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**Central Bedfordshire Council**  
Retail Review of Planning Applications  
Ref: CB/12/03290/OUT & CB/12/02071/OUT

January 2013

**Central  
Bedfordshire**

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# 1. Introduction

1.1 GVA is instructed to carry out an independent assessment of the retail planning issues raised by two competing retail proposals located adjacent to each other on Grovebury Road, Leighton Buzzard. We refer to the applications as 'Site A' and 'Site B' (Plan 1):

- **Site A:** Proposal for non food retail park and pub/restaurant (Claymore Group and CC Trading Ltd), App Ref: CB/12/02071/OUT.
- **Site B:** Proposal for non food retail park, drive thru restaurant, and pub/restaurant (Barwood Developments Ltd and Invesco PIT Ltd), App Ref: CB/12/03290/OUT;

1.2 Our terms of reference are to carry out a review of the retail issues raised, having regard to the relevant national policy framework (NPPF), and specifically the key policy tests of impact and the sequential approach. As part of this review we have examined the submission material of both applications, and in particular the most up-to-date Retail Assessment submitted by Blue Sky Planning in respect of Site A, and Framptons in respect of site B. A number of clarifications were provided by the applicants during our assessment.

1.3 In the next section, we describe the site and surrounding area and key features of the proposals for each scheme. In Section 3, we summarise the key points of relevance from the NPPF, and set out the local policy context including the main evidence base documents. Sections 4 and 5 set out our analysis of the impact and sequential test and the extent to which the applicants meet the relevant requirements. We draw our conclusions in Section 6.

## 2. Site/Surrounding Area & Proposals

### Site and Surrounding Area

- 2.1 In 2009, Central Bedfordshire District Council was created, merging South Bedfordshire and Mid Bedfordshire District. The three main town centres in the south of Central Bedfordshire include Leighton Buzzard, Houghton Regis and Dunstable. Leighton Buzzard also lies in close proximity – and broadly equidistant – to Milton Keynes, Aylesbury, Hemel Hempstead and Luton, all located outside the district.
- 2.2 The application sites lie adjacent to each other, just over 1 mile south of Leighton Buzzard Town Centre. Whilst they are defined as out-of-centre in retail policy terms they lie within the wider built-up urban area around Leighton Buzzard. The immediate surrounding area is characterised by general commercial/industrial uses, and greenbelt land immediately to the west and south. The surrounding commercial area includes the Grovebury Industrial Estate and Browns trade/retail outlet.
- 2.3 The two application sites have the following existing uses:
- **Site A** (Claymore Group and CC Trading Ltd): Measures 2.41 hectares. Undeveloped at present, comprising pasture land with some trees and hedgerows. It is triangular in shape, and currently access is provided from Grovebury Road in the northern corner of the site;
  - **Site B** (Barwood Developments Ltd): Measures 3.43 hectares. Developed and occupied by a row of industrial/commercial units fronting onto the south-east side of Grovebury Road. The existing structure is relatively old and run-down, and currently access is provided from Grovebury Lane on the north east boundary of the site.

### Site A: Proposal

- 2.4 Site A is proposing one anchor DIY retail unit with a ground floor retail area of 3,252 sq m gross (2,602 sq m net); a mezzanine floor area of 929 sq m gross (743 sq m net); and a garden centre of 929 sq m gross.

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- 2.5 The scheme also includes four smaller units, two offering a floorspace of 697 sq m gross (558 sq m net) with mezzanine levels of 348 sq m gross (278 sq m net); and two offering a floorspace of 465 sq m gross (372 sq m net) with mezzanine levels of 232 sq m gross (186 sq m net). **Site A is proposing a total A1 retail floorspace of 8,594 sq m gross (6,132 sq m net)**, including all mezzanine levels and the garden centre.
- 2.6 The submission material (Wilkinson Williams, November 2012) states that the units would be intended for bulky goods retail operators, and names Wickes, Pets at Home and Benson for Beds furniture as likely operators. The applicant has submitted a letter of interest from Wickes, and also notes the possible relocation of Homebase, subject to the Tesco expansion. In paragraph 1.2 of the Retail Statement they state that the scheme has been formulated in response to proposals by Tesco to demolish the Homebase store at Vimy Road, Leighton Buzzard. They add that this will heighten the need for bulky goods retailing in Leighton Buzzard (paragraph 2.8), and their scheme would suit the requirements of Homebase.
- 2.7 The scheme would attract either Homebase or Wickes, not both, and the Wilkinson Williams report therefore identifies a possible three retailers to fill the five proposed retail units. They add that they have not carried out a full marketing campaign at this stage, but on the basis that they are advising on 140+ schemes across the UK with a consequent in-depth knowledge of the market, this appears to represent a limited level of demand from bulky goods operators within this catchment. They anticipate a 65% pre-let prior to construction.
- 2.8 The Retail Statement proposes the following planning condition to limit use of the retail premises to DIY retail and other bulky goods (paragraph 3.7):
- "The retail floorspace hereby approved shall be used predominantly for the sale of DIY related products, equipment, machinery, materials and products related general building, DIY and home/garden improvement (including plants), and for the sale of comparison goods comprising electrical and gas products, furniture, soft furnishings and household textiles, carpets and floor coverings, and pets and pet related products."*
- 2.9 Site A is also proposing an A3 restaurant of 372 sq m gross, 318 car parking spaces and 36 cycle spaces. The November 2012 Wilkinson Williams report lists Burger King, KFC and Starbucks as potential operators. The application is proposing two access points from Grovebury Road (A4012), one for customer vehicles and one for servicing
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vehicles, and one further pedestrian access point to the public footpath running south of the site.

## Site B: Proposal

- 2.10 Site B is proposing one major DIY retail unit with a ground floor retail area of 1,858 sq m gross (1,300 sq m net); a mezzanine floor area of 159 sq m gross (56 sq m net – see explanation in para.2.13 below), and an external 'project' sales area of 465 sq m gross (326 sq m net).
- 2.11 The applicant was asked to clarify the proposed floorspace figures as part of this assessment, and the information was provided in an email from Framptons on 30 November 2012. In addition to the main DIY unit, the proposals also include eight further retail units, with the following floorspace breakdown:
- Unit 1 to have a ground floor GIA area of 465sq m + 50 % mezzanine;
  - Unit 2 to have a ground floor GIA area of 929sq m + 50 % mezzanine;
  - Unit 3 to have a ground floor GIA area of 697sq m + 50 % mezzanine;
  - Unit 4 to have a ground floor GIA area of 697sq m+ 50 % mezzanine;
  - Unit 5 to have a ground floor GIA area of 697sq m + 50 % mezzanine;
  - Unit 6 to have a ground floor GIA area of 697sq m + 50 % mezzanine;
  - Unit 7 to have a ground floor GIA area of 929sq m + 50 % mezzanine;
  - Unit 8 to have a ground floor GIA area of 418sq m + 50 % mezzanine;
  - Total GIA floor area of 5,530.sq m / Total GIA mezzanine area of 2,764 sq m.
  - Total GIA of 8 units including ground floor and mezzanines = 8,294 sq m.
- 2.12 The **ground floor** retail area of the DIY unit and eight retail units is 7,853 sq m gross (including the outdoor projects area), and 5,496 sq m net assuming a 70% net:gross ratio (including the outdoor projects area).
- 2.13 The gross **mezzanine levels** in each of the eight retail units are described as being 50% of the gross ground floor levels. This equates to a total gross mezzanine floor area in

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- the eight retail units of 2,764 sq m. Including the mezzanine level in the DIY unit (159 sq m gross), the scheme has a total mezzanine floor area of 2,923 sq m **gross**.
- 2.14 For the mezzanines, the applicant then assumes a 50% net:gross ratio, equating to a mezzanine of 80 sq m net in the anchor DIY unit, and a net floor sales area of 1,383 sq m net in the remaining eight mezzanines. The mezzanines across all nine units have a total of 1,463 sq m net floorspace.
- 2.15 **Site B is proposing a total A1 retail floorspace of 10,775 sq m gross (6,959 sq m net)**, including all mezzanine levels and the outdoor projects area. These figures are based on supplementary information provided by Framptons on 4<sup>th</sup> January 2013. The net sales areas of the mezzanines levels (50% of each mezzanine level) do seem conservative, particularly for the main DIY anchor (80 sq.m net). If this scheme were granted consent, the Council should condition the level of ground floor and mezzanine floorspace in each unit rather than for the retail park as a whole.
- 2.16 During ongoing consultation between the Council and the applicants, clarification has been sought in respect to the range of goods intended to be sold from the scheme. During a meeting on 20 November 2012, between the Council and the applicant, we have been informed that the applicant would accept restrictions consistent with those set out in paragraph 7.1 of the White Lion Retail Park (Dunstable) Legal Agreement (attached), with the **addition** of sports clothing, sports footwear and sports equipment, toys and games. The White Lion Legal Agreement agrees, in paragraph 7.1:
- "...not to use or occupy the Retail Buildings other than for the retailing of DIY products (including tools, building supplies, gardening products and ancillary items), furniture, carpets, floor coverings, household fabrics, office equipment and stationary supplies, motor vehicles, cycles and ancillary goods, electrical goods and gas appliances, pets and pet supplies and for the avoidance of doubt no other purpose within Class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 provides always that nothing in this clause shall prohibit ancillary sales of hot and cold beverages and food and confectionary for consumption in or outside the Retail Buildings."*
- 2.17 Site B is also proposing a Drive Thru Restaurant Unit with a GIA of 186 sq m (paragraph 2.2), and a public house/restaurant with a GIA of 604 sq m. Paragraph 3.5 of the
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Planning Statement confirms that customer car, cycle and pedestrian access to the site would be from two new points of access created on Grovebury Road. Separate HGV service access would be provided from Grovebury Lane. Proposals include 389 car parking spaces, 50 cycle spaces, and a new bus stop on Grovebury Lane.

## **Unit Sizes**

- 2.18 GVA in-house Retail Agents have contributed to the preparation of this report, and we are able to comment on the appropriateness of unit size in respect of market demand. The Council have asked us to specifically respond to this point based on consultation comments received on the applications.
- 2.19 We conclude that the unit sizes presented are broadly in accordance with retailers acquiring space in the bulky goods categories. Requirements are broadly in the region of 5,000-15,000 sq ft (464.5 sq m – 1,394 sq m), which is reflective of those units submitted on the application drawings.



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## 3. Policy Framework

### National Planning Policy Framework (NPPF)

- 3.1 The NPPF was adopted in March 2012, and makes clear the Government's commitment to securing economic growth in order to create jobs and prosperity and to ensure that the planning system does everything it can to support sustainable economic growth.
- 3.2 The NPPF requires Local Planning Authorities (LPAs) to adopt a positive approach to decision-taking and to apply a presumption in favour of sustainable development. For decision-taking this means that applications which accord with the development plan should be approved without delay and where the development plan is absent, silent or relevant policies are out of date, permission should be granted unless the adverse impacts of doing so would significantly outweigh the benefits of the development when assessed against the policies in the NPPF.
- 3.3 In terms of retail policies, the NPPF maintains the general thrust of PPS4. It advocates a 'town centres first' approach, and requires planning policies to positively promote competitive town centre environments and manage the growth of centres over the plan period.
- 3.4 The application sites are located out-of-centre. The NPPF confirms (paragraph 24-26) that a sequential site and impact assessment is required in support of both proposals. Paragraph 24 confirms that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Local authorities should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered.
- 3.5 Paragraph 27 directs local authorities to refuse an application where it fails to satisfy the sequential approach, or is likely to have significant adverse impact on one or more of the factors listed under Paragraph 26, including:
- 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

- The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. 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.

### **Local Plan 2004**

- 3.6 The South Bedfordshire Local Plan was adopted in January 2004; and a number of policies were saved in September 2008 pending preparation of the Local Development Framework. Both application sites are allocated as 'Main Employment Areas', and Policy E1 states that within such allocations, planning permission will not be granted for uses other than B1, B2 or B8.
- 3.7 In terms of the role and performance of Leighton Buzzard, the town centre is identified as one of two main town centres in the District alongside Dunstable, with Houghton Regis performing a more local shopping role. Leighton Buzzard is identified as being well provided for in terms of convenience goods, but with a more limited comparison shopping role with few national multiple retailers. The Local Plan states that its ability to attract national multiples is limited by its relatively small catchment area, the proximity of larger centres and the lack of larger modern and well serviced units. It has nevertheless developed a good range of smaller independent comparison retailers (para.8.13, 2004).
- 3.8 Policy TCS4/7 identifies 'Land South of High Street' as a key town centre regeneration site in Leighton Buzzard; put forward for a mix of town centre uses including retail. This policy has been developed in more recent years, and now forms a Development Brief setting out the Council's development aspirations for the site. We discuss this further below. Policy TCS6 refers to out-of-centre retail and leisure development, but this has not been saved and is not relevant for the purposes of these applications.
- 3.9 We conclude that the document is substantially out-of-date and has been superseded by a number of more up-to-date evidence based documents.

### **White Young Green Evidence Base Retail Study 2009**

- 3.10 This was a joint Study on behalf of Luton Borough Council and South Bedfordshire District Council to assess the 'need' for new retail floorspace across the authority areas. Whilst need is no longer a test with which to assess applications against, the

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quantum of spend and shopping patterns across a catchment are key considerations when reaching an overall judgement about the impact of a proposal and also the need for alternative sites beyond those in sequentially preferable locations. We consider that need is a relevant consideration when undertaking both the impact and sequential test.

- 3.11 The WYG Retail Study identified that Leighton Buzzard is an attractive and historic market town, performing well despite the recent economic downturn. There are a small number of multiple retailers offering goods from a number of categories including bulky goods. The Waitrose foodstore is the main convenience offer, although the Study concludes that the town's convenience role has declined as a consequence of the out-of-centre Morrisons foodstore. Overall, paragraph 4.66 concludes that Leighton Buzzard has a good range of shopping and service facilities and displays good levels of vitality and viability.
- 3.12 The Study provides a short qualitative review of out-of-centre non-food retailing; and concludes that the main concentration is Luton Retail Park, Gypsy Lane, comprising ten retail units the majority of which are bulky. Other destinations identified include Chaul End Lane/Dallow Road (five units) and the newer Hatter Way Retail Park (nine units). Leighton Buzzard only has a Homebase DIY store; Table 4.8 lists the Homebase Store within the floorspace schedule, and the supporting text concludes that aside from the White Lion Retail Park in Dunstable there is very little non-food retail warehousing in the (Central Bedfordshire) district.
- 3.13 Paragraph 5.03 acknowledges the growth in proposed and new competing provision in the wider catchment area, including the Junction Retail Park, Aylesbury (18,000 sq m gross bulky goods); the Riverside Shopping Centre in Hemel Hempstead, and the Ikea and Asda stores in Milton Keynes. The study recognises the impact these will have on trade leakage from the Study area, and whilst the focus is primarily on Luton, it concludes in paragraph 5.04 that 'there is a considered need for significant retail development in Luton and the other centres ... to counter the impact of major retail schemes in competing centres...
- 3.14 Section 7 identifies capacity in Leighton-Linslade for £25.3m-£34.4m of comparison good expenditure by 2016, equating to 6,900-9,400 sq m of comparison goods floorspace. The Study does not identify a separate need for bulky goods floorspace, but does identify 'land south of High Street' as a potential opportunity site. Paragraph 7.49 concludes that there is a qualitative need to improve the choice, range and quality of comparison shopping facilities in the town centre through the development

of modern retail floorspace, but recognises that physical opportunities are more limited.

- 3.15 Paragraph 8.66 concludes that meeting longer-term comparison retail floorspace needs within Leighton Linslade may ultimately require a new large out-of-centre retail facility being allocated. Nevertheless, 'land south of High Street' is recognised as being able to accommodate some of the identified floorspace capacity arising over the period to 2016.
- 3.16 This Retail Study has now been superseded by the Roger Tym Retail Study, September 2012, discussed below.

### **Pre-Submission Draft Joint Luton & Southern Central Bedfordshire Core Strategy, 2010**

- 3.17 A joint Core Strategy covering the area formerly administered by South Bedfordshire District Council and Luton had reached submission stage before subsequently being withdrawn in September 2011. Despite this, the Strategy was endorsed by Central Bedfordshire's Executive in September 2011 for Development Management purposes.
- 3.18 Policy CS1 sets out the development strategy for the policy area, and allocated East of Leighton-Linslade as a focus for new housing development with up to 2,500 new homes. Policy CS21 is specific to Leighton-Linslade Town Centre and states that mixed use development would be focused on two major sites and land uses would include up to 6,889 sq m (WYG, 2009) of additional comparison goods floorspace. The emerging development briefs are noted (discussed below).
- 3.19 Paragraph 11.54 recognises that opportunities for new employment will continue to be supported and enabled in accordance with Policy CS1, particularly in the Grovebury Road and Stanbridge Road areas.

### **Land South of High Street Development Brief, GVA, March 2012**

- 3.20 Driven by previous evidence and policy, Central Bedfordshire commissioned a Development Brief for both Land South of High Street and Bridge Meadow.
- 3.21 Land South of High Street covers land of approximately 2.65 hectares, and adjoins the main shopping area. It is a town centre site in policy terms. The primary purpose of development should be to create a new retail quarter for the town centre which is supported by ancillary uses including car parking, residential and leisure uses. The site should form a seamless extension to the Primary Shopping Area and address the
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quantitative and qualitative development needs identified in the 2009 Retail Study, including a significant amount of new comparison goods retail floorspace including larger format stores.

- 3.22 The document does not identify the amount of comparison goods floorspace that the site could accommodate, but we understand from a report to the Development Management Committee on 7 July 2011 concerning a Tesco extension (CB/10/04238/FULL) that the convenience element could be around 2,400 sq m gross and the remaining shopping (comparison) around 2,880 sq m gross. This figure is broadly consistent with some initial mapping/land use allocation scenarios produced by GVA as part of the Development Brief background work, although it must be noted that there are no definitive 'proposal maps/land use allocations' at this stage.
- 3.23 The incorporation of a small foodstore is identified as a potential anchor store, and there is no clear intention to accommodate bulky goods retail type warehouse units. Section 9 adds that delivery is dependant on favourable economic conditions, and the Council anticipates that the development will come forward over the next 5 to 10 years. We discuss this further in Section 4.

#### **Bridge Meadow Development Brief, GVA, March 2012**

- 3.24 The Bridge Meadows site is edge-of-centre, lying outside the Primary Shopping Area and Town Centre Boundary. The Development Brief proposes to unlock this site to provide a new edge-of-town centre waterside quarter for the town which could accommodate a mix of uses including further education, health, recreation and residential. Use Class A1 retail is included within proposed land uses, identifying it as an appropriate location for up to 1,000 sq m gross with a maximum unit size of 250 sq m.

#### **Central Bedfordshire Retail Study, September, 2012**

- 3.25 Roger Tym & Partners was instructed by Central Bedfordshire District Council (CBDC) in January 2012 to undertake a Retail Study to assess future need. Leighton Buzzard, Dunstable and Biggleswade are identified as the larger town centres, and the Household Telephone Survey calculated trade retention of different locations within the survey area. The findings are as follows:
- Luton & Retail Park: 26.1%
  - Dunstable & White Lion Retail Park: 8%
  - Hitchin: 4.3%

- Biggleswade & Retail Parks: 4.4%
  - Leighton Buzzard: 3.3%
- 3.26 Paragraph 5.27 states that the results of the household survey show that the most popular study area locations to shop for DIY goods, furniture and domestic appliances are in and around Luton and Milton Keynes, which may indicate scope for more of these outlets in Central Bedfordshire.
- 3.27 Tables 3.1. to 3.4 below set out the market shares for each main destination for the more bulky goods categories, taken from the Roger Tym Household Telephone Survey. We have focused on Zone 8, the Zone in which Leighton Buzzard is located, which demonstrates that the most popular town centre destinations are Milton Keynes, Aylesbury and Leighton Buzzard, with a range of retail parks attracting a reasonable proportion of trade. Milton Keynes and Aylesbury are both outside Zone 8 demonstrating leakage of trade from Leighton Buzzard's core catchment area. The attraction of Homebase in Leighton Buzzard is evident from the survey results, attracting around 54% of Zone 8 DIY expenditure.

**Table 3.1: Furniture, Floorcoverings, Household Textiles – Zone 8 Market Share**

Milton Keynes	29.3%
Leighton Buzzard	12.0%
Milton Keynes Retail Parks	10.0%
Aylesbury	5.3%

**Table 3.2: DIY and Decorating Goods – Zone 8 Market Share**

Leighton Buzzard (inc. Homebase)	54.0%
Vale Hundreds Retail Park, Aylesbury	7.3%
Milton Keynes	3.3%
Beacon Retail Park, Bletchley	3.3%

**Table 3.3: Electrical Small Products – Zone 8 Market Share**

Milton Keynes	22.7%
Leighton Buzzard	18.0%
Milton Keynes Retail Parks	10.7%
Aylesbury	6.0%

**Table 3.4: Electrical Large Products – Zone 8 Market Share**

Milton Keynes	25.7%
Leighton Buzzard	14.7%
Milton Keynes Retail Parks	8.0%
Aylesbury	2.9%

- 3.28 Paragraph 5.7 recognises that Leighton Buzzard is trading very well, with a sales density of £6,256 per sq m net. The report states that this possibly indicates a degree of pent up demand in the market, although it is also likely to be a result of small unit sizes in constrained buildings. In terms of 'baseline' floorspace need across the District, the report estimates this to be 1,550 sq m net for comparison goods by 2016, rising to 7,555 sq m net by 2021. This assumes no increase in market share.
- 3.29 Within an increased market share option (of 3%) the forecasts rise to 10,085 sq m net by 2016 and 22,120 sq m net by 2021. Paragraph 5.20 concludes that a market share uplift would only be achievable with the provision of some modern new floorspace to attract larger units to the centre.
- 3.30 Section 8 sets out the recommended development strategy, and concludes that Leighton Buzzard could accommodate 25% of identified need to 2031, equating to 5,553 sq m net by 2021 and 8,645 sq m net by 2031 (in an increased market share scenario). They do not provide any clear methodology for reaching such a conclusion, but provide a general comparison with existing split of turnover and the hierarchy of centres. The figure is intended to provide 'guidance' only.

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- 3.31 The Study emphasises that bulky goods is no longer considered a separate category for which a floorspace need should be identified. Paragraph 5.25 states that applications for retail warehouses should be considered on their own merits, and clarifies that the NPPF allows local authorities to 'set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres'. They highlight the scope for the Council to set a specific policy to deal with such proposals.
- 3.32 Paragraph 5.26 quotes from the Practice Guide (paragraph 6.31) in its discussion of DIY, furniture, carpets and domestic appliances and states that 'in many cases, these forms of development are regarded as complementary to the role of town centre retailing, and do not generate sufficient sales productivity to trade in prime town centre locations'.

### **Central Bedfordshire Employment Land Review, 2012**

- 3.33 GVA was instructed by Central Bedfordshire Council to carry out a Stage 1 and Stage 2 Employment and Economic Study for the area. Stage 1 undertook a detailed review of the allocated employment sites across Central Bedfordshire to assess the 'appropriateness' of supply compared to forecast demand. Both application sites are allocated as Main Employment Areas the land use will be a consideration the Council will need to make when balancing their overall conclusions on the wider planning issues.
- 3.34 Whilst this report is focusing on retail issues, it is relevant to point out that the employment study has identified a large amount of vacant (employment) land in Central Bedfordshire. A high proportion of this is identified to include poor sites which may affect the attractiveness of the employment land market across the area. The application sites are located within an employment allocation concluded as being in adequate condition for B Class employment with some potential for redevelopment.
- 3.35 Section 7 of the Stage 1 report concludes a significant oversupply of industrial land of between 75-100 Ha, although office land is broadly in balance. The level of industrial land supply, significantly outstrips that of demand. A number of sites, particularly those that are existing allocations or existing sites in employment use, are not necessarily prime employment sites and are not considered sufficient in scale and quality to be the strategic employment locations needed in order to achieve the Council's job growth aspirations. These existing allocations and existing sites in employment use are better suited to service local needs.



- 3.36 The Stage 2 report concludes that such sites have historic employment presence which was appropriate at the time but the likelihood of future strategic employment is questionable given the lack of strategic and market drivers. The implications of this are that Central Bedfordshire Council have to implement a flexible planning policy regime to encourage employment growth while providing sites that are attractive to the market.
- 3.37 There is no specific conclusion to de-allocate the application sites, but whilst the employment land review concludes that the quality of the employment land (LB064) – including the application sites – is 'good', the Council must balance the significant oversupply of industrial land, with future land requirements, the encouragement of inward investment and the need for employment growth. The conclusion drawn must be a decision about whether the application sites are needed to achieve these primary objectives.

### **Development Strategy for Central Bedfordshire Pre Submission, January 2013**

- 3.38 The Development Strategy will be the main planning document for Central Bedfordshire. It will set out the overarching spatial strategy and development principles for the area together with more detailed policies to help determine planning applications. It is anticipated that the Plan will be formally adopted in early 2014.
- 3.39 Section 6 sets out the policy framework for employment and the economy and confirms that the Development Strategy will deliver 27,000 new jobs between 2011 and 2031 within Central Bedfordshire. It is anticipated that 45% of new jobs will be from B-Uses with the remaining (55%) being delivered through non-B-Uses. The Council recognises (paragraph 6.20) that B and non B employment generating uses can also be complementary and that there may be opportunities to consider their co-location where appropriate.
- 3.40 Paragraph 6.26 notes that the Stage 2 Economic and Employment Study identifies that in quantitative terms there is sufficient existing supply in Central Bedfordshire to satisfy demand, but that the nature of the supply, in terms of scale, quality and location is unlikely to meet the needs of the warehousing logistics sector in relation to access to major strategic transport routes and the accommodation of the scale of development required. The study also identifies that in order to meet the job targets, the contribution of Non B Class employment generating opportunities must also be considered alongside the delivery of B Class uses.

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- 3.41 Both sites are allocated for employment use, and the Council must consider employment within the wider planning issues when considering both applications.
- 3.42 The draft document comments specifically on retail uses, highlighting that the Council would not generally wish to see inappropriate retail uses located on land allocated for employment generating activities; however, the Council acknowledges that some retail uses such as Bulky Goods provision may be more suited to out of centre locations and will need to be assessed on a site by site basis to ensure that such provision will not detrimentally impact upon the town centres:
- 3.43 Policy 7 relates to employment sites and uses:
- "Across the portfolio of employment land within Central Bedfordshire, planning permission will be granted for appropriate B1, B2 and B8 uses.*
- In order to provide flexibility, choice and the delivery of a range of employment opportunities, proposals for employment generating non-B uses on employment sites will also be considered on a site-by-site basis (in relation to a series of criteria).*
- To support the role and function of the town centres, retail uses will not normally be considered appropriate on employment sites. Exceptions will be considered on a site by site basis for bulky goods and other forms of specialist retailing less suited to a town centre location."*
- 3.44 Section 7 focuses on town centres and retailing, and notes from the outset that the housing growth envisaged within this strategy will lead to a considerably increased population in Central Bedfordshire over the next twenty years. Paragraph 7.3 adds that during this period, comparison and convenience retail expenditure is expected to increase significantly. The document endorses the sequential approach, but adds:
- "It is recognised that certain types of retailing, whilst beneficial to the local economy, may not be appropriate within town centres, particularly bulky goods retailing and other forms of specialist retailing. In order to meet the needs of shoppers and ensure a variety of retail offer within Central Bedfordshire, proposals for such uses will be considered on a case by case basis." (para 7.6)*
- 3.45 Policy 11 sets a local floorspace threshold of 500 sq m gross external for Retail Impact Assessments for those proposals outside a 'designated town centre boundary'. Proposals for bulky goods and other forms of specialist retailing outside of town centre boundaries will be considered, in conjunction with Policy 7, on a site by site basis
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taking into account the suitability of the site, the impact on the town centre, and the potential increase in traffic generation.

## Summary

- The application sites are both out-of-centre and the NPPF confirms that both applications are required to demonstrate compliance with the sequential and impact test;
- The application sites are both allocated as Main Employment Areas in the 2004 adopted Local Plan. Land South of High Street is identified as a key town centre regeneration site in the adopted Plan;
- The 2009 WYG Retail Study concluded that Leighton Buzzard was performing well, with a good range of shopping and service facilities. The study identifies a need for between 6,900 and 9,400 sq m of comparison goods floorspace; and concluded that whilst Land South of High Street could accommodate some of the identified need, there may be a requirement for a new large out-of-centre retail facility being allocated;
- The most up-to-date Roger Tym's Retail Study (September 2012) identifies a need in Leighton Buzzard of 5,553 sq m net comparison by 2021, growing to 8,645 sq m net comparison by 2031. The Council should be wary of forecasting beyond 2021, and in respect of these applications, 2021 must be viewed as the longer term forecast;
- In broad terms, Land South of High Street could accommodate around 1,750 – 2,100 sq m net comparison on the basis that the scheme will include a foodstore anchor. Following the implementation of Land South of High Street, there remains a residual need for around 3,500 sq m net comparison floorspace in Leighton Buzzard by 2021. This is not in itself sufficient to support either of the applications, which must instead rely on a greater level of claw back than tested by Roger Tym;

## 4. Sequential Test

- 4.1 The NPPF confirms that local authorities are required to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. This applies to both applications. Local authorities should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered (para.24). The document adds 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.
- 4.2 Both applicants acknowledge their out-of-centre location and requirement to adopt a sequential approach. In advance of reviewing their submission material in detail, we have discussed the availability of sites with the Council, a process which has identified Land South of High Street and Bridge Meadow as sequentially preferable sites to the two application sites, in terms of distance:
- Land South of High Street: An edge of centre site, but immediately adjoining the existing Primary Shopping Area. A new retail scheme would be seamlessly integrated creating an enlarged Primary Shopping Area; whilst the site is currently edge-of-centre it would be town centre once developed;
  - Bridge Meadows: An edge of centre site, separated from the Primary Shopping Area. The site would remain edge of centre even following redevelopment.
- 4.3 We have already noted that the NPPF gives preference to accessible sites that are well connected to the town centre. In this case, we consider Land South of High Street to be sequentially preferable to Bridge Meadows. Discussions with the Council did not highlight any further sites in town or edge-of-centre locations to be considered as part of the sequential test, and these should be viewed as sequentially preferable unless demonstrated otherwise.
- 4.4 We discuss each applicant's sequential site assessment in turn.

### Site A, Blue Sky Planning Retail Statement, June 2012

- 4.5 Blue Sky Planning considers both Land South of High and Bridge Meadows, both of which are the subject of adopted Development Briefs. They argue that **Land South of**
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**High Street** is not available due to the requirement for complex land assembly; that the site is not suitable for the proposals given the overall objectives for convenience and high street clothing retailing; and that the site would not be viable for the retail warehouse proposals on the grounds of costly land assembly and site preparation, and the requirement to meet design aspirations for the Town Centre.

4.6 Similarly, they argue that **Bridge Meadow** is not available due to complex tenancy and ownership issues, is not suitable for the proposals given the aspiration for a total retail area of 1,000 sq m and maximum unit size of 250 sq m, and is not viable due to land assembly and demolition and remediation works.

4.7 Blue Sky Planning makes no reference to the adjoining Site B.

#### **Site B, Framptons Retail Sequential Assessment, September 2012**

4.8 Framptons also considers Land South of High Street and Bridge Meadow. Their assessment dismisses **Land South of High Street** for broadly the same reasons as Blue Sky Planning. Notably, they consider the site to be unavailable due to complex land ownership issues, unsuitable for their retail warehouse proposals, and unviable due to the requirement for a high design quality in the town's heritage setting.

4.9 The Sequential Assessment dismisses **Bridge Meadow** for the same reasons as Land South of High Street. They argue that the site is unavailable due to complex land assembly issues and a 10-15 year lead in timescale as set out in the Development Brief; that the site is unsuitable because the proposals would not meet the aspirations of the Development Brief in which retail is broadly an ancillary use; and that the site is unviable due to a heritage setting and strong design standards, and complex land assembly.

4.10 They dismiss both Land South of High Street and Bridge Meadow as being unsuitable, unviable and unavailable. Framptons also comment on adjoining Site A, concluding it to be available and viable. They conclude, however, that the site is unsuitable for the following reasons:

- Site A is an undeveloped Greenfield site, as opposed to Site B which is an obsolete and underused brownfield site;
- Site A is further from the town centre, residential areas and bus routes;
- Site A has only one road frontage, whereas Site B has two, enabling a separation of service and customer vehicles;

- Site B is an established commercial use and the locality would consequently experience no impact in terms of traffic generation;
- Site B is already developed and there are not any ecological or archaeological considerations to address.

### **Land South of High Street: Conclusion**

- 4.11 Both applicants dismiss Land South of High Street as unavailable. Whilst the Council acknowledges it is currently unavailable, they have confirmed that they are working to assemble a development site that should become available with an intended start date of 2015/16. The Council already owns a significant part of the site, and they are committing substantial resources and have commenced the assembly of key land parcels.
- 4.12 Both applicants have concluded that the site is unsuitable and unviable. We would concur with this position in respect of the application proposals, on the basis of the very different aspirations for the site set out in the Development Brief. Paragraph 6.46 of the Practice Guidance on Need, Impact and the Sequential Approach states that 'if LPA's suggest alternative, more central sites as being sequentially preferable, they should be satisfied that the alternatives are genuinely likely to be suitable for the scale/form of town centre uses proposed, having regard to their planning policies, their stated intentions for the site, and any other planning conservation or environmental constraints affecting the site'. It is our view that both proposals are inconsistent with the Council's stated intentions for the site.
- 4.13 In terms of viability, we agree that any scheme for Land South of High Street would require strong, quality and high design standards, being a key town centre integrated site. Whilst the Council already owns land, it would be unlikely for either retail warehouse proposal to be viable based on wider planning requirements. Paragraph 6.31 of the Practice Guidance states that 'in many cases, these forms of development (DIY, furniture, carpets and domestic appliances) are regarded as complementary to the role of town centre retailing, and do not generate sufficient sales productivity to trade in prime town centre locations'.
- 4.14 We conclude that whilst the site will become available, it is unsuitable and unviable for bulky goods retailing as proposed by both applicants. This is primarily due to the aspirations of the Development Brief and the complexity of wider planning considerations due to the heritage of the built environment in Leighton Buzzard town centre.

### **Bridge Meadow: Conclusion**

- 4.15 We agree that Bridge Meadow is not available, on the basis that there is no information about land assembly on a clearly complex site. The information to date, within the site's Development Brief, notes a 10-15 year lead in time. We also concur that the site is unsuitable based on the aspirations of the Development Brief which envisages a limited amount of retail, in restricted unit sizes, as part of a wider mixed use scheme. Based on complex land assembly and tenancy issues we conclude the site to be unviable for both proposals. In conclusion, Bridge Meadow is unavailable, unsuitable and unviable for the proposals being put forward.

### **Site A and Site B: Conclusion**

- 4.16 It is our view that both sites are out-of-centre and equally accessible to the town centre. The sites are sequentially equal and both comply with the sequential test, as set out in the NPPF, in respect of retail issues. We conclude that neither application 'fails' the sequential test, on retail grounds only.

### **Summary**

- Both applicants have effectively dismissed Land South of High Street and Bridge Meadow as sequential sites on retail grounds, on the basis that they are unsuitable and unviable in the context of the respective Development Briefs and wider planning policy. The Council should give due consideration to the wider planning issues in advance of forming a decision on the sequential test;
- Both Sites A and B are equal in sequential terms, and both comply with the sequential test, as set out in the NPPF, in respect of retail issues. We conclude that neither application 'fails' the sequential test, on retail grounds only;
- The next Section considers impact issues, including impact on the town centre, and impact on the implementation of Land South of High Street and Bridge Meadow, both sequentially preferable and priority sites in general retail terms.

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## 5. Impact

- 5.1 The NPPF states (para.26) that when assessing applications for retail, leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment. This should include assessment of:
- 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
  - The impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made.
- 5.2 In this case, the applicant must give due consideration to retail proposals on Land South of High Street and Bridge Meadow and demonstrate that the proposals will not compromise either scheme from coming forwards over the plan period.
- 5.3 Our analysis has already demonstrated a 'retail' need over and above the floorspace that could be accommodated on Land South of High Street and Bridge Meadow, but not sufficient to accommodate the full extent of just one of the proposals. Our analysis has also demonstrated, in Section 3, the leakage of 'bulky goods' trade from Zone 8, the zone in which Leighton Buzzard is located, primarily to Milton Keynes town centre and Milton Keynes Retail Parks.
- 5.4 We review each submission document in turn to analyse their respective impact assessments.

### **Site A: Blue Sky Planning Retail Assessment, June 2012**

- 5.5 Blue Sky Planning has based their impact assessment on the White Young Green Retail Study (2009) and has not reviewed the most recent Roger Tym Retail Study (September 2012). Nevertheless, we review their methodology and conclusions, but do compare this to the most up-to-date retail evidence base for Central Bedfordshire in drawing our own conclusions.
- 5.6 Overall, their assessment concludes Leighton Buzzard to be performing well, a conclusion consistent with both the White Young Green (2009) and Roger Tym (2012)



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retail evidence. The applicant concludes that the health of the centre is not reliant on bulky goods retailing, a point we would broadly agree with but would caution that there is likely to be some overlap in goods sold from the town centre and a bulky goods destination. This requires further consideration. Overall, we would concur that Leighton Buzzard is a healthy and vibrant town centre, with no evident signs that there is a strong risk of decline.

- 5.7 The applicant concludes that the proposal would not impact on the implementation of Bridge Meadow on the basis that the proposals for the site are for residential led development with a small amount of retail to be provided as part of a mixed use scheme. We agree with this point given qualitative composition and lengthy timescales.
- 5.8 They highlight that Land South of High Street is the only planned investment within the centre that is proposed to include a significant amount of retail development. This is a priority site in Leighton Buzzard and it is crucial that the proposals do not compromise the scheme from coming forwards. Their assessment concludes that given continued difficult economic circumstances the implementation timeframe for Land South of High Street runs beyond the 5-10 year period and the proposals will not therefore impede on a scheme coming forwards given the much shorter timescales envisaged.
- 5.9 We disagree with this point on the basis that land assembly for Land South of High Street has commenced and early investor confidence in the site is crucial. Implementation timescales might be longer, but an emerging scheme and developer and retailer interest is important from the early stages to ensure the emergence of a viable and deliverable scheme. It is important that the Grovebury Road proposals do not impact on retailer interest in the town centre scheme, and an earlier implementation timescale of the Grovebury Road proposal would not in itself prevent this from happening.
- 5.10 Nevertheless, the assessment goes on to highlight the qualitative difference between the town centre aspirations and the application proposals, emphasising the higher order niche retailers and predominantly fashion orientated goods envisaged as part of the town centre strategy, and the sale of bulky goods as part of the application proposals. We concur that there is a complementary role for bulky goods retail warehouse destinations alongside a town centre offer, and the applicant acknowledges the use of conditions to control the range of goods and minimise any impact arising on the town centre and – importantly – planned investment.
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- 5.11 The applicant concludes that there is sufficient expenditure to support their proposals, the Tesco commitment (1,014 sq m net comparison), and planned investment at Land South of High Street, by 2016. This, combined with the qualitative differences in planned investment, leads them to conclude a negligible impact on existing, planned and committed floorspace. This is, however, based on the White Young Green evidence, which is now out-of-date, and we must consider the proposals against the more up-to-date Roger Tym Retail Study (September 2012). We discuss this later.
- 5.12 The applicant sets out their quantitative impact assessing, demonstrating the levels of trade draw and subsequent impact on different destinations. The assessment notes the levels of trade leakage from Zone 7, a tightly defined survey zone around Leighton Buzzard; and they conclude relatively low levels of trade retention for different goods types (8.6% - clothing / 34.5% - electrical goods / 48% - books, toys, gifts etc / 39.5% - furniture and floor coverings). They conclude that the 32.1% DIY trade retention is primarily accountable for by the nearby Homebase store.
- 5.13 The assessment has disregarded the DIY component (the main DIY unit) from the Town Centre impact assessment on the basis that it will draw no trade from the town centre. This clearly mitigates the levels of impact, although we note that the DIY unit will have a turnover of £3.11m which is a small proportion of overall turnover. Nevertheless, Leighton Buzzard town centre clearly has an element of DIY products on sale and the full extent of the proposed scheme should be tested.
- 5.14 The assessment concludes a 1.9% impact on Leighton Buzzard town centre on the basis that 70% of scheme turnover (£4.87m) will be derived from claw back, and 30% will be diverted from the town centre (£2.09m). They forecast town centre turnover at 2016 to be c.£95m; we consider this to be an over-estimate of turnover based on the most recent Roger Tym figures. Nevertheless, even assuming a lower town centre turnover of around £70m, impact would remain under 3% which we would consider to be an acceptable level, albeit conservative as a consequence of excluding the DIY operator. Their assessment acknowledges some overlap of goods between the two destinations, which we agree to be inevitable, particularly based on the Leighton Buzzard market shares for different goods types set out in Section 3 of this report.
- 5.15 In conclusion, the applicant demonstrates that the town centre is performing well and that provided appropriate conditions are put in place the proposals will provide a retail destination offering goods different to that provided or planned for in the town centre. They emphasise the relatively significant leakage of comparison and bulky goods trade from the core catchment area. We broadly concur with these
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comments and conclusions. They also note the sufficient expenditure to support existing, committed and planned investment in Leighton Buzzard, although this is based on out-of-date evidence, and we discuss this further in the context of the most recent Roger Tym Study later in this section.

### **Site B: Framptons Retail Impact Assessment, September 2012**

- 5.16 The Framptons Assessment was prepared more recently than the Blue Sky Planning submission, and they have therefore had opportunity to consider the findings of the Roger Tym Study when it was produced in Draft. The Roger Tym Study is now final and the quantitative figures remain unchanged from the draft.
- 5.17 Their assessment firstly considers the two planned investments at Bridge Meadow and Land South of High Street, concluding the very different retail offer compared to their proposed retail warehouse scheme. Provided sufficient conditions are put in place on the retail warehouse scheme, we would conclude that the proposed scheme would not deter the effective marketing or delivery of the two preferred town and edge of centre sites. Consideration of a number of other factors must be taken into account, however.
- 5.18 Like Blue Sky Planning, Framptons concluded the health of Leighton Buzzard to be strong; a point we have already concurred with. They note that the proposals would be complementary to the town centre, and again we broadly concur with this view.
- 5.19 Their quantitative impact assessment of trade draw assumes that the Homebase store will continue trading, and we consider this to represent an appropriate worst case scenario. We note that if the Homebase were to close, the proposed retail park would benefit from an element of diversion of trade.
- 5.20 They estimate (letter dated 4<sup>th</sup> January 2013) the turnover of their scheme to be £14.9m, which we consider to be a reasonable assumption; and they emphasise the loss of trade from the core catchment area (65%) as set out in the Roger Tym study, primarily to Milton Keynes and Milton Keynes Retail Parks. They note that leakage to Milton Keynes Retail Parks is 9.4% equating to £16.4m of Zone 8 expenditure, i.e. more than sufficient to support the proposed development. Their assessment states that Leighton Buzzard could achieve a greater market share uplift than suggested in the Roger Tym work (3% uplift) due to the extent of leakage.
- 5.21 Like Blue Sky Planning, the assessment has disregarded the DIY component (the main DIY unit) from the Town Centre impact assessment on the basis that it will draw no trade from the town centre. Again, this mitigates the level of impact arising, although

we note that the DIY unit will have a turnover of £1.8m (letter dated 4<sup>th</sup> January 2013) which is a small proportion of overall turnover. Nevertheless, like the Site A proposals we conclude that Leighton Buzzard town centre clearly has an element of DIY products on sale and the full extent of the proposed scheme should be tested.

- 5.22 Based on the turnover of the unit warehouses only, they assume that 70% of the non-DIY scheme turnover (para.6.33 & letter dated 4<sup>th</sup> January 2013) (£9.2m) will be derived from claw-back expenditure from alternative destinations, and the remaining 30% (£3.9m) would be diverted from the town centre. In 2017, they assume the town centre turnover to reach £80.94m based on the Roger Tym turnover (£67.8m) and a 2% market share increase, equating therefore to a town centre impact of 4.5%. They conclude this to be relatively modest, a conclusion we would broadly agree with, but again we note this is conservative based on the exclusion of the DIY unit.
- 5.23 Frampton's add that if the Homebase were to close as a consequence of Tesco implementing their commitment to extend, the vast majority of the expenditure associated with that DIY store will be diverted to their Grovebury Road proposals. At this stage it is important to assume it will remain open in order to consider a 'worst case' scenario.

### **Conclusions - Retail**

- 5.24 Both applicants make a number of impact points that we broadly agree with:
- Leighton Buzzard continues to perform well, and overall is a vibrant and healthy centre;
  - The health of Leighton Buzzard town centre is not substantially reliant on DIY and bulky goods trade, although we note there will be some overlap of goods;
  - Neither proposal will impact upon the deliverability of Bridge Meadows on the basis of lengthy timescales and the aspirations for a mixed-use scheme with only a small amount of ancillary retail in restricted small unit sizes;
  - Both proposals are complementary to the aspirations for Land South of High Street which is focused on higher order specialist/niche operators, fashion retailers and eating/drinking destinations. The proposals are unlikely to impact on the marketability of Land South of High Street based on the complementarity of the different aspirations;
  - There is a substantial amount of comparison goods leakage (65%) from Zone 8, the zone in which Leighton Buzzard is located. This is not inconsistent with the role of Leighton Buzzard as a lower order centre, but Roger Tym do highlight

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opportunities to claw back some of this trade to increase market share through new retail development.

- 5.25 It is important, however, to consider this in the context of quantitative need and impact, and importantly whether the town centre could withstand the levels of trade diversion being suggested; either individually or in parallel if both schemes came forward.
- 5.26 It is our view that the loss of one or two key retailers in a town centre can commence the process of gradual and continued decline, either through national economic trends, or new development and a consequent significant impact. At this stage we are not suggesting Leighton Buzzard town centre is vulnerable to this at present. We review our qualitative considerations in the context of quantitative need and impact, in order to reach our overall conclusions about the appropriateness of one or both schemes in impact terms.
- 5.27 Roger Tym, in their most recent Retail Study (September 2012) identify a need of only 2,521 sq m net comparison in Leighton Buzzard by 2016 even when incorporating a 3% market share uplift. This figure grows to 5,775 sq m net by 2021, 7,043 sq m net by 2026 and 8,643 sq m net by 2031.
- 5.28 We have already noted that Land South of High Street is intended to accommodate around 2,000 sq m net of comparison floorspace, and the Tesco store has consent for an extension of 1,014 sq m net comparison floorspace. These two schemes absorb all the identified need over the next 5 years, and 3,014 sq m net of identified need by 2021, leaving a residual need of 2,761 sq m net by 2021; i.e. not sufficient to support one of the Grovebury Road application proposals.
- 5.29 Need can no longer be cited as a reason for refusal, but deficiencies can lead to greater levels of impact, and need is therefore a relevant consideration to the impact test. Both proposals would therefore be reliant on trade diversion, both from Leighton Buzzard Town Centre and elsewhere. It is necessary to consider acceptable levels of trade diversion, without leading to any unacceptable impacts on town centres.
- 5.30 Both applicants have identified the leakage of comparison goods trade, primarily to Milton Keynes town centre and retail warehouses in Milton Keynes/Bletchley, and acknowledge the opportunity to claw back trade. As Framptons have pointed out in their assessment, this leakage comprises 9.4%/£16.4m of Zone 8 trade to four retail warehouse parks in Milton Keynes/Bletchley. This figure has been identified from Table

4, Appendix 3 of the Roger Tym Retail Study, September 2012, and we agree with this conclusion.

- 5.31 It is also apparent from the Roger Tym Study that aside from the Milton Keynes Retail Parks there is little Zone 8 trade travelling to alternative bulky goods shopping destinations. Leighton Buzzard town centre is receiving 30.2% of trade; Milton Keynes town centre is receiving 35% of trade; and Aylesbury town centre is receiving 7% of trade. We conclude therefore that there is little bulky goods trade above that being leaked to Milton Keynes retail parks (£16.4m in 2012) that could be clawed back to support the application proposals.
- 5.32 In addition, the application proposals are centred in Zone 8 and any trade diversion from elsewhere in the survey area would more likely result in the creation of unsustainable shopping patterns, contrary to policy. Adjoining Zone 5 and 6 primarily travel to Luton, Dunstable and Milton Keynes town centre; and Zone 9 travel to Bedford, Milton Keynes and retail parks in Kempston and Milton Keynes. Neither applicant has aimed to do so, but there would be little policy argument to alter these shopping patterns.
- 5.33 The applications are therefore reliant on Zone 8 claw back from the four Milton Keynes Retail Parks (£16.4m in 2012). Forecasting ahead to 2016, and drawing on Appendix 3 of the Roger Tym work, the level of Zone 8 leakage would reach £19.4m.
- 5.34 Site B (Framptons) claim that their scheme would claw back £9.2m from Zone 8 leakage; and Site A (Blue Sky) claim that their scheme would claw back £4.87m from Zone 8 leakage, totalling £14.1m of claw back (c.2016). This demonstrates that there is sufficient leakage (£19.4m) to support both applications, although this is marginal. It is relevant to point out that if both schemes were to proceed, there would be an element of 'mutual impact', i.e. the bulky goods schemes would impact upon each other, and would be less reliant on claw back from outside Zone 8.
- 5.35 Site B considers their scheme will divert £3.9m of expenditure from the town centre; and Site A will divert £2.09m; totalling £6m. Roger Tym conclude that Leighton Buzzard had a town centre turnover of £62.3m in 2012 (Appendix 3, Table 5a), equating to a cumulative impact of 9.6%. Forecasting ahead, however, the town centre turnover will reach around £80m by 2016, equating to a cumulative impact of around 7.5%. Again, this is likely to be an overestimate on the basis that both schemes will impact on each other to some extent, thereby reducing the impact on town centre locations.

- 5.36 Provided the schemes are conditioned appropriately, we conclude that there is sufficient expenditure to claw back from bulky goods destinations beyond Zone 8 to support both proposals. This takes into account an element of mutual impact. It is our view that this level of claw back is marginal, and the introduction of any further floorspace over and above the proposed retail park schemes would rely instead on trade diversion from town centres, notably an increasing impact on Leighton Buzzard town centre.
- 5.37 The impact identified is material, but not, in itself, significant in NPPF terms. Given the marginal nature of available expenditure, we would be concerned about any further out-of-centre floorspace given the lack of opportunity for any further claw back and the increased reliance on town centre trade. There is some product overlap with the town centre, and an increasing scale of floorspace in out-of-centre locations will inevitably erode town centre turnover, range of operator and in time the health of the centre.
- 5.38 Based on our own on-site surveys, desk based research and work produced by the group 'I Love Leighton Buzzard' (representing town centre traders) we have identified those retailers in the 'town centre' that would likely overlap in product range with the application proposals:
- T&K Furniture
  - Cee Jay Furniture
  - Halfords
  - Buzzard Sports Goods
  - Millets
  - Dillamores Furnishers
  - Sections Hardware
  - Wilkinson
  - Model Railway Models
  - Fabric World
  - Green Tea Interior Décor
  - Amethyst Interior Décor
  - Ultra Wood Interiors/Furniture
  - Amalfi Tiles
  - Dorvics Cycle Repairs
  - Chainey's Cycles
  - The Kitchen Studio
  - Kingfisher Carpets and Flooring
  - Argos
  - LB Home Improvements Windows and Doors
  - Nutmeg Needle Crafts
  - Stanbridge Interior Decor

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- 5.39 These are primarily focused around the furniture and floorcoverings and home interiors and soft furnishings sectors, and there are few operators selling sports goods and toys. The Council's evidence base documents have also demonstrated the strength of these independent businesses through customer loyalty over a much wider catchment area. Given the overall health of Leighton Buzzard, customer loyalty and the attractive environment in the town centre, it is likely that these retailers will continue to trade well within the wider town centre environment.
- 5.40 In terms of the qualitative considerations, we are reasonably comfortable that the type of scheme being proposed is largely complementary to the existing town centre offer and planned town centre investment. This is in the context of appropriate conditions being placed on any consent restricting the sale of goods; we discuss this later.
- 5.41 We have noted, however, that the cumulative impact of both schemes is marginal based on the limited amount of trade available to 'claw back' into Zone 8. We would caution against any further increase in out-of-centre floorspace if these schemes were granted planning permission given the likelihood of trade diversion from the town centre, and competition with retailers, increasing. Whilst it is usual for out-of-centre retail parks to generally impact on each other given the similar product range and travel habits of shoppers, the amount of expenditure available is not unlimited and trade will instead be diverted from those present in the town centre.
- 5.42 In this case, and provided appropriate conditions are put in place, the claw-back arising as a consequence of the two scheme proposals, will more likely come primarily from competing bulky goods destinations rather than the town centre; paragraph 8.2 of the Practice Guidance states that 'the use of conditions will be appropriate where the consequences of certain types of development could lead to unacceptable impacts'. A greater level of flexibility in the range of goods would be likely to be unacceptable in impact terms.
- 5.43 The level of commercial/market demand for space will eventually determine the success of the schemes; if they are not able to 'claw back' the level of floorspace required they will not let. This may give rise to future pressure to relax conditions, but this is not a reason for refusal when such an application should be assessed on its own merits in the future. The bulky goods proposals are more likely to impact on each other in terms of expenditure and market demand, and the outcome will, to some extent, be left to the market.
- 5.44 We have received initial high level advice from our GVA retail agency team, who have advised that both schemes, independently from each other, would let during
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and after construction, but clearly Site A with fewer units would achieve a fully let status quicker. The consultants for Site A have stated that they would expect only 65% let prior to construction, which would suggest a greater difficulty for Site B to let given the greater number of units.

- 5.45 We understand from our retail agents that it is unlikely that there is sufficient 'bulky' goods demand to let both schemes in this market and the foreseeable future. Clearly, planning permission for both schemes might leave one site vacant and unimplemented leading to pressures to relax conditions in the future. This is a risk, but not in itself a reason for refusal.
- 5.46 We conclude that the cumulative impact of the proposals is material and, in our view, borderline. There is sufficient expenditure available to claw-back from alternative bulky goods retail park destinations to support both proposals, provided the proposals are of a sufficient mix and quality to achieve the trade diversion required. In this context, the cumulative impact of both proposals would not seem to be significant in NPPF terms. The applications must also be considered within the wider planning context including traffic, and employment land, for example.

#### **Restaurant/Bar Proposals (A3/4/5)**

- 5.47 Both applications are proposing eating/drinking units. As noted in Section 2, Site A is proposing a restaurant use of 372 sq.m; they do not provide an impact assessment. Site B is proposing a Drive Thru restaurant with a GIA of 186 sq.m, and a public house/restaurant with a GIA of 604 sq.m. They also do not provide an impact assessment. It is our understanding that the units proposed at Site A and Site B would be defined as A3/4/5 in any planning permission.
- 5.48 The Council have requested consideration of the potential impact of this element of the proposals on the future aspirations for the town centre. The main town centre development aspiration, Land South of High Street, is envisaged to include a quality element of eating and drinking destinations, and it must be considered whether the Grovebury Road application proposals will compromise the aspirations for the town centre from being realised; i.e. leisure operator displacement.
- 5.49 As noted earlier, Leighton Buzzard town centre is performing well with a reasonable eating and drinking offer. Retail agents at GVA have provided information confirming that the drive-thru and pub sectors in respect of retail parks is very active in the current market, with operators seeking space including McDonalds (300-350 sq.m), KFC (230-300 sq.m), Costa Drive-Thru (165 sq.m), Starbucks Drive-Thru (170 sq.m),

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Subway (140-185 sq m), Burger King (230-280 sq m), Marstons public houses (465-600 sq m), Mitchells & Butler public houses (370-465 sq m).

- 5.50 In this context, the Site A proposals are more likely to be targeting a coffee shop or fast-food type operator, and Site B would be looking for both a coffee shop/fast food operator and pub operator with restaurant facilities.
- 5.51 It is our view that the type of supply/demand in respect of either proposal, would be very different to the type of restaurant operator being targeted for the new town centre extension scheme. A pub operator of the type found at retail parks would be unlikely to take space, or be targeted, for a town centre scheme of the type emerging. Similarly, coffee shops trade alongside each other in most towns across the UK, and often operate more than one unit; it would be difficult to argue at this stage that the proposals would compromise the town centre scheme from attracting coffee shop operators such as Starbucks, Costa Coffee and Café Nero, for example.
- 5.52 We conclude that the proposals, on their own or together, would be unlikely to impact on planned town centre investment given the very different target markets that are being targeted and acquiring space on retail park developments.

## Summary

- Leighton Buzzard town centre is performing well, but there is some overlap of goods, particularly in the furniture and floorcoverings category. The proposals would be broadly complementary to the existing overall town centre offer and planned future investment, but the Roger Tym Study identifies limited capacity and a subsequent requirement for trade diversion to support either proposal in quantitative terms;
- The town centre is performing well, the proposals are largely complementary, and there is sufficient available expenditure to claw-back from retail parks in Milton Keynes. The cumulative impact would be material, and the level of available expenditure is borderline, but in the context of the data presented the schemes combined would not have a significant impact. We would be cautious against any further out-of-centre floorspace given limitations in available expenditure;
- Our conclusions are based on a 'DIY and bulky goods' scheme and the Council must implement appropriate conditions to limit the range of goods that would be sold from either development;

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- The A3/4/5 elements of the proposals would be unlikely to impact on future planned investment in Leighton Buzzard town centre given the different target markets.

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## 6. Conclusions

### Proposals

- 6.1 Site A comprises 5 retail units and a floorspace of 6,132 sq m net comparison. Site B comprises 9 retail units and a floorspace of 6,959 sq m net comparison. The key difference in terms of floorspace is that Site A is proposing a larger anchor DIY unit, which we understand does meet current requirements from Wickes/Homebase. We would, however, question the mezzanine assumptions put forward by Site B, which seems conservative.
- 6.2 Site B has a greater number of units and has proposed a more 'open' goods condition to include – in addition to those proposed for Site A – office equipment and stationary supplies, motor vehicles, sports clothing, sports footwear and sports equipment, toys and games, cycles and ancillary goods.

### Policy Framework

- 6.3 The application sites are both out-of-centre and the NPPF confirms that both applications are required to demonstrate compliance with the sequential and impact test. They are both allocated as Main Employment Areas in the 2004 adopted Local Plan. Land South of High Street is identified as a key town centre regeneration site in the adopted Plan.
- 6.4 The 2009 WYG Retail Study concluded that Leighton Buzzard was performing well, with a good range of shopping and service facilities. The study identifies a need for between 6,900 and 9,400 sq m of comparison goods floorspace, and concluded that whilst Land South of High Street could accommodate some of the identified need, there may be a requirement for a new large out-of-centre retail facility being allocated.
- 6.5 The most up-to-date Roger Tym's Retail Study (September 2012) identifies a need in Leighton Buzzard of 5,553 sq m net comparison by 2021, growing to 8,645 sq m net comparison by 2031. The Council should be wary of forecasting beyond 2021, and in respect of these applications, 2021 must be viewed as the longer term forecast.
- 6.6 In broad terms, Land South of High Street could accommodate around 1,750 – 2,100 sq m net comparison on the basis that the scheme will include a foodstore anchor. Following the implementation of Land South of High Street, there remains a residual

need for around 3,500 sq m net comparison floorspace in Leighton Buzzard by 2021. This is not in itself sufficient to support either of the applications, which must instead rely on a greater level of claw back than tested by Roger Tym.

### Sequential Test

- 6.7. The NPPF confirms that local authorities are required to apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. This applies to both applications. Local authorities should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered (para.24). The document adds 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.
- 6.8. Both applicants have effectively dismissed Land South of High Street and Bridge Meadow as sequential sites on retail grounds, on the basis that they are unsuitable and unviable in the context of the respective Development Briefs and wider planning policy. The Council should give due consideration to the wider planning issues in advance of forming a final decision in respect of the sequential test, notably, access, transport and land uses, for example.
- 6.9. Both Sites A and B are equal in sequential terms, and both comply with the sequential test, as set out in the NPPF, in respect of retail issues. We conclude that neither application fails the sequential test, on retail grounds only. At the time of preparing this report, there are no sequentially preferable sites which are available, suitable or viable for the proposed development.

### Impact

- 6.10. In conclusion, there is a clear lack of 'baseline' need for the scale of retail floorspace being proposed, although need can no longer be cited as a reason for refusal, and in any event there are clear opportunities for claw back of trade from further afield. Proposal B would have a greater impact on the town centre. There is more potential for Proposal B to maximise internal mezzanine areas and a total of nine units rather than 5 would create a greater product overlap with the town centre. However, we have concluded that the scheme would not, on its own, have a significant impact on the town centre (in terms of planned and existing offer) if appropriately conditioned.

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- 6.11 The town centre is performing well, the proposals are largely complementary to the existing offer and to any planned development emerging, and there is sufficient available expenditure to claw-back from retail parks in Milton Keynes. The cumulative impact would be material, and the level of available expenditure is borderline, but in the context of the data presented the schemes combined would not have a significant impact in NPPF terms. We would be cautious against any further out-of-centre retail floorspace given limitations in available expenditure. The applications must also be considered within the wider planning context including traffic, and employment land, for example.
- 6.12 The level of commercial/market demand for space will eventually determine the success of the schemes; if they are not able to claw back the level of floorspace required they will not let. This may give rise to future pressure to relax conditions, but this is not a reason for refusal when such an application should be assessed on its own merits in the future. The bulky goods proposals will impact on each other in terms of expenditure and market demand, and will let to operators when the market determines.
- 6.13 We conclude that the proposals cannot be refused on retail impact grounds, and the applications must be considered within the wider planning context including traffic, and employment land, for example.
- 6.14 Our conclusions are based on a 'DIY and bulky goods' scheme and the Council must implement appropriate conditions to limit the range of goods that would be sold from either development. The conditions put forwards by both schemes appear appropriate, and we would not recommend any widening of product category to ensure the maximum protection for the town centre.
- 6.15 Site B has proposed 'sports clothing, sports footwear and sports equipment, toys and games', which are not 'bulky goods'. Our assessment has identified very few operators in the town centre which sell these types of goods, so we conclude a limited impact on the town centre as a consequence. Nevertheless, such goods are sold in the town centre, and the Council should consider tighter restrictions on a planning permission to control, for example, the number of units selling this type of goods (to one per goods type), and the offer of sports 'clothing' being ancillary to a sports equipment operator. This would protect the town centre now and in the future as a possible consequence of changing economic circumstances, market demand and operator formats etc.
- 6.16 The Council should also consider restrictions on sub-division, the merging of units, and the extent of permanent/temporary eating/drinking facilities. This would enable
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control over any future aspirations at the developments if planning permission were granted, allowing the Council to consider changes on a case by case basis.

- 6.17 The Council should seek legal advice on the restrictions presented to ensure they are enforceable and the most appropriate means by which to control the sale of goods and format of units on both developments; i.e. planning permission conditions or an associated legal agreement.



Report

**Appendices**





**Appendix 1**  
**White Lion Retail**  
**Park Legal**  
**Agreement**

Private & Confidential

12 / 00361

25 JAN 2012

DATED

2012

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CENTRAL BEDFORDSHIRE COUNCIL

(1)

and

WHITE LION RP LIMITED

(2)

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**AGREEMENT**

Under Section 106 of the Town and Country  
Planning Act 1990 relating to land at  
Boscombe Road, Dunstable, Bedfordshire

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**Wragge&Co**

Tel +44 (0)870 903 1000 Fax +44 (0)870 904 1099 mail@wragge.com www.wragge.com

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**BETWEEN:**

- (1) **CENTRAL BEDFORDSHIRE DISTRICT COUNCIL** of Priory House, Monks Walk, Chicksands, Shefford, Bedfordshire, SG17 5TQ ("Council"); and
- (2) **WHITE LION RP LIMITED** (incorporated in Guernsey) whose registered office is at Frances House, Sir William Place, St Peter Port, Guernsey, GY1 4HQ("the Owner")

**BACKGROUND**

- A The Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("Act") and the highway authority for the purposes of the Highways Act 1980 and the traffic authority for the purposes of the Road Traffic Regulation Act 1984 in respect of the land edged red on the plan annexed ("Land").
- B By an agreement dated 9 March 2009 (the "Consolidated Agreement") an agreement dated 22 December 1997 together with various supplemental agreements containing planning obligations and covenants regulating the development of the Land were consolidated.
- C White Lion RP Limited is the owner of the Land.
- D Having regard to the provisions of the development plan and all other material considerations the Council has agreed to vary certain provisions of the Consolidated Agreement.

**1 Definitions**

In this agreement the following words shall have the following meanings:

"1990 Act" means the Town and Country Planning Act 1990 (as amended);

"Application" means the applications submitted to the Council on 25 January 2012 and given reference number \_\_\_\_\_ to modify the Consolidated Agreement;

"Development" means the proposed changes to the Consolidated Agreement outlined in this Agreement;

"Land" means the land edged red on the Plan;

"Link Road" means the land shaded yellow on the Plan;

“Original Planning Application” means the application for planning permission in respect of the site that was submitted to South Bedfordshire District Council on 21 April 1998 and which was which was allocated statutory registration no. SB/TP/98/0413;

“Original Planning Permission” means planning permission reference SB/TP/98/0413 granted by South Bedfordshire Council on 26 August 1998;

“Plan” means plan reference URB WL [07] 0002 attached to this agreement; and

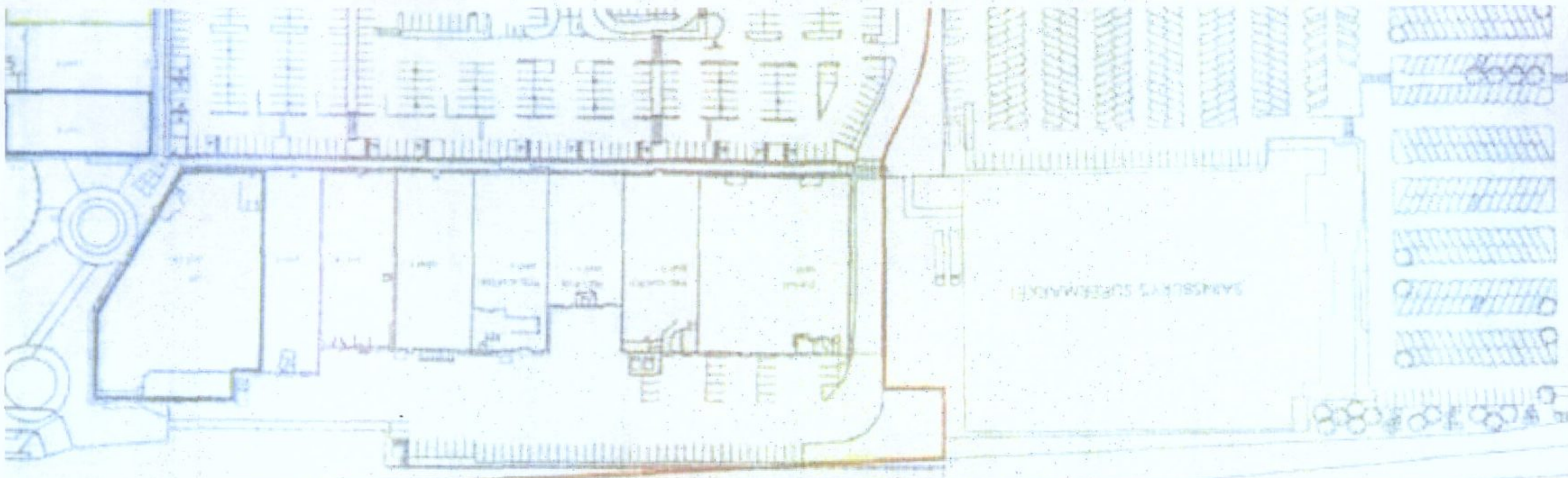
“Pre-existing Agreements” means all agreements made pursuant to section 106 of the 1990 Act binding on the Land prior to the date of this agreement including but not limited to the Consolidated Agreement;

“Retail Buildings” means the retail units within class A1 of the Town and Country Planning (Use Classes) Order 1987 constructed on the Land from time to time.

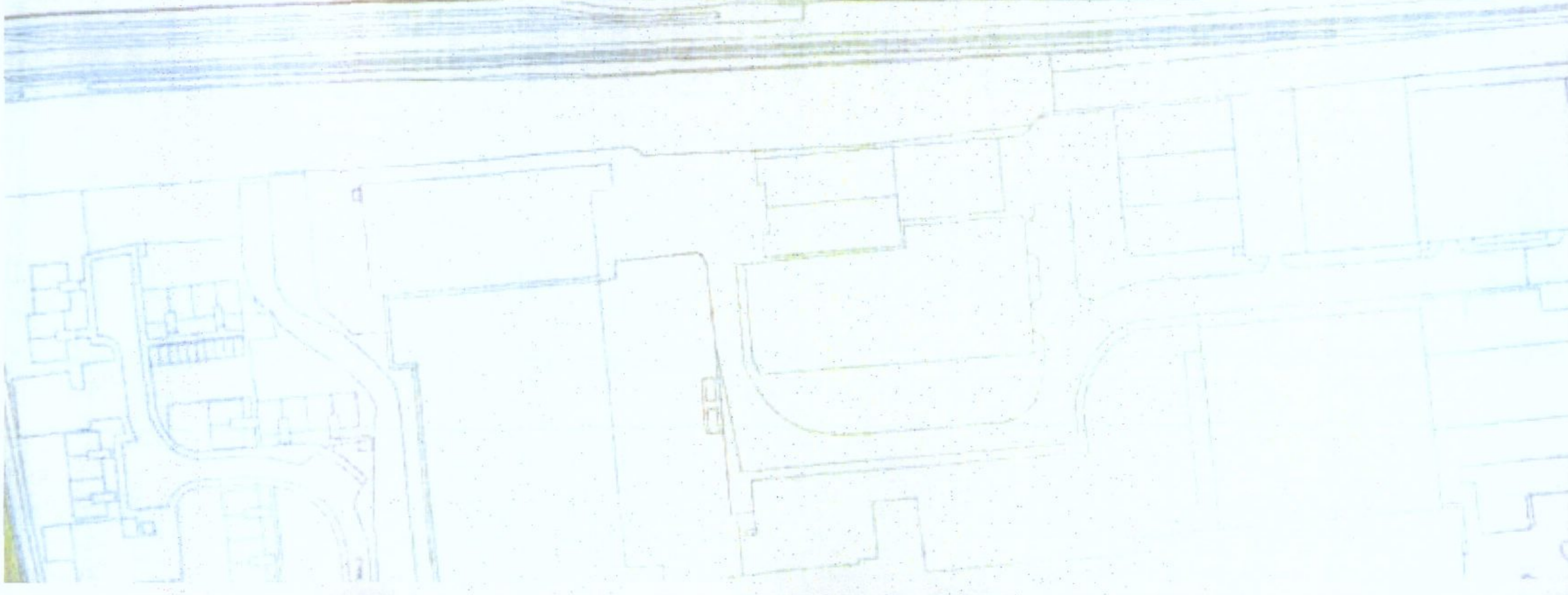
## 2 Interpretation

In this agreement (unless the context otherwise requires):

- 2.1 references to any party shall include the successors in title of that party and those deriving title through that party;
- 2.2 the words “including” and “include” and words of similar effect shall not be deemed to limit the general effect of the words which precede them;
- 2.3 words importing persons shall include firms, companies and bodies corporate and vice versa;
- 2.4 words importing the singular shall include the plural and vice versa;
- 2.5 words importing any one gender shall include either gender;
- 2.6 construction of this agreement shall ignore the headings, contents list and front sheet (all of which are for reference only);
- 2.7 references to a numbered clause, schedule, paragraph or appendix are references to the clause, schedule, paragraph or appendix of or to this agreement so numbered;
- 2.8 any reference to any statutory provision order or instrument shall be deemed to



SAKSHI'S SUPERMARKET



include any subsequent re-enactment or amending provision other than references to the Town and Country Planning (Use Classes) Order 1987 which shall be a reference to that instrument as in force at the date of this agreement;

- 2.9 an obligation to do something includes an obligation to procure it to be done;
- 2.10 an obligation not to do something includes an obligation not to cause, permit or allow it to be done;
- 2.11 where any approval, consent or agreement is required from any part under this agreement, that approval, consent or agreement shall not be unreasonably withheld or delayed;
- 2.12 where the approval of the Council is required under this agreement approval is to be given in writing by the Development Control Manager for the time being of the Council or his successor in function or such other officer as he may appoint to act on his behalf.

### **3 Legal Effect**

- 3.1 This agreement is a planning obligation by agreement made pursuant to the provisions of section 106 of the 1990 Act section 2 of the Local Government Act 2000 and all other enabling powers with the intention of binding the Land.
- 3.2 This agreement shall take effect immediately at which time the Pre-existing Agreements shall be of no further effect in relation to the Land.
- 3.3 This agreement is enforceable by the Council as local planning authority.
- 3.4 This agreement is a local land charge under the Local Land Charges Act 1975 and may be registered by the Council as such.
- 3.5 The Owner shall not be liable for any breach of this agreement in respect of any period during which it no longer has an interest in the Land or the relevant part of it to which the breach relates but without prejudice to liability for any subsisting breach prior to parting with such interest.
- 3.6 If at any time any provision in this agreement is or becomes illegal, invalid or unenforceable the legality, validity and enforceability of the remaining provisions shall not in any way be affected or impaired in consequence.

- 3.7 A person who is not a party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 3.8 Nothing in this agreement shall be construed as restricting the exercise by the Council of any of its statutory powers.
- 3.9 This agreement shall be governed by and construed in accordance with English law and the parties hereto irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute or matter arising out of or connected with the Agreement.

#### **4 Agreement**

The parties agree that from the date of this agreement the Pre-existing Agreements shall be of no further effect in relation to the Land and shall not be enforceable against the Owner and the Council will cancel entries of the Pre-existing Agreements from the Register of Local Land Charges in relation to the Land.

#### **5 Restrictions on Floor Area**

- 5.1 The Owner agrees with the Council not to extend or alter any of the Retail Buildings except in accordance with planning permission granted by the Council provided that nothing in this clause shall prevent:
- (a) the creation of internal floor space at first floor or mezzanine level for use for retail purposes within:
    - (i) that Retail Building shown edged yellow on the Plan subject to a limitation on the creation of mezzanine retail floor space of 929.03 square metres (10,000 square feet) gross internal floor area;
    - (ii) that Retail Building shown edged pink on the Plan;
    - (iii) that Retail Building shown edged blue on the Plan subject to a limitation on the creation of mezzanine retail floor space of 418.06 square metres (4,500 square feet) gross internal floor area; and
    - (iv) that Retail Building shown edged green on the Plan subject to a



limitation on the creation of mezzanine retail floor space of 1,380.54 square metres (14,860 square feet) gross internal floor area;

- (b) the creation of further internal floor space or mezzanine level within any of the Retail Buildings provided always that unless otherwise agreed in writing by the Council such floor space located within such Retail Buildings:
  - (i) is not used for retail purposes; and
  - (ii) is only used for ancillary purposes including office and storage purposes; and
  - (iii) is not available for access by the public;
- (c) the amalgamation of two or more of the individual Retail Buildings to create a larger unit or units.

5.2 The parties agree that notwithstanding any of the provisions in clause 5, nothing in this agreement shall allow or permit the number of Retail Buildings on the land to be less than four or greater than 16.

5.3 The Owner agrees with the Council not to alter or divide any of the Retail Buildings or to create any new Retail Buildings so as to cause:

- (a) any Retail Building to have a gross internal ground floor area of less than 325 square metres (3,500 square foot); and
- (b) at any time more than five of the Retail Buildings to have a gross internal ground floor area of between 325 square metres (3,500 square foot) and 674 square metres (7,255 square foot); and
- (c) the remaining Retail Buildings to have a gross internal ground floor area of less than 674 square metres (7,255 square foot).

## **6 Restriction on Franchisees**

The Owner agrees with the Council not to permit franchisees to use or occupy in aggregate more than 30 per cent (30%) of the gross internal ground floor area of any of the Retail Buildings (including any new Retail Building created pursuant to the provisions of clause 5.3).

## 7 Restriction on Goods Sold

- 7.1 The Owner agrees with the Council not to use or occupy the Retail Buildings other than for the retailing of DIY products (including tools, buildings supplies, gardening products and ancillary items), furniture, carpets, floor coverings, household fabrics, office equipment and stationary supplies, motor vehicles, cycles and ancillary goods, electrical goods and gas appliances, pets and pet supplies and for the avoidance of doubt no other purpose within class A1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 provided always that nothing in this clause shall prohibit ancillary sales of hot and cold beverages and food and confectionary for consumption in or outside the Retail Buildings.
- 7.2 The Council agrees with the Owner that notwithstanding the provisions of clause 7.1 The Owner shall be entitled to cause or permit the Retail Building shown edged green on the plan annexed having a maximum gross internal floor space of 4,449.41 square metres (47,893 square feet) to be used or occupied by Dave Whelan Sports Limited having its registered office at Whelco Place, Enfield Industrial Estate, Enfield Street, Wigan, WN5 8DB (registration number 06846128) ("DW Sports") for the sale of sports clothing, sports footwear and sports equipment and for health club facilities and provided always that not more than:
- (a) 2,367.54 square metres (25,484 square feet) shall be used or occupied for health club facilities; and
  - (b) 1,380.54 square metres (14,860 square feet) shall be used or occupied for retail sales of which no more than 929.03 square metres (10,000 square feet) shall be used or occupied for the retail sale of sports clothing and sports footwear.
- 7.3 The Council agrees with the Owner that notwithstanding the provisions of clause 7.1 the Owner shall be entitled to cause or permit one of the Retail Buildings having a maximum gross internal floor area of 929.03 square metres (10,000 square feet) to be used or occupied by First Choice Holiday Hypermarkets Limited ("First Choice") whose registered office is at First Choice House, London Road, Lowfield Heath, Crawley, West Sussex RH10 9GX and whose registered company number is 3647615.
- 7.4 In the event that either First Choice or DW Sports cease (or intend to cease) to use or occupy the relevant Retail Building(s), the Owner may:

- (a) request the Council's written approval, such approval not to be unreasonably withheld or delayed, to the occupation of the relevant Retail Building by a new occupier provided that the new occupier will continue the same use of the relevant Retail Building as First Choice or DW Sports as the case may be; and
- (b) if no response is received from the Council within 56 days of the request pursuant to clause 7.4(a) then the Council's approval will be deemed to have been given; and
- (c) provided that the Council's approval is obtained pursuant to clause 7.4(a) or is deemed to have been given pursuant to clause 7.4(b) the new occupier shall be allowed to occupy the relevant Retail Building on the same basis as First Choice or DW Sports, as appropriate, and such occupation shall not constitute a breach of clause 7.1 of this agreement.

7.5 Provided always that in the event that either or both of First Choice or DW Sports cease to use or occupy the relevant Retail Building(s), and no agreement of the Council to a new occupier has been obtained pursuant to clause 7.4, such Retail Building(s) shall be only occupied for the uses specified in clause 7.1 unless otherwise agreed in writing with the Council.

## 8 Indemnity

- 8.1 The Owner shall indemnify and hold the Council harmless against any claim for compensation, loss or damage whatsoever arising out of, or incidental to the carrying out of, the Link Road works (other than in respect of claims arising from the negligence of the County Council, its employees, agents or contractors) and against all charges, costs, and expenses in connection therewith and arising therefrom and in particular, but without prejudice to the generality of the foregoing, to indemnify and hold the Council harmless against all claims, charges, costs and expenses arising out of, or incidental to, the use of the Link Road by public service vehicles and made under, or arising from, Part 1 of the Land Compensation Act 1973 and the Noise Insulation Regulations 1975 and any amendments thereto.
- 8.2 White Lion RP Limited has no obligation to meet any claim or liability under this deed except to the extent that the assets for the time being in the hands of White Lion RP Limited are sufficient for that purpose.

THE COMMON SEAL of CENTRAL )  
BEDFORDSHIRE COUNCIL was hereunto )  
affixed in the presence of: )

Authorised Signatory

EXECUTED as a DEED on behalf of )  
WHITE LION RP LIMITED )  
acting by )  
)

Director

Director/Secretary