

South Kesteven District Council
Development Management
Council Offices
St. Peter's Hill
Grantham
Lincolnshire NG31 6PZ

Your Ref
Our Ref DASJGIL0112/00002
Direct Dial 020 7406 1637
Direct Fax 020 7406 1602
Email jdas@wedlakebell.com

By email J.JOHNSON@southkesteven.gov.uk

12 December 2012

Dear Sirs

**PLANNING APPLICATION S06/1151 BY
WM MORRISON SUPERMARKETS PLC**

We write further to our objections dated 30 November 2011 and 21 August 2012. These further comments should be read in conjunction with those previous submissions.

Thank you for providing us with the further information submitted by the Applicant which as we understand it comprises revised plans, the main effect of which are that the areas previously shown for further Phase 2 retail development and A3/A5 have simply been coloured out, although the areas themselves remains within the application site boundary.

In addition we understand that the Council has taken further advice from White Young & Green Planning & Environment (WYG) on the revised retail assessment submitted by the Applicant, specifically in light of the objection made on behalf of our clients (which set out an initial assessment by our clients' retail consultant).

New Application

We refer to our previous comments relating to the Council's ability to continue to treat this application as part of the previous applications. It is clear to us that significant changes have been made to the previous application and as such it is not open to the Council to continue to treat it as the previous application. Given the relatively long time since the original application was submitted, it is likely that members of the public would be misled into thinking that this is the same as (or at least substantially similar to) the original application on which they have made representations in the past and therefore they would not need to look again at the details of the latest application.

52 Bedford Row London WC1R 4LR | Tel 020 7395 3000 | Fax 020 7395 3100
DX 166 London Chancery Lane | www.wedlakebell.com

Wedlake Bell LLP is a limited liability partnership incorporated in England and Wales with registered number OC351980. Wedlake Bell LLP is authorised and regulated by the Solicitors Regulation Authority under number 533172. Its registered office and principal place of business is at 52 Bedford Row, London WC1R 4LR.

A list of members may be inspected at this address. The term 'Partner' is used to refer to a member of Wedlake Bell LLP

WB117135874/1 (1)



Associated offices
throughout Europe

It is not only the case that the application plans have been revised from the original and from those in the challenge considered in the Courts, but the plans have been further revised and the Applicant has submitted several versions/amendments to its supporting documentation. We remain of the view that the Council is in error in continuing to treat this application under the original application number.

PLANNING AND RETAIL ASSESMENT

We make these further comments in relation to both the further revised retail assessment submitted in support of the application and the further comments secured by the Council from WYG following initial concerns raised on behalf of our clients.

What is clear to us and what should be evident from the latest response from the Council's retail consultant's (WYG) comments, is that very little effort is being made by the Council and its advisors in properly and comprehensively assessing the suitability of the development proposal. WYG appear to be undertaking a damage limitation exercise of checking whether our clients' consultant has made any valid comments which would question the rationality of the Council's decision and thereafter addressing those concerns. We would have expected the Council's retail consultant to have identified the serious shortcomings of the Applicant's retail assessments when it first carried out its review and not after our clients' expert had drawn this to their attention. These concerns are particularly noteworthy as the Council had intended to grant permission based on what was inaccurate and therefore we believe misleading information (before our clients became aware of the proposed consideration of the application at Committee almost immediately before the Committee hearing).

You will be aware that when we made our representations in August 2012 they were on a provisional basis pending any further comment from our clients' retail consultant once he had an opportunity to consider the details. He has now also reviewed the Council's retail consultant's latest comments. He remains concerned that a proper review of the Applicant's retail assessment does not appear to have been undertaken and that they appear merely to have checked our clients' retail consultant's initial comments. Our clients' retail consultant has serious concerns that the proposal will have a negative impact on town centre trade and turnover, which would in turn have a negative impact on the vitality and viability of Stamford town centre, such that this application should be refused on retail grounds. His specific comments which we believe, require further consideration by WYG are as follows:

“Comments on additional information submitted by Peacock & Smith in support of a Planning Application for a non-food retail development (6 units) with associated parking, servicing and access on the Former Mirlees Blackstone Site, Uffington Road, Stamford PE9 2FT

Further to my letter dated 20 August 2012 and earlier January 2012 report I write to advise you of my comments on the additional information submitted by Peacock & Smith (P&S) in support of the above Planning Application in a letter dated 21 September 2012.

P&S have now updated their assessment to address some of the issues raised in my letter dated 20 August 2012 including a revised capacity / impact assessment using

the latest Pitney Bowes (PB) expenditure¹ and population forecasts for Stamford as well as updated / more realistic forecasts of non retail sales². P&S identify sufficient expenditure growth by 2017 (£21.2m) to support the speculative proposal that will have a turnover of £20.8m). However, **this is on the assumption that all the expenditure growth in the Stamford area is available to support new (out-of-centre) floorspace. There will be other claims on this expenditure growth such as turnover efficiency improvements in existing retail floorspace in the town. In addition, it has to be assumed like existing expenditure part of the growth will be lost to higher tier centres such as Peterborough and Grantham.** In undertaking capacity assessments the PPS4 Practice Guide (PG) that remains extant guidance advises that consideration should be given to market shares although para B53 acknowledges it is "*common practice for need assessments to forecast quantitative needs based on current, i.e. constant, market shares.*" P&S unrealistically assume that all expenditure growth will be retained within the study area thereby increasing market shares.

On a constant market share basis, that is the most robust and typical approach to capacity assessments as acknowledged by the PG, the South Kesteven Retail Needs and Town Centres Study (SKRNTCS) identified capacity for 5,600 sq m (net) new comparison goods floorspace in Stamford by 2016. Since the SKRNTCS was published lower population and expenditure figures have been published by ONS / Experian that will reduce this capacity. However, even if it is taken as presented there is barely sufficient capacity for this proposal (4,576 sq m net) in Stamford in the short term covered by the study period.

In addition, the Council must decide whether they want all this limited capacity taking up by this out-of-centre proposal leaving no capacity for sequentially preferable developments in the town.

The Core Strategy (policy E2) also indicates that large retail developments such as this should be directed to the sub-regional centre of Grantham where they are of a more appropriate scale. As a result of there being insufficient current or future capacity to support this proposal the impact on the town centre and local shops will be far greater than assessed by P&S.

In their revised impact assessment P&S now divert a much more realistic 45% of the turnover of the proposal from the town centre that results in an impact of 8.7%³. However, the turnover of the town centre is based upon an allowance for 23%

¹ P&S appear to use the PB / Oxford Economic Forecasting forecast of 3.9% per annum for comparison goods (although this is not stated in the footnotes to their capacity tables) which it should be noted is considerably higher than the equivalent Experian forecast for the same period of 1.6% pa growing to 3.0% pa

² Special forms of trading (SFT) that are mainly comprised of internet sales

³ In Table 5 appended to the 21 September 2012 P&S letter the impact on the town centre appears to be 9.1%. The Inspector at the Secretary of State Decision in Worksop (APP/A3010/A/10/2124458 para 18) concluded in that (relatively healthy) town whether an impact of 10% on the town centre was 'significant adverse' was arguable but it was still a material

of comparison goods turnover coming from inflow from beyond the already extensive study area based upon street surveys undertaken in 2009. Within this allowance there is a very generous assumption about the expenditure levels of visitors / tourists to Stamford being the same as the spending levels of local residents when the greatest level of tourist expenditure is likely to be on food and drink.

Based on the household survey and assumptions of tourist / visitor spending P&S calculate **the average sales density for the town centre as £8,757 per square metre (psm) which is considerably higher than the national average sales density for Next (c. £6,400 psm) and M&S (c. £6,000 psm).** Generally independents such as those that comprise the majority of shops in Stamford have much lower sales densities than leading national multiples. **I therefore consider that the estimated town centre turnover is greatly overstated and consequently the assessed impact on the centre will be far greater than 8.7% / 9.1%.**

P&S present a health check of the town centre in their original Retail Planning Assessment (Appendix 5) in which they conclude Stamford is vital and viable. In particular the centre has below average vacancy rate. However, the Portas Review (p 29) and the Local Data Company caution that vacancies are not the only indicator of vitality and viability. What is filling them is another important indicator. The Local Data Company advise in their May 2012 ebulletin:

"Low vacancy towns may appear to be healthy but if the retail offer is considered to be worsening in quality of offer, as the ongoing debate around rising numbers of £ shops, pawnbrokers, bookmakers and charity shops highlights, then this can be just as detrimental to the long term prospects of a town as empty shops..."

The town also has a significant number of charity shops including in primary frontages and P&S have overestimated the turnover of the town centre. I consider that an impact of 10% or greater arising from this speculative development is entirely possible and would have a negative effect on the vitality and viability of Stamford town centre.

I have also read the comments of the Council's Planning Policy team with regard to the revised planning application. I consider their comments in the 24 July 2012 memorandum are inconsistent with guidance in the PG which remains extant guidance on retail and town centre planning policy. With reference to Core Strategy Policy SP1 the memo states *"It also allows for the use of appropriate edge-of-town sites where there is insufficient land available within the built-up part of the town"* There is no such designation as 'edge-of-town' in NPPF or PPS4 before it, the site is out-of-centre and contrary to the statement of the policy officer in retail terms the site it is not well located.

With regards to the policy officer's comments on the site being *"immediately adjacent to existing retail units and within easy reach of the town centre"* the objective of the sequential assessment set out in PG (6.2) is to generate linked trips with the town

consideration. Clearly an assessed impact of 8.7% or even 9.1% in Stamford is a material consideration that requires careful consideration particularly given the speculative nature of the proposal and the likely overestimating of the town centre's current turnover level.

centre, not out-of-centre retail parks. The PG (3.8) specifically advises with regards to successful out-of-centre destinations:

"it would not necessarily be appropriate to plan for further growth at existing successful out of centre locations where these locations do not meet other key policy objectives e.g. accessibility etc. In these circumstances, it may be appropriate to proactively plan to reinforce the offer of other existing centres in order to 'recapture' market share from less sustainable retail locations."

Clearly that is what the Core Strategy Policy E2 attempts to do redirecting major retail development such as this to Grantham.

Finally, the NPPF contains specific guidance that is relevant to Stamford as a market town. There are specific recommendations in the body of the Government's Response Report responding to the recommendations 4 and 5 of the Portas Review. Whilst the draft NPPF didn't include this advice that was originally contained in PPS4 (EC4.1) it has been reintroduced to the final NPPF whilst the rest of the policy guidance was being 'shrunk' considerably. Clearly the Government place a great deal of emphasis on retaining and enhancing markets as demonstrated by the amendments in NPPF (para 23) from the draft presumably because they accept Mary Portas's view that they can be *"traffic drivers back to our high streets"*. NPPF therefore supports Mary Portas's vision of the enhancement and promotion of markets as *'fundamental traffic drivers back to our high streets...'*

I therefore conclude that the P&S capacity assessment fails to follow specific PG guidance and is flawed in several areas. In contrast to the conclusions of the more robust SKRNTCS that itself is now superseded by more cautious population / expenditure / SFT information, there is barely sufficient capacity for this proposal (4,576 sq m net) in Stamford in the short term covered by the study period. As a result of there being insufficient current or future capacity to support this proposal the impact on the town centre and local shops will be far greater than assessed by P&S.

Due to its excessive scale this out of centre proposal will have a negative impact on town centre trade and turnover, which in turn will have a negative impact on the vitality and viability of Stamford town centre.

NPPF (para 27) advises out-of-centre retail proposals should be refused planning permission where they fail to demonstrate compliance with the sequential assessment (para 25) or where a proposal is likely to lead to significant adverse impacts (para 26). I conclude that P&S have failed to demonstrate compliance with the NPPF impact test (para 26) and can be refused on these grounds alone. If the Council disagree with this conclusion then the proposal has to be determined against the whole NPPF and para 14 advises adverse impacts should be weighed against the benefits.

In my January 2012 report I demonstrated that only limited weight can be attached to the positive benefits of the proposal. In contrast, greater weight might be attached to the negative impact of the proposal and particularly when considered cumulatively with the Sainsbury occupation of the former Focus unit on Markham Retail Park and the proposed second phase to this development. Although impact of the proposal on

its own might not be 'significant adverse' it is significant and a material consideration particularly as the turnover of the town centre appears to be overestimated by P&S. The cumulative impact of the proposal and other recent / proposed developments on Stamford town centre is of particular concern. The proposal is not a sustainable development therefore the NPPF 'presumption in favour' is not a material consideration in the determination of this planning application.

My overall conclusion is that need has not been demonstrated for this proposal in the updated information submitted by P&S. This has implications for the impact assessment which also fails to follow specific PG guidance and is flawed. **Clearly an assessed impact of 8.7% or even 9.1% upon Stamford town centre is a material consideration, as in the Worktop decision, that requires careful consideration particularly given the speculative nature of the proposal and the likely overestimating of the town centre's current turnover level.** As a result when properly assessed the proposal fails to satisfy NPPF para 26 and can be refused on these grounds alone (NPPF para 27). Even if this is not accepted, the proposal fails the planning balance of positive and negative impacts set out in NPPF (para 14) particularly when considered cumulatively with other recent / proposed developments such as the new Sainsbury store. I therefore suggest the Council are respectfully asked to consider this application very carefully and to refuse it as it contravenes national and local planning guidance."

Further comments on the latest WYG Review

Our clients' retail consultant is troubled by the latest comments from WYG. He is aware that WYG made representations on behalf of Wigan Council at its Replacement UDP hearing in which WYG took an opposing stance to that which it appears to be taking in Stamford in relation to this revised application. We attach the proof of evidence of Keith Nutter on behalf of WYG, where WYG advanced much of the basis for assessing the suitability of retail development and its likely impact on the vitality and viability of the town centre, which are detailed and relied upon by our clients' retail consultant in his critique above.

Our clients' retail consultant is of the view that **"the turnover that is calculated for Stamford town centre is particularly high. WYG say in their letter (top page 3) that this 'appears reasonable'. I strongly disagree."** He also states:

"In addition to no capacity for this proposal in the catchment and the policy requirement to direct major development to Grantham, my concern remains that as the turnover of the town centre (accepted by WYG) appears to be overstated then the impact on the town centre are understated and once it reaches double (percentage) figures it is a cause for concern.

This is reflected in the unrealistically high average sales density calculated by P&S (£8,757 per square metre (psm) pre impact and £7,964 psm post impact) and now revised downwards by WYG (£7,735 psm post impact) based on later town centre floorspace figures.

This very point was made (against me) at a UDP inquiry by WYG themselves in 2004 ...I don't consider WYG have given sufficient consideration to this point and their advice that the assessed town centre turnover (and sales density derived from it)

'appears reasonable' is inconsistent with evidence presented by the NW Regional Director of WYG to a UDP inquiry."

Our concerns over the Retail Review

It is clear to us that the Applicant revises its retail assessment once our clients' consultant has identified serious shortcomings with it. We find it surprising those shortcomings are not identified by the Council's retail consultant before the application is recommended for approval based on misleading or inaccurate data. In its latest review WYG again agrees with the Applicant's revised retail study in which the Applicant's retail consultant has made a marked shift in its assessment of impact by now stating that the impact will be 9.1% rather than its original estimate ranging between 5.8% and 8.7%. These changes were only admitted following review by our clients' retail consultant.

Our clients are advised that the failure by WYG to comprehensively and appropriately review the retail assessment is such that in reality the impact on the town centre is likely to be 10% or more.

WYG accepted and argued some basic rules of assessing retail assessments in its evidence for Wigan Council. We ask that a similar assessment is undertaken by WYG in relation to this application. We draw particular attention to the following basic principles of assessment which WYG maintained on behalf of Wigan Council which appear to us to apply here (but which have not yet been applied in relation to this proposal):

- There is a need to examine and scrutinise development proposals in detail to identify and understand the probable affect of each development on the town centre;
- A key factor in assessing qualitative and quantitative need for a retail development will relate to the actual development proposed (rather than generic descriptions);
- It is extremely difficult to appraise likely impact of any retail development on existing centres if the format and type of retail proposed is uncertain;
- In assessing likely impact the end operator is a key consideration;
- It is unrealistic to expect retailers to outperform their company averages for every square metre at any particular location;
- Sensitivity testing is required of the detailed data;
- In assessing the expenditure growth likely to be available for new proposals it is accepted that not all growth identified will be available for the new user and allocation needs to be made for existing businesses improving their turnover; commitment in the form of permitted development and leakage to competing centres.

It is not clear to us the basis upon which WYG has been retained by the Council as it seems that its review is on an adhoc basis which simply looks to see whether any objections raised have any merit rather than to consider the development proposal as a whole in the context of the Council's retail policies. We would ask that WYG undertake a comprehensive review of all data to advise the Council on the likely impact on the town centre.

Our clients' concerns have increased in light of the latest review which clearly indicates that the development proposed will affect the vitality and viability of the town centre. Our client wishes to remind the Council that this application remains **a speculative out-of-centre retail development**.

This is phase 1 of at least 2 phases of development. The Council is all too aware of the proposal for phase 2 and a proposal for A3/A5 use which remain within the application site boundary. As such the Council does appear to be giving its tacit approval to a retail element being built on those parts of the site. No alternative development is proposed for that area.

If the "phase 2 area", as previously identified and now coloured out, remains within the application site boundary it is clear that the Council will at least tacitly be approving retail development on that area without any consideration of the likely impact. It is already accepted by the Applicant (as evidenced by the removal of reference to phase 2 and through its retail assessment) that there is no capacity for further retail development in Stamford. This is further confirmed by the latest review by WYG which accepts town centre impact at some 9.1%. Phase 2 as previously proposed intends a further 30,000 sq ft of retail space which have not been assessed and approval of plans providing space for such future development together with additional A3/A5 uses will inevitably fetter the Council's discretion at a later date.

We refer to our previous submissions in this regard. As far as we can see no real attempt has been made to remove the proposed second phase and as such approval of the proposal plans which does not remove this element entirely, questions the rationality of the Council's decision, in a proposal such as this where the exact floorspace proposed is vital to the consideration of whether such an application should be approved or refused.

Our clients are concerned by the findings of their retail consultant who has identified serious shortcomings with the Applicant's latest retail assessment and particularly with regard to the following facts, namely, that the development proposed (i) takes up all/ virtually all of the new comparison goods floorspace capacity identified for Stamford to 2016, leaving none for any sequentially preferable developments in the town and (ii) appears to clearly contradict policy E2 of the SKDC Core Strategy which identifies that such large retail developments should be directed to the sub-regional centre of Grantham.

They are also particularly concerned that the updated retail impact assessment submitted by P&S on 21 September 2011 is flawed as it :-

- a) Suggests unrealistically high average sales densities for the shops in the town centre. The P&S densities are well in excess of the national average sales densities for leading national multiples when it is well known that the majority of shops in Stamford are independents which are recognised as having much lower sales densities than national multiples; and
- b) Substantially overstates Stamford town centre turnover, and thus significantly understates the impact which the application proposal will have on the vitality and viability of the town centre. P&S originally suggested an impact ranging between 5.8% and 8.7%. P&S now suggest an impact of 9.1%, with which WYG concur. However in light of the overstatement of Stamford town centre turnover, this figure will, in reality, be in excess of 10%; and
- c) Takes no account of the residual impact which reduced footfall in the town centre due to the proposed retail park draw will have upon other shops in the town.

With regard to other matters such as transportation and sustainability considerations, we refer you to our previous representations. We do not understand there to be any change in relation to these matters and as such we re-iterate our previous concerns which still remain unanswered.

Conclusions

We reiterate submissions made previously and above that the current application is significantly different from the original application (which decision to grant planning permission was quashed at Court) such that the current application requires a fresh application and cannot simply be dealt with as amendments to the original application in the manner proposed.

Notwithstanding the comments above in relation to the need for a fresh application, in light of the accepted serious shortcomings previously identified by our clients' retail consultant we ask that the Council instructs its retail consultant to undertake a full and detailed review of the retail assessments submitted by the Applicant such that serious consideration is given to the impact on the vitality and viability of Stamford town centre.

In these acknowledged very difficult times for existing town centres we would urge the Council to carefully consider any out of centre retail application which might threaten the vitality and viability of its town centres. At the very least we would expect it to make decisions which accord with its own Development Plan policies. Little if any consideration is given to its policy of promoting Grantham for such developments and no explanation is offered to explain the proposed departure. We believe the application as it stands is contrary to policy and as such should be refused.

Yours faithfully



Wedlake Bell

Enc.