two outlets in the town may decide to close their town centre unit'. This is an adverse qualitative retail impact, borne out by the current proposals.

This is a direct adverse impact on investment and town centre vitality and viability as a result of Banbury Gateway. We consider this to be significant adverse impact, contrary to NPPF indicating that permission should be refused. Again, members' attention should be drawn specifically to this point.

Impact conclusion

The applicant is relying on an historic retail assessment (2011) that does not relate to the scheme as currently proposed. The Council has insufficient information from the applicant on which to determine the proposal's compliance or otherwise with the retail policy tests in national guidance.

We have prepared an alternative assessment that addresses the technical flaws in the WYG assessment. This analysis relates to the current proposal (with Primark). We conclude that retail impacts on comparison retailing in Banbury town centre will be almost treble the levels of diversion identified by WYG in the 2011 RPA (**10.1%** compared with 3.4%). On the basis that the 2011 scheme was previously considered to be on the margins of acceptability in relation to impacts on the town centre (and was recommended for refusal in terms of impact), this analysis demonstrates clearly that the current proposal conflicts with policy and should be refused.

Banbury town centre is, common with many other middle-order centres, under particular pressures from structural changes in the retail and leisure sectors (including out of town developments) and is in need of new investment. The Banbury Gateway development will divert nearly half of its £92.3m turnover directly from the town centre. Our assessment identifies this will be c£45 million of turnover to an out-of-centre location which, with the additional of Primark alongside Mark and Spencer and Next, will function as an alternative and directly competing comparison shopping destination.

The evidence demonstrates significant adverse effects on town centre vitality and viability and investment prospects contrary to the NPPF.

Summary

We request that planning permission be refused on the basis of significant adverse retail impact, contrary to NPPF, as demonstrated by our comparative retail assessment.

The applicant's data is insufficient and is out of date, and in any event the development is now materially different to that which was previously assessed. For these reasons the application should be refused.

We wish to emphasise that we will be present at Planning Committee.

Yours Sincerely

Turley

Enc.

Appendix 1 – copy of our letter dated 27 January 2012

Appendix 2 – Turley assessment tables

27 January 2012

Delivered by Email

Jane Dunkin
Cherwell District Council
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Our ref: SAIQ2041
Your ref: 11/01870/F
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Dear Jane

PLANNING APPLICATION BY PRODRIVE AND LXB, ACORN WAY BANBURY

We act for Scottish Widows plc and Scottish Widows Unit Funds Ltd ('SW'). SW manages and operates Castle Quay Shopping Centre which anchors Banbury town centre. Our client's have a long leasehold interest in the Centre which is owned freehold by Cherwell District Council, and to whom our clients pay a head rent. Our client is the principal investor in Banbury Town Centre, with responsibility for managing a significant proportion of the centre's floorspace. We respond further to our letter dated 9 January 2012.

SW strongly object to the proposals for a new out of town retail development on Prodrive's site at Wildmere Industrial Estate. This letter sets out our concerns and thereby reasons for refusal of planning permission, on the following grounds:

- Significantly adverse retail impact on Banbury town centre, and
- Failure to comply with the sequential test.

Our comments are made with reference to the statements made in the application documentation, a critique of the submitted retail assessment and market commentary provided by Agents with knowledge of retail in Banbury.

Retail Impact – General Observations and Market Commentary

The retail development is variously referred to in the application documentation as a 'shopping park'. This is not a recognised retail definition but effectively confirms the nature of the development – that is – a direct competitor to the town centre, offering directly comparable goods of an open Class A1 nature that are not stated to be restricted in any way. The proposals will have a direct impact on the continued vitality and viability of Banbury town centre.

The direct competitive nature of the proposals is made clear in the application documentation. The Planning Statement makes it clear that the success of the development is dependent on attracting

major retailers. Based on the shopping park format, it is clear that existing traders in Castle Quay will be under threat of relocation, to the detriment of the centre as a whole. Retailers such as Boots, W H Smith, Burtons, JJB Sports, Top shop and River Island all have representation in Castle Quay and are also known to trade from out of centre shopping parks.

There is further recognition in the application that the intended occupiers will not all be new. It is stated that occupiers are "likely" to be new to Banbury, but local Agents consider this to be unrealistic based on the size of the market and Banbury's established catchment. It is highly likely, in their view, that established retailers in Banbury town centre will simply relocate from Castle Quay or Banbury Cross Retail Park, no doubt against the background of significant rent incentives.

It is stated that M&S and Next will continue to trade from their existing stores in the town centre but in the absence of any S106 agreement, this cannot be guaranteed. Agents acting for Castle Quay suggest that these tenants' trading from two locations in a small town is highly improbable. Worryingly, we are advised by our Agents that the lease on Next's existing unit in the town centre is being actively marketed, suggesting that there is no intention to keep this unit open. If approved, the resultant effect is that key anchors to Banbury town centre will be lost.

Based on the continued uncertainty of the current economic climate, retail expenditure and consumer confidence/demand are at an all time low. As a direct consequence, vacancies on the high street and in shopping centres have risen to unprecedented levels. Banbury is no exception. The effect of this has led to an over-supply of stock in Banbury town centre and moves by retailers such as Argos to out of town sites.

Banbury town centre is not as vital and viable as lxb's agents suggest. Like many town centres, there are a significant number of existing tenants who are retaining occupation solely due to the rental concessions offered by landlords. Void levels in Castle Quay shopping centre are significant and total 16 units. Some of these are actual vacancies and others have been let on a temporary basis to short term operators. Allowing the lxb proposals will further undermine efforts to attract and retain tenants.

The immediate future remains precarious and uncertain with further rumoured administrations over occupiers including Birthdays/Clintons, H&M, Waterstones, JJB and Game/Gamestation who all have representation in Castle Quay. Further restructuring of the BHS, Arcadia and New Look portfolios are well known and may well reduce further representation in Castle Quay.

The limited number of retailers with requirements that do exist in Banbury will almost certainly also consider an out of town shopping park which will only add to voids in the long term and contribute to the decline of Banbury town centre. There is a real risk that the approval of lxb's proposals at Banbury Gateway will be the tipping point in the decline of Banbury town centre.

In short, the development will directly compete with Banbury town centre, contrary to the principles of national planning policy. There are no safeguards to control the nature of goods and the development, if approved, is likely to draw key retailers out of Castle Quay shopping centre to the

detriment of the town centre as a whole, which will suffer irreparable damage as a result. This is a very serious consequence of this development being permitted.

Retail Assessment – Detailed Comments

The LxB Prodrive Banbury Gateway planning application is supported by a Retail Planning Assessment (RPA) prepared by WYG (December 2011). This comprises a report and appendices, including statistical retail analysis (Appendices 8 and 9), sequential site assessments (5 and 6), and other supporting material. Also included as appendices are plans showing the extent of the catchment area and survey zones (Appendix 2), the location of Marks and Spencer stores (3) and the distribution of retail parks (4).

The retail assessment has many technical flaws which raise serious doubts about the predicted scale of the impact on Banbury town centre and supports our view that the impact will be severe. Our detailed comments are set out below, however, our overall conclusions are that:

1. The WYG assessment significantly under-estimates the impact of the proposals on Banbury town centre.
2. The impact analysis is based on a number of key assumptions that are inconsistent and illogical, resulting in the underestimation of impacts on Banbury town centre (point 1); and the overestimation of trade diversion from out of centre floorspace in Banbury and 'All other shops and centres'. The latter are not specified in the assessment, and yet the estimated diversion from these retail facilities/centres is equivalent to a significant 44% of the estimated turnover of Banbury Gateway or £38.3 million. This compares with total diversion from Banbury of £15.5 million, a centre located only 2.4 km from the application site. The assessment also lacks the cumulative impact analysis required by PPS4.
3. The sequential analysis in effect acknowledges that there are sequentially preferable sites in Banbury capable of accommodating elements of the proposal. Taking account of the requirement in PPS4 for flexibility in trading formats and potential for disaggregation (Policy EC15.1d), the WYG RPS provides '*de facto*' evidence of the existence of sequentially preferable sites supported, in one key instance – Bolton Road, by emerging SPD. Policy EC15 of PPS4 requires proposals to comply with the sequential approach, and EC17 directs refusal where such sites exist (as in this case).

On behalf of the owners of Castle Quay Shopping Centre we therefore object to the proposed development on the basis of:

- Evidence of significant adverse impacts on Banbury town centre, leading to direct conflict with policies EC16.1 and EC17 of PPS4.
- Failure to comply with the sequential approach, leading to conflict with PPS4 policies EC15 and EC17.

Our detailed observations on which these conclusions are based are set out below.

Economic Analysis and Impact Assessment

The methodology used by WYG to quantify retail impact is set out in Section 6 of the RPA; further details are provided in Appendix 8 (Economic Assessment Methodology). The supporting statistical tables are included as Appendix 9 (Economic Tables). The focus of the assessment is comparison goods, although the scheme includes an element of convenience floorspace.

WYG applies a conventional methodology based on a catchment area sub-divided into zones, within which future retail expenditure is quantified and estimates are made of existing turnover levels (Banbury and other centres and retail facilities) and trade diversion to the proposal. The analysis draws on the findings of a household telephone survey undertaken by NEMS Market Research; this is used to calculate market shares and turnover.

The household survey also provides the foundation for the impact analysis. WYG 'adjust' market shares on a zone-by-zone and centre-by-centre basis as a means of assessing the impact of the proposal. This is based on an assumed trade draw pattern by zone. Having adjusted market shares, WYG then aggregate the new expenditure flows to quantify impacts on centres and retail facilities. The analysis therefore compares turnovers in the design year (2016) in a 'no scheme world' with turnovers in 2016 with the scheme in place, based on judgements about future market shares in each zone. The critical stage is the market share adjustment, and the key issue is whether this is realistic and robust. This is set out in Tables 8 and 9, with the resulting impacts summarised in Table 10.

We have no issue with much of WYG's supporting analysis, in particular Tables 1-7 in Appendix 9. The methodology up to this point is well recognised; the growth rates, per capita spending and the other inputs are derived from Experian and have been applied to the survey zones in a conventional way (with turnover derived from spending flows). However, the judgments made by WYG in Table 9 are, in our view, flawed and lead (through the aggregation process) to impacts being underestimated. We have particular concern about the following:

Zone 1 – this is the zone from which the scheme is assumed to individually derive the highest proportion of its turnover (35%). Comparing Tables 8 with 9, WYG have adjusted the market share in a 'scheme world' by -2% in relation to Banbury town centre (from 69.7 to 67.7%), but the adjustment in relation to 'Banbury out of centre' is much greater at -6.4%. The resulting impact is £6.6 million on the town centre and £21.6 million on Banbury's retail parks – this is a greater level of diversion from this zone alone than WYG assume in respect of Banbury town centre from the total catchment area (£-15.5 million). Through the workings of WYG's model this has major implications for overall impacts.

These judgements are illogical in our view. The scheme is described as a 'shopping park' (paragraph 2.2.1 of the RPS) and effectively comprises open-A1 comparison floorspace. The largest concentration of competing floorspace proximate to the application site is in Banbury town centre. The Southam Retail Park largely contains bulky goods retailers. Banbury Cross contains some 'town centre' retailers, but the majority is occupied by large format and bulky goods retailers traditionally

found on retail parks. The locational differences are marginal, particularly given the extensive catchment area assumed by WYG. It seems much more likely that impacts in zone 1 will fall on the most directly competing floorspace i.e. that located in the town centre, rather than out of centre, increasing overall town centre impacts.

Zone 3 – key market share adjustments in zone 3 are similarly illogical. The proposal is assumed by WYG to have no impact on the market share of the principal centre in this zone – Chipping Norton, which remains constant at 19.8% in Tables 8 and 9, but a -6.8% market share impact on unspecified ‘All other shops and stores’, equivalent to diversion of -£7.6 million. The implications of WYG’s assumptions for turnovers derived from spending in this zone are:

- Banbury TC: -£3.2 million
- Banbury OOC: -£1.4 million
- Chipping Norton: no impact
- Other unspecified: -£7.6 million

Given that pre-impact market shares for ‘other’ and Chipping Norton are broadly the same, impacts should be of a similar magnitude, but weighted towards those centres most directly competing.

Zones 5 and 7 – we have similar concerns with the assumptions applied to market shares in zones 5 and 7. In zone 5 the monetary impact on ‘All other shops and stores’ is -£6.1 million; the implications for Southam is an estimated reduction in turnover of £0.1 million. In zone 7, the respective reductions in turnover associated with market share adjustments are -£4.5 million on ‘All other shops and stores’; but a ‘zero effect’ on Buckingham.

We do not consider these outputs to be robust. Combined with other assumptions they lead to the underestimation of impacts on Banbury town centre, and the overestimation of impacts on ‘All other shops and stores’, which in the overall assessment account for an unrealistic 44% of the proposal’s diverted turnover (£38.3 million – Table 10). We conclude that the proposal will derive a much higher proportion of its turnover from Banbury town centre than assumed by WYG, and much less from Banbury OOC and unspecified centre/facilities.

The resulting impacts shown in column 6 of Table 10 are unrealistic in our view – only three destinations are shown as experiencing any real diversion. Even if only 50% of the scheme’s turnover were derived from Banbury, impacts would increase to 10% during a period of economic austerity on a centre where efforts are being made by the Council to attract new investment. The reality is that the impact could be much greater.

Other Issues: we have other concerns relating to WYG’s economic analysis as follows:

- Catchment area – this in our view has been too widely drawn. Although the site is located in the M40 corridor, poor transport links to the north and (particularly) to the south are likely to deter trips from these areas. The survey results relating to Banbury support this view and

WYG acknowledge Banbury's 'limited sphere of influence' (RPS, paragraph 4.2.12). It is questionable that the scheme will change this or have a significantly wider draw than the town centre.

- External draw – for similar reasons it seems unlikely that 15% of turnover will be drawn from outside the catchment area, particularly given the presence of full range M&S stores in surrounding locations. These represent intervening opportunities that would deter long distance trips to the proposal site.
- Cumulative Effects – although we have not examined commitments in detail, we are surprised by the limited number identified in Appendix 11 given the extent of the catchment area, which includes, and is ringed by, major centres (such as Oxford). A more exhaustive assessment is required and cumulative impacts should be assessed, consistent with PPS4 guidance. This is critical given the scale of the proposals and their emphasis on high order comparison retailing.
- Convenience impacts – similarly, the study includes no assessment of convenience impacts. This is important given the Council's aspirations for food related development in the town centre.

Sequential Assessment

PPS4's requirements relating to the sequential approach are clear. Sequentially preferable sites cannot be discounted simply on the basis that their scale (in terms of site area) is insufficient to support the totality of the proposal.

WYG's sequential analysis confirms that sequentially preferable sites exist in Banbury. These in some cases are capable of accommodating elements of the proposal if disaggregated. WYG reference the Bolton Road site and identify emerging SPD, which we note refers to convenience shopping. However, this is '*de facto*' a sequentially preferable site capable of accommodating up to 6,000 sq m of floorspace, equivalent to one of the proposed anchor stores, and with policy support for retail development. WYG acknowledges that the site is suitable and viable in part; the site is discounted on the basis of availability and the inability of the scheme to be 'disaggregated'.

The principal anchor store retailer is already represented in Banbury and is noted by WYG to be trading successfully, having recently invested significantly in their town centre store in 2007 (RPS paragraph 2.3.3). The extent to which the proposal is needed to meet the needs of this retailer in Banbury is, at best, uncertain, against this background.

On the basis of our review of the RPS and Appendices, we consider that the lack of sequential preferable alternatives in Banbury is unproven for the following reasons:

- The commercial case relating to the need for a major out centre development in Banbury is not adequately explained, in particular, the proposed dual store representation by M&S; why the new store would 'fulfil the needs of different types of consumers' (RPS, paragraph 2.3.3); and why this leads to the sequential test being met;

- Similarly, the inability of the scheme to be disaggregated is asserted by WYG (paragraph 5.4.3), but not properly justified as required by PPS4 Policy EC15;
- The timescales relating to availability (and the dismissal of alternative sites) are related to the commercial and planning need – this is also asserted rather than explained;
- Question marks remain in the assessment relating to the viability of alternative sites (literally in the Sequential Sites Overview on pages 34-35 of the RPS); and
- There is clear evidence of the existence of sequentially preferable sites (development sites better related to the town centre in planning terms).

The proposal seeks planning permission for, in effect, a significant quantum of unfettered comparison goods floorspace in an out of centre location. It is critical that the assessment in support of this is exhaustive, as required by policy. The RPS and Appendices do not currently provide sufficiently robust evidence to demonstrate sequential compliance, leading in our view to conflict with Policy EC15 of PPS4.

Other Comments

We highlight the following additional matters:

- There is reference to detailed discussions with agents at paragraph 2.1.2, but no details are provided. It is possible that some of the identified demand could be accommodated in Banbury town centre.
- The high net to gross ratio in the M&S store is referenced at paragraph 2.3.1 in the context of the need for staff facilities. The net trading area resulting has direct implications for turnover and impact. Again, the impact could be far greater if a higher net floorspace was used. Further explanation is required.
- As noted above, why the M&S store would meet the needs of a different type of consumer (paragraph 2.3.3) is not adequately explained.
- Evidence of linked shopping with Banbury Cross (paragraph 4.2.8) is based on percentages rather than actual numbers, and the cautionary tone is noted. We consider that limited weight should be attached to this evidence.
- Banbury's limited sphere of influence (paragraph 4.2.12) in the context of its role in the shopping hierarchy is a key weakness, which is not reflected in WYG's health check analysis. The extent to which the scheme would draw from the extensive used in the assessment and from beyond (15%) is questionable in light of this evidence.
- Table 6.2 demonstrates the concentration of impacts on unspecified locations; the table shows only £48.5 million of the scheme's comparison goods turnover impacting on existing facilities,

with a significant £38.5 million (44%) impacting elsewhere. We consider this balance to be incorrect. Again, this underestimates the likely retail impact on Banbury town centre.

In summary, the conclusions of the Retail Assessment cannot be relied upon as an appropriate basis on which to make a planning decision. The retail impact of the scheme on Banbury town centre will, as we thought, be significantly greater than suggested by the applicants. Our own estimate is that the proposals will divert at least 50% of the turnover away from the town centre, leading to a direct impact of upwards of 10%. Such a level of predicated impact is, by recognised standards, significant enough to warrant refusal.

In the continuing uncertainty of the economic climate retail expenditure and resultant consumer confidence and demand are at an all time low. As a direct consequence vacancies on the high street and shopping centres have risen to unprecedented levels. Town Centres are fragile and the practical effect of allowing this proposal, as a direct competitor, is that key retailers are likely to leave Castle Quay Shopping Centre, thereby increasing vacancy rates and detracting from investment in the centre as a whole.

We trust that our comments will be carefully considered by Officers and Members in the determination of this application. The decision your Council makes on this application will have a major impact on the future prosperity of Banbury. Any decision to grant planning permission in light of our client's strong objections will be challenged further through the appropriate channels.

Yours sincerely

Andrea Arnall
Associate Director

CC:

TABLE 1: MARKET SHARE AND TURNOVER OF EXISTING FACILITIES IN STUDY AREA (2011)

	Banbury		Bicester		Chipping Norton		Moreton in Marsh		Study Area		Daventry / Towcester		Brackley		Long Crendon		Kidlington	
	(%)	(£m)	(%)	(£m)	(%)	(£m)	(%)	(£m)	(%)	(£m)	(%)	(£m)	(%)	(£m)	(%)	(£m)	(%)	(£m)
Zone 1																		
Banbury Town Centre	69.6%	198.5	21.1%	34.9	33.2%	32.5	11.9%	10.1	17.9%	25.1	22.6%	47.3	17.9%	18.1	1.4%	0.7	2.0%	6.4
Banbury Out of Town	20.9%	59.4	5.0%	8.3	8.5%	8.3	2.1%	1.7	5.3%	7.5	2.6%	5.5	4.5%	4.5	0.1%	0.0	0.3%	1.0
Zone 2																		
Bicester Town Centre	0.3%	0.7	42.0%	69.6	0.2%	0.2	0.0%	0.0	0.0%	0.0	0.0%	0.0	1.9%	1.9	4.9%	2.7	0.5%	1.5
Bicester Out of Town	0.2%	0.4	6.1%	10.1	0.3%	0.3	0.3%	0.3	0.0%	0.0	0.0%	0.0	0.7%	0.7	0.8%	0.4	0.2%	0.6
Zone 3																		
Chipping Norton Town Centre	0.4%	1.2	0.5%	0.8	19.8%	19.4	2.4%	2.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	1.6%	0.8	0.0%	0.0
Charlberry	0.0%	0.0	0.0%	0.0	2.0%	1.9	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0
Zone 4																		
Moreton-in-Marsh Town Centre	0.0%	0.0	0.0%	0.0	0.0%	0.0	11.6%	9.8	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0
Stow-on-the-Wold Town Centre	0.0%	0.0	0.0%	0.0	0.2%	0.2	3.2%	2.7	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0
Shipston on Stour	0.1%	0.4	0.0%	0.0	0.8%	0.8	9.1%	7.7	0.3%	0.4	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0
Zone 5																		
Southam	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	4.9%	6.9	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0
Zone 6																		
Daventry Town Centre	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	0.1	14.9%	31.3	0.0%	0.0	0.0%	0.0	0.3%	1.0
Daventry Out of Town	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	0.0	0.9%	1.8	0.0%	0.0	0.0%	0.0	0.0%	0.0
Towcester	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	3.3%	7.0	0.0%	0.0	0.0%	0.0	0.0%	0.0
Zone 7																		
Buckingham Town Centre	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	14.7%	14.8	0.1%	0.0	0.0%	0.0
Buckingham Other	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	2.0%	2.1	0.0%	0.0	0.0%	0.0
Brackley	2.5%	7.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.3%	0.6	4.5%	4.5	0.0%	0.0	0.0%	0.0
Zone 8																		
Kidlington	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	5.7%	18.7
Witney Town Centre	0.0%	0.1	0.2%	0.4	14.7%	14.3	0.1%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	39.1%	127.7
Witney Out of Centre	0.0%	0.0	0.0%	0.0	0.2%	0.2	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.5%	1.8
Outside of Catchment Area	6.1%	17.2	25.1%	41.5	20.9%	20.4	59.5%	50.4	71.3%	100.1	55.4%	116.3	53.8%	54.3	91.2%	49.6	51.4%	168.0
Total	100%	284.9	100%	165.6	101%	98.5	100%	84.7	100%	140.1	100%	209.8	100%	100.9	100%	54.2	100%	326.7

NOTES:

1. Market share and turnover derived directly from Retail Statement (Table 6 and Table 7, Appendix 9)

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TABLE 2: MARKET SHARE AND TURNOVER OF EXISTING FACILITIES IN STUDY AREA (2016)

	Study Area																			Trade Draw from Outside Study Area		Total	
	Banbury (%)	Banbury (£m)	Bicester (%)	Bicester (£m)	Chipping Norton (%)	Chipping Norton (£m)	Moreton in Marsh (%)	Moreton in Marsh (£m)	Southam (%)	Southam (£m)	Daventry / Towcester (%)	Daventry / Towcester (£m)	Brackley (%)	Brackley (£m)	Long Crendon (%)	Long Crendon (£m)	Kidlington (%)	Kidlington (£m)	Total within Study Area (%)	Total within Study Area (£m)	(%)	(£m)	(£m)
Zone 1																							
Banbury Town Centre	69.6%	237.1	21.1%	46.1	33.2%	37.1	11.9%	11.7	17.9%	28.1	22.6%	56.6	17.9%	20.8	1.4%	0.8	2.0%	7.3	25.8%	445.6	2%	9.1	454.9
Banbury Out of Town	20.9%	71.0	5.0%	11.0	8.5%	9.4	2.1%	2.0	5.3%	8.4	2.6%	6.6	4.5%	5.2	0.1%	0.0	0.3%	1.2	6.6%	114.8	2%	2.3	117.2
Zone 2																							
Bicester Town Centre	0.3%	0.9	42.0%	92.0	0.2%	0.3	0.0%	0.0	0.0%	0.0	0.0%	0.0	1.9%	2.2	4.9%	3.0	0.5%	1.7	5.8%	100.1	20%	25.0	125.1
Bicester Out of Town	0.2%	0.5	6.1%	13.4	0.3%	0.3	0.3%	0.3	0.0%	0.0	0.0%	0.0	0.7%	0.9	0.8%	0.5	0.2%	0.7	1.0%	16.6	70%	38.5	55.0
Zone 3																							
Chipping Norton Town Centre	0.4%	1.4	0.5%	1.1	19.8%	22.1	2.4%	2.3	0.0%	0.0	0.0%	0.0	0.0%	0.0	1.6%	1.0	0.0%	0.0	1.6%	27.9	2%	0.6	28.4
Charlberry	0.0%	0.0	0.0%	0.0	2.0%	2.2	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	2.2	0%	0.0	2.2
Zone 4																							
Moreton-in-Marsh Town Centre	0.0%	0.0	0.0%	0.0	0.0%	0.0	11.6%	11.4	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.7%	11.4	5%	0.6	12.0
Stow-on-the-Wold Town Centre	0.0%	0.0	0.0%	0.0	0.2%	0.2	3.2%	3.2	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.2%	3.4	50%	3.4	6.8
Shipston on Stour	0.1%	0.5	0.0%	0.0	0.8%	0.9	9.1%	8.9	0.3%	0.5	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.6%	10.8	10%	1.2	12.0
Zone 5																							
Southam	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	4.9%	7.8	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.5%	7.8	15%	1.4	9.2
Zone 6																							
Daventry Town Centre	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	0.2	14.9%	37.5	0.0%	0.0	0.0%	0.0	0.3%	1.2	2.3%	38.9	45%	31.8	70.6
Daventry Out of Town	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	0.1	0.9%	2.2	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.1%	2.3	45%	1.9	4.2
Towcester	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	3.3%	8.4	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.5%	8.4	15%	1.5	9.9
Zone 7																							
Buckingham Town Centre	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	14.7%	17.1	0.1%	0.0	0.0%	0.0	1.0%	17.1	50%	17.1	34.3
Buckingham Other	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	2.0%	2.4	0.0%	0.0	0.0%	0.0	0.1%	2.4	50%	2.4	4.7
Brackley	2.5%	7.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.3%	0.6	4.5%	5.2	0.0%	0.0	0.0%	0.0	0.7%	12.8	2%	0.3	14.6
Zone 9																							
Kidlington	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	5.7%	21.3	1.2%	21.3	50%	21.3	42.7
Witney Town Centre	0.0%	0.1	0.2%	0.5	14.7%	16.4	0.1%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	39.1%	145.7	9.4%	162.7	20%	40.7	203.4
Witney Out of Centre	0.0%	0.0	0.0%	0.0	0.2%	0.2	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.0%	0.0	0.5%	2.0	0.1%	2.2	20%	0.5	2.7
Outside of Catchment Area	6.1%	20.6	25.1%	54.9	20.9%	23.3	59.5%	58.5	71.3%	112.2	55.4%	139.2	53.8%	62.5	91.2%	56.0	51.4%	191.9	41.6%	719.1	95%	13,662.5	14,381.5
Total	100%	339.1	100%	219.0	101%	112.4	100%	98.3	100%	157.3	100%	251.1	100%	116.3	100%	61.3	100%	373.0	100.0%	1,727.8	-	-	15,591.2

NOTES:

1. Market share and turnover derived directly from Retail Statement (Table 8, Appendix 9)

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TABLE 3A: ANTICIPATED TURNOVER OF REVISED PROPOSAL

Element of Scheme	Gross Floorspace (sq m)	Comparison Sales Area (sq m)	Sales Density (£ per sq m)	2011 Turnover (£m)	2016 Turnover (£m)
Proposal					
Unit 1	929	650	4,250	2.8	3.0
Unit 2 (Next)	3,726	2,608	4,510	11.8	12.7
Unit 3	559	391	4,250	1.7	1.8
Unit 4	140	98	4,250	0.4	0.4
Unit 5	140	98	4,250	0.4	0.4
Unit 8 (Primark)	5,576	3,903	5,473	21.4	23.0
Unit 9	929	650	4,250	2.8	3.0
Unit 10	1,300	910	4,250	3.9	4.2
Unit 11 (M&S)	9,294	5,751	5,047	29.0	31.3
Unit 12	465	326	4,250	1.4	1.5
Unit 13	465	326	4,250	1.4	1.5
Unit 14	929	650	4,250	2.8	3.0
Other mezzanine floorspace	2,055	1,439	4,250	6.1	6.6
Sub-Total	26,507	16,362	-	85.7	92.3

NOTES:

- Gross floorspace derived from S73 application submission
- Assumes that 70% of the gross floorspace represents the net sales area with the exception of M&S, which has been derived directly from the application submission
- Sales density for unnamed operator derived from application submission. Sales densities for M&S, Next and Primark derived from Mintel Retail Rankings 2013
- 2011 Turnover = comparison sales area x sales density
- 2016 Turnover allows for increased turnover efficiency of +1.5% per annum

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TABLE 3B: TRADE DRAW OF PROPOSAL

	1 - Banbury	2 - Bicester	3 - Chipping Norton	4 - Moreton in Marsh	Study Area 5 - Southam	6 - Daventry / Towcester	7 - Brackley	8 - Long Crendon	9 - Kidlington	Trade Draw from Outside Study Area	Total
<i>Current Trade Draw of Banbury town centre</i>	53%	9%	9%	3%	7%	13%	5%	0%	2%	n/a	100%
<i>Current Trade Draw of Banbury out of town</i>	62%	9%	9%	2%	8%	6%	5%	0%	1%	n/a	100%
<i>WYG estimate of Trade Draw by Zone[^]</i>	41%	9%	17%	4%	11%	5%	9%	2%	2%	n/a	100%
Anticipated Trade Draw of Proposal	47%	10%	10%	3%	9%	7%	6%	2%	2%	5%	100%
Turnover by Zone (£m)	42.9	9.2	9.2	2.8	8.3	6.5	5.5	1.4	1.8	4.6	92.3
Market Share within Zone	12.6%	4.0%	7.8%	2.7%	5.0%	2.4%	4.5%	2.1%	0.5%	-	

NOTES:

- Current trade draw of existing facilities in Banbury derived from Table 2
- WYG estimate of trade draw derived from submitted Retail Statement (Table 9, Appendix 9) rebased to exclude the 15% of inflow (i.e. represents turnover derived from the Study Area only)
- Anticipated trade draw of proposal based on Turley assumptions taking into account a number of factors, including current shopping patterns and strength of proximity of competing provision (both existing and proposed)
- Turnover derived from outside Study Area based on Turley assumptions taking into account the extent of the Study Area
- Market share within zone = 'turnover by zone' expressed as a proportion of available expenditure within the zone in 2016

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TABLE 4: ESTIMATED TRADE DIVERSION OF THE PROPOSED DEVELOPMENT (2016)

	Banbury			Bicester			Chipping Norton			Moreton in Marsh			Study Area			Daventry / Towcester			Brackley			Long Crendon			Kidlington			Total (£m)
	Current Market Share	Banbury Trade Diversion (£m)	Resultant Market Share	Current Market Share	Bicester Trade Diversion (£m)	Resultant Market Share	Current Market Share	Trade Diversion (£m)	Resultant Market Share	Current Market Share	Trade Diversion (£m)	Resultant Market Share	Current Market Share	Trade Diversion (£m)	Resultant Market Share	Current Market Share	Trade Diversion (£m)	Resultant Market Share	Current Market Share	Trade Diversion (£m)	Resultant Market Share	Current Market Share	Trade Diversion (£m)	Resultant Market Share	Current Market Share	Trade Diversion (£m)	Resultant Market Share	
	Banbury Gateway Proposal		42.9	12.7%		9.2	4.2%		9.2	8.2%		2.8	2.8%		8.3	5.3%		6.5	2.6%		5.5	4.8%		1.4	2.3%		1.8	
Zone 1																												
Banbury Town Centre	69.7%	32.4	60.4%	21.1%	2.5	19.9%	33.2%	4.3	29.2%	11.9%	0.7	11.2%	17.9%	1.8	16.7%	22.6%	1.5	22.0%	17.9%	1.6	16.5%	1.4%	0.1	1.1%	2.0%	0.1	1.9%	44.9
Banbury Out of Town	20.9%	7.5	18.7%	5.0%	0.3	4.9%	8.5%	0.7	7.7%	2.1%	0.1	2.0%	5.3%	0.3	5.1%	2.6%	0.2	2.6%	4.5%	0.2	4.3%	0.1%	0.0	0.0%	0.3%	0.0	0.3%	9.3
Zone 2																												
Bicester Town Centre	0.3%	0.1	0.2%	42.0%	3.7	40.3%	0.2%	0.0	0.3%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	1.9%	0.1	1.8%	4.9%	0.1	4.8%	0.5%	0.0	0.5%	4.0
Bicester Out of Town	0.2%	0.1	0.1%	6.1%	0.7	5.8%	0.3%	0.0	0.2%	0.3%	0.0	0.3%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.7%	0.0	0.7%	0.8%	0.0	0.8%	0.2%	0.0	0.2%	0.9
Zone 3																												
Chipping Norton Town Centre	0.4%	0.2	0.4%	0.5%	0.0	0.5%	19.8%	1.2	18.6%	2.4%	0.0	2.3%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	1.6%	0.0	1.6%	0.0%	0.0	0.0%	1.4
Charlberry	0.0%	0.0	0.0%	0.0%	0.0	0.0%	2.0%	0.0	2.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0
Zone 4																												
Moreton-in-Marsh Town Centre	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	11.6%	0.1	11.5%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.1
Slow-on-the-Wold Town Centre	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.2%	0.0	0.2%	3.2%	0.0	3.3%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0
Shipston on Stour	0.1%	0.0	0.1%	0.0%	0.0	0.0%	0.8%	0.0	0.8%	9.1%	0.3	8.8%	0.3%	0.0	0.3%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.3
Zone 5																												
Southam	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	4.9%	0.3	4.8%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.3
Zone 6																												
Daventry Town Centre	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.1%	0.0	0.1%	14.9%	1.0	14.6%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.3%	0.0	0.3%	1.0
Daventry Out of Town	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.1%	0.0	0.1%	0.9%	0.1	0.9%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.1
Towcester	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	3.3%	0.2	3.3%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.2
Zone 7																												
Buckingham Town Centre	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	14.7%	0.3	14.4%	0.1%	0.0	0.0%	0.0%	0.0	0.0%	0.3
Buckingham Other	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	2.0%	0.1	2.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.1
Brackley	2.5%	0.5	1.9%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.3%	0.0	0.2%	4.5%	0.2	4.3%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.8
Zone 9																												
Kidlington	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	5.7%	0.0	5.7%	0.0
Witney Town Centre	0.0%	0.0	0.0%	0.2%	0.0	0.2%	14.7%	1.0	13.7%	0.1%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	39.1%	0.7	38.9%	1.7
Witney Out of Town	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.2%	0.0	0.2%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.0%	0.0	0.0%	0.5%	0.0	0.5%	0.0
Outside Catchment Area	6.1%	2.1	5.5%	25.1%	2.0	24.2%	20.9%	1.9	19.0%	59.5%	1.6	57.8%	71.3%	5.9	67.6%	55.4%	3.6	54.0%	53.8%	3.0	51.2%	91.2%	1.2	89.4%	51.4%	1.0	51.2%	22.3
Total	100%	42.9	100.0%	100%	9.2	100.0%	101%	9.2	100.0%	100%	2.8	100.0%	100%	8.3	100.0%	100%	6.5	100.0%	100%	5.5	100.0%	100%	1.4	100.0%	100%	1.8	100.0%	87.7

- NOTES:
1. Current market share and turnover taken from Table 2
 2. Trade diversion by zone taken from Table 3B
 3. Trade diversion from existing facilities based on a judgement informed by current shopping patterns and the type of development proposed
 4. Resultant turnover = existing turnover minus anticipated trade diversion
 5. Resultant market share = resultant turnover expressed as a proportion of available expenditure within zone in 2016

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TABLE 5: ANTICIPATED TRADING EFFECTS OF THE APPLICATION PROPOSED (2016)

	Turnover - Pre Development 2016	(%)	Trade Diversion (£m)	Resultant Turnover (£m)	Impact
<u>Zone 1</u>					
Banbury Town Centre	445.6	51.2%	44.9	400.7	-10.1%
Banbury Out of Town	114.8	10.6%	9.3	105.5	-8.1%
<u>Zone 2</u>					
Bicester Town Centre	100.1	4.6%	4.0	96.1	-4.0%
Bicester Out of Town	16.6	1.0%	0.9	15.7	-5.3%
<u>Zone 3</u>					
Chipping Norton Town Centre	27.9	1.6%	1.4	26.5	-5.2%
Charlberry	2.2	0.0%	0.0	2.2	0.0%
<u>Zone 4</u>					
Moreton-in-Marsh Town Centre	11.4	0.1%	0.1	11.3	-0.9%
Stow-on-the-Wold Town Centre	3.4	0.0%	0.0	3.4	-0.5%
Shipston on Stour	10.8	0.4%	0.3	10.5	-3.0%
<u>Zone 5</u>					
Southern	7.8	0.3%	0.3	7.6	-3.2%
<u>Zone 6</u>					
Daventry Town Centre	38.9	1.1%	1.0	37.9	-2.5%
Daventry Out of Town	2.3	0.1%	0.1	2.2	-2.9%
Towcester	8.4	0.2%	0.2	8.2	-2.5%
<u>Zone 7</u>					
Buckingham Town Centre	17.1	0.3%	0.3	16.8	-1.8%
Buckingham Other	2.4	0.1%	0.1	2.4	-2.1%
Brackley	12.8	0.9%	0.8	12.0	-6.0%
<u>Zone 9</u>					
Kidlington	21.3	0.0%	0.0	21.3	0.0%
Witney Town Centre	162.7	2.0%	1.7	161.0	-1.1%
Witney Out of Centre	2.2	0.0%	0.0	2.2	-1.3%
Outside of Catchment Area	719.1	25.5%	22.3	696.8	-3.1%
Total	1,727.8	100.0%	87.7	1,640.1	

NOTES:

1. Turnover pre-development taken from Table 2 and excludes any expenditure attracted to existing centres from outside Study Area
2. Trade diversion taken from Table 4
3. Resultant turnover = turnover pre-development *minus* trade diversion
4. Impact = reduction in turnover expressed as a proportion of turnover should no development come forward
5. Turnover of existing facilities and turnover of proposal based on turnover derived from the Study Area only due to the uncertainties estimating the level of expenditure derived from outside Study Area

Our Ref: MD/sm

Bob Duxbury
Cherwell District Council
Bodicote House
Bodicote
Banbury
OX15 4AA

27 March 2014

Dear Bob

BANBURY GATEWAY, S73 APPLICATION TO VARY THE PERMITTED SCHEME TO ALLOW FOR A SPECIFIC RETAILER (PRIMARK), REF 13/01948/F

Response to Turley letter dated 26th March 2014

I refer to the letter sent in yesterday by the planning consultants acting on behalf of the owners of Castle Quay Shopping Centre. It does not raise any new points that have not already been considered by yourselves and your advisers in addressing this application and the previous amendment that was approved for the changes to the Next unit.

The objection from Turley is based on the premise that this application proposes a “development that is now materially different to that which was previously assessed” and as a consequence it should be treated *de novo* with a new retail impact assessment because 2 years have passed since the original one was completed and the application approved.

The planning permission granted in December 2012 (11/01870/F) was subject to a number of planning conditions. These same planning conditions were also included in the Section 73 Permission that allowed the scheme changes for Next. Condition 38 headed “Subdivision” states: “*the retail units hereby approved shall not be subdivided to provide any more than 15 A1 retail units on the site and no A1 retail unit shall be subdivided to less than 465 square meters in ground floor area.*”

The next planning condition, no 39 headed Amalgamation states:-“*The A1 retail units hereby approved shall not be amalgamated with the A3 units indicated as Units 3, 4 and 5 on drawing numbered 8842-P-101E and the A1 retail units shall not be amalgamated to provide any more than TWO A1 retail units exceeding 1,800sqm (GIA at ground floor level).*”

Therefore, the original planning permission allowed for flexibility in the scheme such that up to 15 individual A1 non-food retail units could be created of between 465sq m and 1800sq m, with 2 of these 15 units permitted to be larger than 1800sq m. This Section 73 application seeks to alter this condition to allow one more unit above 1800sqm and one less A3 unit. This amendment does not result in an increase in the overall level of floor space in the scheme. It therefore cannot be described as a materially different scheme to that which was previously approved by the Planning Committee and reviewed by your advisers CBRE.

Turley consider that Primark, the proposed tenant for the amended unit, will have a greater propensity to impact on the town centre. This statement is not clarified or supported by Turley in any way. As explained in our planning statement, Primark will be a new retailer to Banbury altogether and as a recognised brand leader they will serve

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a wider sub-regional catchment (as acknowledged by CBRE). Primark will provide greater choice for customers living in Banbury and those in the wider catchment area. This will also help to stem the flow of expenditure going to the higher order towns in the retail hierarchy such as Oxford and Milton Keynes.

A single Primark unit of 5,576 sq m, selling both fashion and household goods, will occupy the area that was previously intended to be 3 separate units, each of which *might* have been a fashion retailer with premises in the town centre. It is relevant to note again that the retail park occupiers will impact on the other out of centre retail parks because of the similarity of the goods sold. In the case of Primark, much of the impact from the household goods that will be sold will be on like retailers on the Banbury Cross retail park and Tesco. This point is noted in the recent NPPG – “retail uses tend to compete with their most comparable competitive facilities”.

Therefore we remain entirely satisfied that the introduction of Primark onto this scheme will not alter its’ makeup such that it would result in significant adverse impact on the town centre, which is also accepted by CBRE in their conclusions that “the impact is unlikely to be significant”.

Turley have sought to prepare their own “alternative” retail impact assessment and to make assumptions that have no justifiable basis. They state that they have “*corrected the flaws identified previously and incorporated assumptions that more accurately reflect the actual shopping patterns in the catchment area*”. They conclude that “*the correction of these errors combined with a higher scheme turnover logically leads to significantly greater predicted impacts*”.

The original retail study that was undertaken by WYG to support the scheme as approved was based on a series of assumptions relating to the nature of the trade draw patterns across the catchment area derived from the household survey information that they commissioned. This study was further supported by evidence from M&S relating to the unique nature of their retail offer and how they would attract a greater degree of trade from the sub-regional catchment. The same criteria will apply to Primark who are acknowledged to have a wider trade draw than just the immediate home zone.

WYG used the existing retail park at Banbury Cross as a proxy for the trading patterns for the catchment area. As now advised in the NPPG, “the best way of assessing trade draw where new development is proposed is to look at existing proxies of that type of development in other areas”. Turley, on the other hand, proposed to disregard this important assumption in the WYG study in favour of a weighted comparison with the town centre.

We are satisfied that the original WYG retail study was based on valid assumptions and did not make any of the arbitrary adjustments that have been made in this “alternative” study in an attempt to sensationalise the objector’s case.

We conclude that on the basis that there is to be *no increase* in the overall amount of floor space on the scheme and that this will now be controlled by a planning condition it is open to the Council reasonably to conclude as a matter of planning judgement that the current proposal does not promote a fundamentally and substantially different form of development to that previously considered.

Yours sincerely

Mary Davidson
Managing Director