renewed and improved so that it may compete with the new out of centre stores in St. Helen Auckland.

33. Although the Council accepted at the Inquiry that consumer choice and the promotion of competition were material considerations, I note that the written evidence did not deal with the issue of qualitative need as a positive aspect of the proposals[25]. The scale and nature of what is being proposed here is not dissimilar to that found appropriate by the Secretary of State and LPAs elsewhere in the country. In my view, this was an important omission making it difficult to see how the Council arrived at a balanced judgment.

Quantitative Need/Capacity

34. The Council's concern is solely with the comparison goods elements of the proposals. Much of the evidence before the Inquiry concerned the quantitative need or capacity for the comparison proposals. I appreciate that quantitative need does not have to be proved, although it may be relevant in looking at the issue of impact. Lack of quantitative capacity does not of itself mean that there is a significant impact. That is clear from the Practice Guidance[26]. There are significant differences between the conclusions of the main parties as to the existence or extent of quantitative need for comparison goods in Darlington. I examine the main differences below.

Assessment Year

35. It is agreed that the Darlington Retail Study Update (July 2010) (DRS 2010) [27] would be used as the basis for assessment of quantitative need and that the relevant assessment year of capacity and impact should be 2016.[28] I accept that the application was made in 2009 and that 5 years from that date would be 2014. However, the 5 years should be taken from this year, the year in which this planning appeal is taking place and will be determined. That is because the policy approach is to look at impact 5 years after determination. I note that paragraph D2 of the Practice Guidance gives guidance about the design year. However, I consider that capacity should be assessed at the same date as impact. That must be so because the only relevance of capacity is in examining the issue of impact. PPS4 Policy EC16/1/d advises that impact should be assessed in the light of spending capacity up to 5 years from the making of the application and Policy EC14.7 is to similar effect. The point of that policy is that impact should be examined at a time when the proposals have settled down and there has been a reasonable opportunity for the relevant centre or centres to have responded to the proposals.

Comparison turnover of the appeal proposals

36. It is also agreed that as of today, the comparison goods turnover of the appeal proposals is about £12.12 million[29]. The Council suggests that it is appropriate to make an allowance for increases in the efficiency of the floorspace in the store so that by 2016 its turnover would be £13.8 million. However, I consider it would be inappropriate to make an allowance for increases in turnover efficiency over the next 5 years for what would in effect be a brand new store.

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25 Mr Tonk's proof paragraphs 7.25 and 7.26 and Mr Boyle's proof section 7
26 CDA/3 paragraph 3.15
27 CDB/7
28 SCG2 paragraph 2.5
29 It is agreed that 5% of the additional turnover is likely to be derived from outside the catchment

37. The Council estimates that there would be capacity of £8.1million[30] in 2016 and that this is insufficient to support the £12.1million required by the proposal in that year. Whether the figure of £8.1 million is to be compared with the comparison turnover of the Sainsbury's store as suggested by the Appellant in 2016, namely £12.1 million, or the figure suggested by the Council of £13.8 million, I consider that the shortfall is small. The Appellant calculates capacity would be between £27.5 and £91.93million in 2016 under different scenarios[31].

Expenditure Growth Rates

38. In terms of expenditure growth rates, the DRS 2010 adopts the figures from the EBS 7.1, August 2009 edition[32]. EBS estimates growth of 1.1% from 2010 to 2011 and 2.5% from 2012 to 2016. The Appellant has allowed the 3.7% forecast growth rate suggested by PB[33]. In my view, the PB forecast is a more appropriate rate, which complies with the Government Practice guidance at paragraph B.21 on expenditure growth[34]. I consider the forecast growth rates adopted by the Council are too cautious as they are based on existing short term economic difficulties which underplay the level of expenditure growth in the foreseeable future. It is significant that the long-term growth trend rates provided by both EBS and PB are substantially higher than even the forecast growth rate which the Appellant has used. The EBS long-term growth trend is 4.7%. The PB long-term growth trend is 4.5%.

39. The desirability of using long term growth trends was clearly accepted in the recent appeal decisions at Tithebarn, Preston and McMullen's Brewery, Hertford[35]. In both of those decisions it was recognised that it was right to use long-term growth trends because they take account of recessionary periods as well as periods of growth. I consider the use of long term growth trend rates is robust and that there is nothing about the local circumstances or anything in the nature of the application itself which might suggest that the use of such long-term trend rates would be inappropriate.

40. I note that Mr Warriner has used the PB forecast rate because it provides a roughly midway point between the EBS growth forecast and the long-term growth trend rates produced by both EBS and PB. Mr Warriner's Scenario 2[36] shows that the single change to Mr Tonks' assumptions of using a 3.7% spending growth rate would produce more than sufficient capacity for the appeal proposals in 2016 (£52.01m)[37] and in 2014 (£25.94m.). I consider that an expenditure growth rate of 3.7%, based on the PB forecasts, is appropriate in this case.

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30 Mr Tonk's proof Tables 4.3b

31 GW1 Appendix 11

32 Retail Planner Briefing Note 7.1 August 2009

33 Pitney Bowes Retail Expenditure Guide 2010/2011

34 CDA/3 paragraph B.21 indicates that expenditure growth rates will need to be informed by the application of per head expenditure growth rates which should draw on national long-term trends, but may also have regard to expectations about future regional economic performance and to recent evidence of retail growth. It is however recommended that these growth rates should generally adopt a conservative level of growth in order to reflect the inherent uncertainty in economic forecasts, and the cyclical nature of the retail sector" The Guidance goes on to say at paragraph B.22 that "caution should be exercised to ensure that growth assumptions are realistic and do not over or underestimate the level of anticipated growth"

35 GW2 Appendix 10

36 GW2 Appendix 11 and SSL/GW/2

37 It should be noted that from the £55.21 million surplus identified in Table 10 for Scenario 2 in GW2 Appendix 11 there must be deducted £3.2 million for recent commitments

Special Forms of Trading

41. There are also differences between the Council and the Appellant in relation to the evidence on Special Forms of Trading (SFT). The Council points out that the DRS 2010 discounts expenditure per head on comparison goods by 11.5% in 2010, 12.2% in 2011, 13.7% in 2016 and 13.4% in 2021 to take account of SFT. This is consistent with the national average SFT figures provided by EBS. The Appellant does not rely on the SFT figure of 7.4% produced by PB but instead uses the higher figure of 8.4%, which is the percentage that the household survey suggests goes to SFT in this area. It is argued that local information should be used if it is available and the figure available in this case has merit in that it is comparable, although somewhat higher, than the figure forecast by the respected organisation PB.

42. I consider the rate adopted by the Council is excessive because it does not allow traditional shops to compete for that expenditure. A lower rate of 8.4% should be used based on the household survey results. This recognises that an allowance should be made for SFT but that going forward, this type of spending can be competed for and it should not simply be protected. Moreover, the adoption of this figure does not assume there would be no increase in SFT spending in the future. It merely assumes that SFT would increase in the same proportion as comparison spending as a whole. The effect of reducing SFT to 8.4% is demonstrated in Mr Warriner's Scenario 1[38]. According to Scenario 1, changing Mr Tonks' assumptions only in relation to SFT produces more than sufficient capacity in 2016 (£24.3 million)[39].

Overtrading in the town centre

43. In order to reach an estimate of total capacity, it is important to establish the amount of available spending and then deduct from that amount, benchmark turnovers of existing floorspace and of commitments. I accept that to reach the total of available spending, in addition to expenditure growth going forward, it is necessary to take into account a substantial amount of overtrading (£39.5 million) in the town centre which has not been counted. Only the overtrading in out of centre stores has been considered. The Practice Guidance itself shows that it is inappropriate to exclude from the computation of available spending overtrading in the town centre[40].

44. Not only does Mr Tonks ignore the overtrading in the town centre as part of the available spending, he also deducts from the capacity generated by overtrading in the out of centre stores £16 million, representing a figure which would provide the turnover for the town centre stores, which are presently vacant. I accept that town centre overtrading needs to be treated realistically and with caution.[41] However, it is highly significant that neither in the Core Strategy nor in the DRS is there any suggestion that the overtrading figures in the town centre should be left out of account because of concern about their accuracy. What the DRS says[42] is that overtrading in the town centre should not be counted in because it should "only be used to support new floorspace

[38] GW2 Appendix 11 and the 2014 Table at SSL/GW/2
[39] GW2 Appendix 11 and the 2014 Table at SSL/GW2 shows there is not quite sufficient surplus capacity in 2014 of £10.27m. As with Scenario 2, deduct £3.2m for recent commitments from the figure of £27.5m set out in the Table for 2016
[40] CDA/3 paragraph B.36 onwards at pages 74-75
[41] Mr Tonks' supplementary proof paragraphs 2.31-2.32 and 2.34
[42] CDB/7 page 18, paragraph 4.18

in the town centre ...". I cannot agree with Mr Tonks' method of assessment because all spending that is available should in principle be counted.

45. Moreover, I note that Mr Warriner's assessment has not counted in the whole of the £39.5 million overtrading as part of his capacity assessment. He has simply assumed that there is sufficient overtrading in the town centre for it to be able to supply enough spending for the re-occupation of the vacant units in the town centre. Given that Mr Tonks' figure for re-occupation of vacant units in the town centre was only £16 million this is an appropriate and highly conservative assumption. Adopting Mr Warriner's approach to this matter increases the amount of available capacity substantially as is shown in his Scenario 3. The effect of not deducting from the available capacity which arises from overtrading out of centre is shown in Scenario 3 to produce £28.35million capacity in 2016[43]. and in 2014 a capacity of £13.67million.[44] There is capacity for the proposals on this assumption in both 2014 and 2016.

Turnover efficiency improvement

46. I turn briefly to consider the issue of turnover efficiency improvement. The Council uses a rate of 1.1 % for 2010-2011 and 2.2% pa for the period 2012-2016 from the EBS brief[45]. The Appellant considers that is unjustified, on the basis firstly that such improvements cannot be expected to continue once already achieved and the fact that Darlington has a number of smaller shops means that they are unlikely to occur for this reason too. The Appellant has left that allowance in the assessment as a way of making a liberal allowance to compensate for any negative effect of the recent VAT increases. The Practice Guidance refers to allowance being made for these increases[46] but assumptions about how much allowance should be made for floorspace productivity growth should be "carefully considered and properly justified".

47. From the evidence that is before me, including the *Berwick* decision,[47] it is not enough simply to assume that there would be increases in efficiency, but also that they needed to be justified in any particular case. The Appellant suggests that no allowance should be made in this case. The Council simply relies on the national EBS figures.[48] I agree with the Appellant that the EBS report[49] cannot possibly be proper justification for allowing for turnover efficiency increase. Even if it were thought that some allowance should be made, the fact that the Appellant has included the whole of the allowance in the assessment argued for by the Council means that sufficient account has been taken of both the possibility of turnover efficiency improvement, and the possible impact of the VAT increase.

Commercial Street proposals

48. A further matter of dispute between the parties concerns the commitments counted in by the Council which include the Commercial Street proposals, which are assumed to have a turnover of £46.9 million in 2016[50]. That is

[43] GW2 Appendix 11, Table 10, Scenario 3, deducting from the surplus shown of £31.55million, £3.2million for recent commitments
[44] SSL/GW/2 Table 9A relating to Scenario 3
[45] Mr Tonks' proof paragraph 4.15
[46] CDA/3 page 77
[47] GW2 Appendix 7, Inspector's report paragraphs 15.12 – 15.13 and Secretary of State's decision, paragraph 17
[48] The EBS report itself provides no justification for its forecast rates. The nearest it comes to a justification is in Appendix 4 which refers to a report of 2007 based on data up to 2005, which it is stated is out of date
[49] GW2 Appendix 8, EBS brief 8.1 Appendix 4
[50] Mr Tonks' proof table 4.3b page 13

based on a net floorspace of 11,625 sq m. However, that net floorspace relates to the currently permitted Commercial Street scheme, which would produce an estimated 19,000 sq m gross increase in retail floorspace on the relevant site.[51] Although that planning permission is still extant, it is clear to me on the evidence that there is no intention of proceeding with that scheme. The Council refers to the possibility of the Commercial Street proposals being reduced in scale to 14,000 sq m gross[52]. Furthermore, it is clear from the letter from Signet Planning[53] and the Cabinet report[54] that it is far more than a possibility that the scheme might be reduced.[55] The Cabinet report says that there is a "revised scheme".

49. The Practice Guidance indicates[56] "in judging which commitments should be taken into account, it will be relevant to consider, inter alia, the likelihood of them being implemented, and their potential scale and significance." In this case, there is no evidence to support the case that it is likely that the permitted scheme would be implemented. All the available evidence suggests that that scheme has been abandoned and a new smaller scheme is being pursued. Indeed the reduction in the size of the Commercial Street scheme itself releases about £14million of spare capacity, which would be more than the expenditure of the appeal proposals[57].

50. Bearing in mind all of these capacity differences the tables show that changing the assumptions made by the Council in relation to (a) expenditure growth or (b) SFT, or (c) vacant floorspace would of itself mean that there would be more than sufficient capacity for the appeal proposals in 2016. Furthermore, adopting the Appellant's assumptions about spending growth or vacant floorspace would lead to sufficient capacity by 2014, also. The impact of following the Appellant's assessment on a combination of these assumptions would lead to even greater capacity.

51. Overall I prefer Scenario 4 of the Appellant's assessment. This follows the step by step methodology of the DRS 2010 but considers retail capacity based on a growth rate of 3.7% per annum and allows for SFT at a constant rate of 8.4%. No deduction to the resultant capacity is made to take account of vacant units. Scenario 4 shows that by the assessment year of 2016, over £90m of comparison goods expenditure would be available to support new development in addition to existing commitments. Indeed the capacity figure should be increased by a further £14 million to make allowance for the fact that there is no evidence of any intention to proceed with the larger permitted Commercial Street scheme. I conclude therefore there is a significant amount of capacity to accommodate the proposed development.

Impact

52. Policy EC16.1 of PPS4 sets out 6 impact considerations. For retail development to be considered unacceptable there must be clear evidence that there is likely to be significant adverse impacts resulting from the

[51] CDB/6 paragraph 3.28, page 14
[52] Mr Boyle's proof, paragraph 6.7
[53] Mr Boyle's Appendix 35 (DB 235) Letter dated 28th January 2011
[54] Mr Boyle'e Appendix 25 (DB 225)
[55] The Signet letter states that "the economic downturn has meant that the scheme originally granted consent has been the subject of a comprehensive review process and this has resulted in a newer smaller scale development being pursued by our clients"
[56] CDA/3 paragraph D8, page 93
[57] SSL/GW1 paragraph 1.8

development. The Council considers that the proposal would be likely to lead to significant and adverse impacts as reflected in the reasons for refusal.

53. In terms of Policy EC16.1a, the Council is seriously concerned that the nature and scale of the proposed increase in the comparison goods offer at the store is such that it risks jeopardizing one of the core elements of its retail strategy, namely to encourage as a "first priority" the proposed development at Commercial Street. Reference is made to the objections by Cobalt /Discovery Properties based on their concern that the proposal would "discourage certain sectors of comparison operators, who sell goods that Sainsbury's is proposing within the extension, away from the Oval development." Cobalt's concerns are echoed by representations from others already operating in the town centre, e.g. Binns/House of Fraser, the owners of the Cornmill Shopping Centre, market traders and other interested persons.

54. As I perceive it, the Commercial Street scheme is fundamentally different to the Sainsbury's scheme. It is a fashion-led scheme which is what the Council desires, as confirmed by the Core Strategy[58]. It is aimed at providing a new anchor department store and larger units for fashion retailers, particularly the high end clothes shops that tend to have a loyal following and are recognised as selling goods bought from independent or `in-house' designers. The offer of these shops is quite distinct from the goods that would be sold in the Sainsbury's store, which are generally basic clothing items.

55. Furthermore, the latest letter from Signet stops well short of suggesting that the Sainsbury's scheme would actually have any significant effect[59]. It says that the developers are in the final stages of renegotiating their development agreement with the Council and that they have been instructed to prepare a new planning application. There is nothing there to say that this process is being put on hold pending this appeal. It then says that Sainsbury's extension would provide competition. There is nothing against that in national policy. Later, it says that the viability of the Commercial Street scheme "will not be assisted" by the Sainsbury's scheme. That is plainly insufficient for a conclusion to be drawn that there would be any significant effect.

56. The letter also states that it is inappropriate for non-central store extensions to hinder the bringing forward of a regeneration site, but again this stops short of saying that the store extension would have that effect on the Commercial Street proposals. The Council suggests that the grant of planning permission to Sainsbury's might set a precedent for other schemes and other town centres. However, I consider that each case has to be considered on its merits, in the light of development plan and other material considerations.

57. Overall, the Sainsbury's scheme would not have a significant adverse impact on the prospects of future investment in this or indeed any other town centre. The retail needs assessment demonstrates that there would be significant expenditure capacity so as to provide ample turnover for both the appeal proposal and the Commercial Street proposals.

58. In terms of Policy EC16.1b in relation to impact of the proposal on town centre vitality and viability, the Council indicates a significant concern over the potential impact of the proposal in terms of vacancies, retailer representation and retail rents. I appreciate that Darlington town centre like

[58] CDB/5 paragraph 5.1.2, page 39.
[59] Letter dated 28/1/2011 in Mr Boyle's proof, Appendix 35 (DB235) and earlier letter dated 30/3/2010 (CD E/3)