

Dear Andrew

I am writing with deep concern for the town centre following the decision by CBC to grant planning permission to the EDS "out of town" retail park. I know how supportive you are of local business, the community, and local enterprise. Indeed, you are our champion and I so beg you to lobby the Minister on our behalf for a call in

I hope that I am not too late for this letter to be relevant; alas this type of focused concentration on legal argument is so slow due to the fog like mental state that goes with ME/CFS. SO many apologies for taking so long to write to you on this.

I have put a lot of work into this as I wanted to make sure that I genuinely had a different argument to the Judicial review that I took against the Claymore "out of town" retail park as I very firmly believe that the time of the legal system should not be wasted

. After three weeks of working really hard on this I am convinced that if this decision is not called in there is a different and much much stronger case for Judicial Review than on the Claymore based the Wednesbury Test of Unreasonableness and the ruling of Tesco Stores Ltd v Dundee City Council re the duty of Planning authorities to follow their Development plan.

The planning decision on the EDS site is not in accordance with the policies of the development plan which consists of some saved polices from the 2004 South Bedfordshire Local Plan, the NPPF and the technical evidence base of CBC. Therefore, it goes against the ruling in the Tesco Stores Ltd v Dundee City Council para 17 that "The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: ... His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it. "Although the ruling continues with acknowledgement that that judgement must be exercised by the planning authority's ties, it does also say "Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean". The decision also goes against the Wednesbury Test of Unreasonableness as the statement that the town centre is not suitable for bulky goods and not reliant on DIY is contradicted clearly and obviously by the evidence of your eyes if you walk through the town centre as there is a long list of DIY and bulky goods shops in the town centre.

I am also concerned that the Development Management Committee were misled by the councillors from Leighton Buzzard regards the state of the town centre and the possibility of linked trips and this influenced incorrectly their decision; Cllr Dodwell speaking as the ward councillor to the committee, many of whom lived the other side of the local authority area to Leighton Buzzard stated that the town depended on specialist shops and coffee shops but if you wanted a sofa or DIY you had to go to Milton Keynes . Leighton Buzzard has two large furniture stores in the town centre; one of which is over 800sqm and a similar sized domestic appliance shop, hardware and DIY shops in the town centre with Jewsons 100m from the town centre and Homebase about 400 metres, with Screwfix and Travis Perkins closer to town on Grovebury road than the EDS retail park. This contradicts the CBC retail Study ( Tym) 2013. Cllr Dodwell also

stated that people would be likely to travel into the town centre after the visiting the retail park. This misled the councillors as she did not mention the high level of congestion along Grovebury Road which makes travel into the town centre by car extremely difficult and walking unpleasant.

There are serious concerns as there is a high demand for employment land in the area as articulated by Cllr Spur in the planning meeting, supported by updates from CBC to the Partnership Committee, as well as the saved policy E1 from the South Bedfordshire Local Plan as well as the CBC technical evidence base which is a material consideration so the loss of this site for employment land is concerning. The arguments that there is little reasonable prospect of employment uses on this site in the middle of an employment area that is in high demand, are based on documents not in the public domain and that do not appear to have been shown to Cllrs on the planning committee.

A "Call In" is needed as this decision could really negatively affect economic growth of the town and the wellbeing of the town centre especially independent local traders and the 100-year-old market. This could really impact on the fact that the area is an area of housing growth beside the new strategic A5-M1 link. The resulting congestion of the two retail parks could cause serious problems for the industrial area and the link onto the new strategic A5-M1 link.

This decision also undermines the evidence base on employment and retail for the core strategy which could harm the progress of the core strategy which the area so needs.

A public inquiry is the best vehicle to examine the strength of the arguments on both sides and come to a fair decision is because of the detail and complexity of retail and employment arguments.

Please don't let the legacy of a Conservative Council with a Conservative MP be the demise of Leighton Buzzard's high street, local businesses and the 1000-year-old market. Towns without "out of town" retail parks have low town centre vacancy rates such as Thame -3%, Reigate 1.8%, Rickmansworth 2%, Henley Upon Thames 4%, Epping 1% and Leighton Buzzard until up to now, whereas town centres with "out of town retail parks" have higher vacancy rates. Dunstable has town centre vacancy rate of 17%. It is very concerning that Cllr Young is so keen to use the example of Dunstable as a reason to support the out of town retail park the town centre success of Dunstable.

I am begging you to also consider the social and community costs of the retail parks. Leighton Buzzard has an unusually high number of independent local retailers with two large furniture shops, DIY, pet's shops, as well as some specialist shops. These along with the market traders play a huge role in the local community. For those on a state pension, who can't afford to go out in the evening or to pay for activities and hobbies, coming into town and talking to market traders and local shop keepers often is major part of their social life and support structure. This in turn supports the living longer living independently agenda and reduces costs to social care and the NHS.

The town has a 1000-year market and an active farmers market supporting local British farmers. Loss of footfall could really damage the market trader who are already suffering a down turn in

trade. With rising town centre car parking charges, rising business rates, the change to national insurance, the pressures on small business are huge at present. And it is very likely that we could lose three of the largest retailers in the town which could really harm the town centre according to the latest report from CBC on retail in Leighton Buzzard. I know that TK furniture, Dillamores and Cee jays are coming to see you on 7<sup>th</sup> April as they are all concerned as to whether they can continue

Below are the detailed reasons for a Call In.

I do hope that you can persuade the minister to "Call in" the application

## Detailed reasons

### Employment grounds.

**Summary ;** There has to be a clear and consistent understanding of the development plan as well as a clear understanding of the reason why it has been departed from. I argue that both the officers report and the Development Management Committee showed a lack of understanding of the development plan/ NPPF. In addition the evidence for the departure from the development plan is based on documents that are not in the public domain and appear not to have been shown to councillors. There is a large body of evidence from CBC showing a shortage of employment land in the area.

- 1. There has to be a clear and consistent understanding of the development plan and this has been clarified in case law;** *Tesco Stores Ltd v Dundee City Council* states . para 17. *It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, Gransden & Co Ltd v Secretary of State for the Environment (1985) 54 P & CR 86, 94 per Woolf J, affd (1986) 54 P & CR 361; Horsham DC v Secretary of State for the Environment (1991) 63 P & CR 219, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them."*
- 2. It is understood that an exercise of judgement by the planning authority is needed but it needs to be reasonable;** Para 19 *"As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.*

3. **The judgement continues to clarify this by further explaining that the planning authority has to follow the meaning of the words in the development plan in para 20**  
*“If there is a dispute about the meaning of the words included in a policy document which a planning authority is bound to take into account, it is of course for the court to determine as a matter of law what the words are capable of meaning. If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy.”*
  
4. **Therefore the decision has to be based on an understanding of the development plan. The Development Plan in this case as regards employment is the saved policy E1 from the South Bedfordshire Local Plan and the NPPF and the technical evidence base from the previously submitted Core strategy which CBC describes in the officers report page 69** *“At the meeting of Full Council on 19 November 2015 it was resolved to withdraw the Development Strategy. Preparation of the Central Bedfordshire Local Plan has begun. A substantial volume of evidence gathered over a number of years will help support this document. These technical papers are consistent with the spirit of the NPPF and therefore will remain on our website as material considerations which may inform further development management decision”* I would argue that in the absence of a core strategy the latest technical updates commissioned by CBC also are a material consideration.
  
5. **CBC was criticised for its plan making abilities and understanding of the local employment situation by the Inspector in the examination of CBC’s previous draft core strategy.** The CBC core Strategy was withdrawn in 2015 on the Inspector’s advice due to the failure of the Duty to Cooperate on housing but also on employment.. The report was very critical of both the policies and the lack of evidence base on employment land allocation. The report stated <http://www.colchester.gov.uk/CHttpHandler.ashx?id=17782&p=0> para 58.” *The Plan identifies land to support the delivery of an additional 27,000 jobs over the Plan period. This is stated to be an aspirational figure and, as far as I can tell from the limited discussion held during the Examination to date, is only tenuously linked to any assessment of future employment growth.*  
**59. There is no evidence that the Council has undertaken the identification of the functional economic market area(s) (FEMA) affecting Central Bedfordshire as advocated in the PPG. I”**
  
6. **The Inspector highlighted the lack of cooperation with Luton over accommodating the need for employment land from Luton.** *Para 62.Cllr Young defends the Plan’s approach to employment provision suggesting that LBC’s emerging homes: jobs provision is not balanced and that a more flexible approach to employment land could boost housing supply in Luton where it is most needed. This reinforces my observation about the lack of acceptance of LBC’s urban capacity estimate.”*
  
7. **The Inspector then gives a conclusion that is very critical of Central Bedfordshire Councils approach to planning for housing and employment land in the context of the Duty to Cooperate; para67.”** *In summary, there is almost no evidence of any active, constructive and ongoing engagement on this important cross-boundary issue. The differences between the Council and LBC seem to be part of their wider failure to reach an accommodation on housing provision. The uncertainty of other neighbouring authorities over*

*the nature and effects of the employment approach pursued in the Plan simply could not have arisen in my judgement had the Duty been complied with on this matter.”*

8. **Furthermore CBC’s own technical evidence base for the core strategy (withdrawn in 2015 )shows a shortage of employment land and as I explained in paragraph 4 this technical evidence base is considered a material consideration.** The Local Economic assessment by GVA for CBC 2012 and used as supporting evidence for the submitted draft core strategy( withdrawn 2015) shows a shortage of employment land supply in Central Bedfordshire Council [http://www.centralbedfordshire.gov.uk/Images/economic-assessment-2014\\_tcm3-7430.pdf](http://www.centralbedfordshire.gov.uk/Images/economic-assessment-2014_tcm3-7430.pdf) 1.22 *Providing suitable employment land and premises for existing businesses to grow and new businesses to locate in Central Bedfordshire and create jobs is a priority for the Council, however in the last year, the loss of employment land to other uses has outweighed the gains. Some of the main losses have been in office space in areas like the Dukeminster Estate in Dunstable, however some of this land has been replaced with residential and extra care, which will provide additional employment opportunities. Central Bedfordshire Council has worked closely with partners to improve provision of premises that meet business needs, and this is evident in the opening of the Incuba Centre in Dunstable to provide office space for small and start up businesses. Nevertheless, the loss of land may need to be considered in relation to longer term jobs growth.”*
9. **The statements in the Officer report then surely shows a lack of understanding by officers and Cllrs of CBC of the development plan in light of the Inspectors report on the previous core strategy submission which suggesting that the employment needs of Luton had not been accommodated , and the Local Economic Assessment 2012 for the core strategy , the policy E1 in South Bedfordshire Local Plan, and with the overwhelming evidence from CBC of shortage of employment land in the area provided further on in this document. The officer’s report gives the impression of widespread availability of land para 2.3 “Large scale employment, particularly class B8, uses are generally seeking locations with easy access to the principal road network particularly the M1 motorway. Other sites suitable for such uses are available within Central Bedfordshire and have outline planning, for example the Houghton Regis North sites.”** This surely fits into the Humpty Dumpty description of plan making in *Tesco V Dundee* “**they cannot make the development plan mean whatever they would like it to mean.**” Para 19 *TescoStoresLtd v Dundee*
10. **The Officer report’s comments on employment land availability contradict the saved policy from South Bedfordshire Local Plan adopted 2004; policy E1** “Within main employment areas, defined on the proposals map, planning permission will not be granted for uses other than B1, B2 or b8 of the use classes order 1987.The point of this policy is explained .para 1 “ *The Employment Land Audit has enabled the District Council to identify those parts of the employment land resource which by virtue of their location, accessibility, proximity to main residential areas, relationship to public and private transport infrastructure and facilities, adjoining uses, size and site configuration, can be considered to be suitable for a wide range of B1-B8 use and appropriate for modern industrial and*

*commercial business. These 'Main Employment Areas' represent the principal source of land to meet the needs of the local population for jobs and the requirements of industry and commerce. They comprise the sites and premises which the District Council considers have greatest value in these respects"* **Therefore this area on Grovebury road has been allocated as a main employment in policy E1 as it is most suitable for employment due to a host of reasons including closeness to transport infrastructure. In addition to this argument of 2004 the new A5-M1 strategic link road is about to be opened this year and so this will, strengthen the accessibility to transport infrastructure hence supporting the allocation of the area for industrial use. This is in direct contradiction to the line in the officers report "Large scale employment, particularly class B8, uses are generally seeking locations with easy access to the principal road network particularly the M1 motorway."**

**11. The development plan still allocates this area as employment land to meet the anticipated needs of business.** The CBC Development Plan in the absence of up to date policies/ core strategy consists of saved polices from South Bedfordshire Local Plan adopted 2004 and the NPPF. The NPPF para 21 and 22 are relevant to employment land. **The NPPF states in para 21 "local planning authorities should:• set criteria, or identify strategic sites, for local and inward investment to match the strategy and to meet anticipated needs over the plan period;"** Saved Policy E1 of the South Bedfordshire Local Plan explains that this area has been allocated for employment due to its audit and evaluation of future industrial needs. *" The Employment Land Audit has enabled the District Council to identify those parts of the employment land resource which by virtue of their location, accessibility, proximity to main residential areas, relationship to public and private transport infrastructure and facilities, adjoining uses, size and site configuration, can be considered to be suitable for a wide range of B1-B8 use and appropriate for modern industrial and commercial business. These 'Main Employment Areas' represent the principal source of land to meet the needs of the local population for jobs and the requirements of industry and commerce. They comprise the sites and premises which the District Council considers have greatest value in these respects*

**There is no evidence base from CBC to support the removal of the allocation of this land for employment.** Indeed the Inspector in 2015 on CBC's core strategy stated *There is no evidence that the Council has undertaken the identification of the functional economic market area(s) (FEMA) affecting Central Bedfordshire as advocated in the PPG. "* The evidence base that I am about to go through in detail in the paragraphs below increases the support of this allocation.

**12. Recent evidence from CBC shows that there is a high demand for employment land in Leighton Buzzard. CBC updates to the Partnership Committee of Central Bedfordshire Council and Leighton Linlade Town Council show a demand for more employment land.** The Partnership Committee had an update from CBC in June 2016; item 10 on the agenda which states in para 2.3 page 4 of the agenda item; *"The feedback from the commercial agents is that there continues to be a shortage of freehold land or industrial units but they are receiving positive feedback about Leighton's proximity to the new A5 – M1 link, which should create further interest in the area as a result of the improved connectivity*

to the M1.” (this item is attached). The Partnership Committee was also updated in December 2016 by CBC in item 8 on the agenda in section 2.2 “Be Central Bedfordshire website [www.becentralbedfordshire.co.uk](http://www.becentralbedfordshire.co.uk)) continues to attract interest from potential investors with 7000 visits to the site and 750 property searches since 1st April 2016, with Leighton Linlade featuring prominently.” (this item is attached)

13. **In 2014 November , CBC ( Abel Banu) advised the applicant of the need for industrial land in the area and so did not support a change to residential.** This is in the supporting document (Appendix B A7) also attached. The applicant considered residential development and had contacted CBC .This is in the supporting document (Appendix B A7) also attached. CBC stated that “ *the report also notes a number of business in and around the area unable to locate suitable premises. It continues “ I would note that the recent A5-M1 link has the potential to transform access to the site from a commercial perspective.”* It continues that “*Certainly with the Councils plans to facilitate 27,000 new jobs by 2031 there is very much a need to provide a range and choice of business premises to facilitate this.*” (The officer in this instance mentions the possibility of wider employment generation, but there is not an evidence base supplied to support this departure from the development plan and the evidence of lack need for industrial land in the area)
  
14. **Cllr Spurr, executive member for Community Services for CBC ( until 10/3/17) spoke at the Development Management meeting on 1/3/17 to say that there was a need for employment land in the area.**
  
15. **CBC turned down in February 2013, a similar ( slightly larger )retail development ( Barwoods) in Grovebury road in 2013 due to loss of employment land.** Below are the minutes with the reasons for refusal.  
<http://centralbeds.moderngov.co.uk/documents/g4108/Public%20minutes%20Wednesday%202013-Feb-2013%2010.00%20DEVELOPMENT%20MANAGEMENT%20COMMITTEE.pdf?T=11> item 10 page 21 CB/12/03290/OUT LOCATION Unit 7, Grovebury road “*That Planning Permission be REFUSED for the following reasons; (1) In line with South Bedfordshire Local Plan Review Policy E1, Policies 6, 7 and 8 of the emerging Development Strategy for Central Bedfordshire and national guidance contained within the National Planning Policy Framework, the Council seeks to maintain an appropriate portfolio of employment land within Central Bedfordshire. The application site forms part of a designated Main Employment Area as defined on the proposals map of the South Bedfordshire Local Plan Review 2004 and the policy map of the emerging Development Strategy for Central Bedfordshire wherein the Local Planning Authority’s primary objective is to encourage Business, General Industrial or Storage and Distribution development. The application site falls within an area identified as being in adequate condition for B Class employment with some potential for redevelopment taking account of factors including the quality of stock, access to amenities, the adequacy of site servicing, strategic road access and public transport provision (CBC 2012 Employment Land Review). The main source of demand for B Class premises in Leighton Buzzard is generated as a result of expansion by locally based*

*firms, and some relocation from nearby areas (Luton and South Beds Employment Land and Market Assessment Study, NLP 2010). In this case, there is an expressed need for low cost warehousing to support the expansion of locally based firms as demonstrated by the present/recent occupation of the premises and by third party representations received from a major local employer in response to the application. In light of this demonstrated demand, it has not been adequately shown that there is no viable prospect of the site delivering a B Class use, including through the redevelopment of the site to provide modern units for the local market. Taking account of the supply of B Class land within Leighton Buzzard itself and the scale, quality and location of the site, the proposed development would detrimentally impact upon the supply of B Class land within the locality. The proposal is therefore contrary to Policy E1 of the South Bedfordshire Local Plan Review 2004, Policies 6, 7 and 8 of the emerging Development Strategy for Central Bedfordshire and national guidance contained within the National Planning Policy Framework.*

**The decision on the Planning balance: Whether there is a reasonable prospect of the site being used for allocated employment land.**

- 16. The officers argue in their report that there is little chance of employment uses except at a much lower rate than other employment areas and the retail park para 2.3**”*The applicants have advised that as well as the current units being unattractive for reuse and occupation they have advised that there has been no interest in the comprehensive redevelopment of the site for B class employment uses. para 2.4 The proposed non-B Class development is considered acceptable given the current low level of employment use on the site when compared to the proposed uses.”*
- 17. The CBC Development Plan appears not to support this.** The Development Plan consists of the following; the saved policy E1 from the South Bedfordshire Local Plan saved policy E1 from the South Bedfordshire Local Plan, the NPPF and the CBC technical evidence for the previous core strategy submission. The saved policy E1 gives no option for this departure from allocated employment land. The NPPF. Para 21 states *“Planning policies should avoid the long term protection of sites allocated for employment use **where there is no reasonable prospect of a site being used for that purpose.** Land allocations should be regularly reviewed. **Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.”** Moreover the CBC technical evidence (which the officers report says is a material consideration) which includes the GVA report Central Bedfordshire Council Employment & Economic Study – Stage 2 Final Report August 2012 . The GVA technical report supports a policy in the draft core strategy for a strict criteria for scoring the prospect of future employment which does not support open A1 policy retail . The following extract is from the GVA report Central Bedfordshire Council Employment & Economic Study – Stage 2 Final Report August 2012 *“Policy 7: 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 the following criteria. • the supply pipeline available for B1, B2 and B8 uses within the locality; • the suitability and impact of the proposal in relation to the location and neighbouring land uses; • an increase in the number of jobs that can be delivered; • traffic generation and suitable accessibility; and • the potential to strengthen existing clusters through the delivery of**



*complementary employment generating uses. 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. GVA Critique 4.50 **Broadly this is a strong policy which clearly defines the locations of employment sites across Central Bedfordshire. This is necessary and brings clarity to future development locations.** This policy is also designed to enable the Council to respond to market pressures, and to be able to consider additional sites that have not been allocated provided certain critical criteria are met 4.51 It is advised that, in line with recommendation R5, Central Bedfordshire Council consider implementing criteria whereby those sites which have strong transport links are considered for strategic warehousing uses. The scoring criteria established in this report could be used as a basis for this assessment. Central Bedfordshire Council Employment & Economic Study Stage 2 Report - Draft August 2012*

18. This scoring above in the technical report does not seem to be applied at all by CBC to the EDS application as there is significant demand for employment land, indeed a shortage of employment land in the immediate area. This criteria also highlights that retail will not normally be considered although there will be consideration for bulky goods sites. However this application was passed as open A1 and the bulky goods category has been removed from the NPPF since then; as is shown in Annex 2 of the NPPF Town centre uses. Therefore it appears that CBC have shown little understanding of their development plan in deciding on employment uses of the site
19. **The argument for change of use is based on the officers statement without back up information.** The officers states in para 2.3 *“The applicants have advised that as well as the current units being unattractive for reuse and occupation they have advised that there has been no interest in the comprehensive redevelopment of the site for B class employment uses.”* -that the client has made best endeavours to market the site.
20. **However the evidence on marketing initiatives for the site are based on documents not in the public domain and it appears that these documents have not been shown to the Cllrs in the Development Management Committee.** The officers base their conclusion on the fact that EDS argue in their report that there is no reasonable prospect of employment in Appendix A, page A4 of the “Supporting documents” which can be accessed through <http://www.centralbedfordshire.gov.uk/publicportalviewer/publicViewer.html?caseID=CB/16/00814/OUT> and then clicking on “supporting documents 659717”, In para 2.1 *“despite consistent and continuing efforts over the years, the agencies instructed by our clients have been unable to identify any situation or any potential developer/ occupier whereby the overall redevelopment of the Camden site for continued employment use was a realistic and realisable prospect.* Para 2.14 based on para 2.1-2.7 states that reports that support this conclusion have been shown to the council for an preapplication enquiry process in 2014. Para 2.4; refers to the pre-application CB/14/00655/PAPC and CB/14/001499 .It is not possible as a member of the public to access these. ( I have not had time for an FOI on this) These documents are not part of the supporting evidence for this application so it is impossible to know if active marketing measures have taken place or reasons why this site is not attractive for redevelopment for industrial use when there is a reported shortage of industrial land locally. **It appears that these supporting documents showing the**

**marketing initiatives have not been shown to the Councillors on the Development Management Committee.**

**21. An Appeal decisions by an Inspector shows that more than the word of the applicant is needed to show that “there is not reasonable prospect of the site being used for allocated employment issues.”**The Inspector in the appeal decision 2013 on Land off Pershore Road/Fordhouse Lane, Stirchley, Birmingham, West Midlands B30 3BW [http://www.landmarkchambers.co.uk/userfiles/documents/resources/Decision\\_Stirchley.pdf](http://www.landmarkchambers.co.uk/userfiles/documents/resources/Decision_Stirchley.pdf) says in para 21. *“However, it is far from clear that a sustained and committed period of marketing of the site for industrial use, in the form now proposed for the alternative use, was realistically undertaken. On this basis, I am not persuaded that the loss of industrial land has been shown to be justified. The proposal conflicts with the development plan policies to which reference has been made. Although it is not explicit as to how the reasonable prospect of a site being used for the allocated employment use should be assessed, I also find that the loss cannot be justified under the NPPF.”*

22. One Cllr on the Development Management Committee pointed out that if EDS wanted the area for retail it is then not surprising that they did not build industrial units to attract investment.

23. I also believe that this is relevant from Planning resource 30 July 2015 ,

**24. Plans to erect a 1,500m<sup>2</sup> food store within a designated strategic industrial location in west London were rejected despite the appellant claiming that the character of the immediate area had a more varied and retail nature.**

25. *The site lay within one of the largest concentrations of industrial land in west London but it was notable that adjacent retail uses included Topps Tile and Screwfix, a complex known as Vue Cinema, and a leisure park. Nonetheless, these uses existed when the area was designated as a primary industrial location, the inspector noted, and no objections were raised at the time to the appeal site being included within it. Both the London Plan and the council’s core strategy were clear that the loss of such land should only be contemplated through the plan-making process and not via ad hoc releases. Such areas were intended to provide a reservoir of industrial land which deserved the strongest protection, the inspector held. The fact that the immediate area had a different character from other parts of the designated area was a dangerous argument to accept which would lead to progressive erosion of the industrial land supply.*

## **Town centre policies**

CBC ignored the latest technical evidence which I argue forms part of the Development plans for Central Bedfordshire Council and hence showed a lack of understanding of the Development plan. Tesco Stores Ltd V Dundee City Council 2012 quotes in para 17 *"His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it."*

26. The assessment as regards the Impact test ignored the most recent retail report called "Land South of the High Street" by GVA November 2016 published Feb 2017 commissioned by CBC. It was dismissed by Cllr Young and the Development Management committee and was not referred to in the officers report. This report warned of a very negative impact that the retail park could have on the vitality and viability of the town centre. This GVA report on "Land South of the High Street is the latest evidence on retail for the town centre in Leighton Buzzard.
27. The GVA report should be referred to as a material consideration and not be dismissed and ignored. The NPPF states as a core planning principle para 17 *"Every effort should be made objectively to identify and then meet the housing, business and other development needs of an area,"* The same paragraph also says *"Plans should be kept up-to-date,"* In light of this the GVA report "Land South of the High Street" as the latest technical evidence counts as a material planning consideration and should not be dismissed, Further more on page 69 of the Officer's report it says that the body of technical evidence may be a material consideration *"Preparation of the Central Bedfordshire Local Plan has begun. A substantial volume of evidence gathered over a number of years will help support this document. These technical papers are consistent with the spirit of the NPPF and therefore will remain on our website as material considerations which may inform further development management decisions."* In this context it is likely that the latest report will add to this evidence base for the next core strategy submission. In light of this it seems likely that this latest addition to the technical evidence should also be seen by CBC as a material consideration
28. **Planning history to show the importance of the latest GVA retail report.**  
There is not a saved policy for the town centre listed in the officers report In 2012 CBC formally adopted a development brief for a town centre retail development called "Land South of the High Street". This is then referred to in the previous core strategy submission <http://centralbeds.moderngov.co.uk/documents/s49829/Development%20Strategy%20-%20Appendix%20A.pdf>. Policy 13: *Town Centre Development Development proposals should be in accordance with the principles and objectives of:* • The two endorsed development briefs for Leighton Buzzard • The Houghton Regis Masterplan SPD • The Biggleswade Town Centre Masterplan SPD • The Flitwick Framework Plan and Indicative Masterplan Development proposals elsewhere in these towns should complement and not prejudice development proposed, and should make a financial contribution towards their development where possible. Policy 11 in the same document refers to the retail hierarchy table 7.1 which allocates new retail to Leighton Buzzard town centre. This is supported by the CBC Retail Report (Tym) 2013 which describes the need for more town centre development in Leighton Buzzard. CBC indicated in December 2016 that they will revise the development brief with a new draft brief and a public consultation on it for the Land South of the High Street and have published a new retail study by GVA to support this

revision in February 2017. Therefore this latest technical report by GVA, "Land South of the High Street" commissioned by CBC on Leighton Buzzard town centre development site where CBC is planning to attract investment and has committed considerable resources to doing so is an important material consideration. It would be most unlikely if this new technical report will not be referred to by the new development briefs and hence by the new Core strategy. Therefore it should be a significant material consideration .. However it is not referred to in the planning officers report , and was dismissed by Cllr Young.

29. **The report by GVA on Land South of the High Street commissioned by CBC raises serious concerns as regards the threat of out of town retail parks to the vitality and vitality of the town centre.** [http://www.centralbedfordshire.gov.uk/Images/leighton-intelligence-report\\_tcm3-21441.pdf](http://www.centralbedfordshire.gov.uk/Images/leighton-intelligence-report_tcm3-21441.pdf) This report states in the conclusion Para 6.5 ***There are threats to the retail success of Leighton Buzzard in the shape of the out of town schemes, the two developments mentioned above need to be carefully considered. If open A1 consent is granted at the scheme to the south of the town this will sweep up any major multiple retail fashion brands who would prefer a rectangle box with surface car parking rather than a constrained town centre site. It is apparent from our market testing that a number of the well-known multiples are awaiting the outcomes of planning in this regard***".
30. **The report shows that the retail park is likely to divert retail which would otherwise go into the town centre on "land south of the high street"** and create a diverse retail offer.. The CBC retail study supports new retail in the town centre and policy 23 in the NPPF states "promote competitive town centres that provide customer choice and a diverse retail offer" Leighton Buzzard at present lacks clothes shops as shown in CBC surveys and the retail report so the shops listed in para 4.51 in GVA report are badly needed in the town centre in order to provide a diverse retail offer. Para 4.51 of the GVA report says "This retail park when it proceeds will sweep up most of the large space users such as Next H&M, TK Maxx and Sports Direct, all of those large space retail users who might, if there was no other option go into the town's high street will much rather prefer a uniform rectangle box with free adjacent parking on the ring road and thus this is why Next have refused to occupy space in the town centre as we will come onto later."
31. **The report in its final and concluding paragraph stress the fragility of the vitality and viability of the town centre para 6.17 it will only take the departure of two or three key retailers to have a very negative effect on the town" This has not been taken account of in the summary of the Impact Assessment**
32. **The vitality of the town centre was underestimated as there was no reference to the most recent report on the health of the town centre by The Retail Group commissioned by Leighton Linslade Town Council in early February 2017**which showed that majority of retailers and market traders were trading down or level to last year or down. This was presented to LLTC markets sub committee on Feb 16th agenda item 7. Pages 20-22 have graphs with trade figures, The report surveyed 27 market traders and 79 Retailers;
- Down in sales : Market traders 56%; Retailers 20%  
Level in sales; Market 28%; Retailers 44%  
Up in sales : Market 16%; Retailers 36%

In summary Market 84% level or down on last year. Retailers 64% level or down on last year. This report showed the fragility of Leighton Buzzard Town centre.

- 33. The report also shows that the “out of town retail park” decision is in contradiction to Para 26 of the NPPF as regards the Impact Assessment as regards the impact on planned investment. According to the GVA report the retail park will attract stores which otherwise might go into the Land South of the High Street and so harm committed investment in the town centre..** NPPF para 26 states *“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;”* According to the GVA report the out of town retail park could attract stores which would otherwise go into the town centre and so harm the development of the Land South of the High Street to which CBC is committed .GVA report para 4.51 *“This retail park when it proceeds will sweep up most of the large space users such as Next H&M, TK Maxx and Sports Direct, all of those large space retail users who might, if there was no other option go into the town’s high street will much rather prefer a uniform rectangle box with free adjacent parking on the ring road”*
- 34. The retail park decision is contrary to the development brief land South of the High Street. The officer report is misleading about this development brief.** The Officer report says para 3.12 *“Additionally the proposals are considered complementary to the aspirations for the development at land south of the High Street, which is likely to be focused on higher order specialist/niche operators, fashion retailers and eating/drinking destinations.”* And carries on to say in para 3.19 *“It is considered that the type of scheme being proposed is largely complementary to the existing town centre offer and planned town centre investment”*
- 35. However as can be shown from the extensive quotes below from the Brief Land South is nothing to justify this statement;**The Development brief for Land South of the High Street [http://www.centralbedfordshire.gov.uk/Images/south-high-street-brief\\_tcm3-7317.pdf](http://www.centralbedfordshire.gov.uk/Images/south-high-street-brief_tcm3-7317.pdf) states, In section 4 Vision and Objectives *The South of High Street site will be redeveloped to provide a new retail led mixed use quarter which acts as a sustainable extension to the town centre’s Primary Shopping Area and creates a destination for residents and visitors. 1. Create a retail destination that will attract high profile retailers and visitors and retain local expenditure in the town. 2. Attract complementary uses and operators to those found on the High Street to help foster a vibrant and more competitive town centre offer”*  
*1.4 The site offers the opportunity to create a sustainable extension to the town centre shopping area which enhances the retail offer and the centre’s competitiveness, while preserving the town centre’s existing high quality character, reinforcing its distinctiveness and enhancing the town’s historic character and environment.*  
*2.13 According to GOAD Experian data from February 2011, Leighton Buzzard’s retail vacancy rate is below the UK average. Despite the low vacancy rate, the retail offer in the town is very much geared towards the economy end of the market. This contradicts the relative affluence of the local area, yet reflects the dominant role of competing centres (such as Milton Keynes). Retailers cite a lack of quality available stock of sufficient size as being major reasons for their absence from Leighton Buzzard.*  
*2.15 The high quality built environment is a valuable asset to the town which can be a major attraction for retailers and shoppers, but paradoxically has also contributed to preventing key retailers locating there as a result of the corresponding lack of larger, high quality space which meets the needs of modern retailers.”*  
The GVA report Land South of the High Street is a good evidence base, but a draft brief based on it has not been published or gone through public consultation, or been adopted by a committee vote of CBC so CBC cannot say para 3.12 *“It should also be noted that as the plans for the site have been developed the focus has shifted away from retail to leisure.”*

36. These concerns relevant to para 26 of the NPPF as regards impact on planned investment in the town centre and the effect on vitality and viability were upheld by CBC when CBC refused planning permission in February 2013 for a similar (slightly larger) retail development (Barwoods) in Grovebury road in 2013 due to the impact on the town centre as well employment. Below are the minutes with the reasons for refusal.

[http://centralbeds.moderngov.co.uk/documents/g4108/Public%20minutes%20Wednesday%202013-Feb-](http://centralbeds.moderngov.co.uk/documents/g4108/Public%20minutes%20Wednesday%202013-Feb-2013%2010.00%20DEVELOPMENT%20MANAGEMENT%20COMMITTEE.pdf?T=11)

[2013%2010.00%20DEVELOPMENT%20MANAGEMENT%20COMMITTEE.pdf?T=11](http://centralbeds.moderngov.co.uk/documents/g4108/Public%20minutes%20Wednesday%202013%2010.00%20DEVELOPMENT%20MANAGEMENT%20COMMITTEE.pdf?T=11) item 10 page 21 CB/12/03290/OUT LOCATION Unit 7, Grovebury road; That *Planning Permission be REFUSED for the following reasons.....(2) By reason of the combination of the total commercial floor area of the development, the size of the individual units proposed, the range of goods to be sold from the site, and the number of retail units proposed, the proposed retail development would result in an unacceptable diversion of trade from Leighton Buzzard Town Centre to the detriment of the vitality and viability of the Main Shopping Area. Further, and given the propensity for competition among retailers seeking to come to Leighton Buzzard, the proposal would also negatively impact upon the town centre's capacity to attract new investment and may also prejudice the Council's ability to bring forward development in accordance with the Land South of the High Street Development Brief 2012, in line with its commitment to regenerate this site as a key objective within the Council's adopted Medium Term Plan, "Delivering Your Priorities 2012-16". The development would therefore have an unacceptable impact on existing, committed and planned public and private investment in Leighton Buzzard contrary to Policies 11, 12 and 15 of the emerging Development Strategy for Central Bedfordshire and national guidance contained within the National Planning Policy Framework"*

Lack of understanding of the development plan in connection with Tesco v Dundee as regards main town centre uses and bulky goods. Para 17 *"Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean"*. And para 20 *"If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy."*

37. The development plan in this situation is the NPPF and the technical evidence as described in the section entitled "Relevant policies" of the officers report and the development brief for Land south of the high street. None of these documents/ describe a definition of bulky goods that is different to main town centre uses yet the officer report relies on the distinction between bulky goods as opposed to main town centre uses in assessing both the sequential and the impact test. The law is clear that officers must understand the development plan as set out in Para 17. Tesco v Dundee *It has long been established that a planning authority must proceed upon a proper understanding of the development plan:"*

- 38. The NPPF does not make a distinction between bulky goods and town centres**  
Annex 2 of the NPPF states <https://www.gov.uk/guidance/national-planning-policy-framework/annex-2-glossary#maintown> **“Main town centre uses ;Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).”** This is a significant change from DCLG; “Planning for Town centres; Practice guidance on need impact and the sequential test.” Para 6.31 *The size and bulk of goods sold will also influence the size and type of store required. This applies particularly to retailers selling bulky durable goods such as DIY, furniture, carpets and domestic appliances. 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.*
- 39. This is explained and firmly emphasised in the CBC Retail study 2013 para 5.22**  
***Bulky goods retailing (eg stores selling DIY, carpets or domestic appliances) is no longer considered a separate category for which a floorspace need should be identified. The NPPF defines all retail development (including warehouse clubs and factory outlet centres) as “main town centre uses” (Annex 2). 5.23 We agree with this view - surveys carried out by RTP, together with simple observations, have shown that many, probably most, purchases from retail warehouses do not involve bulky goods and few people frequent retail warehouses in order to take goods away in their cars. At the same time many of the items traditionally defined as bulky goods are widely available on the high street. 5.24 In our view, applications for retail warehouses (defined by their format, ie big sheds, rather than what is sold there) should be considered on their merits. This is continued in the conclusions para 8.8 We do not recommend that the Council plan for a separate floorspace need for “bulky goods” retailing. Bulky goods is no longer considered a separate category of retailing; the NPPF defines all retail development as “main town centre uses” (Annex 2)***
- 40. The evidence base of the household surveys which form an important part of the evidence that underpins the CBC Retail Report 2013 in its questions in the survey makes no distinction between bulky goods and non bulky goods as Lord Sales says in *Central Bedfordshire Council v Harvey para 14.*” It may be noted that that question is general and vague and is not specifically focused on bulky goods,”**
- 41. Despite clear guidance from the Development plan in this case NPPF and the technical CBC retail study 2013 not to use the separate category of Bulky goods the officer report relies on the bulky goods distinction in the sequential test and impact test directly contradicting the development plan. para 3.4 *However this site is regarded as unsuitable and unviable for bulky goods retailing as proposed by the current application. 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.*” And also the in Impact test para 3.10 *“It is suggested that the health of Leighton Buzzard town centre is not substantially reliant on DIY and ‘bulky goods’ trade. These conclusions are in line with the Council’s own retail studies and the advice of the Council’s retail consultant.”* And para 3.14 *“It should also be noted that the proposed scheme is a hybrid development incorporating a mix of retail use and trade counter use. The trade counter use would not compete with town centre uses. The***

*proposed retail floor space (which could impact on the town centre) would be limited to 6,221m<sup>2</sup> (GEA) – 4984m<sup>2</sup> GIA of the total 7,350m<sup>2</sup> (GEA) – 5880m<sup>2</sup> GIA proposed”. And finally para 3.18 *The current leakage of comparison goods trade from Leighton Buzzard and opportunities for ‘clawback’ trade within Leighton Buzzard are identified within the application. In light of the Council’s 2012 Retail Study, there is little ‘bulky goods’ trade opportunity within Leighton Buzzard above that being leaked to Milton Keynes retail parks.**

**All these bulky goods categories mentioned come within the description of main town centre uses. Trade counters as there is no other legal or planning definition is in my opinion covered by factory outlets.** (The inspector agreed that no definition of a trade counter is provided in legislation, circulars or guidance notes.

<http://www.planningresource.co.uk/article/787357/dc-casebook-depth---trade-counter-meaning-clarified-inspector-finds-use-change> )**The officers report shows a lack of understanding of the development plan and so is open to legal challenge as explained Tesco v Dundee para 17 “His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it.”**

**42. CBC is applying two different meanings to the words “Bulky goods” which creates an error of law. Tesco v Dundee para 20.”** *If the decision maker attaches a meaning to the words they are not properly capable of bearing, then it will have made an error of law, and it will have failed properly to understand the policy.”* **The meaning of” bulky goods as described in the Planning Portal**

[https://www.planningportal.co.uk/directory\\_record/141/bulky\\_goods](https://www.planningportal.co.uk/directory_record/141/bulky_goods) is **“Goods of a large physical nature (for example DIY, furniture, carpets) that sometimes require large areas for storage or display.”** This supported definition of bulky goods before the NPPF put all retail into main town centre uses was laid out in the previous planning policy guidance DCLG; “Planning for Town centres; Practice guidance on need impact and the sequential test.” Para 6.31 *The size and bulk of goods sold will also influence the size and type of store required. This applies particularly to retailers selling bulky durable goods such as DIY, furniture, carpets and domestic appliances. 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.*

**Therefore it could be seen by some as common sense that very large bulky goods are not suitable to a town centre and indeed it would appear that this is the understanding of the term that Lord Sales used in the case C1/2014/1325 Harvey v Central Bedfordshire Council and “for the purposes of the Council’s consideration of the application for planning permission, it was the impracticability of using a site in the city centre for sale of bulky goods which could be more conveniently and appropriately carried on at an out of centre site which was the important consideration”**

**However the definition of Bulky goods that was used previously by CBC for the White Lion Retail Park and was used for the conditions for Claymore retail park whose reserve matters were given permission in the same planning included many much smaller items that could easily be practically sold in a town centre if we were following the above line. (a) DIY goods including tools, building supplies and ancillary items; (b) plants and garden products; (c) furniture, carpets, floor coverings and home furnishings; (d) office equipment and stationary; (e) motor vehicle parts and accessories; (f)**



*cycles and ancillary goods; (g) home technology, electrical goods; (h) pets and pet supplies; (i) Christmas decorations and seasonal goods; and (j) all goods ancillary to the items listed in (a) to (i) .* These definition of goods can include small items such as cushions, digital alarm clocks, MP3 players. Pens, paper, Christmas baubles etc. This is not the same definition of bulky goods as used in the Planning Portal, and the Planing guidance on town centres that predated NPPF.

### **Wednesbury case of Unreasonableness**

**42. Not only does Central Bedfordshire Council completely ignore the NPPF and its own (CBC) retail report which say that there is no distinction between bulky goods and main town centre uses, it makes the following the statements para 3.19** *“It is considered that the type of scheme being proposed is largely complementary to the existing town centre offer and planned town centre investment.”* And para 3.10 . *It is suggested that the health of Leighton Buzzard town centre is not substantially reliant on DIY and ‘bulky goods’ trade.* **This goes against the obvious practical fact if you walk through the town centre in Leighton Buzzard you can see for yourself that there are many bulky goods sold in the town centre or just on the centre of the town. There are two furniture shops one over 800sqm and one domestic appliance shop again 800sqm, a cycle shop. Not to mention DIY and other bulky goods vehicles . Therefore to say that the town is not overly reliant on bulky goods and DIY or that bulky goods are complimentary to the town centre is unreasonable and irrational and so would fit the Criteria for Wednesbury Unreasonableness**

Here is a list of shops that fit the description of bulky goods in the Planning Portal, and the description of DIY that presently trade within the town centre boundary as drawn in the South Bedfordshire Adopted plan 2004.

Dillamores furniture shop in the high street ( selling sofas, beds etc)  
TK furniture Hockliffe about 800 msq ( selling sofas, beds, tables, bookcases etc)  
Ceejays, Hockliffe Street about 800 msq (selling washing machines, domestic appliances etc  
Amalfi tiles selling boxes of tiles; Bridge Street  
Argos selling a wide range of DIY, Watrbourne walk  
Selections Hardware High street, selling DIY, Tools etc  
Selections High Street seling garden tools, plants, tubs etc  
Kingfisher Carpets Friday Street. Selling carpter  
Buzzard Blinds selling household blinds Market Square  
John Wilcox Friday Street kitche studio  
Doorvics selling bicycles ( not flatpacked)

### **Within 100 metres of the official town centre boundary;**

Halfords which is definitely a bulky goods shop is only about 60 metres from the official town centre boundary of 2004 but is in the middle of a line of shops  
New City Heating selling very bulky plumbing equipment is about 100 m form the town centre

Jewsons, which is a builders merchant is about 100 metres from the town centre boundary

Homebase is 400 m from the town centre boundary  
Screwfix and travis Perkins are also on Grovebury Road are significantly closer to the town centre by car than the EDS retail Park,

The town also has an edge of centre shops such as New Linslade Plumbing and Butties, which are both serious DIY stores.

The Impact Assessment for the Claymore retail park which was granted planning permission in Feb 2013 said that there would be an overlap between the retail park and 22 shops that exist in the town centre and the "bulky goods" restricted retail park.

**The other factor of Wednesbury unreasonableness is the previous decision of CBC in 2013 to turn down the Barwoods retail park due to impact on the town centre.**

**CBC turned down in February 2013 a similar (slightly larger) retail development (Barwoods) in Grovebury road in 2013 due to the impact on the town centre and loss of employment land. Below are the minutes with the reasons for refusal.**

<http://centralbeds.moderngov.co.uk/documents/g4108/Public%20minutes%20Wednesday%2013-Feb-2013%2010.00%20DEVELOPMENT%20MANAGEMENT%20COMMITTEE.pdf?T=11> item 10 page 21 CB/12/03290/OUT LOCATION Unit 7, Grovebury road

That Planning Permission be REFUSED for the following reasons; (1) In line with South Bedfordshire Local Plan Review Policy E1, Policies 6, 7 and 8 of the emerging Development Strategy for Central Bedfordshire and national guidance contained within the National Planning Policy Framework, the Council seeks to maintain an appropriate portfolio of employment land within Central Bedfordshire. The application site forms part of a designated Main Employment Area as defined on the proposals map of the South Bedfordshire Local Plan Review 2004 and the policy map of the emerging Development Strategy for Central Bedfordshire wherein the Local Planning Authority's primary objective is to encourage Business, General Industrial or Storage and Distribution development. The application site falls within an area identified as being in adequate condition for B Class employment with some potential for redevelopment taking account of factors including the quality of stock, access to amenities, the adequacy of site servicing, strategic road access and public transport provision (CBC 2012 Employment Land Review). The main source of demand for B Class premises in Leighton Buzzard is generated as a result of expansion by locally based firms, and some relocation from nearby areas (Luton and South Beds Employment Land and Market Assessment Study, NLP 2010). In this case, there is an expressed need for low cost warehousing to support the expansion of locally based firms as demonstrated by the present/recent occupation of the premises and by third party representations received from a major local employer in response to the application. In light of this demonstrated demand, it has not been Minute Item 332 Page 21 adequately shown that there is no viable prospect of the site delivering a B Class use, including through the redevelopment of the site to provide modern units for the local market. Taking account of the supply of B Class land within Leighton Buzzard itself and the scale, quality and location of the site, the proposed development would detrimentally impact upon the supply of B Class land within the locality. The proposal is therefore contrary to Policy E1 of the South Bedfordshire Local Plan Review 2004, Policies 6, 7 and 8 of the emerging Development Strategy for Central Bedfordshire and national guidance contained within the National Planning Policy Framework. (2) By reason of the combination of the total commercial floor area of the development, the size of the individual units proposed, the range of goods to be sold from the site, and the number of retail units proposed, the proposed retail development would result in an unacceptable diversion of trade from Leighton Buzzard Town Centre to the detriment of the vitality and viability of the Main Shopping Area. Further, and given the propensity for

competition among retailers seeking to come to Leighton Buzzard, the proposal would also negatively impact upon the town centre's capacity to attract new investment and may also prejudice the Council's ability to bring forward development in accordance with the Land South of the High Street Development Brief 2012, in line with its commitment to regenerate this site as a key objective within the Council's adopted Medium Term Plan, "Delivering Your Priorities 2012-16". The development would therefore have an unacceptable impact on existing, committed and planned public and private investment in Leighton Buzzard contrary to Policies 11, 12 and 15 of the emerging Development Strategy for Central Bedfordshire and national guidance contained within the National Planning Policy Framework.

### **Previous Judgement in relation to Bulky goods and Leighton Buzzard**

**Lord Sales in the judgement Harvey v Central Bedfordshire Council C1/2014/1325 ruled that there was not an error of fact over the issues of bulky goods. However, the only evidence presented by Mr Stookes on behalf of myself on bulky goods was the household surveys in the CBC retail study 2012 and lord Sales stated "There is nothing in the material in the questionnaire returns in the annex to that report which shows that the Council made an error of fact in its assessment of the need for the development on a particular site. And The nature of the answers to the questionnaire, as set out in the appendix to the council's retail consultant's report, did not show that there was any error of fact made by the Council in relation to this matter." With hindsight, we fully accord with Lord Sales judgement on this issue in relation to the evidence produced.**

**However, Lord Sales was not presented with argument of Wednesbury reasonableness based on the evidence of the large number of bulky goods retail outlets trading at that time in the heart of the historic town centre and the large number within 100 metres and within 400m.**

**Moreover, since the judgement by Lord Sales in December 2014 the development plan has changed. The emerging Core Strategy of Central Bedfordshire Council in early 2013 had a retail policy which allowed for out of town retail sites for bulky goods, but on the advice of the Inspector this Core Strategy has been withdrawn. A new development plan is being prepared. Therefore the Development Plan consists of the NPPF which describes bulky goods as main town centre uses and the technical reports (as stated in the officers report for this application) The updated 2013 CBC Retail Report, (the publication of which postdates the planning decision of the case that Lord Sales later adjudicated on) has been altered from the version used as supporting evidence for the planning decision and the emerging core strategy at that time. The latest version which was not presented to Lord Sales stresses strongly that bulky goods are sold in town centres according to RTP1 surveys. This latest version has removed paragraph 26 of the older version of the Retail Study which suggests that the council can set a policy for certain uses that cannot be accommodated in a main town centre; see appendix**

**Appendix; different versions of the retail study.**

## **CBC final report 2012 no longer available on the web**

### ***Bulky goods and car showrooms***

5.22 Bulky goods retailing (eg retail warehouses selling DIY, carpets or domestic appliances) is no longer considered a separate category for which a floorspace need should be identified. The NPPF defines all retail development (including warehouse clubs and factory outlet centres) as “main town centre uses” (Annex 2).

5.23 We agree with this view – it is likely that many purchases from retail warehouses do not involve bulky goods and few people frequent retail warehouses in order to take goods away in their cars. At the same time many of the items traditionally defined as bulky goods are widely available on the high street.

5.24 This is evidenced by the occupiers of the District’s two retail parks. The White Lion Park in Dunstable consists of 11 units including Laura Ashley and First Choice Holidays, both of which would often be found in town centres. The London Road Park in Biggleswade also consists of 11 units and includes Argos, often found on the high street. An application has been submitted to extend the park with a traditional town centre anchor store; Marks and Spencer.

5.25 In our view, applications for retail warehouses (defined by their format, ie big sheds, rather than what is sold there) should be considered on their merits. Applications for retail warehouses on edge or out-of-centre sites should be subject to the sequential test and applicants should be required to demonstrate flexibility on format and scale, as stated in the NPPF (para. 24).

5.26 The NPPF does, however, allow 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” (para. 23, bullet point 8). Therefore if, in the Council’s view, certain uses cannot be accommodated in or adjacent to town centres, there is scope to set a specific policy to deal with such proposals. The Practice Guide at para. 6.31 discusses retailers selling goods such as 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”.

5.27 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

### **recommendations**

para 8.8 We do not recommend that the Council plan for a separate floorspace need for “bulky goods” retailing. Bulky goods is no longer considered a separate category of retailing; the NPPF defines all retail development as “main town centre uses” (Annex 2). In our view, applications for retail warehouses (defined by their format, ie big sheds, rather than what is sold there) should be considered on their merits. Applications for retail warehouses on edge or out-of-centre sites should be subject to the sequential test and applicants should be required to demonstrate flexibility on format and scale, as stated in the NPPF (para. 24).

8.9 The NPPF (para. 23, bullet point 8) does however provide scope for local authorities to set specific policies to deal with proposals for main town centre uses which cannot be accommodated in or adjacent to town centres. The Council therefore have the option to do this if in their view, certain uses cannot be accommodated in or adjacent to town centres.

**The latest version of the retail report published post the planing decision which was submitted as technical evidence for the core strategy**

[http://www.centralbedfordshire.gov.uk/Images/retail-study-appendices\\_tcm3-6889.pdf](http://www.centralbedfordshire.gov.uk/Images/retail-study-appendices_tcm3-6889.pdf)

**Excludes the paragraphs 8.9 and para 5.26 “ which refer to authorities setting policies for main town centre uses which cannot be accommodated .”**Bulky goods and car showrooms 5.22 Bulky goods retailing (eg stores selling DIY, carpets or domestic appliances) is no longer considered a separate category for which a floorspace need should be identified. The NPPF defines all retail development (including warehouse clubs and factory outlet centres) as “main town centre uses” (Annex 2). 5.23 We agree with this view - surveys carried out by RTP, together with simple observations, have shown that many, probably most, purchases from retail warehouses do not involve bulky goods and few people frequent retail warehouses in order to take goods away in their cars. At the same time many of the items traditionally defined as bulky goods are widely available on the high street. 5.24 In our view, applications for retail warehouses (defined by their format, ie big sheds, rather than what is sold there) should be considered on their merits. 5.25 Car showrooms are not included in the definition of a “main town centre use” and there is no requirement to identify a need for them. Applications for car showrooms should be considered on their merits. 8.8 We do not recommend that the Council plan for a separate floorspace need for “bulky goods” retailing. Bulky goods is no longer considered a separate category of retailing; the NPPF defines all retail development as “main town centre uses” (Annex 2). In our view, applications for retail warehouses (defined by their format, ie big sheds, rather than what is sold there) should be considered on their merits. 8.9 Car showrooms are not included in the definition of a “main town centre use” and there is no requirement to identify a need for them. Applications for car showrooms should be considered on their merits.