

DARLINGTON BOROUGH COUNCIL
PLANNING APPLICATIONS COMMITTEE

COMMITTEE DATE: 30 September 2020

APPLICATION REF. NO:	18/00694/FUL
STATUTORY DECISION DATE:	31 July 2020
WARD/PARISH:	BRINKBURN AND FAVERDALE
LOCATION:	Former Vantage Point Site, Faverdale Faverdale Industrial Estate
DESCRIPTION:	Erection of a 1,900sqm (GIA) supermarket (A1 use), 1,900 sqm (GIA) retail store (A1 use) and a 167sqm (GIA) and drive-thru unit (A1/A3 use) with associated parking for 263 cars, ancillary service and delivery areas, landscaping and new access (amended Planning Policy Statement and Retail Policy Statement received 29 November 2018, additional Sequential Test document received 5 February 2019; additional Employment Land Viability Report received 30 April 2019;; amended plans received 31 May 2019; drainage information received 29 August 2019; additional Retail Impact Assessment received 26 September 2019 and Retail Assessment information received 14 May 2020 ; amended drainage information received 28 May 2020 and 8 th July 2020)
APPLICANT:	Hansteen Land Ltd

RECOMMENDATION: REFUSE PLANNING PERMISSION FOR THE FOLLOWING REASON:

In the opinion of the local planning authority, the planning application has failed to demonstrate that there would be no significant adverse impact on the viability and vitality of Cockerton District Centre. The local planning authority consider that the proposal is contrary to the National Planning Policy Framework 2019 (paragraphs 88 and 89) and Saved Policy S10 (Safeguarding the District and Local Centres) of the Borough of Darlington Local Plan 1997

Application documents including application forms, submitted plans, supporting technical information, consultations responses and representations received, and other background papers are available on the Darlington Borough Council website.

APPLICATION AND SITE DESCRIPTION

1. The application site measures 1.89 hectares on the south western edge of Faverdale Industrial Estate. The site is bound to the north, east and south by units and land that forms part of the Industrial Estate and residential dwellings on Faverdale Road to the west. A mature landscaped strip of trees and hedges separates the application site from the residential units. The application site is currently vacant.

2. This is a detailed planning application comprising:

- a) A 1,900sqm (GIA) supermarket (A1 use) (Lidl)
- b) A 1,900 sqm (GIA) retail store (A1 use); (Home Bargains) and
- c) A 167sqm (GIA) and drive-thru unit (A1/A3 use) (Starbucks)

3. The planning application states that the opening and delivery times for the three units will be:

Opening Times:

- Supermarket – 0800 to 2200 Monday to Saturday (including Bank Holidays) and 1000 to 1600 on Sundays
- Retail store – 0800 to 2200 Monday to Saturday (including Bank Holidays) and 1000 to 1600 on Sundays
- Drive Thru Unit – 24 hours a day, seven days a week

Delivery times

- Supermarket – 0600 to 2200 Monday to Saturday; 1000 to 1800 on Sundays and 0800 to 1800 on Bank Holidays
- Retail Store - 0600 to 2200 Monday to Saturday; 1000 to 1800 on Sundays and 0800 to 1800 on Bank Holidays

4. The intention is that all three units will be built out but in phases once the land has been remediated and the main access road has been constructed. The Drive Thru would be constructed first followed by the supermarket and then the retail store but events may allow for one occupier to go ahead of another or simultaneously with one another.

5. The scheme includes the provision of parking spaces for 263 cars throughout the site, ancillary service and delivery areas, landscaping and a new access off Faverdale, the main estate road leading from the roundabout junction with West Auckland Road (A68).

6. It is estimated by the applicant, that the proposed development would create 130 full time and part time jobs.

7. The applicant's overall land ownership extends over a larger 3.98 hectares, which includes the application site. At this time, there are no firm plans in place for the remainder of the wider site and they do not form part of this planning application.
8. The application site and the wider site has been the subject of an outline planning permission in 2015 (see Planning History) for the erection of a food store (up to 4225sqm) and a petrol filling station. This permission has subsequently expired.

Statement of Community Involvement

9. Due to time constraints placed upon the applicant to submit of the planning application, the applicant was unable to carry out a formal pre-application consultation exercise with local residents and appropriate interested parties and stakeholders in accordance with the Council's adopted Statement of Community Involvement document. However, engagement did occur with Ward Councillors and Council officers at that time. Since the submission of the application the scheme has been reported in the local press, the applicant has carried out a number of leaflet drops in the local area, presented a social media campaign and also made a presentation to Members of the Council.

Environmental Impact Assessment Requirements

10. The Local Planning Authority has considered the proposal against the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. It is the opinion of the Local Planning Authority, that the proposal is development for which an Environmental Impact Assessment is not required as the development, subject to mitigation measures, would not be likely to have significant effects on the environment by virtue of factors such as its nature, size or location.

MAIN PLANNING ISSUES

11. The larger site, which is within the ownership of the applicant, was subject to an outline planning application (ref no: 14/01043/OUT) which was granted permission in August 2015. The permission related to the erection of a food store (Use Class A1) up to 4225 sq. m and petrol filling station (Sui Generis) with associated car parking, servicing arrangements with home shopping provision and hard and soft landscaping. As stated above, this permission was now lapsed.
12. The main issues that to be considered here is whether the proposed development is acceptable in the following terms:
 - a) Employment Land Policy
 - b) Retail Planning Policy
 - c) Economic Impacts
 - d) Environmental Considerations
 - e) Design and Layout and Impact on the Character and Appearance of the Area
 - f) Residential Amenity
 - g) Highways Matters

- h) Ecology
- i) Trees and Landscaping
- j) Flood Risk
- k) Air Quality
- l) Land Contamination
- m) Archaeology
- n) Planning Obligations

PLANNING POLICIES

13. The application site is within the developments limits for the urban area and therefore the principle of the proposal would accord with saved policy E2 (Development Limits) of the Borough of Darlington Local Plan 1997 and policy CS1 (Darlington's Sub Regional Role and Location Strategy) of the Darlington Core Strategy Development Plan Document 2011. Therefore, the relevant Local Plan policies for this application include those listed below:

- Existing viable employment sites and other sites with special attributes will be protected by safeguarding them for employment uses or for mixed uses where appropriate subject to certain exemptions being met (Policy CS5 of the Core Strategy 2011)
- Any additional comparison retail goods development should not undermine any retail schemes and proposals at Commercial Street, and is accommodated within the primary shopping area of the town centre or in physically and functionally integrated extensions to it (Policy CS8 of the Core Strategy 2011)
- Any convenience retail development should be located within existing centres and where it will remedy qualitative local deficiencies in the geographical distribution of food shopping including areas of new residential development. (It should be noted that the requirement set out in Policy CS8 does not represent an up to date assessment of retail need in the Darlington administrative area, given that the Darlington Retail and Town Centre Study reported in September 2104, and a further Retail Study Update reported in November 2017).
- The hierarchy of centres in the Borough will be taken into account when considering the appropriateness of proposals for development (Policy CS9 of the Core Strategy 2011)
- The Council will safeguard and enhance the vitality and viability of the district and local centres in the Borough and, in particular, will safeguard their role for food shopping. The development which would undermine the vitality and viability of district and local centres will not be permitted. (Saved Policy S10 of the Local Plan 1997)
- Shopping development, including new food supermarkets up to 2,500 sqm gross floorspace will be permitted within and immediately adjacent to the defined district and local centres provided that they are physically integrated with and have good pedestrian links with the rest of the centre. (Saved Policy S11 of the Local Plan 1997)
- New development should provide vehicular access and parking suitable for its use and location (CS2 of the Core Strategy 2011)

- New development should be within a sustainable location and accessible by various modes of transport, pedestrians and disabled persons (CS2 of the Core Strategy 2011)
- New development should protect the general amenity and health and safety of local community (CS16 of the Core Strategy 2011)
- New development should reflect or enhance Darlington's distinctive nature; create a safe and secure environment; create safe, attractive, functional and integrated outdoor spaces that complement the built form; and relate well to the Borough's green infrastructure network (CS2 of the Core Strategy 2011)
- New development should not result in any net loss of existing biodiversity value by protecting and enhancing the priority habitats, biodiversity features and the geological network through the design of new development, including public and private spaces and landscaping (Policy CS15 of the Core Strategy 2011)
- New development should be focussed on areas of low flood risk (Flood Zone 1) and it should comply with national planning guidance and statutory environmental quality standards relating to risk from surface water runoff, groundwater and sewer flooding (Policy CS16 of the Core Strategy 2011)
- New development should take full account of trees and hedgerows on and adjacent to the development site. The layout and design of the development should wherever possible avoid the need to remove trees and hedgerows and to provide their successful retention and protection during development (Saved Policy E12 of the Local Plan 1997)
- Proposals for development will be required to incorporate appropriate hard and soft landscaping which has regard to the setting of the development in its form, design and plant species, and which enhances the appearance of the development and its setting (Saved policy E14 of the Local Plan 1997)
- New development should secure the necessary physical, social and environmental infrastructure requirements to be delivered by planning obligations and a Section 106 Agreement (policy CS4 of the Core Strategy 2011)

14. Paragraphs 85 – 90 of the National Planning Policy Framework 2019 which considers the vitality of town centres are relevant

Other relevant documents:

- Darlington Town Centre Strategy 2019 - 2030
- Supplementary Planning Document on Design for New Development
- Supplementary Planning Document on Planning Obligations

RESULTS OF TECHNICAL CONSULTATION

15. No objections have been raised to the principle of the proposed development by the Council's Highways Engineer, Environmental Health Manager, Environmental Health Officer, Ecology Officer, Sustainable Transport Officer and Senior Arboricultural Officer subject to the imposition of appropriate planning conditions, if the application is approved
16. There are no objections from the statutory bodies that have been consulted on the planning application, subject to the imposition of planning conditions

17. Following the submission of a revised Flood Risk Assessment in July 2020, the Lead Authority has no objections to the proposed development subject to the imposition of planning conditions, if the application is approved.

RESULTS OF PUBLICITY AND NOTIFICATION

18. The Local Planning Authority issued **441 consultation letters** and erected **four Site Notices** when the planning application was received along with **a press advert in the local newspaper**. Subsequently, consultations on amended and additional plans and information have been have continued to be carried out by the Local Planning Authority.
19. **Seventeen letters of objection have been received** and the comments can be summarised as follows:
- *Noise pollution*
 - *Traffic congestion*
 - *Impact on viability of existing retail and food outlets*
 - *Road safety issues*
 - *Antisocial behaviour and litter*
 - *Soil pollution and contaminated land*
 - *Adverse impact on shops in the town centre*
 - *Home Bargains is not required*
 - *Late night sale of alcohol*
 - *Starbucks not required in a residential area*
 - *A petrol station is required*
 - *Increase in traffic noise*
20. Darlington Friends of the Earth has objected to the planning application on highway safety and traffic congestion grounds and the site is not in a sustainable location
21. The Campaign to Protect Rural England has objected to the planning application. They support existing and proposed Local Plan policies which safeguard sites in existing employment areas for business use class and they are concerned about the amount of greenfield countryside proposed to be allocated in the Local Plan for business class development at Faverdale especially when there is a supply of available vacant brownfield and other land with existing allocations. The CPRE has noted that Darlington Retail and Town Centre Study Update 2017 concludes that there is no requirement for addition convenience/food shopping floor space in the Borough and they consider there is no need for another food store in this part of the town. They also agree with the Study which concludes that all additional comparison retail floor space should be accommodated in the town centre at Commercial Street. The proposed Drive Thru is not considered appropriate for this location would create additional car trips and would be unsustainable, contrary to national and local policy
22. Letters of objection have been received from Bussey and Armstrong and Estill Cooper who have constructed the West Park development which includes housing

and food retail outlets. The letters conclude that the proposals are wholly contrary to national and local planning policy guidance, there is a surplus of existing convenience and comparison floor space within Darlington in quantitative terms; whilst some of additional demand for comparison goods provision might arise in the longer term, this must be treated with caution; the Council has in any event shown that there is scope to meet the qualitative demand for additional comparison goods within the town centre; the applicant has failed to acknowledge the potential allocated site at Commercial Street which is clearly sequentially preferable and could accommodate the proposed development and the proposal alongside other commitments will result on significance adverse impacts and the applicant's submissions underestimate the true effects of these.

23. Letters of objection, submitted on behalf of Hillesden Trust, which owns the retail premises known as Whessoe Retail Park conclude the proposals involves the loss of an allocated employment site without robust justification for doing so. It is evident that the applicant's long term plan is for the creation of a new District Centre at the site but this should be planned for via the plan making process, if it is required; the applicants must demonstrate that they have robustly addressed the requirements of local and national policy with regards to town centre uses in out of town centre locations. The scope of the sequential assessment is deficient in that the applicants have failed to justify their area of search and have not demonstrated sufficient flexibility when considering alternative sites. As a consequence, they have failed to consider the available and suitable site at Whessoe Park which lies within a defined District Centre; granting planning permission would undermine the objectives of the Development Plan policy to safeguard North Road District Centre for food and other day to day shopping needs, in conflict with the town centre first approach of national planning policy. Planning permission should be refused. The Retail Park is available and, on the market, and should be considered by the applicant and the Council as part of the sequential test process.
24. Letters of objection have been submitted on behalf of the Cooperative Group Limited raising questions over the validity, methodology and findings of the various retail impact assessments submitted by the applicant in support of the planning application. The last objection concludes that they stand by the conclusions of their previous submissions: that the application is contrary to saved Policy S10 of the Darlington Local Plan, Policy CS9 of the Darlington Core Strategy and paragraph 89 of the National Planning Policy Framework
25. **Eighty five letters of support** and representation have been received and the comments can be summarised as follows:
- *The site has been vacant for far too long and needs to be brought into use*
 - *Retail provision at the West End of Darlington has kept pace with the population increase and any additional provision should be welcomed.*
 - *This area of Darlington would benefit from more choice and availability of retail outlets*
 - *People will be able to shop without having to travel to Cockerton; towards the town centre; Yarm Road or Morton Park*

- *It is in a contained area lower than nearby houses and fits in with the use of the surrounding area.*
- *Most workers within Faverdale will see this development in a positive light*
- *The land is currently wasted and will be a massive improvement*
- *This will secure more jobs in the area*
- *This will be in walking distance from my home*
- *This will reduce the number of cars having to drive across town for food shopping*
- *West Park area is further expanding, and the provision of new shops can only be of benefit*
- *We need this in our town, and it would be good for local area*
- *This will be great as long as there is pedestrian access*
- *This will utilise a brownfield site*
- *Having a Lidl on this side of town will greatly improve the area and provide other food shopping alternatives*
- *This will enhance the similar development at West Park*
- *This is a good location for the development*
- *I do not believe it would affect footfall in the town centre as these shops are either already outside of the town centre or are no longer operating there*
- *This will have easy access and free parking and will free up congestion in the town centre*
- *Money will be spent in Darlington rather than other places like West Auckland*
- *The infrastructure and transport seem perfectly in place to allow this development to succeed*
- *A great asset to the area*

PLANNING ISSUES/ANALYSIS

a) Employment Land Policy

26. The application site is part of an area identified as employment land in the Local Plan. Policy EP2 (Employment Land) sets out that this area would be suitable for Use Class B1 (Business) uses as well as Use Class B2 (General Industry) and Use Class B8 (Storage and Distribution), subject to impacts on local amenity.
27. Policy CS5 (The Provision of Land for Employment Use) of the Core Strategy states that existing viable employment sites and other sites with special attributes will be protected by safeguarding them for employment uses or for mixed uses where appropriate. Policy CS5 does, however, state that exceptions will be made where it can be demonstrated that:
- Continued use of the site for employment uses is no longer viable for appropriate employment uses, taking into account the site's characteristics and existing/potential market demand; or
 - Continued use of the site for B1, B2 or B8 purposes gives rise to unacceptable environmental or accessibility problems; or
 - An alternative mix of uses offers greater potential benefits to the community in meeting local needs for business and employment, or has other regeneration benefits; and

- The site is no longer required for the purposes of providing a balanced portfolio of land for employment purposes.

28. The planning application has been supported by an Employment Land Viability report (April 2019). This report gives a description of the site, a commentary and general overview of the property market providing a context for the site within the present property market. The report then looks in greater detail at Darlington and the supply and demand for existing commercial buildings in the area and also the supply and demand for development land. Further analysis with a specific focus on the planning aspects followed by a development appraisal of the land for commercial development is included and the report then compares the Faverdale site against major competing developments and focuses on the feasibility of the site for B1, B2 and B8 purposes from a commercial point of view.
29. The authors of the Report are Carter Jonas who were also commissioned to produce a report in 2014 to support planning application reference number 14/01043/OUT. At that time, the Council accepted the findings of the report which stated that the limited demand for employment uses was such that the site was not needed to provide a balanced portfolio of land for employment uses; such employment uses would not be financially viable; the site has been heavily contaminated and it would cost in excess of £1.4 million to remediate and that it is likely that the site will remain vacant unless it is released for an alternative uses.
30. The 2019 Report states that these matters have remained unchanged since 2015 and it provides an update on the industrial market since the original report was produced. There is limited demand in the local area for units of 10,000 sqft or over with only 8 lettings taking place within 3 miles of the application site within the last 3 years; alternative sites further afield have been marketing sites and units with very limited success despite extensive marketing exercises; potential occupiers are looking predominately at existing buildings given the level of rent that they are able to pay.
31. With regard to the application site, the original industrial unit (273,458 sqft) that was previously on the site was marketed in 2006 by agents GVA. It was on the market for one year however they were unsuccessful in finding a tenant for the property. The property had been marketed online on the GVA website, Co-star as well as site boards and brochures. The property was sold to The Spencer Group in 2007 for development and the industrial unit was demolished in 2008. From 2008-2011 the site lay dormant as there was little demand for the site and the recession made the development unviable.
32. In late 2011, Hansteen UK Industrial Property Limited acquired the Spencer Group along with all of their property assets. Since the acquisition, Hansteen has marketed the site for industrial development however no substantial interest has ever been received. The site has in total been marketed/made available for development for over 10 years and there has been no realistic, deliverable or substantial interest in the development site.

33. The Report advises that a proposed scheme of 175,000 sqft industrial development, which would deliver the highest commercial value and would be the most relevant and deliverable use for the site in the current market would still be unviable taking into account factors such as projected rents; build costs and site remediation.
34. The Report concludes that, based on the limited demand, despite extensive marketing over a sustained period, an oversupply of more suitable development sites, and the findings from the development appraisal, the applicant's do not believe that the site should be developed for its current allocated use and will remain vacant unless the site is released for alternative use.
35. Officers do not dispute the findings of the Report submitted with the application and consider that the site, which has been vacant since 2008 is likely to remain vacant unless it is released for an alternative use. In this context paragraph 120 of the National Planning Policy Framework 2019 states that:

Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

- a) they should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and*
 - b) in the interim, prior to updating the plan, applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.*
36. The positive impacts the proposal would have on the locality including jobs, environmental benefits and by bringing a derelict site into use are acknowledged. This position is noted, however, other developments for employment uses would also have their own benefits if a reasonable prospect of an alternative employment use were to come forward.
37. The evidence that has been put forward reflects the current market and highlights that the position has not changed since the previous submission for a supermarket was considered and supported by the Council in 2015.
38. Notwithstanding the question mark over the acceptability of this proposal in general planning policy terms, Officers consider that the site, in a prominent location within the Faverdale Industrial Estate, but on its periphery, close to residential areas, could be redeveloped for purposes other than B1, B2 or B8.

b) Retail Planning Policy

39. The National Planning Policy Framework 2019 (NPPF) emphasises the Government's commitment to securing economic growth and building a strong,

responsive and competitive economy. With regard to the assessment of proposals for main town centre development, the NPPF provides two principal national policy tests relating to the sequential approach to development and to impact.

40. Paragraph 89 of the NPPF sets out a twin impact test, stating that:

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

- a. the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- b. the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider retail catchment (as applicable to the scale and nature of the scheme).’*

41. Paragraph 90 indicates that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of the above factors, it should be refused. However, this direction cannot extinguish the requirement set out in statute to first consider development plan policy and then all material considerations in assessing the ‘planning balance’ when making a decision.

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

‘...if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.’

43. Saved Policy S10 of the Local Plan states that the Council will safeguard and enhance the vitality and viability of the district and local centres in the Borough and, in particular, will safeguard their role for food shopping.

44. Policy CS8 of the Core Strategy relates to additional retail provision. The policy states that the need for additional comparison goods retail floorspace in the Borough by 2016 should be met mainly or wholly by a retail-led scheme at Commercial Street. It is stated that a further 4,000 sq.m gross could be needed, provided that its development would not undermine that at Commercial Street and should be accommodated within the primary shopping area of the town centre or in physically and functionally integrated extensions to it.

45. In terms of convenience retail floorspace, Policy CS8 states that there is no quantitative need for additional floorspace in the Borough up to 2021, with a need for 2,000 sq.m gross floorspace expected between 2021 and 2026. The policy states that such provision should be located within existing centres and where it will

remedy qualitative local deficiencies in the geographical distribution of food shopping including areas of new residential development. It should be noted that the requirement set out in Policy CS8 does not represent an up to date assessment of retail need in the Darlington administrative area, given that the Darlington Retail and Town Centre Study reported in September 2014, and a further Retail Study Update reported in November 2017.

46. The Darlington Town Centre Strategy 2019-2030 sets out a clear direction for the town centre and provides a framework for planning, development and town centre management activities. The strategy outlines key priority areas for action to reshape the town centre. One such area is commercial Street car park, which the Strategy highlights could be developed for convenience food retailing purposes. Such stores can play a significant role in attracting people to the town centre which accords with the requirements of the "Town Centre First" policy within the NPPF.

Retail Impact Test

47. Paragraphs 89 and 90 of the NPPF indicate that application proposals for retail and leisure development may be refused planning permission where a significant adverse impact is likely to arise from development. The key consideration is clearly not whether there is an impact as a result of development, but whether that impact could be deemed to be 'significantly adverse'.
48. In assessing the significance of impacts arising from development, it is appropriate to reflect upon the advice set out in the Town Centres PPG. In this regard, paragraph 017 states that:
- 'A judgement as to whether the likely adverse impacts are significant can only be reached in light of local circumstances. For example, in areas where there are high levels of vacancy and limited retailer demand, even very modest trade diversion from a new development may lead to a significant adverse impact.'*
49. It must be recognised that impacts will arise with all retail developments, but that these will not always be unacceptable, not least because development often enhances choice and competition. It is therefore necessary to differentiate between those developments that will have an impact and those that will undermine the future vitality and viability of established centres, i.e. have a 'significant adverse' impact.
50. The Council has sought independent advice from expert retail consultants Nexus Planning on whether the proposed development would have any impact upon the existing town centre and local and district shopping centres in the Borough. Their conclusions and advice have been provided following extensive discussions with the applicant and their retail consultants and consideration of their submissions made at various points during the determination period.
51. The first strand of the impact test, as identified by paragraph 89 of the NPPF, is set out below.

The Impact of the Proposal on Existing, Committed and Planned Public and Private Sector Investment in a Centre or Centres in the Catchment Area of the Proposal

52. There has been significant investment in Darlington town centre in recent years and given the nature of the Faverdale application proposal, which would principally meet day-to-day needs that arise in the north west of the town, Nexus Planning do not believe the application proposal will adversely impact upon any specific existing, committed or planned investment in the town centre.
53. The centres of principal relevance to the NPPF impact test are considered to be West Park local centre and the Cockerton district centre. Impacts which arise at North Road district centre will principally be borne by the Morrisons store, which appears to trade strongly.
54. Significant development was delivered through the opening of West Park local centre in 2006, and in the form of the adjacent Aldi and Marks and Spencer stores, which opened in 2018. Given that this investment has largely 'bedded in', it is considered appropriate to consider the health of West Park local centre and its ability to withstand impacts arising from the application proposal in the assessment of the second part of the NPPF impact test.
55. As such, Nexus Planning has advised that they find the proposal accords with the requirements of the first part of the NPPF impact test.
56. The second strand of the impact test, as identified by paragraph 89 of the NPPF, is set out below.

The Impact of the Proposal on Town Centre Vitality and Viability, Including Local Consumer Choice and Trade in the Town Centre and Wider Area

57. It is accepted that the proposed Class A1/A3 drive-thru unit would largely cater for those primarily visiting the site in order to shop, and those passing nearby. No significant impacts will arise from the proposed drive-thru unit due to it primarily meeting a relatively localised need. Therefore, it is the retail element of the proposal which is of principal relevance to the second part of the impact test.
58. Officers can advise Members that Nexus Planning provided advice on the initial information submitted in support of the planning application in July 2019 which concluded that their review of the application identified a number of matters where, in their opinion, the applied inputs and assumptions provided for an unreliable assessment. As a consequence, Nexus Planning advised that the applicant had not demonstrated compliance with the second part of the NPPF impact test.
59. Following this, the applicant provided a Response Note and Revised Retail Impact Assessment in September 2019. Nexus Planning, in turn, provided further advice in the form of a letter to Darlington Council (October 2019). Whilst the applicant had sought to revise its approach in order to respond to the concerns, Nexus Planning's advice remained that compliance with the impact test had not been demonstrated.

60. As a consequence of all of the above, the applicant provided further information to the Council with revised retail impact tables (dated 14 May 2020), which revisit the matter of retail impact based on a new household shopper survey (undertaken by NEMS and dated February 2020). Nexus Planning reviewed the additional evidence provided by the applicant in order to advise the Council in respect of the proposal's compliance with the second strand of the NPPF test.
61. The broad methodology for the undertaking of a new household survey was agreed between the applicant and Nexus Planning in January 2020. The household shopper survey was completed before changes and disruption in shopping patterns as a consequence of Covid-19 but the ongoing impacts arising from the pandemic do not invalidate the findings of the survey. Accordingly, Nexus Planning accept that, in principle, the applicant's approach in undertaking a new household shopper survey (and in confirming key elements of its methodology in advance) was appropriate.
62. The applicant set out a series of updated inputs and assumptions which underpin its approach to retail impact. A revised series of retail impact tables were also provided which were all considered by Nexus Planning. Whilst some inputs and assumptions made by the applicant have been accepted, the critical judgement associated with the acceptability of the impacts arising from the proposal is the ability of local food retailers to withstand trade diversion impacts. In considering such impacts, it is important to acknowledge that household surveys can sometimes underestimate the turnover of smaller convenience goods stores. This may be because of sample size, but also due to difficulties in respondents understanding and accurately recalling their 'top up' shopping trips.
63. However, even allowing for this, Nexus Planning believe it to be clear that the revised retail impact assessment fails to provide any assurance that the Co-op and Heron stores at Cockerton district centre would remain viable subsequent to the implementation of the proposal. They have also expressed some concerns about the identified trading performance of the Co-op at West Park local centre, which the applicant's evidence suggests is remarkably low.
64. The advice from Nexus Planning is that the application proposal would have a greater impact on convenience goods retailers at Cockerton district centre and West Park local centre than identified by the applicant. Moreover, it is also important to recognise that the applicant's own assessment actually fails to demonstrate that nearby food stores would continue to operate viably subsequent to the implementation of the proposal.
65. Nexus Planning's considerations in 2019 in respect of Cockerton district centre are set out below and there appears to be no evidence that its performance has improved since:

...the centre's health is weaker than it was five years ago and that its current performance is only moderate. Furthermore, we believe that Cockerton district centre's convenience goods offer will continue to be of importance in the future in helping to anchor the centre.'

66. West Park was found to be a vital and viable centre at June 2019, and one which is anchored in part by the Aldi and M&S Simply Food units to the north of John Fowler Way. The applicant's submission demonstrates that the Aldi performs well, and it is recognised that the M&S is, in qualitative terms, a different proposition to the proposed Faverdale development. Accordingly, whilst the proposal will have some trade diversion from the Co-op at West Park, on balance Nexus Planning believe that West Park centre overall would be unlikely to suffer a significant adverse impact as a consequence of the proposed development. This is a consequence of the likely ongoing satisfactory performance of the Aldi and M&S stores.
67. Cockerton district centre has a greater dependency on smaller food stores which do not appear to trade as strongly as the two key anchors at West Park. Furthermore, there are particular circumstances apparent at Cockerton which give cause for concern; namely, whether or not two Co-op stores are likely to continue to trade in close proximity to one another should the application be implemented. Nexus Planning has advised, the revised retail impact assessment provides no reassurance that the two Co-ops would both remain viable subsequent to the proposed development coming forward.
68. Whilst the applicant's household survey suggests that the larger store performs particularly poorly relative to its company average benchmark it is this store (with a wider product range) that is likely to trade more directly against the proposed Lidl and Home Bargains stores. From the information submitted by the applicant and Nexus Planning's own consideration of the trading performance of Cockerton, Nexus Planning has advised that continued operation of the larger Co-op would likely be jeopardised by the application proposal and the loss of the larger Co-op would deprive the centre of its principal anchor tenant
69. It is also relevant to note that the applicant has provided no further substantive evidence which provides any comfort about how Cockerton's food retailers trade in practice. The applicant fails to provide any detailed observations in respect of the amount of custom it has observed in visiting the stores and there is no 'street survey' evidence or pedestrian count which suggests that the stores actually trade well in practice. Indeed, the application submission is lacking in detail about the local circumstances. Given all of the above, Nexus Planning find that:
- a. the applicant has failed to demonstrate that there would be no significant adverse impact arising at Cockerton district centre as a consequence of the proposal, thereby failing to accord with the requirements of NPPF paragraphs 89 and 90; and
 - b. there is a genuine likelihood of such an impact occurring in practice, based on the applicant's retail impact submission and their knowledge of the centre and their observations over a number of years in respect of how it trades.

Sequential Test

70. Paragraph 86 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in accordance with an up-to-date plan. Paragraph 86 goes on to state that:

‘Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.’

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

72. Paragraph 90 indicates that, where an application fails to satisfy the sequential test (or is likely to result in a significant adverse impact arising at a town centre), it should be refused. However, this direction cannot and does not extinguish the requirement set out in statute to first consider development plan policy and then all material considerations when making a decision.

73. Guidance on the application of the sequential approach is provided by the Town Centres and Retail Planning Practice Guidance (‘the Town Centres PPG’), which was published on 22 July 2019. Paragraph 011 of the Town Centres PPG provides a ‘checklist’ for the application of the sequential test to decision taking. It identifies the following considerations:

- a) With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
- b) Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.

74. If there are no suitable sequentially preferable locations, the sequential test is passed.

75. Paragraph 011 goes on to reaffirm that, only if suitable sites in town centre or edge of centre sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. When considering what a reasonable period is for this purpose, the scale and complexity of the proposed scheme and of potentially suitable town or edge of centre sites should be taken into account.

76. Town Centres PPG paragraph 012 identifies that the application of the sequential test may be affected by the characteristics of a proposal. It states that *'Use of the sequential test should recognise that certain main town centre uses have particular market and locational characteristics which mean that they may only be accommodated in specific locations. Robust justification will need to be provided where this is the case and land ownership does not provide such a justification.'*
77. In respect of viability, Town Centres PPG paragraph 013 identifies that as:
- '...promoting new development on town centre locations can be more expensive and complicated than building elsewhere, local planning authorities need to be realistic and flexible in applying the test.'*
78. The Core Strategy 2011 fails to provide a detailed sequential policy test, albeit Policy CS7 indicates that the town centre will be a focus for further development. Policy CS8 also indicates that the Commercial Street site in the town centre should be the priority for additional comparison goods development, and that additional convenience goods provision should be located within existing centres and where it will remedy local deficiencies in the geographical distribution of food shopping, including areas of new residential development.
79. Nexus Planning has provided a review on how the matter of 'flexibility' has been applied by the Courts, and to consider whether there is any need to 'disaggregate' constituent elements of the proposal when considering alternative sites. The 'suitability' of sequential alternatives should be considered with reference to the subject application proposal and whether the proposal could be accommodated at a sequentially preferable location. The concept of 'disaggregation' relates to the potential for different elements of an application proposal to be sub-divided onto different sites.
80. Nexus Planning advise that they accept there is no need to disaggregate the proposal and that an alternative site should be able to accommodate the application proposal in its entirety, allowing for appropriate flexibility in format and scale.
81. The application site is 1.9 hectares and the proposed layout represents an efficient use of the site, with no substantial access roads taking up excessive space, and car parking configured in a straightforward and efficient manner. Accordingly, whilst it is important to recognise that units may be able to be reduced in size to some degree and that a lesser level of car parking may be acceptable in practice (whilst still allowing for a satisfactory development), it is considered that a materially similar development could not be supported on a very significantly smaller site.
82. Having considered the location of the application site; the existing retail provision of the north west of Darlington; that fact that the proposed discount food store and the other retail unit are focused at meeting day to day convenience goods and household comparison goods needs; and the location of existing competing facilities, it is anticipated that the large majority of custom to the proposed development would originate within a seven minute drive of the application site and Nexus Planning has provided their advice on the basis. Any site located outside of

this area would not offer realistic potential to accommodate a broadly similar development which is capable of meeting broadly similar needs. Indeed, even sites located at the periphery of the catchment may only have a limited overlap in respect of the market served, given the distribution of existing retail facilities in the town. As a consequence of the above, in order to offer realistic potential, sequential alternative sites will need to be:

- a) able to accommodate all of the constituent elements of the proposal without the need for disaggregation;
- b) at least 1.5 hectares in size; and
- c) located within a seven minute off-peak drivetime catchment of the application site.

83. The applicant was requested to investigate the availability and suitability of the following sites which they subsequently discounted for a number of reasons and their responses have been considered by Nexus Planning as follows:

Cockerton Precinct

84. There are no vacant units at Cockerton Precinct which offer any realistic potential. The site remains in use and is easily discounted from the assessment.

Cockerton Band and Musical Institute

85. The Cockerton Band and Musical Institute is also occupied, and land to the east is being developed by North Star for social housing. As such, there is no site available at this location to accommodate the application proposal.

Land at Gladstone Street

86. The Gladstone Street car parks form part of allocation within the emerging Local Plan for being appropriate for town centre uses. The allocation also incorporates the Commercial Street development site and, in aggregate, comprises 2.4 hectares (albeit we recognise that St Augustine's Way runs between the two elements of the wider site). However, the site is located just outside of the seven minute off-peak drivetime catchment which is indicative of the principal catchment area of the application proposal. There would only be a limited overlap between the catchment area of the application proposal should it trade from the Faverdale site and that of a broadly similar operation trading from Gladstone Street. It is accepted that the purpose of the proposal is to cater for residents in the north-western part of Darlington and to divert trade away from the Aldi, M&S Simply Food, Co-op stores, and other operators in that part of the town. The Gladstone Street site could not support a retail operation which competes effectively against such retailers in order to serve residents within the north-west of the town and as a consequence, the Gladstone Street site is not suitable to accommodate the application proposal.

Garden Street

87. The Garden Street car park site is far too small to accommodate the application proposal and it is located outside the seven minute off-peak drivetime area.

Commercial Street

88. Commercial Street forms the southern part of the aforementioned emerging Local Plan allocation and this site would be unsuitable to accommodate the proposed development for the same reasons as the Gladstone Street site.

Former M&S, Northgate

89. This building is not likely sufficiently large enough to accommodate the proposed uses (and associated adjacent car parking). Furthermore, it is outside the seven minute off-peak drivetime catchment and can be discounted from the assessment on this basis.

Sports Direct

90. The former Sport Direct premises are located even further away from the application site, at the eastern part of the town centre. The site therefore could not support the same retail operation and it is therefore not a suitable site for the purpose of the sequential test.

Brunswick Street

91. The Brunswick Street car park site is situated to the east of Darlington town centre. It is well outside the identified catchment area for the proposal and is therefore not a suitable site.

Halfords, Russell Street Retail Park

92. The entirety of the Russell Street Retail Park site is substantially smaller than the application site, it is situated to the north-east of Darlington town centre and is outside the defined seven minute drivetime area. It is not suitable to accommodate the application proposal.

Whessoe Retail Park

93. This site is located at the periphery of the defined seven minute off-peak drivetime. Whilst there would be some overlap between the catchment served from Whessoe Retail Park and Faverdale, there would also be substantial differences. Whessoe Retail Park is not an appropriate location to efficiently serve a localised north-west Darlington catchment. Residents of north-west Darlington would be unlikely to choose to forego more convenient existing operators in the Cockerton and West Park areas to travel to Whessoe Park in sufficient numbers. The site comprises around 1.2 hectares, which is very substantially under the necessary 1.5 hectares threshold.

94. Having considered the above sites, Nexus Planning do not believe that there is a sequentially preferable site to accommodate the application proposal and they find therefore that it accords with the requirements of the test as articulated by NPPF paragraphs 86 and 87.

c) Economic Impacts

95. The proposal itself will deliver new job generating uses which have the potential to deliver up to 130 new full and part time jobs. Further employment opportunities will also be maintained and generated by the construction industry supply chain. This is a material planning consideration when determining this planning application. Overall, the applicant believe that this proposal will have a significant positive

impact on the economy of the area in accordance with a range of national and local policy objectives, in particular:

- a) Total private sector investment into the area of approximately £10 million;
- b) Up to 130 new jobs in order to facilitate the Lidl food store, Home Bargains and Starbucks with further indirect and induced jobs created through construction;
- c) Supporting economic growth and productivity, taking into account both local business needs and wider opportunities for redevelopment;
- d) Promoting the effective use of land for a more deliverable uses that can help to address identified needs; and
- e) Ensuring that Darlington is an economically active and self-sustaining town, offering equal opportunities for all.

d) Environmental Considerations

96. The proposed development represents the redevelopment of a contaminated and brownfield site and the site is fully accessible by means of transport other than the motor vehicle. There are a number of measures to promote sustainable transport are outlined within a Travel Plan which would be promoted to the employees. Furthermore, key measures have been integrated into the scheme which will reduce the developments impact on climate change for example, recycling on site; high efficiency boilers, energy efficient LED lighting (Lidl); electric car charging points, solar panels where possible (Home Bargains); low water usage sanitary appliances (Starbucks). Lidl, Home Bargains and Starbucks each have comprehensive sustainability measures which demonstrate their commitment to addressing the threat of climate change.

e) Design and Layout and Impact on the Character and Appearance of the Area

97. The industrial and commercial area within which the application site lies predominately comprises of vacant sites and two and single storey office, warehouse and industrial buildings of varying ages and designs. The residential dwellings in the area semi detached and detached properties
98. The three proposed buildings sit on the perimeter of the site boundary to allow for the parking areas to be centrally located away from public footpaths. Service yards are generally located to the rear or the side of each unit, keeping active frontages out onto the central parking areas. All three buildings have been developed by utilising their standard brand specifications which would usually be the case on mixed retail developments.
99. The retail supermarket (Lidl) is located on the western perimeter of the site. The unit is a single span building with a shallow mono pitched roof rising to its highest point (just over 7m) facing the car park. The building would be constructed from a mixture of render, metallic cladding and glazing. The pedestrian entrance is located in the south east corner of the building, constructed from glass walling and overshot by a canopy.
100. The retail store (Home Bargains) is located on the northern perimeter of the site. This unit is also a single span building with a shallow pitched roof rising to its

highest point (8.5m) facing the car park. The building would be constructed from red brick and metallic cladding. The pedestrian entrance is located in the south east corner of the store, designed from glass walling and a covered entrance.

101. The Drive Thru unit (Starbucks) is located on the southern perimeter of the site. This is a single storey unit with a mono pitched roof. The roof rises to the front of the unit (to just over 3.9m in height) and it is orientated to have the pedestrian entrance of the building looking into the car park with the drive thru windows facing the Faverdale estate road. A central tower element is positioned to come from the base at the front of the unit rising through the roof (total height of 7m) within the exposed wooden rafters. The units will be constructed using a steel and wooden frame clad in composite highly insulated panels to the side and rear with a full glass wall to the pedestrian entrance elevation.
102. The overall site and all entrances into the buildings will be level to ensure safe, convenient and attractive access for all in accordance with Policy CS2 of the Core Strategy.
103. The site is currently a vacant and derelict site and it has been for a number of years. The proposed buildings are well designed, and the layout is acceptable on this prominent location. The development would not harm the visual appearance of the local area and would accord with policy CS2 of the Core Strategy.

f) Residential Amenity

104. There are no residential properties immediately to the north, east or south of the site. To the west are residential properties on Faverdale Road. These are separated from the application site by a wooded area and are some 32m from the application site. The size and siting of the proposed buildings and the associated landscaping works would be such that no significant issues would be raised regarding overbearingness.
105. The proposed hours of operation and deliveries are acceptable and can be secured by a planning condition.
106. A Noise Impact Assessment has been submitted in support of the planning application which considered the potential noise impacts from the construction phase, plant and machinery; deliveries and road traffic. The Assessment concludes that any impacts during the construction phase can be controlled by a Construction Management Plan; the cumulative operational noise sources would have no impacts during the daytime at the nearest noise receptors to the proposed development but there would be moderate impact during the night time. A subsequent noise mitigation strategy was modelled incorporating a 2 metre high close boarded wooden fence around all plant equipment located at ground level and this showed no impact during the daytime and night time at all receptors. A full assessment of the noise from plant was not possible as insufficient information has been supplied at this early stage on the precise details of the equipment but the Assessment recommends that all plant is designed such that the rating level at nearby residential properties does not lead to significant adverse impacts, in accordance with BS4142.

107. The lighting scheme for the scheme will be designed to maximise efficiency, minimise light spillage and pollution and be to adoptable standards to the access road. Timed and light sensor operations will be employed to ensure safety and minimise night disturbance where appropriate.
108. The Agent acting on behalf of the appellant has advised that the scheme will not include a recycling centre, which can be an adverse noise source.
109. The Council's Environmental Health Manager has raised no objections to the scheme subject to the imposition of appropriate conditions relating to the hours of deliveries and opening times; precise details of external plant and machinery; precise details of the lighting scheme; a Construction Management Plan and compliance with the submitted Noise Impact Assessment.
110. The proposed development would accord with policy CS16 of the Core Strategy 2011 and the NPPF 2019.

g) Highways Matters

Sustainable Transport

111. Faverdale Road bus stops adjacent to the proposed site provide Bus Service No 19. This is a half hourly service Monday to Saturday and hourly on a Sunday. There is no evening service throughout the week. The first bus from the site to the town centre leaves at 07:41 and the last bus from the town centre to the site arrives at 17:47.
112. The site (all three phases) are within 400m walking distance of a bus stop. A slightly further walk to Auckland Road offers more frequent services (every fifteen minutes) including an evening service (1/1B/X1).
113. Improvements are needed to Faverdale Outbound bus stop including raised kerb, and as such a financial contribution will be sought via a Section 106 Agreement.
114. A Framework Travel Plan has been submitted which aims to ensure that all employees can choose from a range of options for travelling by non car modes which is welcomed by the Council's Sustainable Transport Officer. As the site specific plans come forward, the Officer would work with each site/developer to ensure that these travel plans are submitted through our online travel planning tool. This ensures the Travel Plan is accessible, easily updatable and evidence can be provided for monitoring purposes.
115. This site needs to link into existing surrounding footways and there is a pedestrian link into the site that is separate to the main vehicular access.
116. The Travel Plan states that a segregated footway/cycleway will be provided along the northern edge of Faverdale, adjacent to the development site. This footway could be a shared use footway, providing the route has a minimum width of 3 metres (ideally 4 metres). This should include a drop off onto the carriageway and short section of on road cycle lane. A planning obligation would be sought to

improve and maintain footways and cycleways close the site including improvements to Faverdale Black Path and a potential shared use path continuing along Faverdale.

117. Precise details of cycle parking can be secured by the imposition of an appropriate planning condition if the application is approved.

Impact on the Local Highway Network

118. A full Transport Assessment has been submitted in support of the application. The proposed extent of generated traffic is compared against the previously approved permission (ref no14/01043/OUT) and it does show a significant reduction in the AM and PM weekday peak periods and also the Saturday peak.
119. The total vehicle generation for the retail store has been reduced by 20% to take account of trip sharing between this store and the food supermarket store on the site assuming that 1 in 5 people will visit both stores.
120. Based on the adjusted TRICS generation it is estimated that there will be 157 trips in the AM weekday peak and 213 vehicles trips in the PM weekday peak associated with the development. The Saturday peak for the development is estimated to be 11:00 to 12:00 hours and the development is proposed to generate 357 vehicle trips. This is a reduction of 287 trips in the AM peak and 444 in the PM peak when compared to the previously approved consent and a reduction of 424 vehicle trips in the Saturday peak hour.
121. New retail developments typically generate very little wholly new traffic to the highway network, typically around 1%, and in practice the majority of the traffic associated with the development consists of existing retail journeys to other stores that transfer. For the purposes of this assessment it is assumed that 60% of weekday trips and 75% of weekend trips are considered to be transferred.
122. The assessment reviews the existing and committed development as part of the analysis and loads this onto the highway network before assessing the additional trips as part of this application. The different scenarios have been ran through the local Aimsun model that was developed to assess the previous developments. This shows that the additional development traffic would not severely impact on the local highway network and during the Am peak increases the average travel time per vehicle by 27 seconds and 37secs in the Pm peak respectively. Travel times in the Saturday peak are increased by an average of 5 seconds per vehicle when compared to the base scenario. This assumes that certain highway improvement schemes are in place including the recently constructed third lane approach to Rotary Way roundabout, improvements to Cockerton Roundabouts (proposed late 2019) and the new link from Edward Pease Way to Newton Lane which is required as part of the Stag House Farm development which is a realistic base scenario.
123. Based on the above, the Council's Highways Engineer has advised that the development traffic would not have a material impact on the local road network.

Access Arrangements

124. A single point of access is taken off Faverdale Road in the form of a simple priority junction with visibility appropriate to the 30mph speed limit (2.4 x 43m) along with suitable junction spacing. Radius kerbs are detailed along with an access road width of 7.5m which will facilitate the movement of 16.5m articulated vehicles making deliveries to the site.
125. Pedestrian access to the development is via shared footway/cycleway provided both sides of the of the site access road, with suitable tactile paving and dropped crossings as appropriate.
126. A review of recorded accident statistics is included with the Transport Assessment and the findings are confirmed by Police statistics for the previous five year period. The summary of the findings concludes that there is no evidence to suggest that there are any issues with road layout, inadequate signage, or poor road surfaces that are considered contributory factors. There is no particular pattern to accidents and most are deemed to be driver error in exiting junctions or anticipating vehicles ahead stopping or turning.
127. A vehicle swept path analysis has demonstrated that the turning and servicing facilities within the site are of sufficient size to accommodate reuse and servicing vehicles. However, service management plan is necessary and should stipulate the times and size that delivery vehicles can be permitted in the interest of public safety as the units are reliant on using the car park for access to the service yards. This can be secured by a planning condition.
128. The Council's Highways Engineer has advised that the access arrangements for the proposed development are acceptable.

Car Parking

129. Car parking provision across the development is generally in line with the guidance set out in The Tees Valley Design Guide with a total of 263 spaces and includes suitable levels of disabled spaces. The layout of the site has been revised which includes an increase in the level of disabled parking provision and relocating some spaces closer to the supermarket store which is welcomed.
130. Cycle parking has been provided for each element of the development with a total of 30 spaces across the site, cycle racks are located close to the entrance doors of each business in a convenient and overlooked location. The Council's Highways Engineer would consider the proposed arrangements satisfactory.

Offsite highway works

131. There are some offsite works which will need to be addressed (the proposed shared cycleways, redundant access points, road markings, kerb lines, bus stops) which can be satisfied and secured by a planning condition.

Impact on Local Strategic Road Network

132. Highways England has made a review of the Assessment and they are satisfied it has been demonstrated that there will only be a small impact at the A1 (M) (J58). Highways England has not objected to the planning application and requested the

imposition of a planning condition to secure the submission of a Construction Traffic Management Plan

133. Overall, the proposed development is acceptable in highway safety terms and it would accord with CS2 of the Core Strategy.

h) Ecology

134. An Ecological Appraisal has been submitted in support of the planning application. The report states that the site and the immediate area include broadleaved woodland, dense/continuous scrub, introduced shrub, conifer tree lines, semi improved neutral grassland, bare ground, and hardstanding and spoil heaps which are unlikely to qualify as national or local biodiversity priority habitats.

135. The Appraisal advises that the trees within the site have modest ecological value for breeding birds but do not have features potentially suitable for roosting bats. The Appraisal recommends the installation of bird and bat boxes on new structures, the use of appropriate ecological lighting and tree and scrub removal takes place outside of bird nesting season unless monitored by a suitably qualified ecologist.

136. The Council's Ecology Officer accepts the findings of the Appraisal and has requested the mitigation measures be conditioned should the application be approved. In such circumstances, the proposed development would accord with policy CS15 of the Core Strategy 2011

i) Trees and Landscaping

137. There are no significant trees within the application other than along the western boundary, none of which are covered by a tree preservation order.

138. The landscaping for the site has been kept to a minimum with the introduction of grassed strips around the external edges of the site. The existing mature trees and hedges to the west boundary have been retained other than the potential removal of five young trees on the south west corner of the site. These trees would be Category C trees under the BS5837 and there are no objections to their removal.

139. The proposed development would accord with saved policies E12 and E14 of the Local Plan 1997 and CS2 of the Core Strategy 2011.

j) Flood Risk

140. The Environment Agency flood maps confirms that the site lies entirely within Flood Zone 1. Environment Agency / DEFRA mapping indicates no risk from reservoir flooding with isolated areas of generally low risk surface water flooding. There are no historical records of flooding from sewers, highway drainage, overland flow or groundwater in the immediate vicinity of the site and the site is not shown to be at risk from coastal inundation flooding.

141. The existing site drainage is unattenuated and connects into the adopted sewer network which, in turn, discharges into an unnamed watercourse circa 150m south of the development site (close to the West Park housing development).

142. The Flood Risk Assessment submitted in support of the planning application has advised that it is not practical to discharge post-development surface water direct to the nearest watercourse due to a series of third party land ownerships, it is therefore proposed to positively drain attenuated post development surface water run-off to the existing adopted Northumbria Water surface water sewer system to the south of the site utilising the existing on site surface water drainage connection. SUDS will form part of the on site drainage arrangement in the post development situation through the construction of a discharge control (hydrobrake) and attenuation system.
143. Following extensive discussions with the Local Lead Flood Authority, final surface water flows from the site will be limited to greenfield runoff rates in accordance with guidance.
144. It is proposed to connect the foul water drainage from the proposed development into the existing adopted foul sewer network.
145. As the site is to be split into a number of separate ownerships, each development plot owner will be responsible for the regular maintenance and operation of their own private drainage. With regard to the shared access road into the development which serves each plot, the same maintenance strategy documentation will apply to this area also. With regard to the ownership / responsibility for maintenance of this area, this land will be retained by the developer and the responsibility of the maintenance will be placed with a third party management company.
146. All roofed and paved areas are to be formally drained into the on-site surface water drainage system. The design of the on-site surface water system will ensure that no off-site flood flows are generated by the proposed development in the 1% plus climate change event. There will be no residual flood related risks remaining after the development has been completed. Safe access / egress from the site in extreme conditions is unaffected by the development proposals. The FRA concludes that the proposed post development levels will be engineered in order to protect the development and not provide any increased flood risk elsewhere.
147. The Local Lead Flood Authority are satisfied that sufficient information has now been submitted to demonstrate that a surface water runoff solution for the proposed development can be achieved without increasing existing flood risk to the site or the surrounding area. However, if the planning application is approved, conditions have been recommended regarding the management of surface water runoff during construction phase and construction Phasing programme; a detailed Management and Maintenance Plan this information.
148. Northumbrian Water and the Environment Agency have not objected to the planning application and therefore the proposed would accord with policy CS16 of the Core Strategy 2011

k) Air Quality

149. An Air Quality Assessment has been submitted which considers the potential air quality impacts associated with dust and particulate matter (PM10) associated with

the construction phase of the proposed development, as well as road traffic emissions (nitrogen dioxide (NO₂) and PM10 and PM2.5) associated with the operational phase of the proposed development.

150. The report covers an assessment of construction phase dust and PM10 emissions associated with earthworks, construction activities and trackout of generated dust onto the road network. The conclusion of this assessment is that while the impact from the works on human health falls into the low risk category, the impact of dust soiling is medium risk for some of the assessed activities (earthworks and trackout) and mitigation measures will therefore be required to minimise the impacts. It is considered in the assessment that a Dust Management Plan should be implemented for the site and various recommendations are made on what this should include.
151. In relation to the operational phase of the development and the impact from road traffic emissions, the assessment concludes that the predicted change between the 'without development' and 'with development' scenarios is negligible for NO₂, PM10 and PM2.5 (annual mean concentrations).
152. An exceedance of the annual mean air quality objective for NO₂ is predicted to occur at one sensitive receptor location (adjacent to the queuing zone of A68/B6279 roundabout) in the 'without development' scenario due to the contribution of traffic from committed developments in the local area. It is acknowledged that the assessment has however adopted a conservative approach and may overstate future exposure with the assessment assuming that there will be no background improvements or reductions in vehicles emissions in the 2026 scenarios compared to 2016.
153. All NO₂ concentrations and PM10 concentrations were predicted to meet the short term objectives (1 hour mean objective and daily mean objective respectively).
154. The Travel Plan document which has also been submitted with this application has been considered and makes reference to the inclusion of cycle parking and development of a Framework Travel Plan (Lidl and Home Bargains) to ensure employers of the new development provide measures to help make sustainable travel practical and attractive to their employees and choose from a range of options for travelling by non-car modes.
155. Based on the information provided, the Council's Environmental Health Officer does not object to the application in air quality terms and has recommended the imposition of a planning condition for a Construction Management Plan which would include the need to submit a Dust Assessment Report.
156. The planning application would accord with policy CS16 of the Core Strategy 2011

I) Land Contamination

157. The application has been supported by a document which summarises previous site investigation works carried out for the previous application on the site (planning application 14/01043/OUT). The site forms part of the former Faverdale Wagon

Works (railway engineering and sidings) and was more recently occupied by SCA packaging (now demolished). The site is known to have included oil and chemical storage tanks before being cleared.

158. The Environmental Ground Investigation Report dated February 2013 identified the presence of elevated petroleum hydrocarbons, asbestos, and lead (Pb) in near surface deposits of made ground, and elevated chromium, heavy fraction hydrocarbons, B(a)P and chlorinated solvents (TCE) in shallow groundwater. A limited ground gas investigation conducted over four monitoring events identified no significant ground gas concentrations however recommended further ground gas monitoring in particular for any residential element (not relevant to this application). The report did not adequately address all the land contamination constraints and hence the land contamination conditions were attached to the previous planning permission.
159. A Geo-Environmental Summary document (dated 31 July 2018) has been submitted with this application which details that a supplementary site investigation is proposed to provide information on the soils beneath relic foundations once removed, with the requirement for any additional remediation or mitigation measures (than that proposed by WSP) being assessed based on the findings of this. The requirement for gas protection measures for a commercial/industrial end use may be revisited pending the findings of supplementary ground investigations.
160. As this site has previously had planning permission for a similar end use in the past, the Council's Environmental Health Officer has recommended the imposition of the standard planning conditions relating to ground contamination. The Environment Agency has also requested the imposition of planning condition relating to ground water and land contamination. The proposed development would comply with policy CS16 of the Core Strategy.

m) Archaeology

161. The area of this application is the site of the Faverdale Wagon Works. The creation and operation of these works are likely to have included significant disturbance. On that basis, the Archaeology Team at Durham County Council has raised no archaeological objection to the application

n) Planning Obligations

162. Where a relevant determination is made which results in planning permission being granted for development, a planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
- a) Necessary to make the development acceptable in planning terms;
 - b) Directly related to the development; and
 - c) Fairly and reasonably related in scale and kind to the development.
163. Should the planning application be approved, the Heads of Terms that have been agreed with the applicant are:

164. A public transport contribution to improve the Faverdale Outbound stop with raised kerb and shelter and the Faverdale Inbound with a shelter. The obligation for this would be £15,440.

165. A sustainable transport contribution to improve and maintain footways and cycleways close the site including improvements to Faverdale Black Path and a potential shared use path continuing along Faverdale. The obligation would equate to £52,600

THE PUBLIC SECTOR EQUALITY DUTY

166. In considering this application the Local Planning Authority has complied with Section 149 of the Equality Act 2010 which places a statutory duty on public authorities in the exercise of their functions to have due regard to the need to eliminate discrimination and advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. The proposed buildings will be designed to be accessible for all and the general layout has good footpaths links between the buildings and to the existing footpath network. The car parking provision includes disabled spaces in appropriate locations.

SECTION 17 OF THE CRIME AND DISORDER ACT 1998

167. The contents of this report have been considered in the context of the requirements placed on the Council by Section 17 of the Crime and Disorder Act 1998, namely the duty on the Council to exercise its functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area. It is not considered that the contents of this report have any such effect.

CONCLUSION AND RECOMMENDATION

168. The application site is part of an area identified as employment land and therefore the proposed development is a departure from the local development plan. However, Planning law (S.38(6) of the Planning and Compulsory Purchase Act 2004) requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The National Planning Policy Framework (2019) supports the plan led system providing that planning decisions should be “genuinely plan-led” (NPPF para 15).

169. In this instance, it is recognised and accepted that it is unlikely that the site will be an attractive option for B1, B2 or B8 operators having taken into account the marketing history of the site, land contamination and viability issues. However, any proposal for a retail development must be considered against the two principal national policy tests within the National Planning Policy Framework 2019 relating to the sequential approach to development and to impact, alongside all other material planning considerations.

170. Nexus Planning, an expert and independent retail consultant has advised that the proposed development meets the sequential test but fails to conform to the requirements of the retail impact test as the proposal will divert material levels of trade from existing food retailers at West Park local centre and Cockerton district

centre. The advice is that the vitality and viability of Cockerton is particularly susceptible to out of centre competition and that the proposal would jeopardise the ongoing operation of existing in-centre food stores, most particularly, the larger of the two Co-ops, which is situated at Woodland Road. The loss of the larger Co-op would be particularly problematic given its anchor role within the centre.

171. The failure of the proposal to comply with key national and development plan retail policies is clearly an important factor in determining the application. Indeed, paragraph 90 of the NPPF indicates that, where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on a defined centre, it should be refused. However, this direction cannot extinguish the requirement set out in statute to first consider development plan policy and then all other material considerations in assessing the 'planning balance' when making a decision (S.38(6) of the Planning and Compulsory Purchase Act 2004).
172. When considering this application, as well as recognising the limited likelihood of the site being used for employment purposes, some weight also has to be given to the fact that the proposal will bring a vacant brownfield site back into active use, the development will result in economic benefits and job creation, additional retail facilities at the application site would result in some qualitative improvement in the local food retail offer; a Lidl and Home Bargains trading in tandem would reduce some residents' need to travel further afield to source some main food shopping and day to day comparison goods; there are no other sequentially preferable sites and the development does not raise any development management concerns over matters such as highway safety; residential amenity flood risk etc.
173. However, the above does not outweigh the concern that the applicant has failed to demonstrate that there would be no significant adverse impact arising at Cockerton district centre as a consequence of the proposal and the development does not accord with the requirements of NPPF and the local development plan. As a result, the planning application is recommended for refusal for the reason set out below.

THAT PLANNING PERMISSION BE REFUSED FOR THE FOLLOWING REASON

1. In the opinion of the local planning authority, the planning application has failed to demonstrate that there would be no significant adverse impact on the viability and vitality of Cockerton District Centre. The local planning authority consider that the proposal is contrary to the National Planning Policy Framework 2019 (paragraphs 88 and 89) and Saved Policy S10 (Safeguarding the District and Local Centres) of the Borough of Darlington Local Plan 1997