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# Appeal Decision

Inquiry held on 22, 23 and 24 January 2013

Site visit made on 24 January 2013

**by George Mapson DipTP DipLD MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8 February 2013**

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**Appeal Ref: APP/B3030/A/12/2174284**

**Land off North Gate Newark, Newark on Trent, Nottinghamshire, NG24 1HD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by Mr Philip Rowe against Newark & Sherwood District Council.
- The application Ref 11/01067/OUTM, is dated 1 August 2011<sup>1</sup>.
- The development proposed is described on the application form as: "*Proposed erection of retail development comprising Bulky Goods/Open A1/Open A1 Convenience uses and provision of car parking to serve same.*"

**Summary of decision:** The appeal is allowed and planning permission is granted, subject to the conditions set out in Schedule 1.

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## Preliminary matters

### *The appellant company*

1. At the inquiry, it was pointed out that although the application and the appeal have been made in the name of Mr Philip Rowe, this was solely because the constraints of Planning Portal's online application and appeals services. The Portal requires an individual name to be provided in the first instance, with a separate field for a company name to be inserted.
2. The appellant company is '*Newark Property Developments Limited*' and the intention was for the application and appeal to be made in the company name. I shall therefore treat the applicant/appellant in this case as being '*Mr Philip Rowe (Newark Property Developments Limited)*' ['the appellant company'].

## The appeal site and proposals

### *The appeal site*

3. The appeal site occupies an important gateway position on a main arterial route into Newark from the north. It is prominently located between the road and the River Trent and its riverside walkway. It is within the Newark Conservation Area.
4. It was formerly part of the Warwick and Richardsons Brewery site, an area of the land that the appellant company owns and has been trying to redevelop for many years. Part of the site has been developed. One of two listed buildings on the site, the main

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<sup>1</sup> The application was dated 29 July 2011, submitted on 1 August 2011 and registered by the Council on 2 August 2011.

brewery building, has been restored and converted into 54 residential apartments and 3 retail units. The other listed building, 'The Maltings', remains in a state of disrepair.

5. The planning permission for the conversion of the brewery building included the approval for residential development on the appeal site, but the downturn in the housing market has meant that the sales of the apartments in the converted building have stalled and the proposed new build housing is no longer considered to be viable.

#### *The appeal proposal*

6. The proposal is for a new retail warehouse park with 6 units (A-F). The development would provide about 4,960 sqm of gross internal floorspace on the ground floor and about 1,794 sqm of mezzanine space, giving a total to 6,754 sqm gross internal floorspace. The development is intended to meet the requirements of bulky goods retailers for whom alternative sites in Newark town centre would be either unavailable or unviable.
7. Units A and F would be for open (unrestricted) retail use for convenience goods. Units B-C would be restricted by a planning condition to bulky comparison goods.
8. Units A and F would occupy frontage positions and have been brought forward on the site for townscape reasons, given the importance of the street scene to the character and appearance of this part of the conservation area and the setting of the nearby listed buildings.
9. The planning application was submitted in outline. 'Access', 'layout' and 'scale' formed part of it, with 'appearance' and 'landscaping' reserved for subsequent approval.

#### **The passage of the planning application and the DPD process**

10. The appellant company, through its agents Urbis Ltd (Architects), began pre-application discussions with the Council in February 2011, with a first meeting taking place in March 2011. This was almost nine months before consultation began on the Council's Site Allocations and Development Management DPD (October 2011).
11. After making extensive changes to the scheme to satisfy the Council's requirements, the planning application was submitted in August 2011. The proposal was justified by a PPS4 statement.
12. Over the nine month period between its submission and its consideration by the Planning Committee on 12 April 2012, the scheme was subject to further detailed discussions and amendments. The Council informed Urbis Ltd that it would be determined under the planning and development policy existing at that time and that it was considered to be acceptable in terms of PPS4.
13. The Council sought expert retail advice from Alyn Nichols & Associates [ANA], who produced an initial appraisal of the scheme in October 2011. The gist of that appraisal's conclusions was that a refusal of planning permission on retail policy grounds might not be defensible. In November 2011 the appellant company provided a further statement, which was audited by ANA and was apparently agreed in January 2012 with no fresh issues being raised.
14. At that time the Council had begun to make progress with its Allocations and Development Management DPD. The Council sought ANA's view on whether the appeal proposal would give rise to concerns about prematurity and was advised that it would not. The application was reported to the Planning Committee with a recommendation that outline planning permission should be granted, subject to conditions.
15. However, the Committee resolved that it was 'minded to refuse' the application. Although no putative reasons for refusal have been issued, the matters of concern to the Members were:

- 1) That there was scope to disaggregate components of the scheme and, on that basis, there were other sites that would be sequentially preferable to the appeal site;
- 2) That approval of this scheme might prejudice full consideration of alternative sites in the context of the Allocations and Development Management DPD;
- 3) That the prospects of the scheme being developed and occupied were uncertain, having regard to current market conditions; and
- 4) That there is an extant planning permission for residential development on the land, which if not implemented would have an adverse impact on the Council's five year housing supply.

16. There were also criticisms of the layout of the proposed development.

### **The statement of common ground**

17. The parties agree that the appeal proposal would have no significant adverse impact on the vitality and viability of Newark town centre, subject to the imposition of appropriately worded conditions that have been agreed.
18. Despite the Members' criticisms, it has been agreed that there are no objections to the design of the proposal, in terms of the layout, the proposed access improvements, the scale parameters or the indications of appearance on the illustrative plans. The development would have no adverse impact on the character or appearance of the conservation area or on the setting of the adjacent listed buildings. It would have no adverse impact on the local highway network or on the safety of road users. It would not undermine the maintenance of a five year supply of housing land within the District.

### **Main issues**

19. The areas of dispute between the parties relate to the 'sequential test' and 'prematurity', the first two matters of concern to the Members.
20. That being the case, the main issues in this appeal are:
  - 1) Whether by applying the appropriate degree of flexibility to the appeal proposals, or part of them, there are any sequentially preferable locations in Newark for this type of retail development that are both suitable and available; and
  - 2) Whether approval of the appeal development would prejudice full consideration of alternative sites in the context of the Allocations and Development Management DPD, having regard to the limited capacity for additional retail warehouse development in Newark.

### **Other matters**

21. The other two matters of concern to the Members relate to the impact on housing land supply and the viability of the proposed scheme.
22. Housing land supply: The Council's Rule 6 statement confirms that it is not part of the Council's case to suggest that approval of the appeal proposal would create a shortfall in available housing land. As mentioned above, this is also the position taken in the statement of common ground.
23. Viability: The appellant company's advocate said that the Council's commercial agent had been asked to present a case on the basis that some of the units would not be viable for their prospective occupants. However, without having detailed financial information from the appellant company and the requirements of the as yet unknown prospective occupiers, he would be in no position to make such a case.

24. He argued that the United Kingdom operates a free market economy, not a command economy, and the planning system is not concerned about whether or not a proposed development would be profitable for the developer, unless there would be land use consequences. For example, cases of an enabling development to secure a certain benefit. That does not apply here.

### **Planning policy**

#### *The development plan*

25. The Core Strategy DPD (adopted March 2011): A number of policies have been cited that have relevance to this proposal. Some seek to promote the regeneration of under-used urban brownfield sites in Newark. Others promote the growth of retailing and other town centre uses, to maintain the vitality and viability of existing centres. I have taken full account of their provisions and objectives.
26. Of these policies, Core Policy 8 (*Retail hierarchy*) is particularly relevant. It states that Newark town centre will be the principal focus of new and enhanced retail and other town centre activity in the District. Retail development in out of centre locations will be strictly controlled by utilising the policies within PPS4 (now the National Planning Policy Framework [‘the Framework’]). Proposals will need to demonstrate their suitability through a sequential site approach and provide a robust assessment of their impact on nearby centres.
27. Policy NAP 1(9) (*Newark Urban Area; Newark Town Centre*) promotes the town centre as the focal point of retail, leisure and office development, and states that the Council will identify opportunities for improving the retail provision in and on the edge of the centre to reduce travel to other centres outside the District. The Allocations and Development Management DPD should identify capacity for new and improved convenience/comparison goods, including opportunities to improve home, furnishing, gardening and other bulky goods.
28. The Newark and Sherwood District Council Local Plan (adopted March 1999): Some parts of the local plan remain in force following the adoption of the Core Strategy. Of relevance to this appeal is ‘saved’ policy S3 (*Retail Warehouses, Supermarkets and Superstores*), a criteria-based policy that sets out site requirements that must be met. It states that sites should have good access to the main road network, be accessible by a choice of means of transport and have sufficient land for parking and servicing. The proposed development should not add significantly to the overall number and length of car trips.
29. The policy states that in determining applications, the District Council will have regard to opportunities for retail development to make use of derelict or under-used land or to secure the retention in effective use of buildings of architectural interest.
30. Paragraph 9.27 of the supporting text adds that this encouragement applies in cases where an out of centre location is acceptable. It explains that new retail warehouse, supermarket or superstore development should be located within or on the edge of the Central Shopping Area. However, where no such sites are available, planning permission may be granted on out of-centre sites provided it would not undermine the vitality and viability of the town centre or add significantly to the overall number and length of car trips.

#### *National planning guidance*

31. The National Planning Policy Framework: The Framework was published on 27 March 2012 and replaced a raft of PPGs and PPSs, including PPS4. PPS4 (Policy EC15) required a more rigorous sequential test than that contained in the Framework. For example, it is not part of the Framework’s sequential test for applicants to demonstrate that a proposal has scope for disaggregation.

32. The Planning System: General Principles: This ODPM document was published in 2005. It accompanied the publication of PPS1 and remains extant. Paragraphs 17-19 provide the only national planning guidance on prematurity.
33. Planning for Town Centres, Practice Guidance on Need, Impact and Sequential Approach: This DCLG document was published in December 2009 as a Companion Guide to PPS4 and remains extant. The sequential approach is set out at paragraphs 5.4-5.7, and the onus rests on the applicant to demonstrate compliance with it.

### **Need for additional retail warehousing in Newark**

34. The GVA Grimley Retail Study (2010) showed that the District's retail warehouse provision is performing poorly. The householder telephone survey showed that residents in the north and south of the District are using retail parks that are located in neighbouring authorities. This is perhaps unsurprising given the proximity to Lincoln and Nottingham. Nevertheless, the global forecasts indicated that there is capacity in the longer term for additional comparison goods floorspace in the District over the period up to 2026.
35. The Study warned that a 'do nothing' approach to Newark's retail strategy could jeopardise the town centre's position in the retail hierarchy<sup>2</sup>, especially in the light of the large scale retail developments that are coming through the pipeline in competing centres.
36. The Council has accepted that there is need for additional retail warehousing in Newark to meet an existing qualitative deficiency and an imminent quantitative deficiency, which will rise by 2019.
37. The Council supports the redevelopment of the NSK site on Northern Road, rather than the appeal site, to meet this deficiency. The NSK site<sup>3</sup> is allocated for mixed use development on the Core Strategy Proposals Map. It is envisaged that this site could accommodate around 150 dwellings, some employment use, and retail provision of up to 10,000 sqm net floor space.
38. At the inquiry the parties reviewed the retail expenditure capacity figures in the GVA Grimley Retail Study, and the assumptions on which they were made, in the light of current economic conditions. They produced revised figures for the period up to 2026<sup>4</sup>. It was agreed that there would be sufficient capacity to support only one new retail warehouse site in Newark.

### **Reasoning**

#### *Issue 1– The Sequential Test*

39. The appeal proposal represents a substantial new retail development outside the town centre. If sites outside the town centre are to be considered for such development they must be subjected to the sequential test, and that test must demonstrate that a flexible approach has been taken to the proposal. The Council contends that this entails considering whether there was scope for disaggregation of the proposals such that sequentially preferable sites or premises might accommodate some of its components.
40. The Council agreed that disaggregation should apply only to units B, C, D and E, because units A and F would not be subject to a bulky goods restriction.
41. The appellant company's case has three strands. Firstly, that the scheme's compliance with the more robust requirements of PPS4 for the sequential test was confirmed by

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<sup>2</sup> Newark acts as the main shopping and service centre for the surrounding rural area and is also defined as a Sub-Regional centre in the East Midlands Regional Plan [Core Strategy Policy 8 and paragraph 5.28]

<sup>3</sup> Mixed Use Site 3 (NUA/MU/3)

<sup>4</sup> See Document 1.8

- ANA<sup>5</sup> and the officer's Committee report of 12 June 2012<sup>6</sup>. There has been no subsequent change in circumstances, in terms of the range or scope of alternative sequentially preferable sites in Newark.
42. Secondly, that whilst the Framework calls for flexibility from appellants and local planning authorities when considering the format and scale of a development proposal, there is no policy requirement for disaggregation<sup>7</sup>. The appellant company has demonstrated flexibility in altering the design and layout to address the Council's wish to see a high quality scheme that is appropriate to this important site. That should be sufficient.
  43. Thirdly, the sites suggested by the Council as being sequentially preferable were the Co-operative premises on Victoria Street and the Beaumont Cross Shopping Centre (Potterdyke), between Lombard Street and Portland Street, near the town centre. The sites are either not available or not suitable. Tellingly, the Council has not promoted the NSK site as sequentially preferable to the appeal site.
  44. At the inquiry the parties agreed that the Co-operative premises are likely to be let to *B&M Bargains* and the Council conceded that, although it is not unavailable as matters currently stand, it is unlikely to be offered to the wider market.
  45. That leaves only Beaumont Cross with available retail space. This is a new shopping centre, phase 1 of which opened at Easter 2012. It has a new on-site bus station and offers over 100,000 sq ft (9,290 sqm) of open A1 retail floorspace, anchored by a new Asda foodstore, with a basement and ground level car park. Being close to the established town centre, it occupies a more sequentially preferable location than the appeal site.
  46. Beaumont Cross contains eight retail units of between 97.5 sqm and 362 sqm ground floor space, some of which are vacant and available. The Council argued that these units provide substantial flexible space of sufficient size to accommodate at least one of the bulky goods units from the appeal proposal, if disaggregated from the whole scheme.
  47. For example, units 3 and 4 could be combined to provide over 700 sqm of ground floor space. As the smallest unit within the proposed development is 523 sqm, it could be accommodated within these combined units.
  48. The appellant company's position was that disaggregation is neither required by policy, nor a realistic and viable option. However, if it is right to disaggregate then theoretically one or more of the proposed units on the appeal site could be squeezed into the vacant units at Beaumont Cross.
  49. However, there has been no apparent interest in Beaumont Cross from retail warehouse operators. They have had the chance to take up some of the available space there, but none has chosen to do so.
  50. The units at Beaumont Cross are unattractive to retail warehouse operators. They have been added as an adjunct to a secondary car park to the Asda foodstore. They are accessed via the exit route from the foodstore. They lack visibility, presence, footfall and any meaningful association with the town centre. They were evidently designed for high street retailers, operating small format stores with little need or use

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<sup>5</sup> The ANA report of January 2012 (paragraph 4.16) concluded that : "*Within the town centre the [appellant company's] sequential assessment has sought to identify existing vacant premises and concludes that none of these are (sic) suitable available or viable to satisfy the requirement that would be met by the proposed development. In our view this conclusion is fair.*"

<sup>6</sup> The planning officer's report (page 27) stated: "*it is agreed that there are no sequentially preferable sites.*"

<sup>7</sup> The appellant's advocate drew attention to the decision of the Supreme Court in *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13 (21 March 2012). On the facts of that case, it held that there was no need to demonstrate disaggregation of a large Asda when considering the need to demonstrate flexibility. Furthermore it concluded that 'suitable' should be taken to mean 'suitable for the development proposed by the applicant', rather than 'suitable for meeting the identified deficiencies in retail provision in the area'.

for large areas of floorspace for displaying their goods. They were not designed for retail warehouse operators who have very different requirements.

51. Even though the retail warehouse sector is one where new retailing formats are continually developing and evolving to meet changing customer needs and preferences, it continues to be one based on large space formats, economies of scale and easy access. There is little to suggest that the units at Beaumont Cross would be equipped to meet the needs of this sector. Consequently, I find that Beaumont Cross does not represent a suitable, sequentially preferable site to the appeal site for retail warehouse development.
52. In coming to this conclusion I note the view expressed by ANA in the report of January 2012 (paragraph 4.11) that *"with regards to the suitability of the units for bulky goods retailing, we accept that they are unlikely to be acceptable for genuine bulky goods retailers."*
53. Furthermore, I note the opinion of the planning officer in the Committee report on 12 April 2012 (paragraph 27) that *"Whilst the Potterdyke [Beaumont Cross] scheme has vacant units of various sizes that could accommodate additional non-food retailing, none are (sic) likely to be suitable for genuine bulky goods retailers nor indeed would this (sic) be desirable for them to locate in the town centre."*
54. Finally, I turn to consider the factors that weigh in favour of the appeal site as a sequentially preferable out of centre location for a retail warehouse development. The Framework, at paragraph 24 states that *"When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre."*
55. The principal factor in favour of the appeal site is its location on a main road between the town centre and Northgate Retail Park. It enjoys good accessibility and good visibility to the passing public.
56. It is adjacent to Northgate Retail Park, a well established retail warehouse location that serves the Newark catchment area. While the profile of this retail park has strengthened in recent years, the profile of some solus retail warehouses elsewhere has declined. The appeal site would benefit from the profile of the retail park and the clustering effect that comes from close proximity to it, as have the solus retail units of Aldi and Halfords. It would therefore be well placed to take advantage of the customer base that the retail park attracts.
57. I consider that the appellant company has applied the appropriate degree of flexibility to the appeal proposals. I conclude on the first main issue that there are no suitable or available sequentially preferable locations for this type of retail development in Newark.

#### *Issue 2 – Prematurity*

58. Paragraph 17 of *'The Planning System: General Principles'* states that in some circumstances, it may be justifiable to refuse planning permission on grounds of prematurity where a DPD is being prepared or is under review, but it has not yet been adopted.
59. This may be appropriate where a proposed development is so substantial, or where the cumulative effect would be so significant, that granting permission could prejudice the DPD by predetermining decisions about the scale, location or phasing of new development which are being addressed in the policy in the DPD.
60. Paragraph 19 makes clear where the onus of proof lies. It states that where planning permission is refused on grounds of prematurity, the planning authority will need to demonstrate clearly how the grant of permission for the development concerned would prejudice the outcome of the DPD process.

61. The Council's case is that approval of the proposed development would be premature pending the resolution of representations to the Allocations and Development Management DPD. It argued that the Allocations and Development Management DPD has reached an advanced stage. The examination has been concluded and some post-examination modifications have been published for consultation. Once the consultation process has been completed, the examining Inspector will compile her report.
62. The first point to make is that the appeal proposal complies with current development plan policy. Its suitability has been demonstrated through the sequential approach, in compliance with paragraph 24 of the Framework. There is no evidence to show that it would have a materially adverse impact on nearby centres, including the town centre, or that there is a better location in Newark for retail warehouse development of the type proposed. It would therefore assist, not undermine, the objectives of Core Strategy Policies CS8 and NAP1.
63. The appeal proposal also satisfies 'saved' policy S3 of the local plan. The site has good access to the main road network, is accessible by a choice of means of transport and has sufficient land for parking and servicing. It would not add significantly to the overall number and length of car trips.
64. Moreover, it would assist the regeneration of under-used land that is close to Newark town centre and on an important arterial route to it. It would assist in securing the retention and the effective use of 'The Maltings', a listed building which is in urgent need of restoration.
65. The site is available now to meet the specific need for additional bulky goods retailing in Newark that was identified in the GVA Retail Study of 2010. Its development in the short term, rather than medium or long term, would assist the objective of maintaining Newark's position in the retail hierarchy. Consequently, significant benefits would arise from the appeal proposal.
66. Having regard to the presumption in favour of sustainable development, which is at the heart of the Framework (paragraph 14), and the exhortation that decision making "*means approving development proposals that accord with the development plan without delay*", it is clear that planning permission should be granted.
67. This was the view of the planning officer, whose report of 12 April 2012 (page 28) dealt specifically with the prematurity issue and the likely impact of the appeal development on the ability of the NSK site to be redeveloped during the Plan period. It stated that "*ANA therefore advise that a decision to approve development at this site [the appeal site] should not preclude a retail development on the NSK site within the Plan period. Equally, in the officer's submission, it is not necessary to allocate the current site [the appeal site] for retail use given the pending application.*"
68. The Council has not promoted the NSK site as a sequentially preferable site for a retail warehouse development, or that it would assist the regeneration of under-used land. The NSK site is not sequentially preferable to the appeal site and is currently in employment use. It is being promoted to enable the company to relocate to another site within the District because of its role as a major employer. The Council's concern, and that of NSK (Europe) Ltd, is that that objective would be undermined if this appeal were to be allowed.
69. However, the draft allocation of the NSK site (and some adjoining land) is for a mixed use development. In terms of its nature and scale, the NSK redevelopment would be quite different from the development proposed on the appeal site. The appeal development is much smaller and is focussed on bulky goods retail warehousing. The appellant company's aim is to utilise an unused site to meet a qualitative need that was identified in the Core Strategy. The aim of the NSK scheme is to redevelop a site that is already in beneficial use based on future retail capacity which would not come on line until 2019 at the earliest.

70. I believe that significant benefits would arise from the appeal proposal and they should be realised sooner rather than later. Having regard to the presumption in favour of sustainable development, which is at the heart of the Framework, and the exhortation that decision making "*means approving development proposals that accord with the development plan without delay*" (paragraph 14), it is clear to me that planning permission should be granted.
71. I conclude on the second main issue that approval of the appeal development would not prejudice full consideration of alternative sites in the context of the Allocations and Development Management DPD to the extent that planning permission should be refused for the appeal development.

### **Overall conclusions**

72. I have taken account of all the matters raised at the inquiry and in the written representations from all the parties, and also my observations at the appeal site and other sites in Newark that I was invited to view. For the reasons given I have decided that the appeal should be allowed and that outline planning permission should be granted, subject to conditions.

### **Conditions**

73. At the inquiry the appellant and Council submitted a list of conditions and the reasons for them. After some discussion and amendment, this list was agreed.
74. I have considered that list and also the advice in Circular 11/85 and have decided to impose the conditions that are set out in Schedule 1 (page 10). For completeness, I have set out in Schedule 2 (page 15) the reasons for imposing these conditions, some of which differ from those that were put forward by the parties<sup>8</sup>.

### **Formal decision**

75. The appeal is allowed and outline planning permission is granted for the proposed erection of retail development comprising Bulky Goods/Open A1/Open A1 Convenience uses and provision of car parking to serve the development on land off North Gate Newark, Newark on Trent, Nottinghamshire, NG24 1HD in accordance with the terms of the application, Ref 11/01067/OUTM, dated 1 August 2011, and the plans submitted with it, subject to the conditions set out in Schedule 1 attached.

*George Mapson*

INSPECTOR

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<sup>8</sup> The parties agreed that, at a later date, the appellant company might be required to 'tweak' the planning permission in order to meet the specific needs of prospective operators of the units. This might entail applications under s.96A or s.73, or possibly s.79 if it entailed a variation of a condition. In such a case a clear understanding of the reasons for imposing the conditions would be required.

## **SCHEDULE 1: CONDITIONS**

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 2) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) No development shall be commenced on site until details of a phasing scheme have been submitted to and approved in writing by the local planning authority. This scheme should detail how the phases that are not developed out in the early stages will be secured and treated. The development shall thereafter be constructed in accordance with the approved phasing scheme.
- 4) Details of the appearance and landscaping (hereinafter called 'the reserved matters') shall be submitted to and approved in writing by the local planning authority before any development begins pursuant of its respective phase and the development shall be carried out as approved.
- 5) Applications for the approval of the reserved matters shall be in accordance with the principles and parameters described and illustrated in the following drawings a) to d) below, unless otherwise agreed in writing by the local planning authority through the approval of a non-material amendment to the consent. Maximum scale parameters for the buildings are; Buildings A to E would be a maximum height of 14m (including any chimneys) whilst Building F would have a maximum height of 7m.
  - a) Drawing No. PL07 (Site Layout);
  - b) Drawing No. PL08 Rev F (Proposed Ground Floor Plan);
  - c) Drawing No.PL10-13 Rev C (Proposed Site Sections); and
  - d) Drawing No. PL14 (Section through River Edge).
- 6) No development shall take place within the application site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. Thereafter the scheme shall be implemented in accordance with the approved details. The developer shall afford access to the site at all reasonable times to any archaeologist nominated by the local planning authority and allow the archaeologist to observe the excavations and record items of interest and finds.
- 7) Unless otherwise agreed by the local planning authority, development other than that required to be carried out as part of an approved scheme of remediation must not commence until Parts A to D of this condition have been complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the unexpected contamination to the extent specified by the local planning authority in writing until Part D has been complied with in relation to that contamination.

### *Part A: Site characterisation*

An investigation and risk assessment, in addition to any assessment provided with the planning application, must be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the local planning authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the local planning authority. The report of the findings must include the matters a) to c) below:

- a) a survey of the extent, scale and nature of contamination;
- b) an assessment of the potential risks to: (i) human health; (ii) property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; (iii) adjoining land; (iv) groundwaters and surface waters; (v) ecological systems; and (vi) archaeological sites and ancient monuments;
- c) an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

Part B: Submission of remediation scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and is subject to the approval in writing of the local planning authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part C: Implementation of approved remediation scheme

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority. The local planning authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval in writing of the local planning authority.

Part D: Reporting of unexpected contamination

In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with the requirements of Part A, and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of Part B, which is subject to the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority in accordance with Part C.

- 8) The development hereby permitted shall not be commenced until such time as a timetable for the implementation of the flood compensation scheme at Appendix D (drawing reference NTW/1500 Rev B) of the BWB's Flood Risk and Water Environment Report has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be completed in accordance within a timescale which shall be firstly agreed in writing by the local planning authority and in any event prior to first occupation of any unit.
- 9) The development hereby permitted shall not be commenced until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with the approved details before the development is completed.

- 10) The development hereby permitted shall not be commenced until a scheme to install oil and petrol separators has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented as approved.
- 11) The development hereby permitted shall not be carried out other than in complete accordance with the approved Flood Risk Assessment (FRA) dated July 2011, reference number NTW/1500/FRA Rev B compiled by BWB Consulting and the following mitigation measures a) and b) below, as detailed within the FRA. These are:
  - a) finished floor levels shall be set no lower than 12.45m above Ordnance Datum (AOD).
  - b) surface water run-off generated by the development shall be limited so that it would not exceed the run-off from the undeveloped site and would not increase the risk of flooding off-site.
- 12) No part of the development hereby permitted shall be occupied or brought into use until:
  - a) details of (i) the permanent closure of existing site accesses that have been made redundant as a consequence of this permission and (ii) the reinstatement of the access crossing as a footway, have been submitted to and approved in writing by the local planning authority; and
  - b) the works have been carried out in full accordance with the approved details.
- 13) The development hereby permitted shall not be commenced until details of the pedestrian link between the development and the Riverside Walk and the adjacent Brewery Site (outlined in blue) in accordance with the drawing numbers PL07, PL10\_Rev C and PL14 have been submitted to and approved in writing by the local planning authority. These details shall include a full specification of surface treatments and any means of associated enclosure. The approved scheme shall be implemented in full prior to first occupation.
- 14) No part of the development hereby permitted shall be occupied or brought into use until a Travel Plan has been submitted to and approved in writing by the local planning authority (LPA). The Travel Plan shall set out proposals (including targets, a timetable and enforcement mechanism) to promote travel by sustainable modes which are acceptable to the LPA and shall include arrangements for monitoring of progress of the proposals. The Travel Plan shall be implemented in accordance with the timetable set out in that plan.
- 15) The development hereby permitted shall not be commenced until details of measures to prevent the deposit of debris upon the adjacent public highway have been submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in full prior to any other works commencing on site.
- 16) The development hereby permitted shall not be commenced until details of a scheme for the parking of cycles within the application site has been submitted to and approved in writing by the local planning authority. The details shall include the design, materials, amount and specification. The cycle stands shall be located near to the main entrance to the development, be covered and that area shall not thereafter be used for any purpose other than the parking of cycles. No part of the development hereby permitted shall be brought into use until provision has been made for the parking of cycles in accordance with the approved details.
- 17) No part of the development hereby permitted shall be occupied or brought into use until the parking/turning/servicing areas are provided in accordance with the approved plans. The parking/turning/servicing areas shall be retained thereafter

- and shall not be used for any purpose other than parking/turning/loading and unloading of vehicles.
- 18) The development hereby permitted shall not be commenced until details of the design, specification, fixing and finish, in the form of drawings and sections at a scale of not less than 1:10, of the matters listed a) to e) below, have been submitted to and approved in writing by the local planning authority. Development shall thereafter be undertaken in accordance with the approved details.
- a) external windows including roof windows, doors and their immediate surroundings, including details of glazing and glazing bars;
  - b) treatment of window and door heads and cills;
  - c) verges and eaves;
  - d) rainwater goods; and
  - e) extractor vents.
- 19) Any application for Reserved Matters shall be accompanied by a detailed scheme for both hard and soft landscape works which shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The scheme shall be designed so as to enhance the nature conservation value of the site, including the use of locally native plant species. The details shall include:
- a) a schedule (including planting plans and written specifications, including cultivation and other operations associated with plant and grass establishment) of trees, shrubs and other plants, noting species, plant sizes, proposed numbers and densities.
  - b) proposed finished ground levels or contours;
  - c) proposed means of enclosures (including noise attenuation measures adjacent to the service yard);
  - d) car parking layouts and materials;
  - e) other vehicle and pedestrian access and circulation areas;
  - f) hard surfacing materials;
  - g) minor artefacts and structures for example, furniture, refuse units, signs, lighting etc.); and
  - h) retained historic landscape features and proposals for restoration, where relevant.
- 20) The approved soft landscaping shall be completed during the first planting season following the commencement of the development, or such longer period as may be agreed in writing by the local planning authority. Any trees/shrubs which, within a period of five years of being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority. The approved hard landscaping shall be implemented in full.
- 21) No raw materials, equipment, finished products or waste materials shall be stored outside buildings other than in accordance with details to be approved in writing by the local planning authority prior to the commencement of such storage. Thereafter any external storage shall be located in accordance with the approved details.
- 22) Units A to F of the development hereby approved shall not be open to customers outside the following times: 08.00 and 20.00 on any day.

- 23) Servicing of Units A, B, C, D and E of the development hereby approved shall not take place outside the following times: 9.00 to 10.30 and 19.00 to 21.00.
- 24) The development hereby permitted shall not be commenced until a Service Management Plan in relation to the servicing of Unit F of the development has been submitted to and approved in writing by the local planning authority. Thereafter Unit F shall be serviced only in accordance with the agreed Plan.
- 25) No part of the development hereby permitted shall be occupied or brought into use until full details of any proposed air conditioning equipment or other external plant has been submitted to and approved in writing by the local planning authority. The approved equipment and plant shall be installed strictly in accordance with the approved details.
- 26) The development hereby permitted shall not be commenced until a scheme detailing security measures for designing out crime at the site has been submitted to and approved in writing by the local planning authority. This scheme shall include the provision of CCTV covering the public spaces within the curtilage of the site, appropriate external lighting and details of any physical barriers to lock off areas when the premises are closed. The approved details shall be installed on site prior to first occupation and thereafter be retained for the lifetime of the development.
- 27) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) 1995 as amended and the provisions of the Town and Country Planning (Use Classes) Order 1987 as amended:
  - a) Unit A on Drawing PL07 shall not exceed 1,375 square metres gross internal floorspace;
  - b) Units B to E on Drawing PL07 shall not in aggregate exceed 4,540 square metres gross internal floorspace and shall not be used for the sale of any goods other than those within the following categories:
    - (i) Electrical goods and other domestic appliances;
    - (ii) Bathroom suites – furniture and accessories; kitchen units – furniture and accessories, floor and wall tiles;
    - (iii) DIY products, materials, tools and machinery for the repair, maintenance or improvement of the home, the garden and motor vehicles;
    - (iv) Motor and cycle goods; and
    - (v) Furniture, bedding, floor coverings, soft furnishings and textiles.
  - c) Unit F on Drawing PL07 shall not exceed 840 square metres gross internal floorspace and shall not be used for the sale of convenience goods, but may be used for the bulk sale of wines and spirits.
- 28) No retail unit shown on Drawing PL07 shall be subdivided to create a unit with a gross internal floorspace of less than 523 square metres.
- 29) The development hereby permitted shall not be commenced until a priority junction on Northgate has been provided in accordance with the scheme shown on drawing no. BMT/120/TT/001Rev P3.
- 30) The development hereby permitted shall not be commenced until a scheme for improvements to the Northgate/Queens Road junction has been submitted to and approved in writing by the local planning authority. The submitted scheme shall provide MOVA traffic signal control and nearside pedestrian detection facilities (or similar arrangements to provide the same effect). The approved scheme shall be completed prior to first occupation of any of the units.

## **SCHEDULE 2: REASONS FOR CONDITIONS**

- 1) To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
- 2) To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.
- 3) In the interests of visual amenity and to ensure that the scheme is delivered in an appropriate manner.
- 4) This is a planning permission in outline only and the information required is necessary for the consideration of the detailed proposal.
- 5) The application is in outline and the local planning authority wishes to ensure that the details which have not yet been submitted are in accordance with the scale parameters set out in the outline application.
- 6) In order to afford appropriate protection for the potential archaeological significances of the site.
- 7) To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.
- 8) To reduce the impact of the development on the floodplain of the River Trent.
- 9) To prevent the increased risk of flooding and ensure future maintenance of the drainage system.
- 10) To protect ground and surface water from pollution.
- 11) To reduce the risk of flooding to the proposed development and future occupants and to prevent flooding by ensuring the satisfactory storage of/disposal of surface water from the site.
- 12) In the interests of highway safety.
- 13) To provide adequate and safe access to neighbouring developments and to promote sustainable transport links.
- 14) To promote sustainable transport.
- 15) To reduce the possibility of deleterious material being deposited on the public highway (loose stones etc).
- 16) To promote sustainable transport.
- 17) To ensure that adequate off-street parking, servicing and turning provision is made to reduce the possibility of the proposed development leading to on-street parking in the area, and in the interests of safety and convenience on the site.
- 18) In the interests of visual amenity and in order to preserve or enhance the character and appearance of the conservation area.
- 19) In the interests of visual amenity and in order to preserve or enhance the character and appearance of the conservation area.
- 20) In the interests of visual amenity and biodiversity and in order to preserve or enhance the character and appearance of the conservation area.
- 21) To ensure that the work is carried out within a reasonable period and thereafter properly maintained, in the interests of visual amenity and biodiversity and in order to preserve or enhance the character and appearance of the conservation area.

- 22) In the interests of visual amenity and in order to preserve or enhance the character and appearance of the conservation area.
- 23) To reduce conflicts between customers and deliveries/servicing of the units and safeguard the living conditions occupiers of nearby dwellings.
- 24) To reduce conflicts between customers and deliveries/servicing of the units and safeguard the living conditions occupiers of nearby dwellings.
- 25) In the interests of safety and convenience of the public using the adjacent parking area and to safeguard the living conditions occupiers of nearby dwellings.
- 26) In the interests of designing out crime and in order to fulfil the duties imposed under Section 17 of the Crime and Disorder Act 1998, as amended.
- 27) In order to protect the vitality and viability of the town centre from significant harm, to ensure that the range of goods sold is appropriate for the site's location and layout and to control the character of the development.
- 28) In order to protect the vitality and viability of the town centre from significant harm and to control the character of the development.
- 29) In the interests of highway safety and capacity.
- 30) In the interests of highway safety and capacity.



## **2. Documents submitted on behalf of the appellant**

- 2.1. Appearances on behalf of the appellant
- 2.2. Opening submissions
- 2.3. Revised Appendix 10 to Mr Wadcock's Proof of Evidence (additional document) [Site Allocations and Development Management DPD Examination in Public Day 4 (18 December 2012) Matter 5/Representor 72/NSK Europe Ltd *Statement on behalf of NSK Europe Ltd – Site at Northern Road, Newark*]
- 2.4. Two documents (including plan and layout) relating to Beaumond Cross (Potterdyke development), Newark
- 2.5. Inquiry Note on the relative accessibility of the Appeal Site and the NSK (Europe) Limited site (by Peter Brett/Roger Tym)
- 2.6. Inquiry Note on the LPA's revised retail floorspace requirements (by Peter Brett/Roger Tym)
- 2.7. Closing submissions

## **3. Documents submitted by Mr Woollard on behalf of the NSK (Europe) Limited**

- 3.1. Closing submissions

## **4. Core Documents**

- CD1. Newark & Sherwood LDF Core Strategy DPD (adopted March 2011)
- CD2. Newark & Sherwood Local Plan (adopted 1999) extract of policies C1, C2, C4, C5, C11, C23, S3, R10, R12, PU1)
- CD3. East Midlands Regional Plan (extract of policies 1, 2, 3, 18, 19, 22, 27, 35, 45, 48, 49)
- CD4. Bridge Ward Neighbourhood Study Final Report Summary
- CD5. GVA Grimley Retail Study 2010 and Appendices
- CD6. Alyn Nicholls Associates 'Retail Capacity and Retail Proposals at Newark' advice dated May 2010
- CD7. Alyn Nicholls Associates 'Assessment of Retail Policy Issues Arising from the Proposal' advice dated January 2012
- CD8. Experian Retail Planner Report 2009
- CD9. Experian Retail Planner Report 2012
- CD10. Urbis letter dated 31 January 2012
- CD11. Allocations & Development Management Options Report, October 2011
- CD12. Allocations & Development Management DPD Additional Sites Consultation Paper, March 2012
- CD13. Publication Allocations & Development Management DPD, June 2012
- CD14. The Planning System, General Principles (2005)\*
- CD15. Planning for Town Centres, Practice Guidance on Need, Impact and Sequential Approach, December 2009 (Companion Guide to PPS4)\*
- CD16. The National Planning Policy Framework (published 27 March 2012)\*

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