

MID DEVON LOCAL PLAN REVIEW 2013 – 2033

Proposed Submission (incorporating proposed modifications) Examination

Inspector: Paul Griffiths BSc (Hons) BArch IHBC

Hearing 1: Tuesday 26th & Wednesday 27th September 2017

Matters and Issues: Policy J27

Statement of Mid Devon District Council

Prepared by Peter Wilks of Lichfields on behalf of Mid Devon District Council

ISSUE 2	Has a regional need for the retail element and the comparison goods floorspace in particular, been demonstrated?
ISSUE 3	Has the 'sequential test' been approached with sufficient rigour?
ISSUE 4	Has the analysis of the potential impacts of the retail element (2 and 3 above) of the proposal properly fulfilled the duty to co-operate?
ISSUE 8	Can existing town centre uses be properly protected through 'planning controls'?

Background

Lichfields was commissioned by Mid Devon District Council (MDDC) to provide an independent review the Retail and Leisure Proposal at Junction 27 of the M5. Lichfields critically appraised the Retail and Leisure Statement prepared by CBRE on behalf of Friends Life Limited in 2015. Lichfields' identified a number of gaps in the evidence submitted by CBRE, in relation to the need for the development, the sequential site analysis and potential impacts on other development plan proposals. In light of these deficiencies, Lichfields indicated that further analysis was required.

Lichfields was subsequently commissioned to prepare a critique report (dated March 2016) to provide the necessary additional analysis. Based on the additional evidence, the report concluded that the Junction 27 proposals would be acceptable in terms of impact and the sequential test.

Following a duty to co-operate meeting with neighbouring authorities, a number of retail related issues were raised, and Lichfields was asked to prepare supplementary work to build on the previous advice. A retail response was prepared by Lichfields dated July 2016 and Lichfields attended a duty to co-operate meeting to answer to discuss and questions on the issued raised.

These Lichfields reports dated March and July 2016 in conjunction with the CBRE Retail and Leisure Statement form the evidence base behind the Junction 27 allocation.

In summary, Lichfields assess, and the Council concurs, that a sub-regional need can be demonstrated for the DOV, both in isolation and as part of the wider J27 major tourist attraction. Case law is clear that there is no requirement to disaggregate proposals of this nature, and it can be shown that there are no sequentially preferable sites. Notwithstanding this there are good commercial reasons why DOV operators are likely to prefer a location such as J27. The Council have commissioned Lichfields to carry out a number of impact assessments, which have been refined to consider matters raised by neighbouring authorities. Lichfields assess that the highest level of impact on town centres would be less than 6%, which would be more than offset by expenditure growth to 2024. The Council acknowledge that neighbouring authorities have concerns about the retail proposal. This statement sets out that the Council has engaged with its neighbours to assess these concerns, and it is respectfully argued that the evidence points to J27 being achievable without harm to neighbouring centres.

2) Has a regional need for the retail element and the comparison goods floorspace in particular, been demonstrated?

Catchment Area

- 2.1 Based on evidence for other Designer Outlet Villages (DOV) across the country, Lichfields advised that the proposed development will attract trade from a wide area. The proposed Food Hall is expected to have a dual role, in meeting predominantly the needs of tourist visitors to the development and to a much lesser extent and meeting local resident's needs. The proposed Food Hall is an ancillary use that is linked to the proposed Ark tourist attraction, and will therefore also draw trade from a wide area.
- 2.2 The study area adopted by CBRE included 19 zones covering a wide area, extending to Gloucester and Newport in the north and St Austell in the south. Lichfields noted that the scale of DOV proposed exceeded the quantitative capacity for comparison goods floorspace, over and above allocations within Mid Devon, based on local expenditure alone. However Lichfields accepted CBRE's wider study area, but indicated that development will draw most (80%) of its trade will come from 13 core zones (6 to 18).

Retail Capacity

- 2.3 Development plan should plan positively for growth and investment. Lichfields undertook their own independent analysis (March 2016 report) of the likely trade draw of retail proposals from the Core Area, in order to test CBRE's conclusions relating to retail need and impact. Lichfields estimated the DOV will draw about £70 million of comparison goods trade from the 13 core catchment zones, which represents less than 0.7% of total comparison goods expenditure at 2024.
- 2.4 Comparison goods expenditure within the Core Area zones (6 to 18) was estimated by CBRE to increase from £7.09 billion in 2014 to £10.61 billion in 2024, an increase in of +£3.52

billion. CBRE estimated that about £2.6 billion of this expenditure growth would be retained in the Core Area.

- 2.5 Lichfields advised that some of this growth will be absorbed by existing retail floorspace through the growth in turnover efficiencies. Lichfields estimated that expenditure attracted by existing retail floorspace in the Core Area should increase from £5.33 billion in 2014 to £6.37 billion in 2024, leaving around £1.46 billion available to support new comparison retail floorspace. The turnover of the DOV (£70 million derived from the Core Area), accounts for only 2% of projected expenditure growth up to 2024, or only 4.8% of growth allowing for expenditure outflow and increased turnover efficiencies.
- 2.6 Lichfields assessed that this available expenditure growth could support around 265,000 sq.m net (354,000 sq.m gross) of additional comparison goods floorspace by 2024.
- 2.7 Lichfields concluded there will be significant residual expenditure growth to support new retail development in the Core Area, over and above the proposed DOV.

Response to Retail Need Issues Raised

- 2.8 Following meetings with neighbouring authorities under the duty to co-operate, Lichfields prepared further supplementary work relating to retail issues raised. The issues relating to retail need were as follows.
- a. The Pre-publication Draft Exeter and West End of East Devon Retail and Leisure Study (EWEDRLS) prepared by GVA contains more recent information relating to retail capacity/need.
 - b. There were concerns over the reliance placed on long term projections.
 - c. The Lichfields report suggested there is no quantitative need for the DOV comparison floorspace, over and above other allocations within Mid Devon, based on local expenditure generated within the District.
 - d. The Lichfields report did not consider all current commitments in Exeter and other neighbouring authorities, i.e. in Exeter's case the Ikea store, the Bus and Coach Station scheme and the outstanding Moor Exchange Scheme (up to an additional 16,288 sq.m floorspace of which 11,102 sq.m is A1).
- 2.9 Concerns were been raised regarding the level of comparison expenditure growth adopted by CBRE. To explore this further, Lichfields compared CBRE's figures for comparison goods expenditure with GVA's more recent figures. CBRE's projections suggested comparison goods will increase by 50% between 2014 and 2024. GVA's draft EWEDRLS figures suggested only a marginally lower proportional growth in expenditure of 42.5% for the 10 year period 2016 to 2026. This small reduction in projected expenditure at 2024 would only marginally increase the impact percentages calculated by Lichfields and would not change the overall conclusions. Lichfields gave examples, with the impact on Exeter increasing from 2.15% to 2.26% and the impact on Tiverton would increase from 5.40% to 5.68%. Lichfields went on to examined the implications of the draft EWEDRLS.

- 2.10 Lichfields analysis of the GVA study indicated that the DOV is expected to account for only 20% of comparison good expenditure growth generated in Mid Devon District between 2016 and 2026 and less than 3% of the growth within the remainder of the EWEDRLS study area. The overall share in EWEDRLS study area as a whole was only 5%, which is not an unreasonable share of future growth for Mid Devon District.
- 2.11 In terms of other commitments not assessed, Lichfields compared the potential comparison goods turnover of commitments with available expenditure growth within the draft EWEDRLS. The expected turnover of commitments, including the dismissed Moor Exchange scheme was estimated to be £190.51 million in 2026, compared with available growth of £241.7 to £284.1 million, allowing for growth in turnover efficiency of expenditure. Lichfields concluded that the draft EWEDRLS also indicates there is ample comparison goods expenditure growth within Exeter's catchment area to support commitments and proposals in Exeter.
- 2.12 Lichfields disputed claims that the trend of increasing expenditure growth is "reaching a peak" for comparison goods and that consumers are "trading up to higher quality goods rather than buying more goods". Lichfields indicated that this assertion does not reflect the forecasts provided by the main expenditure data providers used in the planning industry e.g. Experian, Pitney Bowes or CACI. Furthermore, the draft EWEDRLS assumes continued growth in comparison goods expenditure based on Experian forecasts. There is no evidence to suggest lower growth should be assumed. Experian's growth forecasts are to be robust and have been accepted at numerous appeals and EIPs. Nor would an assessment of lower growth be consistent with the approach in the NPPF (specifically chapters 1 and 2) to promote sustainable economic growth.
- 2.13 The CBRE retail assessment is based on expenditure projections between 2014, 2022 and 2024. A 10 year period is not a particularly long term, and expenditure and population projections over this period are reliable. The NPPF requires local authorities to meet needs in full over the plan period. Furthermore, the draft EWEDRLS included even longer term projections up to 2026, 2031 and 2033. There is no suggestion within the draft EWEDRLS longer term projections are unreliable.
- 2.14 It should also be noted, that the NPPF indicates that when assessing applications for retail and leisure development, local planning authorities should require an impact assessment that examines trade in town centres, up to five years from the time the application is made and for major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.
- 2.15 As indicated above, Lichfields' previous advice recognised the DOV could not be supported by local expenditure in Mid Devon District alone. Assuming each local authority only meet its own local need is simplistic. There is no suggestion in the NPPF that development within an authority area should only serve residents who live in that authority area. This approach would be inappropriate because it would fail to recognise that shopping catchment areas over-lap, and that catchment areas do not reflect local authority boundaries. Parallel to retail catchments, there is a common agreement that Mid Devon is part of the wider Functional Economic Market Area and Housing market Area.

- 2.16 Mid Devon District retains a relatively low market share (around 25%) of comparison good expenditure. Shopping trips made to Exeter from Mid Devon or further afield should not necessarily be considered to be unsustainable. If Mid Devon retained a significantly higher proportion of the expenditure generated by its residents then there could be a knock on impact on surrounding authorities. Conversely it would be wrong to assume development within Mid Devon should not attract occasional shopping trips from beyond the District boundary including tourist visitors. A balanced approach taking into account the cross flows of expenditure to and from local authority areas is required.
- 2.17 The draft EWEDRLS indicates Exeter draws comparison trade from a wide area, including Mid Devon District. Exeter currently attracts around £140 million of comparison goods trade from the Mid Devon area, which is significantly more than CBRE's estimate of turnover for all shopping facilities in Mid Devon, attracting about £84 million of comparison goods expenditure in 2014. Exeter accounts for a high proportion of the 75% comparison goods expenditure leakage from Mid Devon. Most of this expenditure leakage from Mid Devon District, results in longer and less sustainable shopping trips.
- 2.18 An assessment of needs that only focuses on areas within authority boundaries would also fail to recognise the niche role the DOV is expected play, related to a proposed tourist attraction. The Tourism Study indicates that a major case for J27 is to capture a portion of the traffic already on J27 (and mainline railway), who would otherwise pass through Mid Devon on their way to other tourist destinations. The need for tourism attractions will be qualitative in nature, recognising these attractions will have a wide draw. The need for these facilities cannot always be quantified in terms of the local area. The need for tourism attractions should be aligned with the tourism strategy/vision for the area rather than an analysis of the local catchment population and expenditure.
- 2.19 In conclusion, Mid Devon is not limited to meeting the needs of its own residents. Whilst there is ample expenditure growth to accommodate the retail nature of the proposal; this is only part of the picture as the J27 will serve a much wider catchment in conjunction with the tourism function.

3) Has the 'sequential test' been approached with sufficient rigour?

The Meaning of the Sequential Test

- 3.1 The meaning of the sequential test is a matter of law. Once one correctly understands the meaning of the sequential test, its application is a matter of planning judgment.
- 3.2 The NPPF (paragraph 23) states that local planning authorities should allocate a range of suitable sites to meet the need for town centre uses over the plan period. They should assess the need to expand town centres. If suitable town centre and edge-of-centre sites cannot be identified then other accessible locations that are well connected to town centre should be allocated.

- 3.3 Where there is a need for development, then the nature of the need the development seeks to serve will influence where that development should be located, i.e. the area of search for the sequential approach and the type and size of site required to meet that need. The Practice Guidance advises that, in plan-making, the sequential approach requires a thorough assessment of the suitability, viability and availability of locations for main town centre uses. It requires clearly explained reasoning if more central opportunities to locate main town centre uses are rejected. The NPPF and NPPG are silent regarding flexibility and disaggregation in relation to how the sequential test should be used for plan-making. In relation to planning applications, the NPPF indicates that applicants/ developers must demonstrate flexibility on issues such as scale and format. The NPPF indicates that sequential sites should be capable of accommodating the proposals.
- 3.4 Whilst there is no requirement for disaggregation within the NPPF, the ability to accommodate the retail and tourist elements on sequentially preferable sites has been assessed. For plan making, the Council can consider the scope to disaggregate or change the content of the proposed development when considering the appropriateness of a plan allocation. This consideration will be matters of planning judgement.
- 3.5 The PPG advises that application of the sequential test, for both plan making and for decision making, should recognise that certain main town centre uses have:
- "particular market and locational requirements which mean that they may only be accommodated in specific locations. Robust justification must be provided where this is the case, and land ownership does not provide such a justification."*
- 3.6 The market and locational requirements of proposed DOV and tourist attraction are relevant considerations for plan making.

Suitability

- 3.7 As indicated above, the market and locational requirements of proposed DOV and tourist attraction are relevant considerations. The key objective of the development proposals is to provide a major tourist destination in Mid Devon that acts as a gateway attraction, accessible to the M5 where it can capture passing tourist trade. The soundness and effectiveness of allocations needs to be based on commercial realism.
- 3.8 The Tesco Stores Ltd v Dundee City Council legal decision (21 March 2012 in the Supreme Court) provides guidance on the sequential approach, as indicated in MRPP's paragraphs 3 and 4). The decision states that the exercise of applying the sequential test, should be directed:
- "to what the developer is proposing, not some other proposal which the planning authority might seek to substitute for it which is for something less than that sought by the developer"* (paragraph 38).
- 3.9 It also notes (paragraph 38) that proposals are generated by:

"a developer's assessment of the market and that the criteria of flexibility and realism are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so".

- 3.10 In the case of "Rushden Lakes", Northamptonshire (APP/G2815/V/12/2190175) the Secretary of State considered a mixed use development incorporating retail units, restaurants, lakeside visitor centre, hotel, ski slope and a range of other attractions. This mixed use tourism development is comparable to the J27 proposal. The Secretary of State agreed with his Inspector's assessment that there was no requirement to disaggregate the proposal and that "the sequential test relates entirely to the application proposal and whether it can be accommodated on an actual alternative site. Whilst there is a requirement of the applicant to show flexibility on format and scale, there is no requirement to disaggregate (para 15-16).
- 3.11 The Council accepts that there is synergy between the proposed tourist attraction, themed hotel, restaurants, cafés and Food Hall, and therefore it would not be suitable or viable to disaggregate these uses, and then seek to accommodate these elements on a number of separate sites. Lichfields advised that the DOV has less synergy with the proposed tourist attraction, but the co-location of these uses will be beneficial to each other in terms of spin-off trade and linked trips. The Council accepts that the viability of the proposed tourist attraction is dependent on the co-location of the retail and tourist elements in one location.
- 3.12 Regardless of whether the DOV and tourist attraction can be disaggregated, the Council accepts that locating these uses on sequentially preferable sites that are less accessible to the motorway junction would not be suitable or viable. Evidence from other successful DOVs demonstrates the importance of accessible locations. Linkages with tourist attractions are also beneficial to the viability of the DOV.
- 3.13 In addition, DOVs are invariably located a reasonable distance from traditional town centres. This is evident from the location of most DOV's in the UK. There is a market reason for the relative remote location of DOVs from town centres. DOV operators do not want to compete directly with their town centre stores. For example, if a retailer has a store in Exeter city centre they would not take accommodation for a discount store in a DOV development within Exeter, because the two stores would compete directly. This market and locational requirement is widely recognised and as a result sequentially preferable sites within established town centres would not be suitable or viable for the proposed DOV.
- 3.14 Notwithstanding these important market and locational considerations, the Council has considered sequential sites. If all proposed main town centre uses i.e. the tourism, leisure and retail elements are taken as a whole then a site area of about 28 hectares would be required, or about 24 hectares if the DOV is removed. If disaggregated then the DOV could be accommodated on a much smaller site (4 hectare), but as indicated above, the Courts have clearly established that this degree of disaggregation cannot be required.

Assessment of Sequential Sites

- 3.15 CBRE assessed a number of sites within and near the six town centres identified in the area of search i.e. Taunton, Tiverton, Crediton, Exeter and Exmouth. The majority of sites were

discounted by CBRE are being too small for the proposals. CBRE identified a number of other sites that are large enough to accommodate the DOV if it is disaggregated, but these sites are allocated for alternative uses or mixed use development, and therefore these sites were considered to be unsuitable and unavailable for the proposed development.

- 3.16 The Council commissioned Lichfields to consider a number of other sites that have not been adequately assessed by CBRE, i.e. Exeter Bus and Coach Station, Eastern Urban Extension of Tiverton, North West Cullompton and East Cullompton. None of these sites are considered to be suitable or available.
- 3.17 The Exeter Bus and Coach Station (3.3ha) is too small to accommodate the tourist attraction but in theory could accommodate the disaggregated DOV. However the planning application proposals on this site suggest a different form of development will come forward. The site is not available to provide a DOV, furthermore a DOV would not be suitable or viable in this location for the reasons outlined above.
- 3.18 The other opportunities are proposed urban extensions ranging from 95ha to 160ha. These sites are large enough to accommodate the DOV and tourist attraction, but the allocations and masterplans for these areas do not envisaged this form of development will be provided. The sites are not available to accommodate the DOV and tourist attraction. The opportunities are not in-centre or edge of centre, but are closer to town centres than the Junction 27 site. Although these sites are technically better connected to town centres, they are still not within walking distance from their nearest town centres.
- 3.19 More importantly, the Tiverton and North West Cullompton sites do not meet the market and locational requirements outlined above, and they are not suitable or viable to accommodate the proposals. The East Cullompton site has reasonable access to Junction 28 of the motorway, but this site is severely constrained by the limited capacity of this junction.

4) Has the analysis of the potential impacts of the retail element of the proposal properly fulfilled the duty to co-operate?

Planning policy and guidance

- 4.1 The Planning Practice Guidance advises that when considering impact in the plan making process, issues of adverse impact should not arise if the Local Plan is based on meeting the assessed need for town centre uses in accordance with the sequential approach. The key considerations are, based on advice in the Planning Practice Guidance:
- Whether there would be an impact on existing, committed and planned public and private investment, or on the role of centres (paragraph 014, reference ID 2b-014-20140306)
 - Whether there would be an impact on the vitality and viability of existing town centres (paragraph 017, reference ID: 2b-017-20140306)
- 4.2 The assessment of impact should be in the context of paragraph 14 of the NPPF (emphasis added):

Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless ... any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole ...

Assessment of impact

- 4.3 Lichfields undertook an independent review of CBRE's retail impact assessment. This assessment concluded that the impact on town centres within the core catchment area would not be significant. However Lichfields indicated that CBRE had not considered the cumulative impact alongside local plan allocations and planned investment. Lichfields also addressed concerns at the duty to co-operate meeting with neighbouring authorities. Lichfields assessed the trade draw and penetration rates of the proposed DOV in more detail and on a zone by zone basis. The trade draw of the DOV is shown in Table 1 in Appendix 1 of Lichfields' March 2016 Retail Critique. The detailed analysis of trade draw zone by zone is shown in Table 2 and Table 3 in Appendix 1. The trade diversion and impact summary is shown in Table 4.
- 4.4 The implication of trade draw and impacts estimates for town centres were considered in the context of the CBRE's centre health checks for the main affected centres, i.e. Exeter, Tiverton, Cullompton and Honiton. The highest levels of impact on town centres are less than 6%, which would be more than offset by expenditure growth from the base year to the design year. Lichfields concluded that the levels of impact were not significant and would not undermine consumer choice or result in an increase in shop vacancies.
- 4.5 In order to assess the implications for allocations and planned investment within neighbouring authorities, Lichfields quantified the likely scale of reduction in comparison goods retail capacity, as set out in Table 5 in Appendix 1 of Lichfields' March 2016 Retail Critique. This analysis demonstrated that the predicted levels of trade diversion would have a modest impact on retail capacity levels within other local authority areas, i.e. in most case less than 300 sq.m gross. The highest reduction was in Exeter at 5,687 sq.m gross.
- 4.6 Lichfields responded to concerns raised by Exeter City Council and undertook an analysis of GVA's draft EWEDRLS comparison goods retail projections. The analysis of the EWEDRLS projections indicated there would still be between £378 million to £420 million of comparison expenditure growth available for other locations outside Exeter within the study area. Lichfields' trade draw estimates suggest the DOV will attract not more than £44 million of this expenditure growth (10.5% to 11.6%).
- 4.7 Exeter City Council suggested Lichfields had not considered all Exeter's current commitments or those of other neighbouring authorities. To address these concerns Lichfields estimated the turnover of commitments based on GVA's assumptions relating to net to gross ratios and GVA's sales densities. The commitments were estimated to have a comparison good turnover of £66.6 million at 2016, projected to increase to £81.8 million in 2026. Lichfields also assessed the outline application for mix use redevelopment of the Bus and Coach Station in Exeter and The Moor Exchange Scheme, which was dismissed at appeal. Lichfields demonstrate that available expenditure growth was more than sufficient to support these

proposals, a turnover of £190.51 million at 2026 compared with available expenditure growth of £241.7 to £284.1 million. Lichfields predicted trade diversion from Exeter to the DOV was only £23.46 million, less than 1% of the available expenditure growth.

- 4.8 The concerns raised during the duty to co-operate process have been carefully considered, and evidence has been produced that indicates the likely reductions in expenditure capacity within neighbouring authorities will be modest. Lichfields attended a duty to co-operate meeting to answer and discuss questions on the issues raised.
- 4.9 Whilst it is noted that some neighbouring authorities have expressed concerns about the retail element of J27, the Local Plan Review has been prepared with constructive, active and on-going cooperation to maximise the effectiveness of the Plan. It is also working with the neighbouring authorities on preparation of the Greater Exeter Strategic Plan (GESP). These matters are set out in the accompanying Duty to Cooperate Statement. In the context of Exeter's concerns, the above has set out how Lichfields revised their assessment to consider sites and other matters raised by neighbouring authorities. There is no requirement in the Duty to Cooperate for LPAs to reach agreement on every matter (PPG 9-001-20140306).

8) Can existing town centre uses be properly protected through 'planning controls'?

- 8.1 Any future planning permission for the retail elements of the Junction 27 development will need to be controlled via planning conditions and a legal agreement, in order to ensure the nature of the proposals do not change. A change in the nature and/or scale of the development could lead to more significant levels of impact on town centres, because the development could have a more localised catchment area and compete more directly with nearby town centres.
- 8.2 The specific market and locational requirements of the DOV have been taken into account in selecting site allocation. These market and locational requirements would not necessarily apply to other forms of retail development.

Planning Conditions

- 8.3 The Council anticipates that planning conditions attached to the permission will control the following:
1. The maximum amount of Class A1 to Class A5 retail floorspace that can be provided;
 2. The parameters for the mix of Class A1 to A5 uses;
 3. The amount of Class A1 comparison and convenience goods floorspace that can be provided;
 4. Restrictions on range of goods that can be sold, with a focus on clothing and fashion retailing within the DOV, with a limit on other comparison goods.
 5. Minimum and maximum size of retail units (?)

- 8.4 These types of conditions are commonly used successfully for out-of-centre retail developments across the country.
- 8.5 A recent example is a designer outlet centre recently approved by the Secretary of State (Reference: APP/V2723/V/15/3132873) at Scotch Corner in North Yorkshire. The conditions seeking to restrict the content and form of development were as follows:

The permission hereby granted authorises use of the site for specialised retailing as a Designer Outlet Centre with associated ancillary facilities only and no retail unit shall be used as a Class A1 outlet for the primary retail sale of garden products, books, CDs, DVDs, electrical goods, computers and software, white goods and no unit shall be occupied as a newsagents, chemists, travel agency, post office, ticket agency (excluding the approved Tourist Information facility), hairdressers or dry cleaners.

For the purposes of this condition “specialised retailing” and “Designer Outlet Centre” means clearance stores operated by: a) manufacturers; b) retailers who do not directly manufacture, but who either own their own brand or retail branded goods; or, c) the franchisees or licensees or stockists of such manufacturers or retailers, in each case involving the retail sale of discounted comparison goods defined as previous season's stock, run-offs, over-runs, samples of branded goods, goods produced for subsequently cancelled orders, market testing lines, rejects, seconds, clearance goods and surplus stock and accessories.

For the avoidance of any doubt, the maximum amounts (gross internal floorspace and net sales areas) and the mixture of uses provided for by this planning permission are as follows:

a) maximum of 14,584 sq. m gross floor space (11,668 sq. m net sales area) for Class A1 retail uses at ground floor level;

b) maximum of 5,833 sq. m gross floor space (4,528 sq. m net sales area) for Class A1 retail uses at mezzanine level;

c) a maximum of 2,029 sq. m for Class A3 restaurant and café uses;

d) the provision of toilet blocks, a site management suite (including police office), and a Tourist Information facility.

No individual retail unit, either as constructed or as a result of any subsequent combination of units, shall exceed 1,200 sq. m gross floor space (including any mezzanine floor space).

No building or part of any building shall be used for the sale of food other than confectionery or within a restaurant or café for consumption on the premises.

Legal Agreement

- 8.6 Given the niche and highly specialist nature of the DOV, further controls will need to be imposed via a legal agreement. The legal agreement will need to ensure that the tourist attraction is completed along with the DOV. S106 Agreements are an appropriately

powerful tool to regulate the nature of the DOV and minimise impacts. Such an agreement would be lawful under the CIL Regulations/NPPF 204 tests of necessity, direct relation to the proposal and fairly and reasonably related in scale.