

<b>APPLICATION NO</b>	<b>PA/2020/660</b>
<b>APPLICANT</b>	Rafkins (Scunthorpe) Leisure Park Ltd
<b>DEVELOPMENT</b>	Planning permission for mixed use development: hotel (Class C1), gym (Class D2), retail units (Class A1), food and drink and drive-thru restaurants (Class A3/A5), with access, car parking, landscaping and associated works
<b>LOCATION</b>	Land off Jack Brownsword Way, Scunthorpe
<b>PARISH</b>	Gunness
<b>WARD</b>	Burringham and Gunness
<b>CASE OFFICER</b>	Mark Niland
<b>SUMMARY RECOMMENDATION</b>	<b>Grant permission subject to conditions</b>
<b>REASONS FOR REFERENCE TO COMMITTEE</b>	Member 'call in' (Cllr Josh Walshe – significant public interest and highway concerns)

## **POLICIES**

### **National Planning Policy Framework:**

Paragraph 8 – Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

- an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure
- a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and
- an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

Paragraph 47 – Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations

indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.

Paragraph 86 – Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.

Paragraph 87 – When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.

Paragraph 109 – Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 127 – Planning policies and decisions should ensure that developments:

- (a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
- (b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
- (c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
- (d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
- (e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
- (f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

Paragraph 158 – The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.

Paragraph 159 – If it is not possible for development to be located in zones with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in national planning guidance.

Paragraph 160 – The application of the exception test should be informed by a strategic or site-specific flood risk assessment, depending on whether it is being applied during plan production or at the application stage. For the exception test to be passed it should be demonstrated that:

- (a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and
- (b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

Paragraph 175 – (d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.

**North Lincolnshire Local Plan:**

S7, T1, T2, LC15, HE5, DS1, DS3, DS7, DS12, DS14, DS16, T19

**North Lincolnshire Core Strategy:**

CS1, CS2, CS3, CS5, CS6, CS14, CS16, CS17, CS18, CS19, CS25

**Housing and Employment Land Allocations:**

PS1, TC1

**CONSULTATIONS**

**Highways:** No objections subject to conditions.

**Environment Agency:** Recommends the updating of the FRA regarding resilience measures. If this is not the case, conditions are recommended controlling an appropriate resilience scheme and finished floor levels, as well as to protect ground water.

**Drainage (Lead Local Flood Authority):** No objections subject to conditions.

**Anglian Water:** The application site falls outside of their geographical remit.

**Environmental Protection:** No objections subject to conditions relating to land contamination, air quality, odour, noise and the construction phase.

**Ecology:** The ecologist states that no mitigation has been proposed for the loss of existing species or habitats. Whilst a small amount of landscaping is proposed, the design does not appear to have been designed with biodiversity enhancement as a guiding principle. The

ecologist therefore objects to the proposal. However, if there are any overriding reasons why the application is to be approved, then conditions are put forward as mitigation.

**IDB:** The IDB has no objection in principle but advises that ground conditions in this area may not be suitable for soakaway drainage. It is therefore essential that percolation tests are undertaken to establish if the ground conditions are suitable for soakaway drainage throughout the year.

**Spatial Planning:** It would be extremely difficult to accommodate all the uses and parking provision required in a town or district centre location. However, the hotel/gym part of the proposal is specifically a town centre use that would benefit the regeneration of Scunthorpe town centre by being in a more central location. Such uses cannot be classed as solely drawing in clients/customers from the existing Gallagher Retail Park/North Lincolnshire Shopping Park and have a much wider function and attraction. Those shopping in the vicinity may use the restaurants as a draw but are unlikely to use the hotel and gym at the same time. It is noted, however, that there is no disaggregation requirement to do so.

**Public Rights of Way:** No public rights of way, greens, commons or other access land appear to be affected by this proposal. We therefore have no objection to what is proposed on these grounds.

**Humberside Police – Designing Out Crime Officer:** No objection but puts forward advice in relation to the cycle shelter and motorcycle parking bays.

## **PARISH COUNCIL**

No comments have been received from Gunness Parish Council.

## **PUBLICITY**

The proposal has been advertised by means of site and press notice in accordance with Article 15 of the Development Management Procedure Order 2015 as amended.

One objection has been received which states:

‘The main priority for this development should be an upmarket social restaurant/bar area to attract chains like Nando's and Pizza Express to Scunthorpe (look at Valley Centertainment in Sheffield). The four retail spaces should be changed to restaurants to make this an eating out area, leaving retail for the town centre. The drive thru's should be scrapped to attract proper restaurants and not fast food chains.’

The comments about the town centre are material to this assessment although the control over what moves into the units is outside of the scope of planning.

## **STATEMENT OF COMMUNITY INVOLVEMENT**

No statement of community involvement has been evidenced.

## **ASSESSMENT**

### **Planning history**

- PA/2005/2051: Full planning permission to erect a restaurant (A3), including the formation of a new vehicular access point and car parking area to serve both the proposed restaurant and the previously approved health and fitness centre – granted 15/02/2006
- PA/2003/1830: Full planning permission to vary condition 1 of planning permission 2002/1885 in order to read ‘the development shall be begun no later than 5 January 2005’ – 16/03/2004
- PA/2003/0359: Full planning permission for two Class A3 restaurant units, a hotel, and a health and fitness centre, with associated car parking – granted 18/05/2005
- PA/2002/1885: Full planning permission to vary condition 3 of outline planning permission 1997/0830 – granted 04/03/2003
- PA/2000/1071: Approval of reserved matters following the grant of outline planning permission 1997/0830 to erect three fast-food units, a health and fitness club, and a hotel with associated car parking, landscaping and road access – granted 05/01/2001
- PA/2000/0982: Section 73 consent to vary condition 2 of outline planning permission 1997/0830 to extend the reserved matters submission deadline to 12 September 2001 – granted 06/10/2000
- PA/1997/0830: Outline planning permission to construct buildings and external works for use under Classes A3, B1, C1 and D2 - granted 12/09/1997
- 7/1989/0212: Outline planning permission to erect buildings for Business Use Class B1(a): 50-bedroom hotel, fast-food unit, petrol station, car wash, and leisure unit – granted 20/07/1989

### **Site constraints**

- SFRA Flood Zone 2/3(a) Tidal (North and North East Lincolnshire SFRA 2011)
- Located close to a Secondary B aquifer
- Edge-of-town retail

### **Site characteristics**

The site forms part of a wider rectangular piece of land with the former Frankie & Benny’s restaurant to the north-east and Scunthorpe United stadium to the south. There are a number of food and drink uses in the immediate vicinity, including Pizza Hut, KFC, McDonalds and Frankie & Benny’s. There is also a public house and a hotel in close proximity to the site. There are retail and food/drink uses slightly further from the site, but still close to it, including Next, Tesco, B&Q, Costa Coffee, Debenhams, M&S and more. All of these are within the Gallagher Retail Park.

To the west of the site there is a footway link providing pedestrian access over the M181 and beyond to the settlement of Gunness. To the south there is a field located next to Glanford Park where SUFC train.

## **Proposal**

Planning permission is sought for mixed use development: hotel (Class C1), gym (Class D2), retail units (Class A1), food and drink, and drive-thru restaurants (Class A3/A5) with access, car parking, landscaping and associated works.

Since the application was submitted, a change to the Use Classes Order has been introduced. This change groups all the above uses under Class E (with the exception of C1 Hotels).

### **The key considerations for this proposal are:**

- **principle of development;**
- **flood risk and drainage;**
- **ecology;**
- **highways;**
- **character and appearance;**
- **environmental issues;**
- **air quality/sustainable resource;**
- **land contamination; and**
- **pre-commencement conditions.**

### **Principle of development**

Scunthorpe is classed as a major sub-regional town in the settlement hierarchy set out in the Core Strategy DPD. Policy CS1 states that it will be the focus for the majority of new development and growth, including housing, employment, retail, sustainable transport links, and higher order services and facilities to serve North Lincolnshire, and the town centre will be the main focus of new retail, leisure, commercial office and cultural developments in the area.

As part of the urban renaissance programme, significant regeneration will take place within the town centre to provide new retail opportunities, a new market hall, and cultural and leisure facilities, as well as enhancements to the public realm and urban fabric. The use of high quality and innovative design will be supported in the town centre and mixed use development will be encouraged.

Policy CS2 supports the wider development strategy by seeking to deliver development in sustainable locations. Scunthorpe is considered to be a key location for development. In particular, the use of previously developed land is supported. Any proposals should seek to meet the sustainability principles outlined in the policy in relation to accessibility.

A 'sequential approach' will also be applied to ensure that development is, where possible, directed to those areas that have the lowest probability of flooding, taking into account the vulnerability of the type of development proposed, its contribution to creating sustainable communities and achieving the sustainable development objectives of the plan. Where development does take place in the flood plain, mitigation measures should be applied to ensure the development is safe.

Policy CS3 states that development limits will be applied to all settlements (except for rural settlements in the countryside). These are defined on the settlement inset maps within the Housing and Employment Land Allocations DPD (March 2016). The site is within the defined settlement boundary for Scunthorpe.

### ***Retail – sequential approach***

Policy CS14 sets out the retail hierarchy and aims to support the vitality and viability of the town and district centres in the area. Town and district shopping centre boundaries are shown on settlement inset plans in the Housing and Employment Land Allocations DPD (March 2016). Where development is proposed in edge of centre or out of centre locations, developers are required to comply with the sequential approach to site selection. This approach is further reinforced in policies TC1 and S8 respectively.

Paragraphs 86 and 87 of the NPPF state:

'Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.'

When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.'

Additional guidance on the application of the sequential approach is provided in the 'Planning Practice Guidance - updated July 2019' with a checklist that sets out the considerations that should be taken into account whilst determining the sequential test. They are:

- With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. It is important to set out any associated reasoning clearly.
- Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
- If there are no suitable sequentially preferable locations, the sequential test is passed.

In line with paragraph 86 of the National Planning Policy Framework, only if suitable sites in town centre or edge of centre locations are not available (or expected to become available within a reasonable period) should out of centre sites be considered. When considering what a reasonable period is for this purpose, the scale and complexity of the proposed scheme and of potentially suitable town or edge of centre sites should be considered.

The application has been accompanied by a retail sequential test which requires assessing against the provisions of the development plan (policies quoted above), the NPPF (particularly paragraphs 86 and 87) and the Planning Practice Guidance's sequential test checklist. It is noted that NPPF paragraph 90 concludes by stating that where a proposal fails to satisfy the sequential test, it should be refused.

With regard to the sequential test, Scunthorpe Town Centre, Frodingham District Centre and Ashby High Street District Centre were all identified, during pre-application discussions, as areas of search. The applicant lists the alternative sites that were explored:

- ST1: Asda Car Park, Carlton Street
- ST2: Carlton Street East Long Stay Car Park
- ST3: Former TJ Hughes, Mary Street
- ST4: West Street/Chapel Street Car Park
- ST5: Home Street Short Stay Car Park
- ST6: Former Scunthorpe Market Site
- ST7: King Street/Winterton Road Long Stay Car Park
- ST8: Land east of Winterton Road
- ST9: Land north of Glebe Road.

As part of the sequential test, the applicant has demonstrated that many of the identified sites are unsuitable to accommodate the proposed development without disaggregation. The only possible exception is the former Scunthorpe Market site which has been discounted on the grounds of the possible town centre need for the market car park, poor connectivity of the site to the strategic highway network (SRN) and that it is slightly smaller in area than the proposal site. An argument is put forward that the loss of existing town centre parking and the space that this development would require, along with the parking provision required for this development, would mark the site as being unsuitable, especially as there would also be issues with servicing and deliveries; the site is bounded by Home Street to the east and Church Street to the west, but is currently one-way. Furthermore, it is likely that the proximity of residential uses at Crosby Flats and the maisonettes would carry amenity related issues due to activity. It is possible that this would place certain restrictions on business/commercial activity in terms of the way and times they operate. The drive-thru uses would certainly not be absorbed well in this scenario and therefore the applicant's arguments of 'suitability' hold true in this regard.



## ***Disaggregation of uses***

Of course, if the proposal could be broken down/separated into individual uses, then some of the sites considered within the retail sequential test may be suitable. However, site disaggregation, by its absence in the NPPF and Planning Practice Guidance, is a factor to which little weight can be given. There is, therefore, no requirement to disaggregate a scheme to fit available land within a town or district centre. However, it is noted that a degree of flexibility should be applied in the format/scale of a proposal to consider whether a town centre site could accommodate the scheme, and this is the policy position we are fronted with.

In case law terms there are also examples of how inspectors uphold the notion that disaggregation of uses is not something that should be expected of a developer. The applicant presents a series of cases where inspectors support that disaggregation of a proposal should not take place. In one of the more famous cases, 'Rushden Lakes', the Secretary of State supported the inspector's stance that the retail sequential test should only search sites that can accommodate the whole proposal (and not elements of it):

'...The sequential test relates entirely to the application proposal and whether it can be accommodated e.g. on a town centre site.' (2014, APP/G2815/V/12/2190175, paragraph 8.48)

A furthering point in case law terms is the grant of planning permission for an out of centre factory outlet centre (FOC) at Scotch Corner issued in December 2016 (APP/V2723/V/15/3132873 & APP/V2723/V/16/3143678). In this case the SoS endorsed his inspector's conclusions on the sequential approach as follows:

'In carrying out the sequential test it is acknowledged that whilst Framework paragraph 24 [now paragraph 86] indicates that applicants should demonstrate flexibility on issues such as format and scale, it does not require the applicant to disaggregate the scheme. The sequential test seeks to see if the application, i.e. what is proposed, can be accommodated on a town centre site or on sequentially preferable sites.'

It is somewhat frustrating that a scheme seemingly made up of numerous and unrelated planning units cannot be disaggregated; however, the applicant presents a robust argument that is backed by both policy and planning case law.

## ***Summary of principle***

Therefore, without the ability to split the uses, the proposal has satisfied the tests set out in policy and the PPG as regards the retail sequential test. The argument put forward surrounding disaggregation is well known in planning and difficult to refute. The proposal is made up of E and C1 classes which will benefit the socio-economic landscape of Scunthorpe, despite being in an edge of town location. The retail uses amount to less than 1000 square metres, whilst the restaurants, drive-thru's, hotel and gym all complement the existing uses at Gallagher Retail. In terms of flexibility, the proposed units are not overly large in floor space terms. The hotel, for example, is large but this is due to its height; it is unlikely, therefore, that there could be a reduction in floor space so that some of the alternative sites would become acceptable. Furthermore, members should note that the application site has been subject to previous permissions that related to leisure uses, albeit under a dated policy framework. The proposal is therefore considered acceptable and would align with the aforementioned planning policies relating to principle.

## **Flooding and drainage**

Policy CS19 of the Core Strategy is concerned with flood risk. It states that development in areas of high flood risk will only be permitted where it meets the following prerequisites:

1. It can be demonstrated that the development provides wider sustainability benefits to the community and the area that outweigh flood risk.
2. The development should be on previously used land. If not, there must be no reasonable alternative developable sites on previously developed land.
3. A flood risk assessment has demonstrated that the development will be safe, without increasing flood risk elsewhere, by integrating water management methods into the development.

The site is located within Flood Zone 2/3a within the North Lincolnshire SFRA 2011. The applicant is therefore required to submit a flood risk assessment, as well as sequential and exceptions tests, given the move to a more vulnerable flood risk classification (see also paragraphs 100, 101 and 102 of the NPPF).

### ***Sequential test***

The applicant has submitted a robust sequential test submitted by DLP. The assessment of potential sites took as its starting point land within the defined centres and at the edge of defined centres set out below, with sites elsewhere and out of centre carrying no sequential preference in retail policy terms, as discussed in the Planning & Sequential Assessment.

The centres considered are:

- Scunthorpe Town Centre
- Frodingham Road District Centre
- Ashby High Street District Centre.

This is succinct with the overarching spatial strategy set out by policy CS1 of the North Lincolnshire Core Strategy. The methodology for site searches relates to the space requirements needed by this proposal, as well as connections to movement frameworks for pedestrian and vehicle access. (This aligns with the disaggregation argument put forward and discussed in the principle section.) The methodology is also considered acceptable.

Reasoning for discounting the sites that are explored within flood zone 1 are considered sufficiently robust and it is clear that there are no alternative sites that would be succinct with the spatial strategy that are available in flood zone 1; the sequential test is therefore passed.

### ***Exceptions test***

NPPF paragraph 160 states that for the exception test to be passed it should be demonstrated that:

- (a) the development would provide wider sustainability benefits to the community that outweigh the flood risk; and

- (b) the development will be safe for its lifetime taking account of the vulnerability of its users, without increasing flood risk elsewhere, and, where possible, will reduce flood risk overall.

The applicant has put forward strong socio-economic reasoning as to why the proposal is sustainable within a covering letter. The applicant states:

'The proposed development would deliver a wide range of benefits through further investment to the north-west of Scunthorpe in an established retail and leisure location. Benefits include the creation of over 100 FTE jobs in a sustainable location close to bus stops and existing and future residential development.

Further benefits include the creation of opportunities for local supply chains to benefit through providing goods, services and skills and further job opportunities through construction of development. Additional economic benefits are associated with the visitor economy through provision of a hotel close to Glanford Park Football Stadium.

The development would also result in an improved offer of social and leisure activities in an established visitor location, therefore contributing towards the social and cultural wellbeing of local residents.'

The benefits then of the proposal are clear in socio-economic terms. Environmentally the land is brownfield and is fairly described as scrubland, although wildlife habitat networks have begun to prosper. There would clearly be some environmental damage due to the loss of these habitats; however, on balance of all three pillars of sustainability, the wider public benefits are weighted greater. This element of the exceptions test is therefore passed.

Policy CS19 of the Core Strategy is concerned with flooding, whilst policies DS14 and DS16 of the North Lincolnshire Local Plan are concerned with both surface water and foul drainage; all are relevant. The second part of the exceptions test is more technical, and the development needs to be safe for its lifetime, taking account of the vulnerability of its users, without increasing flood risk elsewhere, and where possible reducing flood risk overall.

The LLFA, IDB, Environment Agency and the Water Board have all been consulted. The LLFA, following meetings and a request for additional information, now consider, subject to conditions in relation to surface water, that the proposal is acceptable. The EA has expressed concerns surrounding resilience measures and requested an update to the FRA to recognise the critical flood level (i.e. from sources other than the Trent) and to strengthen their advice on resilience. The information has not been forthcoming though there has been dialogue. Ultimately, conditions controlling the datum point and methodology of resilience measures would be attached to any forthcoming permission, as well as conditions relating to finished floor levels and an evacuation plan. A condition reinforcing that no sleeping accommodation can be provided at ground level would also be included. The EA has also requested conditions relating to ground water protection and these too would be attached. The IDB, at this stage, has no objection but will be looped into any discussion on the proposed surface water drainage strategy that will form a condition.

It is therefore considered, subject to the mitigation outlined above, that a drainage scheme can be achieved and a development that would not be harmful to ground water. The proposal then is considered to align with policies CS19 of the Core Strategy, and DS14 and DS16 of the local plan, as well as paragraphs 148 to 169 of the NPPF.

## Ecology

Policy CS17 is concerned with biodiversity and so too, in part, is policy CS5; both are reinforced by paragraph 175 (d) of the NPPF. Policy CS17 sets out principles for managing and improving the district's wildlife habitat networks and states:

'The council will promote effective stewardship of North Lincolnshire's wildlife through:

1. safeguarding national and international protected sites for nature conservation from inappropriate development;
2. appropriate consideration being given to European and nationally important habitats and species;
3. maintaining and promoting a North Lincolnshire network of local wildlife sites and corridors, links and stepping stones between areas of natural green space [emphasis added];
4. ensuring development retains, protects and enhances features of biological and geological interest and provides for the appropriate management of these features [emphasis added];
5. ensuring development seeks to produce a net gain in biodiversity by designing in wildlife, and ensuring any unavoidable impacts are appropriately mitigated for [emphasis added];
6. supporting wildlife enhancements that contribute to the habitat restoration targets set out in the North Lincolnshire's Nature Map and in national, regional and local biodiversity action plans [emphasis added];
7. improving access to and education/interpretation of biodiversity sites for tourism and the local population, providing their ecological integrity is not harmed.'

The ecologist states that the site supports typical Scunthorpe brownfield habitats '...scrub, semi-improved neutral grassland and ephemeral/short perennial vegetation close to tree belts and a pond. Such habitats could support a good diversity of invertebrate species, including pollinators.' The officer goes on to state that the no mitigation has been proposed for the loss of existing species or habitats and whilst some landscaping is proposed the development has not been designed with biodiversity enhancement as a guiding principle.

The applicant has submitted a preliminary survey, reptiles survey and landscaping plan. The ecologist confirms that there is no evidence of reptiles nor Great Crested Newts and the concern relates to the overall net loss of biodiversity. The applicant has provided a landscaping plan that shows some planting in and around the car parking areas and to the rear and fore of buildings. However, given that this site has benefited from being left, wildlife habitat networks have emerged and this scheme would result in a large net loss of that.

Paragraph 47 of the NPPF states, '...Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.' The application site benefits from previous planning permissions: PA/1997/0830 and the subsequent reserved matters PA/2000/1071. The outline allowed for development all the way along the M181 to where SUFC train, though the reserved matters (which were phased) were only agreed up to a point where the

Travelodge ends. (The remaining land approved under the outline no longer has a permission as the applicant failed to meet the timeframe for submitting reserved matters.) The result is that the applicant does have an extant permission to lay hard standing for car parking across half of this proposal site without requiring planning permission. This means that where this can occur the biodiversity that has prospered can be destroyed and in planning terms this would mean that there is a lesser overall net loss of biodiversity.

This material consideration offers sufficient justification to impose conditions on any approval. It is unlikely, given the amount of development and the size of the site, that a biodiversity management plan would result in achieving a net gain, but it would close the gap in terms of the total net loss of biodiversity. Therefore, whilst the proposal is contrary to policy CS17 and paragraph 175 (d) of the NPPF, there are material considerations that indicate a departure may be supported, whilst the inclusion of conditions would reduce the amount of overall loss.

## Highways

Policy T2 of the North Lincolnshire Local Plan states that all development should be served by a satisfactory access. Policy T19 of the local plan is concerned with parking provision as well as general safety. Both are considered relevant. Policy CS25 of the Core Strategy is concerned with sustainable transport and is also relevant, as are paragraphs 102–111 of the NPPF.

The applicant has submitted a transport assessment and framework travel plan. The proposal is located at an edge of town location but is highly accessible by both public transport and other sustainable modes such as on foot or bicycle. The application includes parking for around 158 vehicles as well as cycle storage/parking. The councils' highways team has been consulted and considers the proposals to be acceptable subject to conditions. These relate not only to the provision of access roads and parking prior to the first use, but also to delivery/servicing and construction management plans, as well as the re-siting of the cycle park. This latter point is also discussed by the designing out crime officer. The cycle park at present is not to a secure enough standard but, despite comments, its location is acceptable. Any lack of natural surveillance can be bolstered by security cameras and control of access so it can be improved in its current location; it is therefore not considered necessary to relocate it. Much of the designing out crime theory emanates from the Defensible Space principles put forward by Oscar Newman (1971), where one element is weak, for example natural surveillance; this can be mitigated by greater control over accessing the facility and/or the addition of CCTV (increase in surveillance). Therefore, its location is not paramount and in any case it is difficult to see where it could be relocated without posing a risk to highway safety, furthermore existing uses should as the Travelodge offer protection through surveillance of the facility. What is considered necessary is the ability to control the overall security of the cycle park (lockable devices, transparent elevations etc and this would be achieved sufficiently through condition.

Highways have also stated, 'We would also advise that any S106 should include some financial contribution for improvements to cycle signs and lines in the vicinity of the site and along the A18 to encourage and promote cycling. Also, a contribution towards the proposed M&S bus stop.' A condition is proposed regarding signage which would mitigate the need to secure this element through legal agreement. Whilst a financial contribution towards a bus stop at M&S could be requested in principle, there is no breakdown of costings or what would be a proportionate amount given that there is already an abundance of uses at

Gallagher Retail. Also the comments suggest that there is an existing need for this and a need generated by this development. Furthermore, there is no information substantiating why the existing bus stop at Tesco is not sufficient. The request, through its lack of detail, therefore, would fail to meet the tests for obligations set out within the CIL regulations and cannot be requested of the developer.

A final note is that the member 'call in' in part relates to highway concerns; this area suffers from heavy congestion and this is compounded on match days at Scunthorpe United. This is an existing issue and is not one created by this development, though clearly on a match day it will add to it. It is therefore considered, subject to the aforementioned mitigation, that the proposal would accord with policies T2 and T19 of the local plan, and CS25 of the Core Strategy, as well as paragraphs 102–111 of the NPPF.

### **Character and appearance**

Policy CS5 of the Core Strategy seeks to deliver quality design within North Lincolnshire. It sets out an interpretive criteria base for applicants to consider during their design journey, which state:

'New development in North Lincolnshire should:

- contribute towards creating a positive and strong identity for North Lincolnshire by enhancing and promoting the image of the area through the creation of high quality townscapes and streetscapes;
- ensure it takes account of the existing built heritage from the earliest stages in the design process, in particular terms of scale, density, layout and access;
- incorporate the principles of sustainable development throughout the whole design process. This will include site layout, minimising energy consumption, maximising use of on-site renewable forms of energy whilst mitigating against the impacts of climate change, for instance flood risk;
- create safe and secure environments, which reduce the opportunities for crime and increase the sense of security for local residents through the use of Secured by Design guidance;
- consider the relationship between any buildings and the spaces around them, and how they interact with each other as well as the surrounding area. The function of buildings should also be considered in terms of its appropriateness for the context in which it is located
- create attractive, accessible and easily distinguished public and private spaces that complement the built form;
- support sustainable living and ensure that a mix of uses, which complement one another, are incorporated;
- provide flexibility in that new and existing buildings and spaces are able to respond to future social, technological, environmental and economic needs;
- be easily accessible to all users via recognisable routes, interchanges and landmarks that are suitably connected to public transport links, community facilities and services

and individual communities and neighbourhoods in North Lincolnshire. Buildings and spaces should be accessible by all sections of the community, and ensure that the principles of inclusive design are reflected;

- incorporate appropriate landscaping and planting which enhances biodiversity or geological features whilst contributing to the creation of a network of linked greenspaces across the area. Tree planting and landscaping schemes can also assist in minimising the impacts of carbon emissions upon the environment;
- integrate car parking provision within the existing public realm and other pedestrian and cycle routes.'

The applicant has submitted a robust Design and Access Statement that sets out its framework for design through principles that align with those above from policy CS5. The applicant provides a contextual analysis of the surrounding area considering transport and movement frameworks, neighbouring uses, style and form of buildings as well as green space and proximity to residential properties. The document states that the proposed layout has derived, through consideration of the existing site, its immediate context, connections with the surroundings and how the new development will function with regard to the existing highways, and that the siting of the buildings plays an important role in how the site relates visually to the Gallagher Retail Park.

Mass is considered, links and permeability, as well as the palette of materials; it is a text book approach to explain the design narrative and one that reflects both of the Urban Design Compendiums. Designing out crime is considered along with a sustainability strategy. The upshot is that a scheme has been offered that is not only in keeping with the rest of the Gallagher retail park, but one that will modernise it and improve the overall aesthetic. The hotel, which is over three storeys (four in total in respect of the building, but there are separate ground floor uses), is a mixture of metal cladding and brickwork. This building would have a wide-ranging impact and would be seen on approach to Scunthorpe, as well from a distance in the locality. At present Glanford Park and the Farmhouse Pub are viewed on approach to Scunthorpe, as is Tesco Extra. There is a clear distinction at this point that you are entering an urban environment. The hotel will positively add to this approach showcasing a new bespoke hotel. The area is buoyant with commercial activity and this proposal reinforces that positive representation.

The other buildings are in keeping with what is around them but will be largely unseen until in the centre of Gallagher Retail Park. Therefore, the built form, whilst far reaching, could be described as typical of an edge of centre retail park and finishing materials follow suit. The elevation plans are detailed and so materials will be secured through the approved plans condition.

The proposal is considered to fully comply with the principle set out by policy CS5 of the Core Strategy. The only exception is that both the designing out crime officer and Highways have requested a more secure cycle park. (This is discussed in the Highways section). A condition can be attached to any forthcoming permission to prevent use until details of access control/security improvements of this facility have been submitted to and agreed in writing with the planning authority. Therefore, subject to the aforementioned mitigation, it is considered that the proposal is in accordance with policy CS5.

## **Environmental issues**

Policy DS11 of the local plan is concerned with polluting activities. It states that planning permission for development, including extensions to existing premises and changes of use, will only be permitted where it can be demonstrated that levels of potentially polluting emissions, including effluent, leachates, smoke, fumes, gases, dust, steam, smell or noise, do not pose a danger by way of toxic release. Policy DS1 is also concerned with the protection of amenity.

The council's Environmental Health department has assessed the application and considers that a construction environmental management plan is required to mitigate neighbouring amenity during construction. The recommended condition requires the developer to submit information relating to lighting and the control of dust and noise. An additional condition to manage construction working hours is also considered necessary to mitigate unacceptable impacts upon the amenity of neighbouring uses, as well as patrons servicing those uses.

In operational terms the proposal is located on a site that would be in keeping with other uses, even complementary, and represents a continuation of what is already contained within Gallagher Retail Park. Given the above mitigation, it is considered that the proposal would accord with policy DS11.

## **Air quality/sustainable resource**

Policy CS18 of the Core Strategy is concerned with sustainable resource use and climate change. Its purpose is to promote development that utilises natural resources as efficiently and sustainably as possible. Two points of this policy are relevant:

- (10) ensuring development and land use helps to protect people and the environment from unsafe, unhealthy and polluted environments, by protecting and improving the quality of the air, land and water
- (12) supporting new technology and development for carbon capture and the best available clean and efficient energy technology, particularly in relation to the heavy industrial users in North Lincolnshire, to help reduce CO<sub>2</sub> emissions.

The councils Environmental Health department has assessed the proposal and proposes a condition that, prior to development, a scheme for electric charging points is submitted to and agreed in writing with the local planning authority. In terms of construction, the applicant has submitted air quality information that the Environmental Protection Officer recommends the development is linked to. These requests are considered to be in accordance with the above policy requirements and will be attached to any permission to mitigate impact upon air quality generated by the development.

## **Land contamination**

Policy DS7 of the North Lincolnshire Local Plan is concerned with contaminated land. It states that permission will only be granted on contaminated sites where a detailed site survey has been submitted, and a suitable scheme of remedial measures has been agreed to overcome any existing contamination.

The applicant has submitted a Geo-environmental Assessment, which notes contaminants of concern; these include heavy metals, inorganics, asbestos, VOCs, PAHs, petroleum



hydrocarbons, methane and carbon dioxide. Further investigation is recommended; however, no proposals for this investigation have been put forward. Furthermore, the site is close to a Secondary B aquifer and therefore control over contaminants is vital (along with that of ground water as put forward by the Environment Agency which will also be attached). The EPO recommends then that a full robust condition, which would require a desk-based study, remediation and verification reports, should be attached to any permission.

It is therefore considered, subject to such a condition, that the proposal would accord with policy DS7 of the North Lincolnshire Local Plan.

## **Conclusion**

The applicant has demonstrated that there are no suitable alternative sites for this development within identified town or district shopping centres, both in retail and flood risk terms. The proposal would carry high socio-economic benefits for the locality in the creation of business and jobs. There would be a net loss of biodiversity though this loss is mitigated somewhat by the existing fallback position to formulate car parking across much of the site as well as a condition requiring a biodiversity management plan. There are strict conditions surrounding flooding and resilience measures as well as those to protect groundwater as the proposal site is close to a Secondary B aquifer. There are also conditions to mitigate the construction phase of the development.

Ultimately, on balance, the proposal does represent a sustainable form of development that would have both social and economic benefits for the principal settlement of North Lincolnshire, despite it being an edge of town development.

## **Pre-commencement conditions**

The Town and Country Planning (Pre-commencement Conditions) Regulations 2018 sets out a requirement for planning authorities to agree or give requisite notice to applicants regarding the attachment of pre-commencement conditions. This process has been followed.

## **RECOMMENDATION Grant permission subject to the following conditions:**

1.  
The development must be begun before the expiration of three years from the date of this permission.

### **Reason**

To comply with section 91 of the Town and Country Planning Act 1990.

2.  
The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan 13776-098D  
Existing Site Plan 13776-099C  
Proposed Site Plan 13776-101D  
Proposed Unit 01-05 GA Plans 13776-111C  
Proposed Unit 01-05 GA Plans 13776-112C

Proposed Unit 01-05 Roof Plan 13776-113B  
Proposed Unit 01-05 GA Elevations 13776-114A  
Proposed Unit 06-08 Plans 13776-115A  
Proposed Unit 06-08 GA Elevations 13776-116B  
Proposed Unit 09 GA Plans 13776-117A  
Proposed Unit 09 Elevations 13776-118A  
Proposed Unit 10 GA Plans 13776-119A  
Proposed Unit 10 Elevations 13776-120B  
Proposed Boundary Treatment Plan 13776-121A  
Proposed Site Sections 13776-122A  
Landscape Plan 13776-VL-L01 13776-VL-L01A

#### Reason

For the avoidance of doubt and in the interests of proper planning.

3.

No development shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development.

#### Reason

To prevent the increased risk of flooding to themselves and others, to improve and protect water quality, and to ensure the implementation and future maintenance of the sustainable drainage structures in accordance with policy DS16 of the North Lincolnshire Local Plan, policies CS18 and CS19 of the North Lincolnshire Core Strategy, and paragraphs 155, 157, 163 and 165 of the National Planning Policy Framework.

4.

The drainage scheme shall be implemented in accordance with the approved submitted details required by condition 3 above, be completed prior to the occupation of any dwelling or building within each phase or sub-phase of the development on site, and thereafter retained and maintained in accordance with the scheme for the life of the development unless otherwise agreed in writing with the local planning authority.

#### Reason

To prevent the increased risk of flooding to themselves and others, to improve and protect water quality, and to ensure the implementation and future maintenance of the sustainable drainage structures in accordance with policy DS16 of the North Lincolnshire Local Plan, policies CS18 and CS19 of the North Lincolnshire Core Strategy, and paragraphs 155, 157, 163 and 165 of the National Planning Policy Framework.

5.

Prior to each phase of development approved by this permission, no development shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:

(i) A preliminary risk assessment which has identified:

- all previous uses;
  - potential contaminants associated with those uses;
  - a conceptual model of the site indicating sources, pathways and receptors;
  - potentially unacceptable risks arising from contamination at the site.
- (ii) A site investigation scheme, based on (i) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site.
- (iii) The results of the site investigation and the detailed risk assessment referred to in (ii) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
- (iv) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (iii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- (v) Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

**Reason**

To ensure that the development does not contribute to, and is not put at unacceptable risk from or adversely affected by, unacceptable levels of water pollution in line with paragraph 170 of the National Planning Policy Framework.

**6.**

Prior to any part of the permitted development being brought into use, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the local planning authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

**Reason**

To ensure that the site does not pose any further risk to human health or the water environment by demonstrating that the requirements of the approved verification plan have been met and that remediation of the site is complete. This is in line with paragraph 170 of the National Planning Policy Framework.

**7.**

No development shall take place until information has been submitted to and agreed in writing with the local planning authority detailing appropriate resistance/resilience measures that are to be incorporated across the development in respect of flooding. They shall be retained thereafter.

**Reason**

In the interest of flood risk prevention and to accord with policy CS17 of the Core Strategy.

8.

Prior to the first use of any building, an evacuation escape plan shall be submitted to and agreed in writing with the local planning authority. The methodology for escape from flooding shall thereafter be followed in the event of an emergency.

Reason

To protect from flooding and to accord with policy CS19 of the North Lincolnshire Core Strategy.

9.

No sleeping facilities shall be provided at ground level by the hotel at any time.

Reason

To protect from flooding and to accord with policy CS19 of the North Lincolnshire Core Strategy.

10.

No development shall take place until the applicant or their successor in title has submitted a biodiversity metric assessment and biodiversity management plan to the local planning authority for approval in writing. The document shall include:

- (a) an assessment of biodiversity loss based on the habitat and hedgerow baseline from the Preliminary Ecological Appraisal Report Reference number ER-4401-01-B dated 14/09/2019;
- (b) details of measures required to provide at least 1% biodiversity net gain in accordance with the Defra biodiversity metric 2.0;
- (c) details of sensitive working practices to avoid harm to hedgehogs and nesting birds;
- (d) details of bat boxes or bat bricks to be installed;
- (e) details of swift boxes and sparrow terraces to be installed;
- (f) details of nesting sites to be installed to support other birds species;
- (g) restrictions on lighting to avoid impacts on bat roosts, bat foraging areas, bird nesting sites and sensitive habitats;
- (h) prescriptions for the planting and aftercare of trees and shrubs of high biodiversity value;
- (i) proposed timings for the above works in relation to the completion of the buildings.

Biodiversity units should be delivered on site, within the red line and blue line boundaries shown on the submitted Location Plan. Those that cannot viably be delivered on site should be delivered locally, according to a local plan or strategy.

Reason

To conserve and enhance biodiversity in accordance with policies CS5 and CS17 of the Core Strategy.

11.

The biodiversity management plan shall be carried out in accordance with the approved details and timings, and the approved features shall be retained thereafter, unless otherwise approved in writing by the local planning authority. Prior to the commencement of use of the retail units hereby approved, the applicant or their successor in title shall submit a report to the local planning authority, providing evidence of compliance with the biodiversity management plan.

Reason

To conserve and enhance biodiversity in accordance with policies CS5 and CS17 of the Core Strategy.

12.

The mitigation measures described in Table 7.1 and 7.2 of the Air Quality Assessment, reference LDE2078-001 dated March 2020, shall be implemented in full for the duration of the proposed construction works.

Reason

To protect residential amenity and accord with policy DS1 of the North Lincolnshire Local Plan.

13.

A scheme for the provision of electrical vehicle charging points shall be submitted to and approved in writing by the local planning authority. The scheme shall be retained thereafter.

Reason

To facilitate the uptake of low emission vehicles and reduce the emission impact of traffic arising from the development in line with the National Planning Policy Framework.

14.

No plant for refrigeration, ventilation or air-conditioning shall be installed until details have been submitted to and approved in writing by the local planning authority. The details shall include an assessment of likely impact of the plant on residential amenity, specifying noise output and any mitigation measures necessary. All plant shall be installed and maintained in accordance with the details approved by the local planning authority.

Reason

To protect residential amenity and to accord with policy DS1 of the North Lincolnshire Local Plan.

15.

Construction and site clearance operations shall be limited to the following days and hours:

- 8am to 6pm Monday to Friday

- 8am to 1pm on Saturdays.

No construction or site clearance operations shall take place on Sundays or public/bank holidays.

HGV movements shall not be permitted outside these hours during the construction phase without prior written approval from the local planning authority.

Installation of equipment on site shall not be permitted outside these hours without prior written approval from the local planning authority.

Reason

To protect amenity and to accord with policy DS1 of the North Lincolnshire Local Plan.

16.

No stage of the development hereby permitted shall commence until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include the following:

Noise and vibration – the CEMP shall set out the particulars of:

- the works, and the method by which they are to be carried out;
- the noise and vibration attenuation measures to be taken to minimise noise and vibration resulting from the works, including any noise limits; and
- a scheme for monitoring the noise and vibration during the works to ensure compliance with the noise limits and the effectiveness of the attenuation measures.

Light – the CEMP shall set out the particulars of:

- specified locations for contractors' compounds and materials storage areas;
- areas where lighting will be required for health and safety purposes;
- the location of potential temporary floodlights;
- identification of sensitive receptors likely to be impacted upon by light nuisance;
- proposed methods of mitigation against potential light nuisance, including potential glare and light spill, on sensitive receptors.

Reason

To protect residential amenity to accord with policy DS1 of the North Lincolnshire Local Plan.

17.

No development shall take place until details of the private access road, including construction, drainage, lighting, servicing and the provision of suitable pedestrian crossing points into the development, have been submitted to and approved in writing by the local planning authority.

Reason

In the interest of highway safety and to accord with policy DS1 of the North Lincolnshire Local Plan.

18.

The development shall not be brought into use until the private access road has been completed in accordance with the approved details.

Reason

In the interest of highway safety and to accord with policies T2 and T19 of the North Lincolnshire Local Plan.

19.

The development shall not be brought into use until:

- (i) the access roads to the service and customer parking area;
- (ii) adequate cycle parking;
- (iii) the loading, off-loading and turning areas for all vehicles; and
- (iv) the parking spaces and access aisles (including surface markings);

have been provided in accordance with approved details and once provided all of these facilities shall thereafter be so retained.

Reason

In the interest of highway safety and to accord with policies T2 and T19 of the North Lincolnshire Local Plan.

20.

The proposed development shall not be brought into use until a delivery/servicing management plan (including delivery times) has been submitted to and approved in writing by the local planning authority. Once approved the delivery/servicing plan shall be implemented reviewed and updated as necessary.

Reason

In the interest of highway safety and to accord with policy T2 of the North Lincolnshire Local Plan.

21.

No development shall take place until a construction phase traffic management plan showing details of all associated traffic movements, including:

- delivery vehicles and staff/construction movements;
- any abnormal load movements;
- contractor parking and welfare facilities;
- storage of materials and traffic management requirements, including the means of controlling the deposition of mud onto the adjacent highway, along with appropriate methods of cleaning the highway, as may be required;

has been submitted to and approved in writing by the local planning authority. Once approved the plan shall be implemented, reviewed and updated as necessary throughout the construction period.

**Reason**

In the interests of highway safety and to accord with policies T2 and T19 of the North Lincolnshire Local Plan.

22.

No signage associated with the development shall be positioned within the limits of the adopted highway.

**Reason**

In the interests of highway safety and to accord with policies T2 and T19 of the North Lincolnshire Local Plan.

23.

The cycle park shall not be used until further details relating to security improvements have been submitted to and agreed in writing with the local planning authority.

**Reason**

In the interest of designing out crime and to accord with policy DS3 of the North Lincolnshire Local Plan.

**Informative 1**

Our records indicate that the proposed development site is bounded by a watercourse (surface water pipe/culvert, pond or ditch). Following inspection, the watercourse may need to be cleared, replaced, protected or diverted by the landowner at their expense in accordance with their riparian responsibilities. An easement adjacent to the watercourse may need to be provided for future maintenance. Any other drainage feature found during excavations must be immediately reported to the LLFA Drainage Team on 01724 297522, prior to any further construction works being carried out. Please refer to North Lincolnshire Council's 'Guide to Watercourses and Riparian Ownership' detailing riparian rights and responsibilities. Compliance with this guidance is to ensure the free flow of surface water is maintained throughout the development.

**Informative 2**

Alterations and/or connections into these watercourses must be consented by the local Internal Drainage Board through an Ordinary Watercourse Consent and appropriate discharge rates must be agreed. Please contact the LLFA Drainage team on 01724 297522 or by email to [llfadrainageteam@northlincs.gov.uk](mailto:llfadrainageteam@northlincs.gov.uk) for further details. Compliance with this guidance is to ensure the free flow of surface water is maintained throughout the development.

**Informative 3**

In determining this application, the council, as local planning authority, has taken account of the guidance in paragraph 38 of the National Planning Policy Framework in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the area.