Department for Communities and Local Government

Our Ref: APP/M4320/V/15/3002637

Mr Philip Marsden
Savills (UK) Ltd
33 Margaret Street
London W1G 0JD

7 December 2016

Dear Mr Marsden,

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 77
APPLICATION MADE BY BNP PARIBAS SECURITIES SERVICES TRUST COMPANY LTD AND BNP PARIBAS SECURITIES SERVICES TRUST COMPANY (JERSEY) LTD AS TRUSTEES FOR THE TRITON NO 2 PROPERTY UNIT TRUST (JERSEY) AND SAINSBURY'S SUPERMARKETS LTD ON LAND AT MEOLS COP RETAIL PARK, FOUL LANE, SOUTHPORT, MERSEYSIDE PR9 7RG
APPLICATION REF: DC/2014/00887

1. I am directed by the Secretary of State to say that consideration has been given to the report of Christina Downes, BSc, DipTP, MRTPI, who held a public local inquiry on 8-11, 14-16 September 2015 and 21-24, 28-30 June 2016 into your clients' application for planning permission for redevelopment comprising demolition of three existing retail units, the construction of an elevated (first floor) supermarket with new car parking at ground floor level, a petrol filling station, public recycling facility, alterations to the vehicular access via Meols Cop Road and Foul Lane, reconfiguration of the existing car park and associated hard and soft landscaping, in accordance with application ref: DC/2014/00887 dated 9 May 2014.

2. On 6 January 2015 the Secretary of State directed, in pursuance of Section 77 of the Town and Country Planning Act 1990, that your client's application be referred to him instead of being dealt with by the local planning authority, Sefton Council.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that planning permission be granted, subject to conditions.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. He has decided to grant planning

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permission subject to conditions. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

Policy and statutory considerations

5. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the saved policies of the Sefton Unitary Development Plan, adopted June 2006 (UDP). The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR16.

6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance').

Emerging plan

7. The emerging plan comprises the Local Plan for Sefton (emerging LP). The Secretary of State considers that the policies of most relevance to this case are those set out at IR18.

8. Paragraph 216 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. The Secretary of State finds that its policies can be afforded substantial weight for the reasons given at IR310.

Main issues

9. The Secretary of State agrees with the Inspector that the main issues are those set out at IR303.

Planning policy context and approach to decision making

The development plan

10. The Secretary of State agrees, for the reasons set out by the Inspector at IR304 that saved Policies CS1, CS3, NC3, DQ2 and EP6 generally accord with the Framework.

11. The Secretary of State has considered the Inspector's analysis at IR305-6, and agrees, for the reasons given, that Policy R1 is out of date in the terms of Paragraph 215 of the Framework. He further agrees, for the reasons set out at IR307, that Policy R2 is out of date. He agrees with the Inspector (IR308) that Policy R9 is out of date, for the reasons given. He thus concludes, in agreement with the Inspector (IR309), that paragraph 14 is engaged and that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole.

Emerging policy

12. The Secretary of State has given careful consideration to the Inspector's analysis at IR310-314, and agrees that the most up to date and appropriate boundary for the town

centre and the Primary Shopping Area (PSA) as shown on the Policy Map to the emerging LP and this does not appear to be controversial or disputed by any of the main parties.

The Framework and the relevance of the PSA

13. For the reasons set out by the Inspector at IR315-319, the Secretary of State agrees that the wider town centre is relevant to the consideration of the impact of the proposal, but not to the extent contended by the objectors.

Whether there is a sequentially preferable site on which the retail proposal could be accommodated, bearing in mind the need to demonstrate flexibility

14. The Secretary of State has given careful consideration to the Inspector's analysis at IR320-322, and agrees that the sequential assessment has been properly applied in this case (IR321). For the reasons given he agrees (IR323) that there are no sequentially preferable locations and the sequential test is passed.

The effect of the application proposal on the vitality, viability and retail function of Southport town centre

15. For the reasons given at IR324-325 the Secretary of State notes that there is no contention from either the Council or objectors that there are centres other than Southport that would be relevant to the impact assessment, and agrees.

16. The Secretary of State agrees that capacity or need for a retail development is no longer a relevant policy test, and that what matters is where the proposed new store would draw its expenditure and the impact that this would have on the designated centre, for the reasons set out at IR326-9.

17. For the reasons given out IR325 the Secretary of State agrees that Southport town centre should be the focus of the impact assessment. The Secretary of State agrees with the Inspector, for the reasons given at IR 330-344, that Southport is a relatively vital and viable centre, although suffering from a number of weaknesses. He further agrees that a conclusion that the town centre is undergoing a spiral of decline and deterioration is not supported by the evidence and is unreasonably pessimistic.

18. For the reasons given at IR345 the Secretary of State agrees that there is no evidence that the occupation of the site at Lord Street would be influenced by the application scheme. He further agrees that the application proposal has not had a negative effect on the potential investor in the site at Cambridge Road. For the reasons given at IR346 he agrees that the proposal has not deflected investment from the premises at Tulketh Street, and that there is no evidence that any other development sites would be put in jeopardy by the proposal.

19. The Secretary of State has carefully considered the Inspector's analysis at IR347-390. For the reasons given there, the Secretary of State concludes, in agreement with the Inspector, that the overall impact on the PSA would be relatively low (IR391). He further concludes that while the convenience impact would be higher, this would mainly fall on Lord Street Sainsbury's, and that there is no reason why this branch would close. He agrees with the Inspector (IR391) that the loss of convenience turnover from other shops in the PSA would be small, and that they would not become unviable or be adversely impacted as a result.

20. He agrees, for the reasons given at IR380-390 and IR392-394 that the impact of the loss of linked trips would have only a small impact. He further agrees (IR395) that Southport town centre is sufficiently resilient to withstand the scale of impact that has been identified on its PSA and the wider town centre for the reasons given at IR330-334.

21. The Secretary of State therefore agrees that the application proposal would not have a significant adverse impact on the vitality and viability of the PSA or on local consumer choice and trade in the wider town centre. He concludes that as such it would accord with the Framework in this respect and comply with saved Policy CS1 and Policies SD2 and ED2 (as proposed to be modified) in the emerging LP, in agreement with the Inspector at IR396.

Whether the proposal would be in a sustainable location that would be accessible by means of travel other than the car and encourage linked trips to the town centre

22. The Secretary of State has considered the Inspector's analysis at IR397-401. For the reasons given he concludes, in agreement with the Inspector, that this is a reasonably sustainable location that would offer staff and customers the opportunity to travel by non-car modes. While he accepts that many would undertake their shopping by car, he concludes that such trips are likely to be short. He further agrees that those shopping in the new store would be able to make trips to the town centre by bus, cycle or a short car journey. He thus finds that the proposal would comply with Saved Policy CS1 as well as Policy EQ3 (as proposed to be modified) in the emerging LP, and Framework policy in terms of accessibility (IR401).

Whether the proposed development would give rise to unacceptable highway impacts

23. For the reasons set out at IR402-412, the Secretary of State agrees that there is no convincing evidence that the development would cause unacceptable impacts on the safety and free flow of traffic on the local highway network. He further agrees (IR412) that the residual cumulative impacts of the development would not be severe. He therefore concludes that there would be no conflict with saved Policies CS3 and EQ2 of the UDP or draft Policy IN2 (as proposed to be modified) in the emerging LP, in agreement with the Inspector at IR412.

Other matters

24. The Secretary of State agrees, for the reasons given at IR413-418, that the proposal would not unacceptably harm the living conditions of adjoining residential occupants. He further agrees that it would comply with saved Policies CS3 and EP6 in the UDP and Policy EQ4 (as proposed to be modified) in the emerging LP (IR419).

25. For the reasons set out at IR420 the Secretary of State agrees that the application would not affect any designated wildlife sites, and, subject to appropriate mitigation measures to prevent pollution from entering Fine Jane's Brook, secured by planning condition, concludes that the proposal would comply with saved Policy NC3 in the UDP.

26. The Secretary of State agrees with the Inspector for the reasons given at IR421 that the jobs created would be a benefit to the local economy and that there would be a variety of positions available, including part time opportunities and work for those currently without a job, school leavers and people wanting to re-enter the job market. As such he concludes that the proposal would accord with Saved Policy CS1 in the UDP and Policy SD2 (as proposed to be modified) in the emerging LP.

27. For the reasons given at IR422-423 the Secretary of State agrees that the proposal would not interfere with any rights under Article 8 of the European Convention of Human Rights or Article 3(1) of the United Nations Convention on the Rights of the Child.

Planning conditions

28. The Secretary of State has given consideration to the Inspector's analysis at IR284-299 and IR424-425), the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework.

Planning obligations

29. Having had regard to the Inspector's analysis at IR300-302, the planning obligation dated 21 July 2016, paragraphs 203-205 of the Framework, the Guidance and the Community Infrastructure Levy Regulations 2010, as amended, the Secretary of State agrees with the Inspector's conclusion for the reasons given in IR426-432 that the obligation complies with Regulation 122 of the CIL Regulations and the tests at paragraph 204 of the Framework and is necessary to make the development acceptable in planning terms, directly related to the development, and is fairly and reasonably related in scale and kind to the development, with the exception of the obligation in relation to the existing Lord Street Sainsbury's Store, which would not comply with Regulation 122 for the reasons given at IR431, and therefore cannot be taken into account in any grant of planning permission.

30. The Secretary of State has taken into account the number of planning obligations which have been entered into on or after 6 April 2010 which provide for the funding or provision of a project or type of infrastructure for which an obligation has been proposed in relation to the application. The Secretary of State has had regard to the Inspector's conclusions at IR430 and agrees for these reasons that the obligations are compliant with Regulations 123(3), as amended.

Planning balance and overall conclusion

31. For the reasons given above, the Secretary of State considers that the application is in accordance with CS1, CS3, NC3, DQ2 and EP6 of the UDP and emerging Policies SD2, IN1, IN2, EQ2, EQ3, EQ4, EQ7 and ED2 of the emerging Local Plan, and is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

32. Given that policies R1, R2 and R9 for retail are out of date, the Secretary of State considers that paragraph 14 of the Framework is engaged. He has therefore considered whether the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies as a whole. The Secretary of State concludes that the proposed development would contribute to economic growth and generate a significant number of new jobs both during the construction phase and once the store was operational. Even when set against the smaller number of jobs which may be lost at other stores as a result of the proposal, the Secretary of State affords this benefit significant weight.

33. The Secretary of State concludes that the proposal would increase the choice and variety of the convenience offer and notes that many residents from the local community would welcome the introduction of a Sainsbury's in their locality. He affords these benefits moderate weight. He further concludes that staff and customers would have sustainable travel choices and that the site is relatively accessible even though many would undertake their journeys by car. He concludes, in agreement with the Inspector, that there is no objection to the appearance of the building and that it would bring some improvement to the physical environment of the retail park. He affords the improvement of the physical environment modest weight.

34. The Secretary of State concludes that the application proposal would not harm existing committed or planned investment. He concludes that there would be some adverse impact on the PSA and wider town centre but that this would be relatively small, and he affords this modest weight against the proposal. He concludes that, taking account of its existing health, the impact on the vitality and viability of the town centre would not be significantly adverse, that none of the existing foodstores would be likely to close and that local consumer choice and trade would not be diminished as a result of the proposal.

35. As such the Secretary of State concludes that the proposal satisfies the economic, social and environmental roles of sustainable development. He further concludes that there are no adverse impacts that would significantly and demonstrably outweigh the benefits. As such he concludes that the application proposal would amount to sustainable development in accordance with the Framework and Policy SD1 (as proposed to be modified) in the emerging LP.

36. The Secretary of State therefore concludes that the application should be granted planning permission, subject to conditions.

Formal decision

37. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby grants planning permission for demolition of three existing retail units, the construction of an elevated (first floor) supermarket with new car parking at ground floor level, a petrol filling station, public recycling facility, alterations to the vehicular access via Meols Cop Road and Foul Lane, reconfiguration of the existing car park and associated hard and soft landscaping, in accordance with application ref: DC/2014/00887 dated 9 May 2014, subject to the conditions at Annex A of this letter.

38. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

39. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

40. A copy of this letter has been sent to Sefton Council, Tesco Stores Ltd, Asda Stores Ltd and Southport and Windsor Properties LLP, and notification has been sent to others who asked to be informed of the decision.

Yours sincerely,

Philip Barber

Authorised by Secretary of State to sign in that behalf

Annex A - Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2012-002 A-PL-01 Rev B; 2012-002 A-PL-02 Rev B; 2012-002 A-PL-03 Rev D; 2012-002 A-PL-04 Rev A; 2012-002 A-PL-05 Rev B; 2012-002 A-PL-06; 2012-002 A-PL-07; 2012-002 A-PL-08; 2012-002 A-PL-09; 2012-002 A-PL-10 Rev L; 2012-002 A-PL-11; 2012-002 A-PL-12 Rev A; 2012-002 A-PL-13; 2012-002 A-PL-14.

3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) A scheme of noise control for any plant and equipment to be installed on the site shall be submitted to and approved in writing by the local planning authority prior to its installation. The scheme of noise control shall demonstrate compliance with the maximum noise emission limits set out in Section 7 of the *Combined Environmental Noise Survey and Noise Impact Assessment Report* by Hann Tucker (12 August 2014). The approved scheme shall be implemented and shall thereafter be retained and operated in accordance with the manufacturer's instructions.

5) A scheme of odour control for any kitchen or other extraction systems shall be submitted to and approved in writing by the local planning authority prior to their installation. The approved odour control scheme shall be implemented on site before the extraction system is brought into operation. Thereafter it shall be retained and operated in accordance with the manufacturer's instructions for so long as the retail use continues to operate.

6) The development hereby permitted shall not be open for trading until the following highway works have been completed:

- Construction of the new vehicular access and left turn lane off Foul Lane together with the realignment and reconstruction of the pedestrian footway and the installation of flush kerbs and tactile paving either side of the access.
- Closure of the redundant vehicular access on Meols Cop Road together with the realignment and reconstruction of the pedestrian footway.
- Construction of the new traffic signal controlled junction incorporating controlled pedestrian crossing facilities across the access to the car park.
- Removal of the existing bus stop within the lay-by on the east side of Meols Cop Road and introduction of a replacement bus stop within the existing carriageway alignment on the east side of Meols Cop Road, including the installation of access kerbs, a raised footway area, a new bus stop post and timetable and appropriate carriageway markings.
- Upgrading of the existing northbound stop on Meols Cop Road, to the north of Fine Jane's Brook with access kerbs and a raised footway area.
- Installation of flush kerbs and tactile paving either side of Argameols Close at its junction with Meols Cop Road.
- Reconstruction and widening to 3.0m of existing pedestrian/cycle path on the south side of Fine Jane's Brook between Meols Cop Road and Foul Lane, including the provision of a scheme of lighting.
- Introduction of waiting restrictions on both sides of the section of Meols Cop Road between the Kew Roundabout and Fine Jane's Brook.

7) No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The CMS shall be carried out as approved and adhered to throughout the construction period. The CMS shall provide for:

- The parking of vehicles of site operatives and visitors.
- Loading and unloading of plant and materials.
- Storage of plant and materials used in constructing the development.
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- The drainage of the site whilst ensuring the protection of the surface water system, including Fine Jane's Brook, from pollutants, contamination and construction debris.
- Hours of work.
- Wheel washing facilities.
- Measures to control the emission of dust and dirt during construction.
- A scheme for recycling/disposing of waste resulting from demolition and construction works.

8) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of how construction traffic will be managed during the construction period to ensure the safety of highway users and the free flow of traffic on the highway network. The CTMP shall be carried out as approved and remain in place throughout the construction period.

9) A scheme of noise control for the servicing and delivery areas shall be submitted to and approved in writing by the local planning authority. This shall include details of the acoustic screen, the surfacing treatment to be used on the ramp and the management measures to minimise noise from deliveries as set out in Section 8 of the *Combined Environmental Noise Survey and Noise Impact Assessment Report* by Hann Tucker (12 August 2014). The approved scheme shall be implemented before the store is open for trading and shall thereafter be retained for so long as the retail use continues to operate.

10) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. This shall be based on sustainable drainage principles in accordance with the principles and provisions set out in the *Flood Risk Assessment* by George Harwood Ltd (17 July 2014). It shall also include details of future management and maintenance to ensure it remains effective for the lifetime of the development. The approved surface water drainage scheme shall be carried out before the store is open for trading and shall be managed and maintained in accordance with the approved details for so long as the retail use continues to operate.

11) No development shall take place until a scheme for the disposal of foul sewerage has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

12) No development shall take place until details of the acoustic fence along the northern boundary with the parking area as shown on Drawing No: 2012-002 A-PL-03 Rev D, including its height, finish and density has been submitted to and approved in writing by the local planning authority. The acoustic fence shall be constructed in accordance with the approved details before the store is occupied and open for trading and shall thereafter be retained for so long as the retail use continues to operate.

13) No pile driving or ground compaction works shall take place unless details of the methodology to be employed; the hours and duration of the works; and the means by which dust, vibration and noise is to be mitigated, have first been approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.

14) The development hereby permitted shall not be open for trading until the Hackney Carriage lay-by as shown on Drawing No: 2012-002 A-PL-03 Rev D has been provided. It shall thereafter be retained for its intended purpose for so long as the retail use continues to operate.

15) The development hereby permitted shall not be open for trading until the areas for car parking and cycle parking have been provided in accordance with the details on Drawing No: 2012-002 A-PL-03 Rev D. These parking areas shall be retained for their intended purpose during the lifetime of the development.

16) The development hereby permitted shall not be open for trading until a Travel Plan Co-ordinator has been appointed. Within 6 months of the opening of the foodstore hereby permitted, a Travel Plan shall have been submitted to and approved in writing by the local planning authority. This shall follow the general principles, strategies, review and monitoring arrangements set out in the Framework Travel Plan, ref VN20135, dated August 2014. The approved Travel Plan shall be in place for so long as the retail use continues to operate.

17) Full details of hard and soft landscaping, including a timetable for implementation, shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. This shall follow the principles in the illustrative Drawing Nos: 1003-05 Rev D and 1003-07 Rev C. Development shall be carried out in accordance with the approved details and timetable. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

18) A Landscape Management Plan, which sets out long term design objectives, management responsibilities and maintenance schedules for all landscaped areas approved under Condition 17 shall be submitted to and approved in writing by the local planning authority before the development is first occupied. The Landscape Management Plan shall be carried out as approved and its provisions implemented during the lifetime of the development hereby permitted.

19) No development shall take place until a scheme for refuse storage and recycling has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out before the store is open for trading and shall be retained for so long as the retail use continues to operate.

20) The collection of waste from the recycling centre shall not be undertaken outside the hours of 0800 and 2000.

21) The mitigation measures in Section 5 of the *Extended Phase 1 Habitat Survey* by RPS (30 January 2014) relating to habitats, protected species and invasive species shall be carried out both during the course of construction and during the operation of the retail use.

22) The measures in the *Renewable Energy & Energy Efficient Assessment* by Sustainable Design Solutions Ltd (24 February 2014) shall be incorporated into the design of the store and shall be available for use before it is open for trading. The measures shall be retained for so long as the retail use continues to operate.

23) All external lighting on the building and within the site boundary shall be housed in full cut-off lanterns with an angle of elevation set no higher than 5 degrees from the horizontal to limit sky glow and glare.

24) The foodstore hereby permitted shall be subject to the following floorspace restrictions:

- The total gross internal floorspace shall not exceed 10,942 m^2 including any mezzanine floorspace.
- The net retail floor area (excluding checkouts, lobbies, concessions, restaurants, customer toilets and walkways behind the checkouts) shall not exceed 5,574 m^2 including any mezzanine floorspace.
- The total retail sales area for the sale and display of convenience goods shall not exceed 3,809 m^2 including any mezzanine floorspace.
- The total retail sales area for the sale and display of comparison goods shall not exceed 1,765 m^2 including any mezzanine floorspace.

25) The development hereby permitted shall be used as a single unit and shall not be subdivided into two or more retail units.

26) The 2 concession units contained within the building hereby permitted shall not exceed 145 m^2 (gross internal floor area).

27) Apart from the development hereby permitted, no other retail unit on the retail park, as defined by the blue line on Drawing No 2012-002 A-PL-01 Rev B, shall be used for the sale or display of convenience goods.

28) No other retail unit on the retail park, as defined by the blue line on Drawing No 2012-002 A-PL-01 Rev B, shall be further subdivided into two or more retail units.

The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Christina Downes BSc DipTP MRTPI

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

Date 6 September 2016

TOWN AND COUNTRY PLANNING Act 1990

SEFTON COUNCIL

Application made by

BNP PARIBAS SECURITIES SERVICES TRUST COMPANY LTD AND BNP PARIBAS SECURITIES SERVICES TRUST COMPANY (JERSEY) LTD AS TRUSTEES FOR THE TRITON NO 2 PROPERTY UNIT TRUST (JERSEY) AND SAINSBURY'S SUPERMARKETS LTD

Inquiry held on 8-11, 14-16 September 2015 and 21-24, 28-30 June 2016

Meols Cop Retail Park, Foul Lane, Southport, Merseyside, PR9 7RG

File Ref: APP/M4320/V/15/3002637

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ABBREVIATIONS LIST

Term	Acronym
Asda Stores Ltd	Asda
Community Infrastructure Levy Regulations	CIL Regulations
Local Plan for Sefton (as proposed to be modified)	Emerging LP
National Planning Policy Framework	Framework
Primary Shopping Area	PSA
Primary Shopping Frontage	PSF
Sainsbury's Supermarkets Ltd	Sainsbury's
Sefton Retail Strategy Review 2015	2015 SRSR
Sefton Retail Strategy Review Update 2012	2012 SRSR
Sefton Unitary Development Plan	UDP
Tesco Stores Ltd	Tesco
Wm Morrison Supermarkets Plc	Morrisons

File Ref: APP/M4320/V/15/3002637
Meols Cop Retail Park, Foul Lane, Southport, Merseyside, PR9 7RG

- The application was called in for decision by the Secretary of State by a direction, made under section 77 of the Town and Country Planning Act 1990, on 6 January 2015.
- The application is made by BNP Paribas Securities Services Trust Company Ltd and BNP Paribas Securities Services Trust Company (Jersey) Ltd as Trustees for the Triton No 2 Property Unit Trust (Jersey) and Sainsbury's Supermarkets Ltd to Sefton Metropolitan Borough Council.
- The application Ref DC/2014/00887 is dated 9 May 2014.
- The development proposed is redevelopment comprising demolition of three existing retail units, the construction of an elevated (first floor) supermarket with new car parking at ground floor level, a petrol filling station, public recycling facility, alterations to the vehicular access via Meols Cop Road and Foul Lane, reconfiguration of the existing car park and associated hard and soft landscaping.

Summary of Recommendation: That planning permission be granted, subject to the conditions in Annex Three

PROCEDURAL MATTERS

1. The Inquiry was closed in writing on 22 July 2016 (***Document INQ/80***).

2. The application was considered by the Council on 15 October 2014 and it was resolved that it should be recommended to the Secretary of State for approval, subject to the completion of a legal agreement and subject to planning conditions that were set out in the Planning Officer's report (***Documents CD 7 and CD 8***).

3. The Secretary of State called in the application for his own determination on 6 January 2015 in accordance with his policy, which includes large out-of-centre retail developments (***Document ADMIN/1***). On the information available at the time of making the Direction, the following were the matters on which the Secretary of State particularly wished to be informed for the purpose of his consideration of the application:

   3.1 The extent to which the proposed development is consistent with Government policies on ensuring the vitality of town centres and promoting sustainable transport (the National Planning Policy Framework Sections 2 and 4).

   3.2 The extent to which the proposed development is consistent with the development plan for the area.

   3.3 Any other matters that the Inspector considers relevant.

4. Three parties were granted Rule 6 status at the Inquiry: Southport and Windsor Properties LLP, Tesco Stores Ltd (Tesco) and Asda Stores Ltd (Asda).

5. I undertook a number of unaccompanied site visits within Southport town centre. I also visited the Meols Cop Retail Park and its surroundings several times, including during the afternoon peak at the request of local people in order to see traffic conditions for myself.

6. On 2 November 2015 the Council published the Sefton Retail Strategy Review (SRSR) (***Document CD 33***). This was work undertaken in conjunction with the examination of its Local Plan for Sefton and included a new household survey. It is a substantial piece of work and two of the Rule 6 Parties did not consider

that there was sufficient time before the Inquiry was due to resume on 10 November 2015 to properly consider its implications. The document clearly is of considerable relevance to the consideration of the application proposals and so I agreed that the Inquiry should be adjourned to avoid prejudice to any party to the Inquiry. Unfortunately the earliest date when the Inquiry could be resumed was 21 June, when it sat for a further 7 days.

7. Asda chose not to attend the resumed Inquiry. It had already given its evidence in September 2015 and therefore decided to submit a written statement setting out its position with regards to the new information that had subsequently arisen. This was received the day before the start of the resumed Inquiry and the Applicants wished the Secretary of State to note that they considered this to be unreasonable conduct, albeit that no application for costs was made (***Document INQ/74B, Footnote 2***). As points were raised in Asda's further representations about the other Rule 6 Parties' evidence and in view of the timescales, it was agreed that a short period of time should be allowed after the Inquiry business was concluded to submit written comments. In the event it was only the Applicants who chose to do so (***Documents POE/28; INQ/79***).

8. A Planning Obligation by Agreement was submitted and discussed at the Inquiry. However, the fully executed version was not completed by the end of the sitting period. There was also some late information about town centre vitality and viability, on which the Applicants wished to make comments. For these reasons the Inquiry was closed in writing two weeks after the sitting period had finished (***Documents INQ/79; INQ/80***).

9. Some small amendments to the application proposal were submitted before the start of the resumed Inquiry. These include four revised landscape drawings that provided an illustrative framework for planting. They are intended to provide the basis for the formal landscaping scheme and include additional planting, particularly on the northern part of the site. The Council had no objection to these plans being accepted for consideration and I am satisfied that no-one would be prejudiced by their inclusion (***Plan B***).

THE SITE AND SURROUNDINGS

10. There are descriptions of the site at ***Documents SCG/3, Section 3; POE/1, Section 3***. Useful maps and plans can be found at ***Plan A/1*** and ***Documents POE/11, Appendix 6; POE/18, Plan ASJ4; POE/17, Appendix 1; INQ/3; INQ/25***.

The main points are:

11. The application site is at the northern end of the triangular shaped Meols Cop Retail Park. It comprises a large retail unit currently occupied by Homebase and two unoccupied smaller units. These total some 10,440m^2 floorspace. The Homebase building and its garden centre occupies much of the width of the site and the other units stand back behind a large open car park. Altogether, including the application buildings, there are 11 retail units with a combined floorspace of about 17,600 m^2. These vary in size and some have resulted from subdivisions. They are mainly bulky comparison goods outlets although there is an Aldi foodstore to the south, which benefits from its own car parking area. Although Aldi is adjacent to the retail park it is not within the ownership of the Applicants.

12. On the northern side of the Homebase store is a landscaped area with trees and greenery and a footpath, which runs between Foul Lane and Meols Cop

Road. At this point there is an on-demand light controlled pedestrian crossing. The northern boundary of the application site is demarcated by Fine Jane's Brook, beyond which is a residential area, including the cul-de-sac of Argameols Close. On the western side of Meols Cop Road is a large recreation ground adjoined by King George V College and Meols Cop High School.

13. Meols Cop Retail Park is on the eastern side of Meols Cop Road and close to its junction with Kew Roundabout. There is a left only turn from this road into the retail park but the main access point is off Foul Lane. To the south is the Kew Retail Park, which is smaller but also comprises mainly bulky comparison goods stores. A B&Q warehouse stands between the two retail parks and there is a Tesco Extra foodstore and McDonald's fast food restaurant and drive-through to the south west. Scarisbrick New Road leads from Kew Roundabout to the town centre and on its southern side is Southport & Formby District General Hospital. To the south of the hospital is the Kew residential area, including land where a large housing development is proposed.

14. Southport town centre is about 2.5 km to the west of the application site. The Victorian boulevard of Lord Street with its traditional shopfronts, trees and public open spaces stretches along its north-western edge adjacent to the parks and promenade area. Morrisons foodstore is to the rear of Lord Street at its south-western end whilst Sainsbury's foodstore is at its north-eastern end. The town centre extends in a south-easterly direction, incorporating the pedestrianised Chapel Street. Southport railway station is along London Street and beyond this is Central 12 Retail Park where Asda is situated. Lidl has a foodstore at the southern end of the town centre, beyond the railway line. There is also a retail park at Ocean Plaza, but this is outside the town centre and adjacent to the seafront.

PLANNING POLICY

15. The development plan comprises the saved policies of the **Sefton Unitary Development Plan (UDP)**, which was adopted in June 2006. Those policies that the Council considers to be relevant to this proposal are set out in the Statement of Common Ground (***Document SCG/3, Paragraph 4.2***).

16. Whilst I have taken all relevant policies into account in the Report, those I consider to be most pertinent to this case are as follows:

    16.1 Saved **Policy CS1** seeks to ensure that development is consistent with a number of regeneration priorities. These include a choice of employment opportunities; safeguarding the economic, commercial, retail and local service role of established town centres; and locating development to reduce the need to travel. Saved **Policy CS3** sets out a number of development principles. Amongst other things, proposals should not compromise road safety; cause significant harm to amenity or to the character or appearance of the surrounding area; create risk to people or property as a result of noise or light nuisance. Planning conditions and legal agreements should be used to make the most of social, economic and environmental benefits.

    16.2 Saved **Policy R1** establishes that the preferred location for retail development is within the defined town, district and local centres. It should enhance vitality and viability and provide a competitive mix of comparison and convenience stores in Bootle and Southport town centres. The sequential hierarchy includes the town centres, followed

by the edge of town centres, followed by the district and local centres and finally out-of-centre locations.

16.3 **Figure 7.2** establishes the Primary Retail Frontages in the various centres, including Southport. Saved **Policy R2** relates specifically to Southport town centre. It contains a number of criteria but most importantly establishes that the preferred location for new retail development is within the town centre identified on the Proposals Map. Saved **Policy R9** is directed to key town centre uses seeking to locate on edge and out-of-centre sites. This requires a demonstrable need; a lack of harm to the vitality and viability of centres within the primary catchment area; and conformity with the sequential approach in saved Policy R1. In addition, out-of-centre locations need to demonstrate that they are accessible to non-car modes. A number of retail parks, including Meols Cop Retail Park, are given priority above other out-of-centre locations.

16.4 Saved **Policy NC3** includes a provision for opportunities to be taken through the development process to encourage the enhancement, management and creation of wildlife habitat. Saved **Policy DQ2** seeks to include at least 10% of the predicted energy requirements of major non-residential development from renewable resources. Saved **Policy EP6** aims to ensure that the impacts are reduced to an acceptable level where development is likely to generate significant noise levels.

17. **The Local Plan for Sefton** (emerging LP) is anticipated to be adopted in 2016. The Examining Inspector issued initial findings in February and April 2016, following the Hearings, which took place between November 2015 and January 2016. Proposed modifications were published on 22 June 2016 (***Document POE2, Appendices A, B, C***). Those draft policies that the Council considers to be relevant to the application are set out in ***Document POE/2, Paragraph 2.6***.

18. Whilst I have taken all relevant draft policies into account, those that I believe to be most pertinent to this case are as follows:

18.1 Draft **Policy SD1** sets out the presumption in favour of sustainable development. Draft **Policy SD2** establishes a number of sustainable principles, including promotion of economic growth, tourism and jobs; helping Sefton's towns and local centres to diversify and thrive.

18.2 Draft **Policy ED2** is in three parts. The first part establishes the hierarchy of centres, with Southport and Bootle designated as the Borough's town centres. The second part sets out the sequential test for retail, leisure and other town centre uses. The primary shopping areas (PSA) are most favourable for retail uses, then town, district and local centres followed by edge-of-centre locations and finally out-of-centre sites. For out-of-centre sites, preference is given to accessible sites that are well connected to the defined centre town centre followed by designated retail parks, including Meols Cop. The third part requires an impact test for retail uses of more than 500m^2 gross floorspace that are located outside the PSA. This should demonstrate that there would be no adverse impact on the delivery of existing, committed and planned public and private investment within any defined centres. Also, that there would be no significant adverse impact on the vitality and viability of any existing centre for five years

18.3 Draft **Policy EQ2** relates to design. Amongst other things there should be safe and easy movement in and out of the site for everyone, including pedestrians; the amenity of those adjacent to the site should be protected. Draft **Policy EQ3** seeks to ensure that development is located in accessible locations and that the safety of all road users is not adversely affected. Draft **Policy EQ4** includes a provision that the impact of noise and lighting should not be significant or should be reduced to an acceptable level. Draft **Policy EQ7** seeks to ensure energy efficient and low carbon design.

18.4 Draft **Policy IN1** refers to infrastructure and developer contributions. Draft **Policy IN2** concerns transport and includes a provision that a new access should not reduce the capacity of the primary route network.

19. The **National Planning Policy Framework** (the Framework) establishes that the presumption in favour of sustainable development is a golden thread running through plan making and decision taking. It sets out the economic, social and economic dimensions to sustainability, which gives rise to the need for the planning system to perform a number of inter-related roles. Of particular relevance in this case are Section 2 of the Framework, which seeks to ensure the vitality and viability of town centres and Section 4, relating to the promotion of sustainable transport. Paragraph 24 establishes the sequential test whilst Paragraph 26 sets out how the impact test should be applied (***Document CD/1***). Paragraph 32 requires developments that generate significant amounts of movement to be supported by a Transport Statement or Assessment. Account should be taken of the opportunity for sustainable travel modes, depending on the nature and location of the site. A safe and secure access to the site should be achieved and improvements should be made to the transport network to limit significant development impacts. Development should only be refused where the residual cumulative impacts are severe.

20. The **Planning Practice Guidance** is a web-based resource and provides relevant advice in respect of retail and transport matters (***Document CD/2***)

THE PROPOSAL

21. The proposal is for the redevelopment of the application site with a Sainsbury's superstore comprising 10,942m^2 of Class A1 retail floorspace. The net sales area would be 5,574m^2 of which 3,809m^2 would be convenience sales and 1,765m^2 comparison sales. The sales area would be at first floor level and reached by means of lifts and a travelator. Above this would be a partial mezzanine providing space for a customer café as well as toilets and a staff area. Unlike the existing Homebase, the new building would be re-orientated to face west towards Meols Cop Road. This elevation would comprise brickwork with a high proportion of glazing. The other elevations would be mainly clad in dark grey metal panels.

22. The new building would extend about 15m further back on the site, beyond which would be the service area. This would take access from Foul Lane and include a ramped access up to the first floor service yard. The northern edge of the car park and service ramp would be enclosed by acoustic fencing. The building would stand about 45-55m further back from Meols Cop Road than the existing Homebase and there would be a petrol filling station and recycling facility at the front of the site.

23. Whilst in places the height differences may be less, the drawings indicate that the eaves height on the northern elevation would be about 6m higher than the existing building. However, apart from two projecting stairwells, it would stand about 6m further back from the footpath. This would a greater depth of tree planting to improve the screening between the building and the residential properties in Argameols Close on the far side of Fine Jane's Brook.

24. A new access would be constructed, which would include a signalised junction. There would be a right turning lane from Meols Cop Road into the site from the southerly approach and a slip lane exit from the northerly approach. The egress from the site would include right and left turning lanes. There would be 533 car parking spaces, including some in the undercroft. The car park would have several links into the existing retail parking area.

THE CASE FOR THE APPLICANTS

*The Applicants' case is fully set out in their evidence, including their opening and closing submissions (**Document INQ/74**). In addition, the points made in their subsequent letter of response to Asdas's written submissions have been incorporated (**Document INQ/79**). The main points are:*

25. There are only two main issues that have been raised in opposition to the proposed development, which are capable of being determinative of this application. These are the retail impact upon Southport town centre and the highway impact on the junctions closest to the Meols Cop Retail Park. In addition there is a legitimate concern from those who live nearest to the proposed new store that their residential amenity would be protected. As a result of the concerns expressed a suite of measures is proposed, which can be secured through the imposition of conditions. These include significantly improved landscaping and additional control on the design and use of the servicing area (***Document POE/16, Paragraphs 2.7-211***).

26. This is an application that is supported by the Council. Contrary to the suggestion of the local Member of Parliament that the decision to support the application was based on some form of "democratic deficit", the body entrusted by Parliament to determine planning applications has unequivocally considered that the public interest lies in favour of the grant of planning permission. Moreover it is an application that has received significant third party support. It is a highly unusual position for the Secretary of State to consider that the grant of permission here could give rise to issues of more than local interest, when in reality all parties have agreed that any impacts are only upon one town within Sefton Borough. Significant weight should be afforded to the fact that the Council considers that the planning balance, and therefore the public interest, lies in favour of development.

27. It is also important to recognise that the main objectors to the proposal are all commercial rivals. They are not benevolent individuals looking to act in the best interests of Southport. Indeed, no other town centre retailer or trade body has objected to the proposals. The principal purpose of Tesco, Asda and Morrisons is to protect their own private financial interests. Whilst that is equally true of the Applicants it is not true of the Council, who has maintained its steadfast support for the scheme throughout the process.

APPROACH TO DECISION MAKING

28. As with any application the starting point is Section 38(6) of the 2004 Act. Paragraph 215 of the Framework advises that how up to date a policy should

be considered depends upon its consistency with the Framework. In this case the UDP is now of some age although saved Policy R9 still reflects much of Framework policy apart from the inclusion of the need test. The proposal would comply with the sequential test and would not give rise to any significant impact upon vitality and viability or investment. So even if there were insufficient capacity, the proposal would only conflict with the out-of-date part of the saved policy and the remainder would be complied with.

The PSA / town centre issue

29. Policy ED2 (as proposed to be modified) in the emerging LP has been drafted to conform to the Framework and given its advanced stage it should carry substantial weight in the overall planning balance. However, the drafting of the policy is not ideal especially in relation to the sequential test. Nonetheless the policy read as a whole makes it repeatedly clear that a distinction must be drawn between the concept of "town centre" for retail and other purposes.

30. The Glossary to the Framework is clear that for retail purposes the term "town centre" is to be taken to be synonymous with "primary shopping area" (PSA) where there is one. Those objecting do not dispute that the sequential test ought to be applied to the PSA. However, they go on to argue that the reference in Paragraph 26 of the Framework means the defined town centre and not the PSA. Such an interpretation does not conform with the Glossary and makes no sense for the following reasons:

    30.1 If the Government had wanted the Framework to be understood as referring to a different geographic location for the application of the sequential test and the impact test then less opaque language would have been used so that the distinction was understood.

    30.2 The first sentence of Paragraph 26 requires a retail impact assessment for proposals over a threshold floorspace if they are outside of town centres. If that means outside of the defined town centre then in a case such as this where there are edge and out-of-centre sites within the defined town centre it would mean that guidance would not require a retail impact assessment if development were to be proposed on them, which is obviously wrong. Alternatively if the first sentence of Paragraph 26 uses "town centre" to be synonymous with PSA then it is difficult to see why the same phrase means something different in the last bullet point.

    30.3 The interpretation adopted by both Tesco and Asda would result in the same site being both in-centre for impact purpose and out-of-centre for sequential test purposes. They consider that an edge-of-centre site located in the town centre boundary would have to produce a retail impact assessment even though it couldn't do other than impact positively on the town centre. If an interpretation gives rise to such absurd results then it should be discarded as clearly wrong.

    30.4 The Examining Inspector for the emerging LP plainly endorsed the interpretation that the requirement for a retail impact assessment applied to a proposal outside of the PSA, and therefore by implication that it conforms to the Framework.

    30.5 The Planning Practice Guidance makes the point clearly when it explains the purpose of the impact test (***Document CD/2***). It cannot rationally be referring to edge and out-of-centre sites, as defined, by

reference to the PSA on the one hand and adverse impact upon a different notion of what is the town centre on the other.

30.6 If the interpretation of the first part of Paragraph 26 is as contended by Tesco and Asda then the Examining Inspector would have erred in not pointing out that Policy ED2 (as proposed to be modified) was at variance with the Framework[1].

31. Although policy in the Framework requires the assessment of impact against the PSA, the effect on the wider town centre could still be a material consideration. However, no-one has argued that the trade diversion from Asda or Morrisons would itself be a concern or lead to store closures. The argument is rather that there would be a loss of linked trips to the PSA. Central 12 is an out-of-centre retail park in national policy terms but which the Examining Inspector has considered should be within the wider town centre boundary. This recognises the extent to which it generates linked trips to the heart of the town centre, which is the PSA. The case of the Central 12 owner that it was part of the PSA was rejected by the Examining Inspector (***Document POE/2, Appendix C, Paragraph 4***).

32. Central 12 is 420m from the PSA and separate and distinct from the Primary Retail Frontages of Lord Street and Chapel Street, which form its core. There are already many retail uses along London Street and the only way that the retail park could be included in the PSA is if there is a significant redevelopment of the station and its environs. This would only be achieved through the development plan process and the PSA boundary would be revisited at that time. Central 12 is mainly occupied by main town centre uses in accordance with the definition in the Framework Glossary. That is why it has been included in the town centre boundary.

33. The point was made by Tesco that the Health Check has been carried out on the town centre as a whole and not just the PSA (***Document CD/33, Appendix 3***). However, the impact on the wider town centre can be a material consideration. Whatever has been done in Sainsbury's retail assessment, it is the wording of the Framework that is important. In any event, those shops within the town centre but outside the PSA that were not identified in the 2015 household survey as an individual shopping destination, would not make a material difference to the turnover of the PSA (***Document INQ/55***).

34. It was argued by Tesco that the Braintree appeal evidenced an endorsement by the Secretary of State of its interpretation of the Framework. Here the impact was assessed to be upon the town centre as a whole but it is clear that the circumstances are radically different to those in Southport. There was a PSA in the 2005 Local Plan under saved Policy RLP113. However, this was not one of the policies that either party drew to the Inspector's attention as relevant. The appeal decision revolved around convenience impact and both Morrisons and Sainsbury's were in the PSA in Braintree so the point simply did not arise (***Documents CD/29; INQ/56; INQ/57***).

THE SEQUENTIAL TEST

35. The Applicants undertook a sequential test and this was concentrated on Southport as being the only centre of sufficient size to realistically

[1] Mr Sutton confirmed that he would expect a retail impact assessment to be prepared for a store that is more than 300m from the PSA but within the town centre.

accommodate the proposed development. A flexible approach was adopted with premises capable of accommodating a store of around 7,500m^2 or sites in excess of 2.5 ha being considered (***Document POE/10, Paragraphs 7.1-7.16***). Over the course of the application process, only three sequentially preferable sites have been suggested as follows:

35.1 **Tulketh Street**. During the adjournment between the two sittings of the Inquiry this site has been taken on by Sports Direct. Sports Direct has purchased the site and secured planning permission for partial change of use to a gym. The approved works facilitate the reconfiguration of the building to create 4 bespoke commercial units to be occupied by Sports Direct, Flannels, USC and a private health and fitness club (***Document POE/16, Paragraphs 4.9-4.15***).

35.2 **The Range, Units 7 & 8, Central 12 Retail Park**. This unit is far too small to accommodate the proposed foodstore and it could not be modified or restructured to provide a sufficient level of floorspace (***Document POE/10, Paragraphs 7.31-7.36***). For similar reasons the **British Home Stores** building in Chapel Street, which will soon be vacated, would not be a realistic alternative.

35.3 **B&M Bargains site**. This site is close to Morrisons and has a restrictive covenant on convenience retail use. It is not available or suitable in terms of floorspace or size.

36. There are therefore no sequentially preferable sites.

THE IMPACT TEST

Impact on planned public or private investment

37. It was agreed by all parties that Southport town centre would be subject to the main impact, bearing in mind the scale, role and function of the proposed development. There is no evidence from Tesco or Asda that there would be a significant adverse impact on committed and planned public and private investment[2]. Tesco sought to raise the milder concern that if there was an impact upon vitality and viability that would impact upon investment decisions. However it was accepted that no existing or proposed investment could be identified that would be jeopardised by the grant of planning permission. Indeed there was no evidence that the strategies, initiatives or promotion of key sites in the draft Southport Development Strategy would be adversely affected (***Document CD/35, Chapter 10***)[3].

Impact on vitality and viability

38. The determinative issue is therefore whether the likely effect of trade diversion would result in a significant adverse impact upon the vitality and viability of the town centre. If there is such an impact then it is agreed that national policy mandates refusal of the application, if not then the application ought to be granted. The position on percentage impact is relatively easily stated, but the determination of whether the impact is significant adverse or not depends upon far more than simply the headline numbers. It revolves principally around local circumstances.

[2] Both Mr Tibenham and Mr Sutton confirmed this point in cross-examination by Mr Tucker.
[3] These points were agreed by Mr Sutton in cross-examination by Mr Tucker.

39. Tesco argues that even the numerical impacts that Sainsbury's considers would arise would amount to a significant adverse impact. That is founded upon an argument that the three foodstores, Asda, Morrisons and Sainsbury's in Lord Street, are the anchors of the town centre as defined in the emerging LP and that the retail offer of the town centre is the anchor of Southport as a tourist destination. However, that is something of a rich claim when there is scepticism that tourists are spending on average £2.89[4] per day on convenience goods.

40. The impact on those stores would be primarily the diversion of main food shopping to the proposed foodstore. However, it is an odd claim that such diversion of itself would be problematic unless it gives rise to land use consequences in terms of loss of significant linked trips to the PSA and/or the closure of the Lord Street Sainsbury's. Neither is a remote prospect and the outcome would merely be to redistribute main food shopping expenditure amongst the town's large convenience stores with no other real adverse impact upon vitality and viability.

41. The big difference between the impact assessments is that the Applicants' has been independently audited on behalf of the Council by its retail advisers[5]. That is no small thing as the Council has no axe to grind and no commercial interest to promote. The impacts put forward have been properly assessed and come nowhere close to a significant adverse impact. The stance of the Council's retail advisers should not be lightly set aside.

The relevance of need

42. There is no dispute that the need test was dropped that prevented the entry of a new store into a market already dominated by one or more existing stores if there is neither a significant adverse impact, nor a sequentially preferable site on which to put it[6]. In the case of *Warner v Cotswolds DC*, Lord Justice Lindblom made it abundantly clear that the need test was not an express policy test, nor was there any warrant for it to be introduced covertly into the decision making process (***Document CD/52, Paragraph 35***). The argument made by the objectors is that it is somehow important to assess capacity in order to inform need[7]. However, if there is not a significant adverse impact then it is entirely immaterial whether or not there is a need.

Turnover of smaller stores

43. Much time was spent at the Inquiry pointing out that the results of the 2015 Household Survey under-reported the turnover of smaller stores and missed completely a number of the smallest stores. However, observations show that in aggregate the amount of convenience goods sales from the 22 smallest stores is so small as to make no difference. In any event, whilst the point would be relevant to a capacity assessment it is not relevant to an impact assessment.

[4] See Paragraph 54.2 and Footnote 13 below for a further explanation of how this was worked out.
[5] The Council's retail advisers are White Young Green. They were represented at the Inquiry by Mr Shepherd who did not produce his own assessment but rather endorsed that of Mr Price on behalf of the Applicants.
[6] This was agreed by Mr Sutton in cross-examination by Mr Tucker.
[7] Mr Sutton made this point in examination-in-chief.

44. There is no dispute that overall the large foodstores in North Sefton are over-trading against benchmark turnover. Indeed Tesco's evidence indicates an even higher level of over-trading than the Applicants have suggested (***Documents POE/16, Table 6.2; POE/33, Table 2***). There is no suggestion that there would be any meaningful impact on the small or under-reported stores, so the only value of adding their benchmark turnover is to mask the agreed over-trading of the big foodstores in North Sefton upon whom the impacts are most likely to fall. This accords with the principle extolled in the Planning Practice Guidance that retail uses tend to compete with their most comparable competitive facilities (***Document CD/3, Paragraph 016***).

45. The under-representation or omission of the turnover of the smallest stores in the 2015 Household Survey could not have over-emphasised the turnover of the principal stores since all have been endorsed by the operators through their respective consultants as follows:

    45.1 *Tesco* is likely to have sense-checked the turnover of £51.66m in its consultant's evidence before it was released. In any event it falls within the range it has itself stated (***Documents POE/33, Table 2; INQ/17***).

    45.2 The turnover for *Asda* in the 2015 SRSR is a little higher than in the 2012 SRSR. Asda's consultant confirmed that it provides an accurate position of its trading performance (***Document POE/28, Page 1***).

    45.3 Similarly, the turnover of the *Sainsbury's Lord Street* store was reported as a little higher than now and this was also confirmed to have been broadly right.

    45.4 The detailed representations by *Morrisons* made a number of points but did not allege that the content of the 2012 SRSR had got its store's turnover badly wrong (***Document CD/10***).

46. It follows that the Household Survey underpinning the 2015 SRSR is a robust basis to assess impacts and is the best available evidence. Furthermore, the under-reporting of smaller stores has not resulted in an over-inflation of the turnover of the larger stores upon which the impacts fall. If the turnover of those small stores in the town centre had been under-reported by the Household Survey then the only relevance would be that the percentage impact of the proposed development would be less because the town centre's turnover would in reality be higher.

<u>The health of Southport town centre</u>

47. There has been a huge amount of evidence produced on this matter and the evidence on the current health of the town centre was updated in May 2016 (***Document POE/16, Paragraphs 5.1-5.43***). The Council and Sainsbury's consider that the town centre is vital and viable, notwithstanding that it has some vulnerability and there is no room for complacency. Tesco considers that it is a "relatively" vital and viable town centre, which has some indicators that give cause for concern and there is no room for complacency[8]. The difference between the parties is one of emphasis.

[8] In cross-examination by Mr Tucker, Mr Sutton said that Southport was a relatively vital and viable centre but that when considered in terms of the key indicators there was an issue. He

48. The reason why this issue is relevant is to determine the resilience of the town centre to withstand the impact of the proposed development. Overall it is clear that some indices show a significant change in the fortunes of the town centre since the boom of the mid-2000s, especially Zone A rentals and yields, but others have show positive indications, especially in the last 18 months:

48.1 The number of *vacant units* at the time of the survey by the parties in June 2016 was 115[9]. However, if the 12 vacant units that are soon to be occupied are omitted and the 4 that are soon to become occupied are added, the total would be 107. This is marginally higher than in September 2015, when a similar exercise revealed the figure was 102[10]. However, it is not materially worse than the 2013 GOAD figure of 117 (***Documents INQ/65; INQ/34; POE/16, Paragraph 5.40***). Very many of the vacant units are long term vacancies in tiny units no longer suited to modern purposes. Within the PSA vacancies are limited (***Document POE/16, Paragraph 5.15***).

48.2 The present *floorspace vacancy rate* is higher than the national average. However, that is dominated by three very large floorplate vacancies. The Tulketh Street premises, which have been vacant for a long period, will be trading as a gym and three retail units shortly. This will be a major benefit for the town centre. The Victoria Baths on the Promenade and the Genting Casino on Lord Street are leisure units that account for 24% of the remaining vacant floorspace and their future remains problematic (***Document POE/16, Paragraph 5.15***). Even if those two units remained vacant, the floorspace vacancy rates will fall below the national average once Tulketh Street is occupied.

48.3 British Home Stores on Chapel Street will soon close as a result of national trading issues. It is just on the market and the store remains open, but realistically its future will be another occupier, at least on the ground floor. It is suggested that it may prove tricky to let. However, Woolworths took 18 months to relet by splitting the store in two and in the depths of the recession. British Home Stores has a prime pitch and is unlikely to remain vacant for long. It is facile to seek to paint the prospect of successfully letting this pitch with the years that Tulketh Street was vacant and suggest that one balances the other. The Tulketh St letting is a seriously good story and the British Home Stores closure, whilst unwelcome, will not result in a long term vacancy on any meaningful assessment.

48.4 It would be far better if Southport could return to the *Zone A rents* of the mid-2000s. However, the more realistic indicator is how the town centre is doing now. The 2016 Promis Report shows that Zone A rentals have remained stable since mid-2015 at £50/ft^2. Whilst it would have been better if they had increased, it reflects other

added that this was recognised by the Council in its pro-active approach and the indices gave rise to deep concerns.

[9] There were 5 disputed units which are not considered to be vacant for the purpose of this exercise.

[10] There were 104 vacant units but 2 should be removed as although they were vacant at the time of the survey they were due to be re-occupied and so not available.

comparable towns in the North West and is not a direct indicator of a weakness in Southport (***Document POE/16, Paragraphs 5.17-5.20***).

48.5 A recent newspaper article claimed that based on a report by Colliers International, rental rates had fallen by 10% in Southport. This report has not yet been published and so the empirical data, methodology and assumptions used to support the claimed reduction cannot be tested. The latest Promis report for Southport is based on data collected in May 2016 and has been used by all parties. It is the most consistent and reliable data source on which to assess rental levels (***Documents INQ/63; INQ/79***).

48.6 A similar position can be seen with *yields*. There has been a marginal improvement over the past 12 months. This is a function of the overall prices of property becoming more competitive and it would be better if yields had dropped lower and thus improved. However, the point again is that there has been no drop in the last eighteen months, but rather a marginal improvement (***Document POE/16, Paragraphs 5.21-5.24***).

48.7 The Examining Inspector endorsed the *reduced threshold* in Policy ED2 (as proposed to be modified) because of vulnerabilities (***Document POE/2, Appendix C, Paragraph 5***). However, that relates to all of the centres, and is not just a Southport issue. Moreover, there is evidence that many Councils seek reduced thresholds to address vulnerabilities[11].

48.8 Southport has been reclassified as an "average weak town", but that is due to an across the board re-categorisation by *Promis* and virtually all of the centres in the North West are now in the average weak town category aside from the Cities of Carlisle, Chester, Manchester and Liverpool. It is clear that year on year Southport is way above the average weak town index and approaches the PMA average. (***Documents POE/33, Appendix 3, Pages 10-12; INQ/69***).

48.9 The change in *market share* for Southport town centre in recent years is comparatively limited, reflective of its somewhat captive resident population for both comparison and convenience trade within Zone S. Between 2011 and 2015 the town centre's market share for comparison goods altered from 18.5% to 17.4%, which given the tolerances of this sort of exercise was accepted to be broadly comparable[12]. Over the same period the comparison goods market share for Meols Cop Retail Park also fell. For convenience goods in the town centre there was a small change in market share from 11.2% to 9.6%. Over that same period the market share for convenience goods at Meols Cop Retail Park was practically unaltered. This supports the point that Aldi's stellar increase in trading performance has been largely as a result of redistribution between itself and Tesco (***Document INQ/49, Tables 1,2***).

48.10 Apart from Tulketh Street there has been other *new investment* to the town centre, which should be set against the losses (***Document POE/16, Table 5.2 and Paragraphs 5.25-5.32***). There will be inevitable changes in

[11] Mr Shepherd said in evidence-in-chief that White Young Green take a cautious approach to thresholds as the default of 2,500 m^2 in the Framework is relatively high. Examples are Telford and Darlington where lower thresholds have been advised.
[12] This was agreed by Mr Sutton in cross-examination by Mr Tucker.

representation and churn is often a sign of a positive retail market. Apart from the move of Sports Direct to Tulketh Street, there is no evidence to support the proposition that the Central 12 retail park is about to become a wasteland. It is now, and will remain, a successful out-of-centre retail park in retail terms, which presently sits within the town centre boundary.

48.11 *Lord Street* is one of Southport's principal assets, and the deterioration in its physical state and the poor quality of the public realm has diminished both the shopping and the tourist experience. The Council has now appointed a dedicated Heritage at Risk Officer. 15 premises have been refurbished and enforcement action has been taken to remove unauthorised signage and other development since his appointment last year. A further Heritage Lottery Fund bid will be submitted in August 2016. There is no evidence that this process of regeneration of Lord Street as an asset to both the town and visitor economies and experience would be diminished by the application proposal (***Document POE/16, Paragraphs 5.33-5.38***).

49. Overall, there are a range of indicators and some of these show significant positives. These include vacancies and yields and rentals, which have been stable when comparable towns are dropping. Also, 21 out of 27 of the major comparison retailers identified by GOAD are represented in the town (***Document CD/33, Appendix 3, Page 12***). Some indicators show vulnerabilities but these can be overstated if a comparison is made with pre-recessionary data rather than that over the last few years. Overall it is right to characterise Southport town centre as both vital and viable and with good footfall (***Document CD/33, Appendix 3, Page 15***). Tesco's own health check assessment says as much and any walk around the centre evidences that. It is acknowledged that the Council appears to have taken its eye off the ball in relation to Lord Street, with its quirky and eclectic retail offer, but firm steps are now in place. The town centre is sufficiently resilient to withstand the changes that would occur as a result of the application proposal, which would by and large be an irrelevance to its future.

Inflow assumptions

50. In the 2012 SRSR the inflow of expenditure assumed across the whole Study Area for convenience goods was 5% and for comparison goods was 10%. In the 2015 SRSR the expenditure inflow in or adjacent to Southport town centre was assumed to be 10% for convenience goods and 20% for comparison goods (***Documents CD/19, Paragraphs 7.05, 7.25; CD/33, Paragraphs 7.10, 7.43***). The assumed increase was not applied across the board and so it is incorrect to suggest that there has been a doubling of the inflow assumptions between the two surveys. The Council's retail advisers have considered the available evidence in relation to regular inflow of expenditure from adjacent local authority areas and the evidence of visitor expenditure and have concluded that a different approach to inflow should be adopted. The reason for increasing the inflow assumptions was not due to a non-existent increase in visitor numbers as contended by Tesco.

51. There is overwhelming evidence that the inflow assumptions made in the 2015 SRSR are very cautious. There is a resident population to the north-east and east of Southport that look to the town as their centre of choice. Although the information relates to comparison goods expenditure, those who come to

Southport for that purpose may very well also do so for convenience shopping. The figures are substantial:

51.1 *The Central Lancashire Retail and Leisure Study* shows that in Zone 15, which comprises the Rural West, 29.5% of expenditure amounting to £22.57m of comparison shopping is spent at Southport and its retail parks. None of this zone overlaps with any part of the 2015 SRSR Study Area (***Documents CD/33, Appendix 1; INQ/45***).

51.2 *The West Lancashire Retail and Leisure Study* shows that some of its areas also look to Southport town centre for their regular retail needs. There is some overlap between the various study areas, but Zones 3a and 3b of the West Lancashire Study does not overlap. £8.31m of comparison expenditure is spent in Southport town centre from those zones (***Document INQ/44***).

52. Thus in terms of regular comparison expenditure there is at least £30.88m comparison inflow expenditure into Southport. This should be compared to the £34m of inflow expenditure that has been assumed without any allowance for tourist spend. It is an obvious inference that there would also be a significant amount of regular convenience expenditure inflow into the town centre, especially from places such as Hesketh Bank and Tarleton to the north-east of Southport.

53. A component for tourist spend should be added to the regular inflow. The STEAM Report concludes that there was £147m of retail expenditure as a result of tourist spend in 2014 in Sefton (***Document INQ/47, final page***). This can be compared with the £43m of comparison and convenience inflow that has been included in the retail assessment, which is inclusive of regular expenditure from outside of the Study Area and tourist inflow (***Document INQ/50, Section 6***). As a 'sense-check' it demonstrates that the approach is highly conservative. If the £43m was attributable to tourist trade alone then it would comprise only about 30% of the total expenditure concluded by STEAM.

54. Reliance on the STEAM Report has been questioned because its inputs are not transparent. However, Tesco has not made its own enquiries of how the STEAM conclusions have been arrived at, despite reference to it in the Applicants' evidence produced in August 2015. In any event, there is also no other evidence base offered to set against it. Tesco has made a number of other detailed points about the use of STEAM:

54.1 *STEAM relates to the whole of Sefton and there are other tourist attractors, such as Aintree Racecourse Retail Park*. However, in reality Southport is the only large scale resort town in the Borough even though some will visit the smaller towns of Formby, Crosby and Birkdale. Similarly whilst Aintree attracts many visitors to the races, the notion that its retail parks would trade in any meaningful way at such times is fanciful. More importantly the approach of the 2015 SRSR is to assume only a modest proportion of the tourist spend as attributable to Southport town centre. In reality it is likely to be much higher.

54.2 *The assumption that 80% of the inflow expenditure is on comparison goods and 20% on convenience goods is an arbitrary judgment and the proportion of convenience expenditure is too high*. However, it is far from unreasonable if one applies the sense check of assuming that all

20% of the £147m is attributable to convenience tourist spend. That would result in an average spend of £2.89 per person per visitor day on convenience goods – or the price of a sandwich and a bag of crisps[13]. However, it is only assumed that £9m would result from convenience inflow expenditure. This would only equate to 89p per visitor per day being spent on convenience goods.

54.3 *STEAM shows a fall in the number of visitors staying in paid accommodation*. However, the overwhelming majority of the visitors to Southport are those that come for the day and so it is not clear what point is being made.

55. In any event there was very little between the parties on inflow in terms of the actual sums of money assumed and it makes little difference to the outcome of the application. For convenience goods expenditure an inflow of £9m is assumed, whereas Tesco assumes £8.05m. For comparison goods expenditure an inflow of £34m is assumed and Tesco assumes £23.5m (***Documents INQ/50, Paragraph 6; INQ/53 Page 5***). There is substantial evidence to demonstrate that the case on inflow is not just robust but is positively low. It is overwhelmingly likely that the turnover of Southport town centre will be higher than has been assessed by any of the retail consultants.

Trade draw

56. This is the main determinant of the competing retail cases. There are a variety of issues that inform the professional judgment as to where the new store's trade would be drawn from. These include brand loyalty, proximity of other stores and comparability of trading format as established in the Competition Commission's publication *The Supply of Groceries in the UK Market Investigation* (2008) (***Document POE/7, Paragraphs 3.01-3.06***). The trade draws adopted by Tesco appear to bear no relationship to that evidence. They say that the greatest trade diversion would be from the smallest of the big four representatives, with the next door Tesco losing no more than the smaller Asda and Morrisons, which are about 2-2.5km away.

57. Sainsbury's convenience trade draw is consistent with the principles of proximity and comparability, whilst also having regard to the particular features of the stores in question (***Documents POE/10, Paragraph 10.33; POE/12, Paragraphs 3.8-3.17; POE/16, Paragraphs 6.36-6.41, 6.71-6.73; SCG, Appendix 5, Table 7a***)[14]:

[13] This is worked out using data from the STEAM Report (***Document 47, last page***). £147m ÷ 10.15 (visitor days for all visitor types) = £14.45. 20% of £14.45=£2.89.

[14] Inspector's Note: The trade draw assumptions in Mr Price's June 2016 evidence are slightly different to those agreed with the Council in the Statement of Common Ground as can be seen if Table 7a is compared in ***Document POE 17, Appendix 14*** and ***Document SCG/3, Appendix 5***. The explanation seems to be that following Mr Shepherd's review on behalf of the Council some minor amendments were made to the trade draw percentages (***Document POE/8, Paragraphs 6.20-6.23***). I have therefore relied on the retail tables in ***Document SCG/3***. It may also be questioned why Mr Sutton has included different figures in ***Document INQ/43, Table 2***, which purport to represent the Applicants' position. The explanation is that the turnover figure for the proposed new store used by Mr Sutton does not include the petrol filling station floorspace whilst that used by Mr Price does. This is explained in ***Document INQ/78B***.

57.1 Tesco is agreed to be the most comparable store to the proposed Sainsbury's, and would be very close. Thus is has been assumed that the greatest amount of trade, £16.79m, would be diverted.

57.2 Asda is a large format superstore with a significant comparison goods range but is located some distance from Meols Cop. There would be a significant diversion of trade of £8.4m, but much less than from Tesco.

57.3 Morrisons is a large format store, but is further away and is predominantly convenience goods, so is less comparable and less proximate. Whilst a significant diversion of £6.48m would take place, it would not be as great as Asda and certainly not as great as Tesco.

57.4 The Lord Street Sainsbury's is much smaller than the other stores and has little comparison offer. Its customer profile is linked to small baskets, and frequent shopping even for what is termed main food shopping. However brand loyalty counts for something, so a similar amount of diversion is assumed to be diverted as from Morrisons of £6.24m.

57.5 Lidl is overtrading by a considerable degree, but it too is smaller and located at the far end of the town centre so only £0.96m diversion is assumed.

57.6 Aldi is on the same retail park and right next door to the proposed new store. However, it is a discount retailer and therefore has a different customer profile. Nevertheless, it is massively overtrading, and Sainsbury's is determinedly looking to compete with the discounters through its price structuring. There is no evidence for Tesco's assertion that Sainsbury's attack the discounter trade through its collaboration with Netto. A diversion of £4.91m is logical and reasonable but a sensitivity test reveals that even if the diversion was reduced by half, there would be no material difference (***Document POE/16, Paragraphs 6.70-6.76***).

58. By contrast Tesco's trade draw figures are wholly implausible, and have the effect of minimising diversion of trade from out-of-centre stores and instead ascribing it to stores within the PSA and wider town centre, thus maximising impact on that area (***Document INQ/43, Table 1***):

58.1 Tesco, Asda and Morrisons are assumed to lose almost exactly the same amount of trade to the new store despite the fact that Tesco is much larger, has a greater turnover and is proximate to the proposed new store. It is not credible that Morrisons with its smaller floorplate, lower turnover and very different offer to both Tesco and Sainsbury's, would lose the same amount of trade to Tesco, despite being about much further away.

58.2 None of the retail consultants believe that having a large Sainsbury's on its doorstep would boost trade for Aldi[15]. Reliance on customer loyalty profiles is outdated as the main grocers have woken up to the discounters and are now introducing price structuring. Traditionally the discounters were new entrants into mature local markets served by the

[15] Mr Carney was of the opinion that Aldi would boost its trade as a result of the proposed development.

main grocers. That reflected their infancy but here Aldi is the incumbent store and is greatly overtrading with all of the negative issues that this brings to its customers (***Document POE/16, Paragraphs 6.37-6.38***).

58.3 Tesco believes that the Lord Street Sainsbury's would suffer the highest level of monetary diversion at £12m, which would be 20% higher than the monetary impact on Tesco, despite being much smaller and much further away. Asda's assessment was an £8.8m diversion, but even this would be too high as it would be little different to the assumed diversion from Asda and Morrisons, which are both larger stores (***Documents INQ/43, Table 1; POE/28, Page 5***). It is necessary to consider the nature of the shoppers visiting the Lord Street Sainsbury's. Nearly 25% undertake a main food shop every day, and about 50% do so at least twice a week. 76% of the store's trade is from baskets of less than £15, and 25% of customers link to the town centre when making a main food shop. It can be reasonably inferred that the clientele of the Lord Street Sainsbury's is very different from the bulk buy main food shoppers that would be likely to be the principal customers of the new out-of-centre Sainsbury's. (***Documents POE/10, Paragraph 9.18; POE/16, Table 6.8; POE/33, Table 7***).

59. Tesco has produced a mid-point analysis in the event that the Secretary of State considers that its trade draw was too extreme (***Document INQ/43***). However, it is supported by no evidence from the retail consultants and it is not the role of the Secretary of State to split the difference between competing protagonists. What it does show is that Tesco has only limited confidence that its judgments will be accepted by the decision maker. If that is correct then the appropriate approach should be to reject its assumptions rather than to split the difference.

60. In reaching its trade draw conclusions, Tesco has relied upon information provided by its research team. Four stores have been selected to highlight the actual trade draw by a new Sainsbury's store. These are examples but the wider data set is unavailable to the Inquiry. The parameters for selection are unknown and the turnover information is not amenable to being disclosed due to commercial confidentiality. Thus a time period has been selected which may be neutral to reflect the last few years or it may have been chosen to exclude more directly comparable examples. The examples chosen seem to bear little relationship to the case here (***Documents POE/33, Appendices 24 and 25; INQ/13***).

61. There are other examples where Tesco has assumed higher trade diversions than the 35% claimed in this case. Whilst Ross-on-Wye might be unusual, there is no evidence that the other examples, such as the 40% trade diversion at Cottam Brickworks, Preston, have peculiar features (Document ***POE/10, Paragraph 10.33***). Tesco also asserts a 35% impact on Morrisons and a 71.4% impact on the Lord Street Sainsbury's. Its position is totally inconsistent. What matters is local circumstances as concluded by the Inspector in the Saffron Walden appeal decision (***Document CD/26, Paragraph 53***).

Direct impact

62. The level of numerical impact would be 3.8% on the PSA and 8.18% on the town centre as a whole (***Document INQ/67***). This is well below what could be reasonably considered as a significant impact. More importantly the overwhelming majority of the impact would be upon like stores and would

simply divert the trade of single purpose trips. Even on Tesco's figures a case for significant adverse impact could only be supported if the diversion gave rise to active land use consequences. The closure of the Lord Street Sainsbury's would only arise if Tesco's unrealistic trade diversion figure or its mid-point figure for that store were adopted.

63. The evidence from both Sainsbury's and Tesco is that if one focuses upon the main food stores in North Sefton then there is a substantial degree of overtrading. If the Waitrose and Tesco in Formby are included the level of overtrading is just over £22m or £18.3m for Southport alone (***Document INQ/62, Table 6.2***). It is not contended that the new store would be able to capture all of that overtrading. However, it shows that far from diverting trade from a weak town centre, in reality trade would be diverted from a number of large main food stores which are collectively, and for the most part individually, doing very well. Even Tesco, with the Aldi trading very strongly on its doorstep, is still trading at £2.3m above benchmark, on Tesco's assessment (***Document POE/33, Table 2***). This is a location where foodstores are doing well and the discounters are doing exceptionally well. The like-for-like market is buoyant.

64. Moreover, the benchmark figure is only the average trading rate of the stores in question. Thus some stores in a company's portfolio will trade above the company's benchmark and some below it. There is no retail policy protection for a store located outside the PSA, which includes Asda, Morrisons, Tesco and Aldi. Reduction in trade is only of interest if it gives rise to land use consequences. In this case that relates to the alleged loss of linked trips. Diversion of trade from those stores of itself is a matter of policy indifference.

65. No-one contends that the closure of the Lord Street Sainsbury's would be other than an unwelcome impact upon the town centre. If such a closure resulted in the store being unoccupied by a similarly important anchor retailer then the effect would be significant adverse. However on the evidence that is simply not a remotely realistic outcome. Tesco was clear that if the Applicants are right about the trade diversion from the town centre store, then it would be unlikely to close[16]. Indeed, there are numerous examples where Sainsbury's operates in-centre and out-of-centre stores in the same town (***Document POE/10, Paragraph 10.39 and Table 10.3***).

66. If Tesco is right that there would be a diversion of £12m, which is much higher than Asda's figure of £8.8m or Sainsbury's figure of £6.2m, then the store would operate at only 31% of benchmark and its future would be in doubt. However that is based upon unrealistic trade draw assumptions. Even the 'mid-point' trade draw put forward by Tesco would be higher than Asda assumes (***Documents INQ/43, Table 1, Table 4; POE/28, Table 15***).

67. There is thus strong evidence that Sainsbury's would continue to trade both stores indefinitely. However, the Council has raised the point that in a predictive exercise one can never have certainty. To ensure that the Lord Street store does continue to trade, a legal commitment is required. Sainsbury's does not consider that this would be strictly necessary but, nonetheless, it would make sure that Sainsbury's have to wait until the new store matures in its trading pattern before making any decision about the future of its town centre store. Also, it would force the store to continue to

[16] This was agreed by Mr Sutton in cross-examination by Mr Tucker.

trade if it turned out that the predictions have gone badly wrong and so enable Sainsbury's to find a tenant and not leave the building empty at the end of five years. The Council does not consider that one has to look at impacts beyond a five year time horizon. The Framework and Planning Practice Guidance do say that, but it is conceded that if there were a substantial risk of the store closing at the end of the five year period, that could be a material consideration now.

68. Even if the Lord Street Sainsbury's were to close as feared by the objectors, there would not be a significant adverse impact having regard to the main policy considerations in Paragraph 26 of the Framework. The turnover not diverted to the proposed new store would be redistributed to other foodstores in the PSA and wider town centre. The trade in the latter would therefore not see any material reduction in its current level. The turnover of the existing store is a fraction of the total turnover of the wider town centre. Furthermore, local consumer choice would not be diminished as there would still be a significant number of convenience stores serving a variety of purposes for both local residents and visitors.

69. Booths clearly still have an interest in coming into Southport, and Aldi is also looking for a new store, which cannot be accommodated in Churchtown[17] (***Document POE/11, Appendix 23***). Either could be accommodated at Lord Street. However, there would be the option of a non-food retailer sub-letting the store. Whilst this would be less good than a foodstore it would still be a far from catastrophic outcome. There was no allegation that the store would be likely to end up unoccupied at the end of five years and such an outcome would be highly improbable[18]. In reality the clear likelihood is that the store would continue to trade, albeit with a reduced turnover. The nature of the store, the profile of its clientele and how it is used by shoppers means that the impact alleged by Tesco would simply not be plausible.

Indirect impact

70. The pedestrian count data and linked trip survey provided by Asda was so seriously flawed that no reliance could be placed upon it (***Document POE/12, Paragraphs 4.10-4.19***). An updated assessment of linked trips has been made but this is not informed by any new empirical data (***Document POE/28, Pages 5,6 and Table 17a***). Also, there is still no recognition that customers who would be diverted from Adsa, Morrisons or Sainsbury's may still continue to make a trip to the town centre. Such trips would be similar to those associated with the out-of-centre Tesco and Aldi, for example. There should be no reliance on this linked trip assessment (***Document POE/16, Table 6.8***). It should be noted that both the Applicants and Aviva, the owners of Central 12, have undertaken recent surveys of linkages between the retail park and the town centre (***Documents POE/16, Appendices 16 and 17; CD/38, Appendix 3***).

[17] Mr Carney confirmed in cross-examination by Mr Tucker that he had had further discussions with Booths about 91 Lord Street and their requirements but that this was confidential and so there was nothing in writing that he could reveal. He also confirmed that his land at Cambridge Road, Churchtown was too small for Aldi as a potential location. He was however sceptical that the Sainsbury's site at Lord Street would be suitable for either.

[18] Mr Carney in cross-examination by Mr Tucker agreed that Sainsbury's would be likely to continue to trade until a tenant was found unless the turnover was so poor that it was uneconomic to do so.

71. The 2015 SRSR, consistent with its 2012 predecessor, shows that those undertaking a main food shop at the Lord Street Sainsbury's display a much greater proclivity to link trips with the rest of the town centre than those shopping at the other main food destinations (***Document POE/16, Table 6.8***). In the recent survey of linked trips between Central 12 Retail Park and the PSA, which was based on reasonable and transparent assumptions, the prospect of lost trade from the PSA amounted to only about £0.4m (***Document POE/16, Paragraphs 6.86-6.95***). Even if there was the same amount of diversion from the other main foodstores in the town centre and £1m was lost from the PSA as a result of linked trips, the impact would only rise from 3.8% to 4.1% in 2019 and would be well below the level of significance. Tesco sought to argue for a much higher figure. However, that was based upon a cross-tabulation of the Aviva survey (***POE/33, Appendix 7***). In fact the cross tabulation of the latter showed that only 59 out of 310 respondents to the survey had spent more than £30 at Asda. Of those, 20 were undertaking a linked trip on the day of the survey, but only 11 would actually walk. It follows that of the main food shoppers undertaking their main food shopping at Asda, 81% were not undertaking a linked trip on foot. Three points thus arise:

    71.1 Tesco pointed out that some of the respondents indicated that they undertook linked trips sometimes and that therefore it was not just the 20 who were relevant. However, on that day 20 out of 59 would visit the town centre. If on another day one of the other 39 did so, then who is to say that all of the 20 would also still do so. It is an illusory attempt to increase the figures (***Document POE/33, Appendix 7, Q10 and Q11***).

    71.2 Of those linking trips, 9 were doing so by car. That linkage could just as easily be done by a future visitor to Meols Cop, which is only a few minutes drive away. Tesco argued for a similar trade diversion from Tesco and Morrisons partly due to the ease of drive between the two. It also shows that Central 12 is not so well related to the town centre as the objectors contend (***Document POE/33, Appendix 7, Q10***).

    71.3 Even if some or all of those 59 people were to divert, there is no evidence that the linked trips would be lost to the town centre. Southport would remain attractive to the local populous and the competing towns would remain geographically inconvenient. A shopper may make a second trip either on the same day or another day; or they may choose to shop most of the time at the proposed new store but shop at Asda when they want to go to the town centre; or they may not spend the money at all or go to a different centre. In the particular circumstances of Southport, which has a very self-contained catchment, those in the latter category are likely to be a very small number and way below the 19% who made a linked trip to the town centre on foot on the day of the survey.

72. A common sense approach rather than a purely numerical one is justified in the case of Southport. This leads to the conclusion that in this particular case a diversion of trade from the stores in the defined town centre, but outside the PSA, is unlikely to result in a significant loss of trade from a loss of linked trips.

73. The Lord Street Sainsbury's, which shows the highest proportion of linked trips has a customer base that does not generally undertake large trolley shops of the kind that would be undertaken at the proposed new store. These people

are inclined to shop little and often or are otherwise linking to the town centre. Either way they are not likely to be the shoppers diverted to Meols Cop. The role of the Lord Street Sainsbury's to the town centre would continue to be a robust one.

74. It is suggested by the objectors that the grant of permission may be the catalyst for Meols Cop Retail Park to become fully let, for the permitted floorspace to be maximised and for its character to radically alter so that it would become a retail destination in its own right. However, there are already huge attractors to Meols Cop, including the Tesco and Aldi. These already bring in a footfall of millions of shopper trips per annum even though Meols Cop is not a shopping park or even fully let as a retail park. Tesco has over-estimated what could realistically happen. The unimplemented mezzanine floorspace only amounts to about 932 m^2 (***Documents INQ/50, Section 8; INQ/62, Paragraphs 1.5-1.6***).

75. It is not the intention of the Applicants to materially change the role, function or offer of the retail park. There are only two vacant units outside the application site and the existing tenants provide a good complementary offer at the site. A clothing and footwear operator, for example, would require a critical mass to allow comparison shopping and would need a significant premium to occupy the space. It should be noted that the lease to Sainsbury's would preclude the landlord from granting a lease of one of the other retail units to a foodstore for a period of five years (***Documents INQ/39; INQ/40***).

76. In any event, the matter could be resolved through the imposition of conditions. These are not considered necessary and certainly not reasonable in respect of occupied units. Nonetheless, the objectors' point is a plea to impose restrictions upon the remainder of the park and not an in-principle objection to the scheme.

77. This would be a good scheme that would create around 308 full time equivalent jobs in comparison with the 20 or so positions currently at Homebase. Employment opportunities would be available to the local labour market and the Planning Obligation includes a covenant to this effect. The development value of the proposed works would be about £20m during the construction phase and the subsequent operation of the store (***Documents POE/10, Paragraphs 11.1-11.11; INQ/72***).

HIGHWAY MATTERS

78. The Framework test that needs to be applied when considering transport issues is at Paragraph 32. The genuinely held concerns of the local Member of Parliament, local people and Southport and Windsor Properties LLP are not borne out by the evidence. The Council as Highway Authority has maintained its position that the impacts of the proposed development would not be severe. Specifically it agrees that (***Document SCG/3, Paragraphs 5.24-5.27***):

    78.1 The traffic impact assessment demonstrates that there would not be a severe impact on the local highway network.

    78.2 The proposed site access junction on Meols Cop Road and the existing junction with Foul Lane would operate satisfactorily.

    78.3 The new traffic signal controlled junction on Meols Cop Road would assist local residents on Argameols Close when pulling out onto Meols Cop Road.

78.4 The reconfiguration of the site access and redistribution of food shopping trips would result in an overall reduction in traffic passing through the Kew roundabout junction.

79. No alternative assessment of the highway impacts has been made to support a finding that the highways impacts of the proposal would be severe. An updated transport assessment has been undertaken. This takes account of the Council's updated household survey and the 2015 SRSR; the Applicant's latest trade draw assumptions and scenarios; new traffic surveys undertaken in November 2015, including surveys of the Aldi store car park (***Document POE/21, Section 3***). Using this up-to-date evidence base the network trip impact and the impact on the new site access has been reviewed and accepted by the Highway Authority (***Document POE/21, Paragraph 1.1.4***).

80. Furthermore, for robustness there has been a sensitivity assessment based on an increase in trade draw from Tesco to 36% and a reduction in trade draw from Aldi to 5%. A seasonality increase of 5% has also been applied to the movements on Meols Cop Road for the junction assessments (***Document POE/21, Paragraphs 3.11-3.12***). The assessment has clearly considered a worst case scenario.

81. The modelling shows that across the network in both the main case and the sensitivity case there would be reductions in traffic at key junctions. The only junction identified as having an increase in traffic is the site access. However, the modelling of this junction shows that at all times during the working week and at the weekend outside the peak holiday season all limbs of this junction would operate with more than 10% spare capacity. The junction would only operate at over 90% capacity during the Saturday peak in the holiday peak. The modelling thus clearly shows that the highways impacts of the scheme would not be severe.

82. Southport and Windsor Properties LLP maintains objections to the transport assessment. However, its evidence was not supported by any relevant professional qualifications or experience. A transport consultant was not employed to produce an alternative assessment or review that of the Applicant. There was no empirical data or documentary evidence to support the evidence given. Where documents were referred to they were cherry picked and the points derived from them were not borne out by a proper appreciation of the document[19]. The response to the criticisms is as follows:

82.1 There was no reason to survey Tesco separately. The number of trips currently using Tesco would not have a bearing on the level of traffic generated by the proposal. The trade drawn from Tesco is used to calculate the number of trips generated by the proposed Sainsbury's. The number of trips to Tesco is therefore irrelevant (***Document POE/61A, Paragraphs 2.1-2.8***).

82.2 The survey data from 2012 and 2015 and the background data clearly shows that there has not been an increase in background levels of traffic that would warrant an uplift being applied to the transport assessment. Committed developments at Town Lane, at Birkdale Cop in Kew and on land adjacent to the Southport & Formby District General Hospital have been taken into account. The further sites from the

[19] Mr Carney confirmed in cross-examination by Mr Humphreys that he has no transport qualifications, had never undertaken a transport assessment and had not sought professional advice in formulating his criticisms of Mr Smith's transport work.

emerging LP are allocations rather than committed development and, as such, do not need to be considered in the transport assessment (***Document INQ/61A, Paragraphs 2.9-2.19***).

82.3 It is standard practice to use the convenience trade draw to assess the traffic impact because that is what drives trips to a foodstore (***Document POE/10, Paragraph 10.51***). Although Southport and Windsor Properties LLP said that 1 in 6 customers undertake shopping for comparison goods only there was no justification given or evidential support for this split (***Document INQ/61A, Paragraphs 2.20-2.24***).

82.4 The 2012 and 2015 surveys both show that the existing retail units are consistently generating less trips than the average using TRICS data. When the actual survey data is available there is simply no need to apply a national average or make some sort of trip rate uplift for the non-food units (***Documents POE/21, Paragraph 2.4; INQ/61A, Paragraphs 2.25-2.30***).

82.5 No reduction has been made for linked trips within the retail park, which demonstrates the robustness of the transport assessment. It is said that such a reduction would not materialise as it would be countered by a growth in car park spaces, which would increase trips. However, Meols Cop already has an extensive car park and has units in which national retailers operate. There is no reason why the introduction of the new store would generate further trips to the wider retail park. The guidance document from which this is drawn is TRICS Research Report 05/1: *Trip Attraction Rates of Developments with Multiple Retail and Leisure Uses*. It makes clear that individual transport assessments are needed that do not simply adopt statistical averages as a rule of thumb. The Applicant has produced such an expert assessment, whilst the objector has not (***Documents POE/21, Appendix AJSA, Appendix D, Paragraph 7.3; INQ/61A, Paragraphs 2.31-2.34***).

82.6 Units 2a, 2b and 2c have permission for open retail use. Unit 2b has a long lease until 2023 and Unit 2c has a long lease until 2024. If Unit 2a were to be let for food use the trips generated would be likely to be reassigned from Meols Cop trips and would therefore have no impact on the traffic conditions at the site. In relation to the potential for additional mezzanine floorspace, a sensitivity test was undertaken and this concluded that there would be no material difference to the operation of the network or site access junctions (***Document INQ/61A, Paragraphs 2.35-2.46***).

82.7 There is no evidence to challenge the assumption that 50% would be primary trips on weekdays and 70% on Saturdays. Reference is made by Southport and Windsor Properties LLP to the TRICS Research Report 95/2, which concludes that the proportion of pass-by and diverted trips would generally be about 30% and not expected to exceed 40%. However, this document is now over 20 years old and much has changed since then in terms of shopping patterns. Also, the document makes clear that local circumstances have to be considered and an expert judgment formed on them. The Applicant has produced such an expert view, whilst the objector has not (***Document INQ/61A, Paragraphs 2.47-2.53***).

82.8 Even in the worst case scenario, which could only ever arise for 12 hours a year, the junction would still operate within capacity and not cause any problems. The queue lengths would not interfere with any other junctions or pedestrian crossings and would be contained within the new signal controlled junction itself (***Document POE/21, Plan AJSA***). The modelling undertaken using the assumptions of Southport and Windsor Properties LLP, which shows the new junction operating over capacity is not considered to be realistic (***Documents POE/21, Appendix AJSA, Section 2; INQ/61A, Paragraphs 2.54-2.58***).

82.9 There is no evidence of pedestrian accidents occurring around Meols Cop. There is an existing light controlled crossing a short distance to the north and this could be linked up to the new traffic lights at the site junction. A pedestrian crossing within the new junction itself would be unnecessary and would not lead to anywhere other than the playing fields on the western side of Meols Cop Road. The Highway Authority is satisfied with the proposed arrangement and it is the responsible body for highway safety (***Document INQ/61A, Paragraphs 2.59-2.63***).

82.10 The modelling shows all of the Sainsbury's traffic using the new access off Meols Cop Road as that would be the most potentially sensitive junction. If the Sainsbury's traffic did use the Foul Lane entrance, that would reduce the traffic impact of the scheme. Those existing trips that turn left into the retail park and those leaving the park and travelling north have been assigned to the new junction. Other trips have been assigned to the Foul Lane access (***Document INQ/61A, Paragraphs 2.64-2.72***).

83. The site is in an accessible location where trips can be undertaken by bus, cycle or on foot. There are also various improvements proposed, including upgrading the footway/ cycleway that runs between Meols Cop Road and Foul Lane, and providing Real Time Passenger Information to the two nearest bus stops. Cycle parking would be provided close to the store entrance as well as drop-off points and a taxi rank (***Document POE/18, Sections 4-5***).

84. The proposed new access arrangements would require the imposition of waiting restrictions along a section of Meols Cop Road. This is presently unrestricted and used for kerbside parking in connection with the use of the recreation area and football field. Sainsbury's has discussed the matter with the organisers of the football league and agreed that parking can take place in the store car park at these times, which generally would not be when the store was at its busiest.

OTHER MATTERS

85. A comprehensive process of engagement with local residents was undertaken as part of the design process. Over 200 people visited the public exhibition and 82% of those respondents supported the proposed development. Notwithstanding this a number of local residents have raised concerns at the Inquiry, which have been robustly addressed in the evidence.

86. Human rights issues have been raised by a resident living in Argameols Close immediately to the north. This concerns the impact of dust and noise from the development proposal on the serious health issues of herself, her elderly neighbour and her children. There is no evidence to suggest that noise or dust would be produced at such a level as to interfere with Article 8 rights or Article 3(1) of the United Nations Convention on the Rights of the Child. The

proposed conditions regarding the mitigation of noise and dust would adequately address residents' concerns and consequently prevent any breach of Article 8 from arising. If it is considered that Article 8 rights would be engaged then plainly any interference would be at a very low level. This interference would be proportionate to meet the legitimate aims of the planning system as the development proposed here is one entirely in accordance with the salient planning policy. There is no evidence to show that any interference with human rights would be disproportionate (***Document INQ/71***).

87. Residents' concerns have been reassessed and further mitigation proposed to address the points raised as described in Paragraph 25 above. The issue of piling has been considered and there is a condition proposed that requires any works to be subject to details that would first be approved by the Council. There is no technical evidence to suggest that there would be any problems associated with piling (***Document CD/9***).

PLANNING BALANCE

88. There can be little doubt that the overall planning balance weighs decisively in favour of allowing this development. Tesco presently dominate the local convenience food market with about 30% of the trade going to its out-of-centre store on its own figures (***Document POE/33, Table 2***). The proposal would introduce choice and competition without significant impact upon the town centre. It would bring jobs and investment and comprise sustainable development. Southport is a coastal town and is relatively well distanced from its nearest retail rivals, such as Preston, Ormskirk and Liverpool. A rebalancing of trade between the superstores would not lead to existing town centre customers decamping en masse from the town centre. Rather they would spend some of their main food expenditure in a commercial rival to the current operators and continue to use the town centre for other purposes. In the circumstances of this case the job creation and inward investment substantially outweighs the limited and grossly overstated retail concerns. Not only is Paragraph 27 of the Framework not triggered but the grant of planning permission in this instance would be palpably in the public interest.

THE CASE FOR THE COUNCIL

*The Council's case is fully set out in its evidence, including its closing submissions (**Document INQ/73**). The main points are:*

89. The application was considered in October 2014 when, in accordance with the officers' recommendation the Planning Committee resolved that it was minded to grant planning permission. Criticism has been made of the handling of this application by those disappointed with its decision. However, the officers' advice, and the Council's resolution, was the outcome of careful consideration and analysis. Independent retail consultants were engaged to assist in assessing the information provided and to advise upon the merits and potential impacts of the application. The information provided by the Applicants was subject to careful scrutiny and as a result they were asked to provide further information. A substantially revised retail impact assessment was submitted and this provided sufficient information to allow for a proper consideration of the proposal (***Document POE/5, Paragraphs 2.14-2.15***).

90. It is thus clear that the Applicants' submissions were not merely accepted at face value. The evidence was subject to challenge and careful scrutiny. The

advice of the Council's consultants remains that there are no relevant retail or town centre policy grounds for refusing the application. Similarly the advice from the Highway Authority is that the proposal would be acceptable in terms of highway issues and accessibility. Although others may form a different judgment that does not establish any failing on the part of the Council.

PLANNING POLICY CONTEXT

91. Whilst a number of the relevant policies of the UDP remain up to date there are important aspects of the retail policies that do not conform to the guidance in the Framework. In particular this concerns its treatment of the sequential assessment in saved Policy R1, the impact test in saved Policy R9 and the absence of any clearly defined PSA (***Document POE/5, Paragraphs 3.18-3.27***). Greater weight should be given to the policies in the Framework and it is these policies that were primarily addressed when considering retail matters. Although the emerging LP has not completed its Examination, the Inspector has provided initial views on the relevant policies and the Council has proposed modifications in accordance with his views (***Documents POE/2, Appendices A, B and C***). In the circumstances, whilst full weight cannot be given to the emerging LP it has now reached a stage where its relevant policies can be given substantial weight (***Documents POE/2, Paragraphs 2.4, 2.6; POE/8, Paragraph 2.13***).

92. Preparation on the *Southport Development Strategy* is underway. In June 2015 there appeared to be suggestions that this document was being kept from view. In fact at that time the process remained at a very early stage and a draft document was not published until December 2015. Consultation responses are currently being analysed after which a final document will be produced for Council approval. However, this will not occur before September 2016 at the earliest.

93. The Southport Development Strategy is intended to be a high level document concerned with future opportunities for investment across a broad range of initiatives. It is not a planning document and will not be adopted for development management purposes or as a supplementary planning document. Whilst it is capable of being a material consideration, only very limited weight can be given to it at present. The main point of relevance here is the identification of a number of development opportunity sites. However it is clear that the application proposal would have no implications for those sites or for the Southport Development Strategy (***Documents POE/2, Paragraphs 4.1-4.23; POE/8, Paragraphs 4.06-4.14; CD/35***).

94. The UDP identifies Southport town centre for the purposes of saved Policy R2 and this is shown on the Proposals Map. This identified area is stated as the preferred location for new retail development in Southport. It is extensive and includes areas that are clearly not retail areas. The Lord Street Sainsbury's, Morrisons, and Asda are all within this extensive area, but none of them are within the Primary Retail Frontage, which is defined in Figure 7.2 of the UDP. However, the UDP was prepared and adopted in a different policy context and it did not identify a PSA, which the Framework defines in the Glossary as the area where retail development is concentrated. Taking account of the explanation in Paragraph 7.12 of the UDP, the Primary Retail Frontage effectively equates to what would now be identified as the PSA.

95. The emerging LP does identify a PSA and this is quite distinct from the defined town centre. The correct boundary for these areas was a matter of some

debate at the Examination. The Inspector made it clear that the PSA in Southport is correctly identified as being centred on Chapel Street and Lord Street and that it should not extend to the Central 12 Retail Park (***Document POE/2, Appendix C, Paragraphs 3 and 4***).

96. The identification of the PSA is of some significance because for retail purposes the Framework defines edge-of-centre by reference to distance from the PSA and not the town centre. This contrasts with the approach taken to all other main town centre uses. It is clear that for retail purposes the centre or town centre is to be taken as the PSA. This has to follow from the approach to the sequential test in Paragraph 24. As edge-of-centre is defined by reference to distance from the PSA, the only conclusion must be that the PSA is being treated as the centre. Any substantial proposal on an unallocated edge-of-centre site requires an assessment of its impact upon the centre. This position is reflected in Policy ED2 (as proposed to be modified) where, for retail purposes, the PSA ranks sequentially as the first location for development.

97. Tesco sought to place weight on the Council's change of position in including Central 12 Retail Park within the town centre and, in particular, the advice note provided by its retail consultants. This document makes clear that there is limited connection between the retail park and the PSA. The distance from the PSA and the nature of the route is such that the retail park would not normally be considered as town centre having regard to the definition in the Framework Glossary. However, the advice recognised that Central 12 Retail Park was shown as part of the town centre in the UDP and it was considered that a robust argument would be needed to justify its removal. Given the evidence of some linkage with the PSA it was concluded that such a robust case was not present and so it was recommended that the retail park should remain within the town centre (***Document POE/33, Appendix 17, Pages 1-3***).

98. The advice note makes it clear that this was a finely balanced judgment and it stressed that Central 12 Retail Park should be considered as an out-of-centre location for the sequential test due to its distance from the PSA. The importance of this distinction was clearly endorsed by the Examining Inspector. He emphasised that the inclusion of Central 12 retail park within the town centre made it all the more important to identify separately the retail core by designating a PSA (***Document POE/2, Appendix C, Paragraphs 3 and 4***).

THE SEQUENTIAL TEST

99. As the application site is an out-of-centre location it is necessary, in accordance with both the Framework and local policy, to undertake a sequential assessment. In this case Southport is the appropriate area of search. Whilst the figures with respect to capacity or need for development have changed there is no evidence to suggest that the test should be applied to any wider area. Even if appropriate flexibility is applied, the search would be for a site of more than 2.5 ha in area. A number of potential sites were considered but rejected on the grounds of suitability or availability (***Document POE/5, Paragraphs 4.18-4.74***).

100. The current position with respect to Tulketh Street is that the proposal to bring it forward for a variety of uses associated with Sports Direct is now well advanced. Accordingly the site can no longer be considered to be available (***Document POE/8, Paragraphs3.04-3.12***). This has been recognised by Windsor and Southport Properties LLP who had been promoting Tulketh Street as a sequentially preferable site.

101. No other realistic sites have been identified and it appears now to be generally accepted that there are no sequentially preferable sites, even allowing for a reasonable degree of flexibility. In the circumstances the evidence establishes that the proposal meets the sequential test.

THE IMPACT TEST

Health of the town centre

102. There have been regular assessments of the health of the town centre with reviews and updates in 2005, 2009, 2012 and most recently 2015. In addition the Council's retail consultants were commissioned to provide the *Sefton District Centres, Local Centres and Shopping Parades* in 2012 and the *Southport Town Centre Retail Strategy* in 2011. The 2015 and 2012 reviews were supported by a household survey and a detailed health check, which were based on a Study Area extending beyond the Borough boundary. There was also further assessment associated with this planning application (***Documents CD19; CD/20; CD/22; CD/33***).

103. Southport town centre, as might be expected from its size and character, is a predominantly comparison retail centre, with an above average level of comparison goods retailers. Furthermore, as a tourist destination it also benefits from an above average proportion of leisure floorspace. It is thus inevitable that the representation of some other forms of floorspace, including convenience, is below average. This is to be expected in higher order centres and is not itself a sign of any weakness. The town centre's vitality and viability is primarily underpinned by its comparison goods and leisure offers and this is important when considering the predominantly convenience impact projected to arise from this proposal (***Documents POE/5, Paragraphs 5.22-5.23, 5.31***).

104. However, although Southport is primarily a comparison retail centre it still has a good convenience offer. The Sainsbury's is located on the eastern side of Lord Street. Although it is not shown within the Primary Retail Frontage or the designated town centre on the UDP map[20] it is closely and well related to this frontage and this is borne out by the way it functions (***Document INQ/3***). In particular there is a high level of linked trips associated with Sainsbury's as is evident from the 2012 Household Survey and on-site observations. The store has a high proportion of large basket shopping, which is also compatible with a town centre location and function (***Document POE/5, Table 5.9 and Paragraph 5.10***6). The emerging LP shows the Lord Street Sainsbury's as clearly within the PSA. Whilst the plan has not yet been adopted this clearly reflects the reality on the ground and has been supported by the Examining Inspector.

105. Morrisons is about 100m from the Primary Retail Frontage. It is an edge-of-centre store although it is not well laid out to link to the town centre, and this appears to be supported by the findings of the 2012 household survey (***Document POE/5, Table 5.9***). The store is shown as outside the PSA in the emerging LP.

[20] It should be noted that the location of the Lord Street Sainsbury's outside the designated town centre in the UDP came to light on studying the Proposals Map at the Inquiry in September 2015. Mr Shepherd's first proof (***Document POE/5***) had been written on the understanding that it was a town centre site. However, he accepted that it was edge-of-centre even though its function was as an in-centre store.

106. Asda trades from Central 12 Retail Park and is about 450m from the Primary Retail Frontage in the UDP and the PSA in the emerging LP. Whilst the route is level and there are pavements on both sides, there is no real inter-visibility between the two. The northern side of London Street is shown as outside the town centre in the UDP (***Document INQ/3***). It comprises a mix of uses and there is no sense of it being part of the town centre. The southern side of London Street is shown as within the town centre but this is because it is taken up by the railway station. Asda is correctly identified as being out-of-centre (***Document POE/5, Paragraph 3.25***). It is recognised that there are some linked trips from Asda but they are of a much lower scale than is the case with the Lord Street Sainsbury's and they do not give grounds for questioning the conclusion that the site is out-of-centre (***Document POE/5, Table 5.9***).

107. Apart from the large foodstores, there is a Marks and Spencer on Chapel Street and a range of other smaller convenience stores. The town centre is able to provide for a wide range of convenience goods shopping needs.

108. The available evidence does indicate some issues with respect to the health of the town centre. In particular, the level of vacancies has been above the national average for a period of time. This is partly due to the number of small units in the town centre. Also, in terms of floorspace there has been the prolonged vacancy of the large unit in Tulketh Street since Waitrose vacated in 2006. This accounts for a significant proportion of the vacant floorspace within the town centre. Nevertheless it is recognised that there is an issue with respect to vacancies and that it would be beneficial to reduce this rate.

109. There is though some good news with respect to Tulketh Street as the premises are to be occupied by Sports Direct and associated operators. On the downside there is the prospect of the closure of British Home Stores on Chapel Street. Whilst this is regrettable it reflects a national issue rather than providing evidence of any particular weakness in Southport. The same can be said for many of the retailers that Tesco has identified as having been lost to Southport in the past two years. Some like East have gone into administration whereas others like Next and Wallis have retracted and are represented at Central 12 Retail Park (***Document POE/33, Paragraph 5.11***).

110. The agreed position is that there are 115 vacant units in the town centre, which represents an increase on the 106 or so in September 2015. However, it should be noted that 12 of the currently vacant units are to be occupied shortly and that a further 4 are expected to become vacant (***Documents INQ/65; INQ/78A***). If these changes are taken into account the net outcome would be 107 and a similar position to last year. It is clear that the evidence of Tesco was based on an erroneous view of the vacancy position, which was said to be 131 units and an increase in 22 vacant units since September 2015 (***Document POE/33, Appendix 3, Paragraph 1.6***).

111. If the health of the town centre now is compared to the situation 10 years ago, there has been a relative decline in part at least because of competition from other destinations and forms of retailing. Also, some of that decline is comparable to what can be found elsewhere. Whilst there are some long term vacant units in Southport that would benefit from being brought back into active use, the town centre is performing reasonably well. The 2015 SRSR concluded that overall it was vital and viable and functioned well in serving the retail and service needs of the surrounding area and the many tourists who visit each year (***Document CD/33, Paragraph 5.29***). Tesco also confirmed that

the town centre is relatively vital and viable, albeit that it identified areas of concern[21].

112. A proactive approach has been taken to assessing the town centre's health and steps have been taken to assist in strengthening it. There is no substance in any suggestion that the Council has failed to understand, or is indifferent to, the health of the centre (***Document POE/16, Paragraphs 5.33-5.38***).

113. Policy ED2 (as proposed to be modified) includes a 500m^2 threshold for assessing impact on the town centre. Tesco suggests that this is an acknowledgement of particular vulnerability. However, the national default threshold is set at a high level of 2,500 m^2 and the Council's retail consultants commonly advise other Councils that a more cautious approach and lower threshold level is appropriate. In the circumstances one should not read too much into the proposed threshold.

114. The production of the Southport Development Strategy should not be interpreted as an indicator of weakness in the town. Similar development strategies are being prepared for the other main centres of Crosby and Bootle. In fact the setting of the lower threshold and the preparation of the Southport Development Strategy are further examples of the care that is being taken towards the town centre. Although there can be no complacency about the issue, the health of the town centre has not deteriorated over the past year and it continues to perform reasonably well (***Documents POE/5, Paragraph 5.31; POE/8, Paragraph 5.16***).

Capacity

115. A considerable amount of time was spent by commercial objectors questioning the capacity for the proposal. This may be an understandable concern for competitors to the scheme who stand to have trade taken from their existing stores, but policy no longer requires any need to be demonstrated for a retail proposal. Accordingly such considerations cannot directly support any refusal of planning permission (***Document POE/8, Paragraphs 5.03-5.04***). At the time of the consideration of the application there was spare retail capacity but the Officers' Report made clear that the Framework did not require a need for the foodstore to be demonstrated. The application was properly considered by the Council in accordance with the up to date policy approach (***Document CD7***).

Impact

116. There was considerable debate about whether the impact assessment should address the PSA or wider town centre. In this case it does not matter much because no-one is claiming that there would be direct impacts on Asda or Morrisons such that they would close.

<u>Effect on planned public and private investment</u>

117. Three sites have been identified:

117.1 *Land at Cambridge Road, Churchtown* is located within the local centre. A number of potential operators have been identified for the site, but

[21] In cross-examination by Mr Tucker, Mr Sutton said that Southport town centre was relatively vital and viable but it had to be considered in the light of all indicators, which give rise to deep concerns. Mr Fraser asked Mr Sutton whether he considered the health had changed since September 2015. Mr Sutton replied that there were more signs of concern and distress.

there is no evidence that any would be deterred by the proposal[22] (***Document POE/5, Paragraphs 5.44-5.55, 5.50-5.52***).

117.2 *91 Lord Street, Southport* is within the PSA. Although Booths is mentioned as a potential occupier, its agent has made it plain that it is not interested in the site. In view of the location adjacent to Morrisons it is not clear why Booths, or any other food retailer, would be put off investing in the site by the appeal proposal, which is distance away (***Document POE/5, Paragraphs 5.46-5.48, 5.50-5.52***).

117.3 *The Site at Tulketh Street* is in the PSA and Sports Direct has now come forward with its proposals. These have been brought forward in the full knowledge of the application scheme. The obvious differences between the two mean that there is no ground for fearing that there would be an adverse effect on the re-use of the Tulketh Street site (***Document POE/8, Paragraphs 3.11-3.16***).

Impact on vitality and viability of the town centre

Direct impacts

118. The Applicants' retail impact assessment has been revised following the publication of the 2015 SRSR. This was based on a new household survey in September 2015, which provides an up-to-date account of shopping patterns (***Document POE/8, Paragraph 6.04***). The Council's retail advisers have given it careful consideration and are satisfied that it provides a reasonable assessment of the likely impact of the proposal. This suggests that in the absence of the proposed development the various main food shopping stores in the Southport area would be trading at between 97% and 417% of their expected benchmark turnover figures (***Document POE/8, Paragraph 6.12 and Table 6.1***).

119. Tesco sought to cast some doubt upon these figures on the basis that the household survey on which the SRSR is based under-estimates the turnover of the smaller shops and so must inflate the turnover of the larger stores (***Document POE/33, Paragraph 8.39***). This is a recognised difficulty with household surveys and does not in itself cast any doubt upon the reliability of this particular one. In considering this point it is important to bear in mind that, as a recognised tourist destination, Southport benefits from significant inflows of expenditure that are not picked up in the household survey.

120. It is difficult to provide precise figures for inflow, but it is clear from the STEAM report and the neighbouring retail studies that it is substantial (***Documents INQ/44; INQ/45; INQ/47***). Questions were raised about the reliability of the STEAM figures and the age of the neighbouring retail studies but these ignore the fact that the Applicants' assessment has relied upon lower levels of inflow than would be supported by these documents. The presence of substantial additional expenditure above that shown in the household survey is confirmed by Tesco's evidence, which showed that its store's turnover is higher than would be suggested by the survey (***Documents SCG/3, Appendix 5, Table 3d; INQ/17***).

[22] In cross-examination by Mr Fraser, Mr Carney confirmed that he had had received various offers for the site but had chosen to wait until the outcome of the present planning application is known. He confirmed that he was not claiming that there would be an impact on this planned investment.

121. It is generally accepted that retail uses tend to compete with their most comparable competitive facilities and that there is a very clear relationship between the proximity of stores and the impact they have upon each other (***Documents CD/2, Paragraph 016; POE/7, Paragraphs 3.03-3.05***). The most directly comparable store is the Tesco Extra at Town Lane, which is also very close to the application site. The other three of the Big Four convenience retailers are also represented in Southport[23], albeit at a greater distance away and with stores of differing scale and nature. It is agreed by the retail consultants that most of the turnover for the proposed development would be diverted from these four stores, which appears to be a common position between the retail consultants (***Documents INQ/43, Tables 1 and 2; POE/25, Table 15; POE/28, Table 15***).

122. There is a notable difference between Tesco's retail consultant and the other retail consultants as to how trade draw would be distributed between the four main foodstores. It contends that only £9.59m would be diverted from the existing Tesco whereas £11.98m would be diverted from the Lord Street Sainsbury's, £9.33m from Asda and £9.26m from Morrisons. Applying the "like for like" principle and that proximity of stores plays a significant role in the scale of impact, these figures do not appear realistic. The Tesco store is the most similar to the appeal proposal and it is by far the closest. It is simply not credible to conclude that the diversion from Tesco would be comparable to the diversion from the Asda and Morrisons.

123. The position was defended on the basis of advice from Tesco as to what it expects and its experience of previous impacts. It is said to be precious evidence that reveals that the "like for like" assumption, used to demonstrate lack of impact on town centres, may not be accurate (***Documents POE/33, Appendices 24 and 25; INQ/64; INQ/75B, Paragraph 93***). However, whatever assessment was undertaken it clearly did not remove unrepresentative weeks such as Christmas as claimed. Furthermore, the trading pattern in the absence of the competitor does not match the previous trading performance of the store as would be expected, but rather is at a lower level. Also, the control sales line is said to include current sales from similar, but unnamed, stores. In the circumstances none of this information was particularly helpful, especially as nobody from the Tesco research team was present to explain or defend the figures.

124. There would be an element of brand loyalty so that the new Sainsbury's store could be expected to have a proportionally greater impact upon its existing store than if another retailer had been trading there. However, there are other factors that would tend to reduce this trade diversion. In particular, the Lord Street store appears to cater for markedly smaller shopping trips. This is not surprising given its location within the town centre. This relationship means that many trips will be associated with people who will be there for other additional reasons. These people are likely to retain those reasons for being in the town centre with the opening of a new store at Meols Cop. It is thus unrealistic to assume that the proposal would draw more trade from the in-centre Sainsbury's than the very similar and proximate out-of-centre Tesco.

125. There is inevitably a degree of judgment involved in such assessments but that of the Applicants appears much more realistic. Tesco is very close to the

[23] Asda at Central 12, Morrison's off Lord Street and Sainsbury's in Lord Street.

application site, of a broadly similar scale and will have a near identical catchment area. As a consequence, a greater proportion of the application proposal's turnover can be expected to come from the Tesco. It is also reasonable to conclude that slightly more trade would divert from Asda than from Morrisons because it is closer and also sited on a retail park (***Document POE/5, Paragraphs 5.107-5.108***).

126. The Applicants' trade draw assumptions in relation to Aldi seem more credible than those of Tesco. Aldi is effectively next door to the application site and trading very successfully. Tesco's arguments that Sainsbury's does not take much trade from Aldi fail to take into account that historically the two stores have tended to trade in different markets. Also, Aldi has historically been the new market entrant and in such circumstances will inevitably take trade from established incumbents.

127. Tesco has put forward a mid-point position between its own trade draw assumptions and impact conclusions and those of the Applicants (***Document INQ/43***). Whilst the Secretary of State may prefer different parts of each party's assessment, there is no justification for adopting a mid-point position.

128. Even if the proposed store did not draw trade at the levels put forward by the Applicants the consequence would not be that it would draw greater levels of trade from other stores such as the Lord Street Sainsbury's. The impact assessment has been undertaken on the basis of the proposal trading at benchmark, which is the conventional way to undertake such an assessment. It shows the existing large operators trading below benchmark. In such circumstances the reality is that the new store would be likely to trade below its benchmark level as well (***Document POE/8, Paragraph 6.33***).

129. The diversion of £6.38m from the Lord Street Sainsbury's would leave the store trading at 76% of the company benchmark figure in 2019. At this level of trade the store could be expected to continue trading. The Asda and Morrisons stores would continue to trade at 76% and 80% of benchmark respectively and there is no suggestion that these stores would close. When the combined convenience and comparison impact on the town centre is considered the assessment indicates a trade diversion of 3.8% in 2019. The impact on the town centre would not be significant adverse to undermine its vitality and viability (***Document POE/8, Table 6.3 and Paragraphs 6.38, 6.46***).

Indirect impacts

130. The evidence from the 2015 household survey shows that 25% of shoppers using the Lord Street Sainsbury's undertake a linked trip. This is consistent with many customers undertaking a large basket shop. It is reasonable to conclude that they are attracted because of its town centre location and that they are less likely to be persuaded to shop at the proposed new Sainsbury's at Meols Cop than other users of the store. This is an important factor when considering the respective judgments on trade draw from the various stores, and it is also significant when considering the issue of linked trips (***Document POE/8, Paragraphs 6.40-6.43 and Table 6.5***).

131. Asda attempted to calculate the loss of linked trips between its store and the town centre as a result of the trade draw to the proposed new store. There were multiple issues with respect to this calculation. At the outset it was founded upon a flawed understanding of what was actually being measured in the pedestrian survey, which did not properly count pedestrian movements from the Asda store. The analysis also failed to consider that those shoppers

who are currently choosing to shop at a town centre foodstore and undertake linked trips would be less likely to be attracted to the proposed development. Conversely, it should not be assumed that those who do choose to shop at the proposed development would abandon using the town centre. Clearly the other needs that those shoppers had, which are currently being satisfied in the town centre, would remain. The range and offer in the town centre would not be replicated by the application scheme or at Meols Cop Retail Park. There is good reason to expect that many, if not all, of those shoppers who would divert to the proposed new store would still make use of the town centre (***Documents POE/7, Paragraphs 5.01-5.05; POE/8, Paragraph 7.04***).

132. The consequences of the loss of trade to the PSA or wider town centre both directly and indirectly have to be considered in the context of its health. The view remains that the proposal would not result in a significant adverse impact upon the town centre (***Document POE/8, Paragraph 7.04***). There are nonetheless inevitable uncertainties associated with any retail assessment and the need to be careful, given the findings with respect to the health of the centre. If the Lord Street Sainsbury's were to close there would be a significant adverse impact because of the effect on retail choice within the town centre. It is therefore important to secure against the risk of this happening. The covenant to ensure that the store remains open for the first five years of trading of the proposed new development is necessary and important (***Document INQ/72***).

HIGHWAY ISSUES

133. The planning application was given careful consideration by the Council as Highway Authority and its consultants. This included requesting additional information. The consultants were engaged to assess the capacity of the network and the model for the site access junction. This again resulted in amendments to address issues raised (***Document POE/3, Paragraphs 2.3, 2.5***).

134. The application was assessed using the standard methodology for applications of this nature and the Highway Authority was satisfied that the proposal would not have a serious or negative impact on the existing highway network. It was also satisfied that, subject to the proposed conditions and planning obligations, the proposal would meet all relevant requirements with respect to accessibility and sustainable development (***Document POE/3, Paragraphs 2.5, 2.7 and Appendix BM1***).

RESIDENTIAL AMENITY

135. The residents who would be directly affected are those living in Argameols Close. The rear elevations of these dwellings are between 35-55m north of the site on the other side of Fine Jane's Brook. Those elevations currently face the long projection of the rear of the existing Homebase. The proposed building would be higher, but its projection to Meols Cop Road would be reduced by about 55m. This would mainly benefit those who have the shorter distance between their rear elevations and those of the new building. Whilst some of the residents are clearly concerned about the proposals it is considered that the building would be sufficiently distant to avoid overshadowing issues. Although the outlook from these houses would alter, this would not to be a degree that could warrant refusal and there would be no unacceptable loss of privacy (***Document POE/1, Paragraphs 7.17-7.25***).

136. The servicing arrangements have been a particular concern raised by local residents. This is understandable but would be addressed by reasonable

mitigation measures and controlled through planning conditions (***Document POE/1, Paragraphs 7.26-7.30; SCG/3, Appendix 3***).

THE CASE FOR THE RULE 6 PARTY: TESCO STORES LTD

*The case for Tesco Stores Ltd is fully set out in its evidence, including its opening and closing submissions (**Document INQ/75**). The main points are:*

137. The proposal is for a large superstore on a retail park on the edge of Southport. The main issue in this case is the impact that it would have on the town centre. The evidence of Tesco cannot be dismissed on the grounds that it is a commercial rival. Like any other party to a planning proposal it is entitled to raise planning arguments and challenge the evidence put forward in support of the proposal.

THE APPLICATION OF THE IMPACT TEST

The area to be assessed

138. The Framework requires the decision maker to assess the impact of the proposal on town centre vitality and viability. However the Applicants contend that what one should look at is the impact on the PSA. Their evidence on convenience goods impact only relates to the stores which are purported to be in the PSA. Their position on the impact on the wider town centre is that this is not relevant other than in terms of indirect impact through loss of linked trips to the PSA. However, there are multiple problems with this approach:

138.1 The words of the Framework itself do not support it as they expressly require an assessment of the impact on the town centre.

138.2 The words of the emerging LP do not support it as Policy ED2 (as proposed to be modified) sets an impact test that refers to existing centres. The policy identifies existing centres in the first part and for Southport the existing centre is the town centre.

138.3 With its express reference to the town centre, the wording in the emerging LP is consistent with the Framework.

138.4 In one of the very few post-Framework retail decisions made by the Secretary of State at Braintree he has specifically endorsed the need to examine the impact on the town centre as a whole (***Document CD/29, IR Paragraph 507, DL Paragraph 14***).

138.5 The Applicants could point to no Secretary of State decisions, either before or after the introduction of the Framework, which adopt the approach of examining impact only on the PSA.

138.6 The parties have carried out a health check of the town centre but the one undertaken by the Applicants has not been based on the PSA. However, if their approach to impact is correct there would be no need to examine the health of the town centre as a whole.

138.7 Tesco's retail consultant has worked on retail matters for over 30 years and has only ever experienced impact assessments being done on the basis of examining the impact on the town centre.

138.8 Critically, the Applicants have relied on a turnover figure for the town centre as whole, excluding only Central 12 and named stores. This is

clear because the turnover figure includes all the other shops in the town centre outside the PSA. There are 60 shops that are outside of the PSA and not included within the household survey as standalone retail destinations (***Document INQ/55***). The impact of the application proposal on the PSA cannot be adduced from the household survey. The Applicants have had to rely on a town centre figure for the exercise as they cannot disaggregate the convenience and comparison goods expenditure in the PSA.

138.9 The very fact that a figure for impact on the PSA cannot be identified shows that attempts to focus on impact on the PSA are contrived. That is also why other consultants, including those who regularly act for Sainsbury's, do not seek to argue that impact should be measured in terms of impact on the PSA.

138.10 The research undertaken by the Council's retail consultants in order to advise on the most appropriate floorspace threshold for triggering the requirement to undertake a retail impact assessment focuses solely on Southport town centre as defined by GOAD, which publishes the land use and floorspace data. The consultants make no reference whatsoever to the PSA, which is clearly not seen as having any relevance in the context of its assessment of floorspace threshold. If the PSA is the relevant area for the purpose of examining retail impact it would have been expected that the analysis would have focused on this particular area, which clearly it did not.

139. The reference to the Secretary of State's Braintree decision in Paragraph 138.4 above requires further elaboration (***Document CD/29***):

139.1 Sainsbury's was the Appellant and it was one of their regular consultants who adopted this approach of examining impact on the town centre as whole.

139.2 Contrary to the Applicants' assertions, there is a PSA in Braintree, and Policy RLP 113 relating to it was a saved policy at the time of the Secretary of State's decision (***Documents INQ/56B; INQ/56D***).

139.3 The subsequently adopted Core Strategy did not revoke the PSA. Policy CS6 makes clear that new retail boundaries will be defined in the Site Allocations Development Plan Document (***Documents INQ/56A; INQ/56C***). Although there was an emerging Site Allocations document it has since been withdrawn.

139.4 The Statement of Common Ground from that Inquiry changes none of this. It is not surprising that saved Policy RLP 113 was not listed in those policies considered relevant to the appeal because it was not Sainsbury's case to suggest that impact on the PSA should be considered. Sainsbury's case at that Inquiry was the same as Tesco's case at this Inquiry.

139.5 It therefore follows that in the Braintree decision the Secretary of State adopted a position of reading his own policy in the Framework as requiring consideration of impact on the town centre as a whole.

139.6 All the parties involved in that appeal examined impact on the town centre as a whole and not on the PSA. It is impossible to know the full

extent of what was argued at the Inquiry without having been there. However, the Inspector's use of the words "*town centre as a whole*" does imply that he felt it was necessary to clarify it was not impact on the PSA, which is the only smaller policy entity within the town centre (***Document CD/29, IR Paragraph 507***).

140. The fact that the Applicants have sought to deny all of this suggests that they know that if the Secretary of State follows his approach in the Braintree case, and examines impact on the town centre as a whole, the impact would be unacceptable.

141. The Applicants' approach to calculating the impact on the PSA referred to in Paragraph 138.8 above requires further elaboration. The household survey does not provide answers that allow one to accurately identify the level of turnover for either the convenience or comparison stores in the PSA:

141.1 The Applicants' figure for comparison goods turnover in 2019 is £264.8m. This is based on turnover for the town centre as a whole, excluding the Central 12 Retail Park and Asda but including stores that are not in the PSA. This figure is then used in the impact assessment and is for the town centre, minus Central 12 and Asda (***Document SCG/3, Appendix 7, Table 3; Appendix 8, Table 1***).

141.2 The Applicants' figure for convenience goods turnover in 2019 is £23.27m. This is used in the impact assessment but confusingly is not a town centre figure and excludes a number of named stores. Its derivation is from the answers in the household survey, which separately identifies key stores such as Sainsbury's and Marks and Spencer and the turnover for these stores can therefore be isolated. However, the household survey will also include other stores outside the PSA but within the town centre.

141.3 A survey revealed that there are 60 shops located in the town centre beyond the PSA and not at the named destinations in the household survey. Of these, 11 are convenience stores or 10 if Bargain Booze has closed as contended (***Document INQ/55***). This means that the Applicants' convenience goods turnover for local shops in the PSA is wrong as it relies on turnover from the smaller convenience stores in the wider town centre (***Document SCG/3, Appendix 5, Table 3b***). Those people who said they did convenience goods shopping at stores in the town centre without naming the store are spending in the town centre. However, the turnover from these stores and the impact on them is excluded from the Applicants' analysis.

142. One simply cannot derive a turnover figure for the PSA only. The household survey upon which the whole expenditure and impact assessment hinges does not ask people if they shop in the PSA. An added problem is that the extent of the PSA has changed and in September 2015 the Applicants relied on their own definition, which was significantly smaller than that presently defined on the emerging LP Policy Map (***Document INQ/36***).

143. The Applicants have not carried out an assessment of the impact of the proposed development on the town centre. It excludes the impact on town centre stores such as Asda and Morrisons and a far greater impact is identified

if the process is done properly. The mid-point analysis shows a figure for the impact on the town centre relying on the Applicants' trade diversion figures and changing the trade draw estimates to halfway between the two parties. This appears to have been the approach of the Inspector in the Braintree appeal (***Documents INQ/43, Tables 3, 4; CD/29, IR Paragraphs 508, 516***). For the mid-point analysis to work it has to relate to the same area and, for the reasons given, this should be the town centre and not the PSA. If this is done, the Applicants' evidence shows an impact of 8.5% (***Document INQ/43, Table 2***).

144. In the latest tables submitted to set out the position of the respective parties, the Applicants have offered a figure of 8.18% for the impact on the town centre as a whole (***Document INQ/67, Table 2***). In the context of Southport and the health of its town centre, this would be a significant adverse impact.

The health of the town centre

145. The Planning Practice Guidance makes it clear that an assessment of impact should start by looking at the state of existing centres, which in this case is Southport town centre. An updated health check of the town centre has been undertaken, which is significantly more detailed than that provided by the Applicants or their retail consultants (***Document 33, Appendix 3***).

146. The indicators give rise to deep concern because the town centre is already undergoing a process of significant decline and deterioration. Whilst it is accepted that Southport is relatively viable and vital one does not wait until it is unviable or not vital before action is taken. The indicator scores for the health check reveal a sorry picture of a vulnerable centre in clear decline. The comparison of the situation with 2005 allows a base against which to measure the performance of the town rather than relying on annual fluctuations (***Documents POE/33, Paragraphs 5.15, 5.17, 5.34; INQ/48***):

146.1 In 2005 Southport had a *Venuescore retail ranking* of 44th of 3,081 retail venues in the UK. However, by 2011/2012 it had fallen to a ranking of 81st and to 100th by 2015/2016.

146.2 *PMA*[24] rank the top 200 town centres in the country, based on a total non-food retail provision score. Southport's ranking has fallen from 60th in 2005 to 86th in 2015. It also categorises larger towns and cities into town types. Southport was a "sub-regional shopping centre" in the Regional Strategy for the North West. However, the latest Promis Report has removed it from the sub-regional category and it is now described as an "average weak town", which is the bottom of the six available rankings. A town centre the size of Southport would not be expected to be outside of the sub-regional town categories (***Documents POE/33, Appendix 3, Paragraph 1.30-133; INQ/48***).

146.3 It is important to record that there has been a change in categorization and PMA has moved from 4 to 6 categories inserting the words resilient and weak into its classifications for town and sub-regional centres. Southport has moved into the lowest category and is described as

[24] Inspector's Note: PMA is an independent property consultancy that provides research and forecasting. This includes the UK Property Market Information Service (Promis) delivering reports on the commercial sector.

weak. The sub-regional category clearly still remains in the new town types but Southport is no longer in it. It is difficult to see how this clear loss of status could be judged irrelevant by the change in categorization. However, even if the comparison with its previous sub-regional category is ignored because of the change in categories, Southport now sits in the bottom tier of the rankings (***Document INQ/69***).

146.4 *Zone A rentals* were at £95/ft^2 in 2009. Whether this figure was before or at the start of the economic downturn is not clear. However, there has been a very dramatic deterioration since then and that is very clear on all the available evidence. The fall in rents between 2010 and 2015 has been 44.4%, which is very noticeably the biggest fall of all those towns in the North West of England. The figure of £50/ft^2 for Zone A rents remains the position in 2016 and it is a very low figure. The latest information, if confirmed, would suggest rents are now under real pressure (***Documents POE/33, Paragraphs 1.42-1.44 and Appendix 5; INQ/48; INQ/63***).

146.5 *Yields*[25] have increased considerably since 2005 when they were 5.25%. They were 7.5% in 2009 and improved to 7.25% in 2011/2012 and 2015/2016. The Applicants claim that between these last two dates yields went back to 7.5%, in which case the latest figure would be an improvement, and better than the UK average, but it is nevertheless very small (***Documents POE/33, Page 16; INQ/48***). The latest information on the Next premises in Lord Street suggests a yield of 10%[26]. This has not yet found its way into the performance indices but is a serious cause for concern.

147. Another cause for concern is the loss of *market* share. For comparison goods expenditure this was 4.3% between 2005 and 2015 and 1.1% between 2011 and 2015. For convenience goods it was 1.6% between 2011 and 2015. These are percentages that relate to very large sums of money that have been lost to the town centre (***Document POE/33, Appendix 3, Paragraphs 1.53-1.58***).

148. The number of *vacant units* has continued to rise. There were 64 vacancies in 2005 and that doubled to 125 in 2009. The number improved to 102 in 2011, but in the survey in June 2016 there were 120 vacancies (***Documents INQ/48; INQ/65; INQ/78A***). The Applicants consider the figure is less than this because they have rejected as vacant units where a letting has been secured. However, GOAD record the position on the day that the survey of vacancies is conducted and it is this that should be recorded.

149. The Applicants have made much of the future occupation of the Tulketh Street premises by Sports Direct. However, they have taken no account of the imminent closure of British Home Stores. The latter should not be included now in the vacancy figures but nor should Tulketh Street be excluded. The approach adopted is important because the number of vacant units will go

[25] Inspector's Note: The yield of a property indicates the size of the annual return on the investment. The annual rental income is expressed as a percentage of the property value and so a lower yield indicates a better outcome.
[26] This information was provided by Mr Carney, referring to ***Document INQ/33B***.

down with the occupation by Sports Direct but at the same time it will bounce back to present levels with the loss of British Home Stores.

150. British Home Stores is in a more prominent location that the Tulketh Street premises. It comprises 4,875m^2 of floorspace and its loss on Chapel Street is all the more significant. It cannot be assumed that it will be reoccupied quickly. There are a number of significant constraints as it is on three levels and has a very large area behind the store itself. Even in respect of the ground floor, the floorspace is supported by pillars within the shop floor. It is relevant to note that the Tulketh Street premises reportedly fell in value from £9m in March 2007 to £2.4m in March 2016. Even if the owner overpaid originally, it suggests that there has been a collapse in capital values (***Document POE/37, Paragraph 3.5***).

151. The Applicants contend that there has been a fall in vacant floorspace to below the national average. However, that does not include the Tulketh Street premises, which should not be relied upon yet. Moreover if it is, then the imminent closure of British Home Stores should also be taken into account. The vacant units detract from the appearance of the town centre (***Document INQ/54***).

152. The 2015 SRSR records that there was a 3.6% fall in *footfall* in 2014, which is significant compared to a national fall of just 0.9% over the same period. In Lord Street there was a 5.3% fall whereas in Chapel Street flows were higher in May 2015 than May 2014. However the latter were well below the levels in 2013. There is no evidence about the source of the press article that was produced by the Applicants and it is also contradicted by the available evidence (***Documents POE/33, Appendix 3, Paragraph 1.3; INQ/42***).

153. A number of national multiples have left the town centre. Some new occupiers have also arrived but on the whole they are not national multiples. The occupation by independent stores might be consistent with the unique offer in the town, but it is the national multiples that are relied upon to measure the strength of a town centre. These are the stores that bring people into a town in significant numbers. The draft Southport Development Strategy makes clear that there is a need to restore Lord Street as a prime retail location and for that the prime retailers need to be present (***Documents POE/33, Paragraph 5.11; POE/16, Paragraphs 5.27, 5.28; CD/35, Paragraph 2.51***).

154. The Southport Development Strategy recognizes that the retail and tourist offers in Southport are inextricably linked. Lord Street is signposted from the main roads into the town as a key part of the tourist offer in the town. It is seen as a unique and iconic retail feature. Yet this defining part of the town centre is plainly in trouble and the Conservation Area appraisal highlights the full detail of what is at risk on Lord Street. The Heritage at Risk officer and the lottery bid are positive steps but that will not replace lost expenditure. The Council's intervention is welcome but rather late in the day. Lord Street needs investment and that investment is in the retail uses that drive footfall and make the town centre an attractive place to visit (***Documents CD/35, Paragraphs 2.18, 3.2; CD/31***)

155. The town centre is vulnerable and nearly all of the indices show that it is in persistent decline with a deteriorating position. The last thing that Lord Street and the rest of the town centre need is a 10,942m^2 superstore with a turnover of £67.9m being granted planning permission now. The new store would lead to a

very significant increase in footfall at Meols Cop due to the enhancement in the attractiveness of the other large format retail units on the retail park.

Expenditure available to support the proposed store

156. It is vitally important that the Secretary of State appreciates that the evidence now supporting this proposal is very different from the evidence that was relied upon at the time that Committee Members voted in favour. The planning application was very clearly promoted on the basis that the 2012 SRSR had identified capacity within North Sefton for an additional convenience goods store of the size proposed (***Document CD/9A, Paragraph 6.28***). That case has now evaporated and the emerging LP makes clear that there is no capacity for a new store and only a limited amount of capacity in the period up to 2030 (***Document POE/2, Appendix A, Paragraph 7.20***).

157. The Applicants now say that need is irrelevant. It is accepted that there is no test of need but the matter of capacity is still pertinent to the issue of impact. This is for exactly the same reasons the Applicants sought to highlight it in the first place and sought to build their case on an identified surplus need. Such evidence is designed to divert attention away from any impact on the town centre. That is especially true if, as here, the Applicants seek to highlight that existing stores in Southport are overtrading. However, the attempt to assuage any concerns about the impact on the town centre through excess capacity reinforces the point that if that capacity disappears, as here, then there would be a different impact on the town centre.

158. Without that need for a new store, trade would have to be drawn from other convenience stores, most of which are in the defined town centre. These include Sainsbury's existing Lord Street store, Asda, Morrisons, Marks and Spencer, Lidl, Tesco Express, Farm Foods, Iceland and a host of other smaller stores and mixed convenience and comparison retailers like B&M Bargains.

159. In this case the Applicants presented the Council with evidence that there was overtrading in existing stores in the Borough, including in Southport where it was about £36.6m. Again, this is likely to go a long way to alleviate any concerns about the impact on the town centre. However, the overtrading in stores like Tesco, Morrisons and Asda has also evaporated in the 2015 SRSR, especially if the additional 5% that has been added to the convenience goods turnover figures for inflow is removed (***Document CD/9A, Paragraphs 6.27, 6.28; POE/33, Paragraphs 8.11, 8.37-8.44***).

160. The evidence relied upon to justify this additional 5% of tourist inflow comes from the STEAM report, but it provides no explanation of how the £146m figure is calculated. The attempt to identify how much of that is spent on convenience goods in Southport is unsupported by any evidence. The attempt to link an enhanced tourist inflow to the West and Central Lancashire retail reports is hopeless, as there is clearly significant overlap between the catchments and the additional 5% uplift is said to equate specifically to tourism spend (***Documents INQ/44; INQ/45; INQ/47***). Southport residents will also spend outside of the catchment but such small scale tourism spend is not easily picked up in the household surveys. The increase in inflow has been used as post-event justification to mask the drop in expenditure in town centre stores even though the difference between the parties is relatively small, being in the region of about £1m.

161. The evidence on overtrading shows that it is now derived almost exclusively from the Waitrose in Formby, which is irrelevant to this proposal, and Aldi at Meols Cop. In this out-of-centre location, with free car parking and other stores adjacent, the Aldi is trading very strongly. Its £14m or so of overtrading is though not a reason to grant planning permission for the appeal scheme. Aldi presents another genuine threat to the town centre, which the proposed superstore would undoubtedly enhance.

162. The key difference with the Applicants as to the expenditure deficit relates not to inflow but to the available floorspace and the assumptions made about it:

    162.1 Shops like B&M Bargains, Poundworld and 99p Stores have a mixed offer and are clearly selling convenience goods. The Applicants make no allowance for these stores absorbing expenditure (***Document POE/33, Appendix 22, Table 6***).

    162.2 There are other stores in the wider Southport area, some of which are in local centres that were not included in the 2015 SRSR. The Applicants have identified them as having a floorspace of about 2,735 m^2 (***Document POE/16, Paragraphs 6.23, 6.24***). These stores are plainly relevant to the issue of available expenditure. Whilst the Applicants make an allowance for some of this floorpsace there is clearly more that has not been taken into account.

    162.3 A benchmark turnover of £4,000 m^2 has been applied to the small stores in the town centre rather than the £2,500 m^2 applied by the Applicants. This higher turnover is justified because they benefit from town centre footfall unlike those in the small shopping parades (***Document POE/33, Appendix 22, Table 6***).

163. It is accepted that these smaller stores may not be trading as badly below benchmark as the Household Survey suggests. However, equally it may be overinflating the turnover of the larger stores (***Document POE/33, Paragraphs 8.37-8.41,Table 2***). Asda and Tesco have confirmed that their trading positions are broadly accurate although such information has not been given by Morrisons (***Document INQ/17***).

164. Trade diversion is very clearly informed by the available expenditure and where it is being spent. As there is no overtrading the new store would be dependent on diverting trade from existing stores, reducing their turnover and reducing the footfall in the town centre. That is especially important in the context of Southport.

Trade Draw

Tesco

165. A great deal hinges on the estimates of trade draw. Whilst they involve planning judgment they need to be informed by evidence. It is clear that the Applicants seek to load the impact on Tesco in order to lessen the impact on the town centre. This is on the basis of the assumption that like trades with like. That is relevant but it is all too often used very glibly to make assumptions about large superstores in order to deflect the focus away from the impact on town centres. It is far better to rely on empirical evidence of the actual impact of new stores on similar stores. No other party has produced

such evidence, notwithstanding that the Applicants could have done so to justify their assertion that the proposed new store would divert 35% of its convenience goods trade from Tesco.

166. Tesco has provided empirical evidence of observed impacts on its stores. All the examples are recent and relate to named stores close to a Sainsbury's of similar size to the proposal. Other comparable factors are visibility, access and location (***Document POE/33, Appendix 24***). The Applicants could have identified a Tesco store where they thought there might be a greater impact from the opening of a new store. It could then have asked Tesco to provide the evidence in respect of that Tesco store but it has not done so. Tesco would of course then be able to ask Sainsbury's to reciprocate and show its own impact figures of existing stores impacted upon by a new store.

167. These plainly are examples selected for the reason that they are similar. The Applicants implied that this meant they had been cherry picked but they did not suggest any other Tesco stores that they thought might provide different results. It is hard to imagine that Sainsbury's do not know the location and date of the opening for every Tesco superstore in the country. The major foodstore operators watch very carefully what each other are doing.

168. The evidence shows graphs of the actual sales in blue and the expected sales in orange. The orange line is a no-new store world and it is clear to see there is a difference between the actual sales and both the expected sales and the previous sales before the stores are opened (***Document POE/33, Appendix 25***). The Applicants criticised the graphs but had no empirical evidence to counter them or to support their own trade draw figure. The key evidence is the figure for impact provided by Tesco's Property Research Team. From these figures it has been concluded that an appropriate level of trade draw from Tesco to the proposed Sainsbury's would be 20% with a resultant impact on the Tesco store of 22.7%. It is relevant to note that the trade draw assumed by the Applicants in other cases was much higher than the actual impact (***Document POE/33, Paragraphs 9.17-9.22, Table 4, Table 5***)

169. The empirical evidence that has been provided by Tesco is precious and special permission had to be obtained. It is not known to have been presented in a public arena such as this before. It reveals that the like for like assumption, relied upon for so many new large out-of-centre superstores to demonstrate a lack of impact on town centres, may not be that accurate.

Lord Street Sainsbury's

170. Key amongst the convenience stores in the town centre is Sainsbury's existing town centre store. This is located on Lord Street, which is the focus of the Council's concern about Southport town centre, as evidenced by the recently published draft Southport Development Strategy. The Applicants have adopted an unrealistically low level of trade draw with just 13% of the turnover of its new store deriving from its existing one. Those who shop at Sainsbury's already have an impressive choice of food shops in Southport. They have a choice of large superstores, smaller foodstores and bargain shops that sell an increasing amount of convenience goods. There are a range of locations including town centre, edge-of-centre and retail parks.

171. The factor that keeps people shopping in Sainsbury's is brand loyalty. It offers a more premium range than most of the competition and people like the

products that it sells. If they like the present store, they are going to like the new store, which would offer a greater range of Sainsbury's products. That is the reason why it is considered that the trade draw from this store would be 25%. Some people walk or take public transport and they would still be able to do so to the new store at Meols Cop. However, despite it being in the town centre, 68% of people doing a main food shop are doing so by car (***Document POE/33, Paragraphs 9.41-9.50***).

Aldi

172. The idea that the proposed Sainsbury's would obtain 10% of its trade from Aldi is not credible. The Verdict Report indicates that Aldi does not lose trade to Sainsbury's and Sainsbury's does not win new customers from Aldi. In both cases such switches would be in the "other" category. Discounters are winning large increases in market share on the basis of price and quality. When the discounters are looking at potential impact, Sainsbury's as an operator is not even on their radar. A much more accurate figure is that Sainsbury's would draw just 2.2 % of its convenience goods trade from Aldi, or probably less (***Documents POE/7, Appendix 2, Page 90, Figures 65, 66; POE/33, Paragraphs 9.29-9.34***).

Other stores

173. The trade draw that would be derived from Morrisons and Asda would be 19.3% and 19.5% respectively. Southport is a largely self contained town and the distance between all the stores is only a few miles. Proximity can be important but becomes far less so when all options are within a few miles of each other. The Applicants do not show any trade diversion from the Marks and Spencer on Chapel Street. Although the Council accepted that there would be some diversion it was unable to say how much[27].

The mid-point calculation

174. It is possible that the Secretary of State will not favour the conclusion of one or other of the main parties on all issues relating to trade draw. Sometimes Inspectors split the difference or suggest that the answer lies somewhere between the two opposing parties. That is the purpose of the mid-point analysis (***Document INQ/43***). The Applicants say that it is not based on any professional view. However, it is a view that the Secretary of State can adopt because conclusions on trade draw rest with him as a matter of planning judgment. It seems such an approach was favoured by the Inspector in the Braintree appeal (***Document CD/29, IR Paragraphs 510, 515, 516; DL Paragraph 14***).

175. The stores put forward by Tesco's Property Research Team are not located on retail parks. It is accepted therefore that there may be a greater impact on Tesco because of that factor and that the mid-point calculation may be more appropriate. There is no legitimacy in seeking to dilute the mid-point by reference to the evidence of Asda, who did not attend the second part of the Inquiry or the Council who simply adopted the position of the Applicants.

[27] In cross-examination by Mr Young, Mr Shepherd agreed that there would be some diversion but that it would be included in the £0.49m trade draw from "other shops", which he thought was a bit high (***Document SCG/3, Table 7a***).

Impact on the town centre

Direct impact

176. The direct economic impact is considered to be as follows:

176.1 The solus impact on the convenience goods turnover of the town centre would be 35.9%. Adopting the mid-point it would be 30.2% (***Documents POE/33, Appendix 22, Table 11; INQ/43, Table 4***).

176.2 The solus impact on the convenience and comparison goods turnover of the town centre would be 11.7%. Adopting the mid-point it would be 10.3% (***Documents POE/33, Appendix 22, Table 10A; INQ/43, Table 4***).

176.3 The cumulative impact on the convenience and comparison goods turnover of the town centre would be 13.6% (***Document POE/33, Appendix 22, Table 10A***).

176.4 The Lord Street Sainsbury's would be left trading at 31% of the company benchmark. Adopting the mid-point it would be 50.4% (***Document POE/33, Appendix 22, Table 12; INQ/43, Table 4***).

177. Whether these represent an acceptable impact rests ultimately with the Secretary of State. It is to be judged in light of the health of the town centre and the condition of Lord Street. The importance of the retail offer to the tourism of Southport is also relevant. The Lord Street Sainsbury's would clearly close on either scenario and this was accepted by the Applicants[28]. The only scenario where it is accepted that the store would be likely to stay open is if the Applicants' scenario is correct and the residual turnover would be about 70% of the benchmark level (***Document INQ/43***).

178. The Council concurs that the closure of the Lord Street Sainsbury's would amount to a significant adverse impact on the town centre[29]. On this issue alone, the proposal would fail the test in Paragraph 26 of the Framework and the application would have to be refused permission in accordance with Paragraph 27. The Council itself accepts that if the proposal fails the impact test, no other material considerations would outweigh that[30].

179. The legal agreement to keep the store open for five years would only become relevant if it is judged necessary. The Applicants do not consider it necessary and as the Council does not provide any separate evidence on impact it is difficult to see how it can reach a different view. It is not CIL compliant, but even if it were it would simply defer the closure of the store. The impact of such a closure should not just be assessed in terms of the risk of that happening in the next five years. Paragraph 26 of the Framework does not justify that approach but is about ensuring that impact is assessed on settled trading patterns. It does not

[28] In cross-examination by Mr Young, Mr Price considered it unlikely that the store would trade at 50% of benchmark levels.
[29] Mr Shepherd agreed that if the Lord Street Sainsbury's store closed, there would be a significant adverse impact. Whilst it was not relied on as an anchor it was important in its contribution to the retail choice and offer of the town.
[30] Mr Faulkner agreed this proposition in cross-examination by Mr Young.

say that impact beyond five years is irrelevant[31]. If that were the case operators could offer to keep open their existing town centre stores for five years no matter what the impact.

180. At Braintree, Sainsbury's offered a commitment to keep their existing store open for ten years but that is not being offered here. The suggestion that the Lord Street store would stay open because the lease runs until 2083 is meaningless. If there was that kind of commitment Sainsbury's would agree to longer than five years. The conclusion is that it would close after that period expires.

Indirect impact: linked trips

181. Convenience goods stores are pivotal to the town centre. They drive the footfall by bringing people into the town on a regular basis. Diverting trade away from these stores would remove footfall from the town centre. The loss of linked trips is an additional impact, but it is accepted to be more difficult to quantify. It is suggested that the loss may be in the region of £5.8m although it is accepted that this is simply a prediction (***Document POE/33, Paragraph 11.45***).

182. The Applicants seek to downplay the value of linked trips to the town centre but accept the possibility of linked trips at Meols Cop (***Document POE/33, Paragraphs 11.47, 11.48***). The loss of expenditure through the loss of linked trips does not have to be quantified to be recognised as an important consideration when assessing impact. Loss of linked trips is also the loss of footfall from the town centre and the loss of potential customers. (***Documents CD/27, IR Paragraph 12.69; CD/29, IR Paragraph 517***).

Indirect impact: Meols Cop

183. The proposed development would add to the respective attraction of Meols Cop as a retail destination compared to the town centre. It is estimated that the new store would generate 2.2m customer trips a year. On the basis that about 22% of expenditure would be diverted from Tesco and Aldi, the remaining 1.7m customer trips would be diverted from elsewhere and mostly from the town centre (***Document INQ/53, Paragraph 7iv***).

184. If Sainsbury's is granted planning permission, the combined sales area for comparison goods offer with Tesco would be 3,850m^2. Furthermore, there would be as much convenience goods floorspace at Meols Cop as there is in the town centre. It would bring shoppers to the new Sainsbury's where the existing out-of-centre retail parks and stores would create a critical mass of floorspace and shopper numbers. The added attraction of the other shops at the Meols Cop retail park would be a further indirect impact on the town centre (***Document POE/33, Paragraph 10.2, Table 8, Table 12***).

185. Units 2a-2c have open A1 use. In addition, the bulky comparison goods restriction has been relaxed and a wide range of goods can be sold in the other stores, albeit they are limited to 15% of the development as it presently exists (***Document POE/33, Paragraph 3.11***). The retail park already has Home Bargains, Currys, Halfords and Aldi. Apart from the latter each of those units has

[31] In cross-examination by Mr Young, Mr Price said that Framework policy says that 5 years is the appropriate period to consider impact so that is what he had done. He agreed though that if the store closed beyond the five year period that was a matter that could be considered.

existing mezzanines or an additional 2,626m^2 of floorspace that has been permitted but not built. Next, which is moving out of its Lord Street premises, could accommodate the currently vacant unit 2a. Furthermore, if the purchase of Argos by Sainsbury's goes ahead as seems likely, there is clear potential to free up Unit 2b for another retailer such as Boots. Marks and Spencer is going onto other retail parks where Sainsbury's operates. Under the terms of the lease, the landowners are restricted from allowing other foodstores onto the retail park but there is no reason why Sainsbury's would not be able to permit them to take up one of the units (***Documents POE/33, Paragraphs 10.21-10.27 and Table 1, Table 10; INQ/39***).

186. The grant of planning permission for the proposed development would make it difficult for the Council's to resist the change of other units to open A1 use on the grounds of impact. The real fear here is that Meols Cop would become a one-stop destination and people would decide not to go to the town centre for many of their major shopping trips

THE CASE FOR THE RULE 6 PARTY: ASDA STORES LTD

*The case for Asda Stores Ltd is fully set out in its evidence, including its opening submissions and final comments (**Documents POE/28; INQ/77**). The main points are:*

THE APPLICATION OF THE IMPACT TEST

The area to be assessed

187. Policy ED2 (as proposed to be modified) in the emerging LP can be given increased weight at this stage following the Examining Inspector's interim conclusions. However, the Applicants' interpretation of the part relating to impact assessment is incorrect. A PSA can now be properly identified in Southport and retail development is directed towards it as part of the sequential test in line with the Framework. The draft policy also confirms that any proposals located outside of the PSA have to carry out a sequential test. Notably, a location within a defined town centre comes second place to the PSA but before edge-of-centre locations, This indicates that the defined boundaries of the town centre are still a more preferable location for retail development should sites not be available within the PSA.

188. Policy ED2 (as proposed to be modified) confirms that any retail proposal located outside the PSA has to carry out an impact assessment. However, to then jump to the conclusion that no policy protection is afforded to any store, business or use that is outside the PSA but within the town centre is not correct. In the present case it is clear that the proposed new store would impact on existing stores in such locations but the Applicants' case is that they simply don't count.

189. Paragraph 26 of the Framework is clear in confirming that the impact assessment relates to town centres. Moreover, there is no text within Policy ED2 (as proposed to be modified) that states an impact assessment should simply focus on the consequences of a development on the PSA. Indeed, the reference is to the impact on any existing defined centre.

190. What the impact test requires is for the consequences of the impacts to be assessed and considered. Results will vary depending on local circumstances. The important point to note though is that the results of an impact assessment

can be negative and positive as standalone conclusions and in some cases both positive and negative impacts can occur at the same time.

191. Just because a retail proposal has to assess the impact on a PSA does not mean that is the end of the story. What the decision-maker has to determine is if the proposal would have a significant impact on any existing defined centre. A PSA and a town centre are both defined as centres and this is now the case on the Policy Map of the emerging LP. It is therefore important to consider the impact on both and particularly those stores that make a positive contribution to the town centre by drawing in trade and footfall that helps to compliment its offer and contribute to its vitality and viability. Neither the Framework nor Policy ED2 (as proposed to be modified) is defined as narrowly as the Applicants suggest. It is clear that they have misinterpreted policy in this respect and that this has had consequences for their whole case, including its conclusions on the impact of the application scheme.

Alterations to Southport Town Centre Boundary and the Local Plan Examination

192. Representations were made by Asda and the owners of Central 12 retail park, Aviva. The Council and its consultants were unable to justify why the retail park should be removed from its location within the town centre, which was established in the UDP. During the Hearing session, the Examining Inspector made comments about ensuring that the opportunity for growth and improvement within the town centre was not unnecessarily constrained. He questioned whether the Council felt that even if Central 12 was removed from the PSA, it should be looking at opportunities to ensure it became better connected, rather than drawing back the town centre boundaries. The Council's retail consultants agreed, particularly in light of the survey evidence by Aviva that demonstrated shoppers were still making linked trips between Central 12 and the PSA despite the distance being beyond the 300m guideline in the Framework (***Documents CD/37; CD/38; POE/2, Appendix C; POE/33, Paragraph 6.5***).

193. The Examining Inspector was clear that it was the Council's plan and therefore for the Council to decide. However, he did highlight the fact that if the existing units and properties along the north-east side of London Road were included within the town centre boundary, this would provide a more positive policy framework for town centre uses and businesses to occupy these properties. This would increase the active frontage between Asda and the Central 12 Retail Park and the PSA and create a better link. Indeed, whilst some of the properties on the north-east side of London Road are within commercial use, they are currently excluded from the town centre boundary on the UDP Proposals Map. The Council must have agreed with this approach as the properties in question are now included within the town centre boundary on the emerging LP Policy Map (***Document POE/2, Appendix A***).

194. Notwithstanding, the Examining Inspector's conclusion that the Central 12 Retail Park is not within the PSA, his comments and the Council's reaction to them have created a position where this could change if the route becomes more commercially active and populated by retail uses over time (***Document POE/2, Appendix C, Paragraph 4***). This opportunity would be far harder to achieve if the proposal is granted planning permission. It would impact on the

number of customers visiting the Asda store and the Central 12 Retail Park and therefore reduce the number of linked trips being made.

The health of the town centre

195. A health check of Southport town centre was carried out along with a site visit in July 2015. This concluded that Southport was not as prosperous as the health check that informed the 2012 SRSR suggested. Over a 10 year period there has been a decline in the number of multiple national retailers, retail ranking and rental values. Footfall was found to be generally good and whilst there were some attractive and good quality features there was also a sense of vulnerability. Weaknesses included the above average number of vacancies with high levels in the Primary Shopping Frontage, including Lord Street (***Documents POE/22, Appendix 16, Paragraphs 1.46-1.86; POE/24, Paragraphs 6.56-6.62***).

196. Southport has not been re-visited. However, the updated evidence of Tesco on the current health of the town centre is supported. In particular it makes the point that key performance indicators show that there is a spiral of decline. This is evidenced by the closure of several national multiples, the fall in comparison and convenience market share, loss of footfall and visitor numbers and the rise in vacancies. The Council has recognised this issue in its emerging LP and has supported various initiatives such as the draft Southport Development Strategy, the inclusion of Lord Street on Historic England's at risk register and the launching of the Southport BID Company. In addition Tesco has reviewed shopping patterns, which reveal a high proportion of visitors to Central 12 Retail Park undertake a regular linked trip to the town centre. Asda, as a main food shopping destination, plays a key role in generating such trips (***Document POE/33, Paragraphs 5.17, 5.19-5.35***).

Expenditure available to support the proposed store

197. The Council's 2012 SRSR had a number of shortcomings that were relevant at the time the Council resolved to grant planning permission for the proposed development. The key issue was that the 2012 SRSR suggested there was capacity for additional convenience and comparison goods spending by virtue of overtrading in existing stores. This could not have been the case because the assessment missed out a significant amount of convenience floorspace (***Document POE/24, Paragraphs 4.16-4.45***).

198. The 2015 SRSR also fails to pick up a number of smaller and independent stores as well as other stores selling reasonable levels of convenience goods such as B&M Bargains and Poundstretcher (***Document CD/33***). Nevertheless it correctly concludes there is no surplus capacity for additional convenience goods at 2015 and only marginal capacity at 2020. Had this conclusion been available to Members of the Council's planning committee, perhaps they would have come to another view.

199. The true and up-to-date picture on retail capacity is that there is actually a deficit of expenditure and overprovision of convenience floorspace within Zone S as shown in the updated economic assessment (***Document POE/28, Table 8A***).

200. The economic assessment has been updated with the latest expenditure data, sales densities and household survey results used by all the main parties. The retail floorspace figure for the proposal has also been updated to include the

petrol station kiosk retail space[32]. Reference to previous commitments has been removed on the basis that these should have been picked up by the new household survey. As such, the only noticeable difference between the parties should be the trade diversion to the proposed store.

Impact on the town centre

Direct impact: convenience goods

201. The new household survey does not alter trade draw patterns to such an extent that it alters the judgements made in the earlier evidence as to where the proposed new store would derive its trade from. There is one minor change in relation to flows from Zone F of which the implications are negligible (***Document POE/28, Footnote 1***).

202. The three main town centre stores would suffer the following loss of convenience goods expenditure (***Document POE/28, Table 15***):

- £8.80m from the Lord Street Sainsbury's resulting in an impact of -55%. It would be undertrading against company benchmark at 48%.
- £9.03m from Morrisons resulting in an impact of -32%. It would be undertrading against company benchmark at 64%.
- £8.85m from Asda resulting in an impact of -27%. It would be undertrading against company benchmark at 70%.

203. The town centre as a whole would lose £26.7m of convenience expenditure each year, resulting in a 28% convenience impact. More worryingly, it would be trading at £41m or 62% of the benchmark level. Only the Lidl store would be trading far in excess of its company average trading figures. However, with the Sainsbury's store providing a very different offer, it would be unlikely to have any marked impact on the Lidl store.

204. The Lord Street Sainsbury's store would be significantly under trading at 48% of its benchmark level. The long lease period remaining on that store is noted but there are no known restrictions associated with sub-letting the space. It is considered that this store would close at the first opportunity after any legal obligations had been absolved.

Indirect impact: linked trips

205. The pedestrian counts and customer survey were undertaken in August 2015 and the value of linked trips that would be lost by virtue of the proposal was calculated (***Document POE/22, Appendices 14, 15; POE/25, Table 17***). The original calculation equated to a loss of £12.8m, of which £4.6m was lost from associated impacts on the Asda store. The Applicants made a number of criticisms of the approach and methodology and a revised assessment was produced for the Inquiry. This reflected that not all of the trips between the

[32] Inspector's Note: Mr Tibenham has adopted the convenience floorspace of Mr Price, which includes the petrol filling station. Mr Sutton has not included the petrol filling station in his assessment. I also note that the sales density for comparison goods is slightly different for each of the three consultants. This will mean that their turnover figures do not correspond, albeit the differences are relatively small.

retail park and the town centre would be attributable to Asda. The linked trip impact was reduced to £4.2m. On the assumption that the number of linked trips associated with the other town centre foodstores would reflect those associated with Asda, a total of £8.5m expenditure would be lost to the town centre through the loss of linked trips (***Documents POE/24, Paragraphs 6.42-6.55; INQ/28***).

206. A further assessment has now been undertaken. This addresses the criticism that no discount had been made for children under 18 years of age who accompanied their parents. It also includes lost linked trips associated with comparison goods shopping trips (***Document POE/28, Table 17a***). It calculates that there would be a loss of trade associated with linked trip spending associated with Asda of £3m. Applying the same approach to the town centre as a whole as before, the loss of expenditure would be £6.9m. Tesco used a different methodology but calculated a loss of £5.8m from the town centre as a result of the fall in linked trips. The Applicants' figure relating to the loss of linked trips between Asda and the PSA is between £0.4m and £0.12m and seems implausibly low from a facility that is clearly generating a significant number of pedestrian movements to and from the town centre (***Documents POE/16; Paragraphs 6.91, 6.92; POE/33, Paragraph 11.45***).

Overall impact on the town centre: direct and indirect

207. The detailed convenience impact assessment has been added to the comparison goods impact assessments of the Applicants to give an overall figure for the combined direct impact of 9% on the town centre. The addition of impact through loss of linked trips expenditure would result in an overall impact of 10.8%. Even using the Applicants' assessment of the value of linked trips the overall impact would be 9.1%. Using Tesco's figures it would be higher at 11.7% (***Document POE/28, Tables 18, 19***).

208. Each impact scenario would represent a significant volume of trade, which would warrant the refusal of the application in its own right. When coupled with the lack of retail expenditure growth and retail capacity in the area to support further retail development that would otherwise support the town centre, the likely closure of the Sainsbury's store, loss of footfall and general health of the town, it is considered that the impacts would be heightened even further.

209. There is no objection in terms of the sequential test in this case. However, there would be significant adverse impacts on Southport town centre. The proposal should be refused under Paragraph 26 of the Framework, Policy ED2 (as proposed to be modified) of the emerging LP and Policies R1 and R9 of the UDP.

THE CASE FOR THE RULE 6 PARTY: SOUTHPORT AND WINDSOR PROPERTIES LLP

The case for Southport and Windsor properties LLP is fully set out in its evidence (Documents POE/37; POE/38). The main points are:

THE SEQUENTIAL TEST

210. The Tulketh Street site is within the town centre. It was formerly occupied by Waitrose and was considered to be a sequentially preferable site. However,

following a long period of vacancy it is shortly to be re-occupied. It is accepted therefore that it is no longer available.

IMPACT ON THE TOWN CENTRE

Impact on planned investment

211. 91 Lord Street is owned by Southport and Windsor Properties LLP. It was formerly occupied as a Safeway supermarket but vacated in the 1990s following its construction of a superstore on adjoining land. Safeway was acquired by Morrisons who own the freehold of the superstore and a lease on No 91, which expires in 2025 and has been under-let to B&M Bargains. Booths Supermarkets has a requirement for a new store in Southport and their preference is to redevelop No 91. There has been no identification of an alternative 1.5 acre site in the town centre to accommodate this requirement.

212. The Applicants and the Council have questioned whether Booths are now interested in this site. They refer to the draft Southport Development Strategy which states that Morrisons has a restrictive covenant over the site, which prevents food retail. However, that is a commercial matter based on the level of premium required to release the covenant (***Document POE/2, Appendix E, Paragraph 6.10***).

213. Morrisons will not discuss vacant possession of No 91 further until the outcome of the application proposal is known. It is reasonable to assume that if the new Sainsbury's were to be built, it would be less willing to facilitate another foodstore redevelopment on an adjacent town centre site. Booths has not commented publicly on the application proposal but there is an inherent risk that it might not come in the fullness of time if it succeeds (***Document POE/34 Paragraphs 2.5-2.8, Appendix 1***).

214. Southport and Windsor Properties LLP own land at Cambridge Road, Churchtown, which has been assembled to facilitate a foodstore-led development (***Document INQ/4***). A discount food retailer has made an offer for the site but this will not be accepted until the result of this application is known. If planning permission is refused, Marks and Spencer may very well revert to their original requirement for a store in Churchtown. In addition, Sainsbury's may also have a store requirement for Churchtown if they are no longer committed to a store at Meols Cop.

The health of the town centre

215. If the town centre is to be subjected to further competition it requires expert evidence to be submitted, which illustrates a sustained period of growth over time. The majority of the previous losses would need to be clawed back and the recovery trajectory indicated. The Applicants have not provided such evidence and therefore no weight should be attached to their subsequent conclusions. They have pointed to negligible increases in indicators such as Zone A rental levels, which have since proven to be incorrect (***Document INQ/63***). They say the town's ranking has altered but fail to point out that rather than improving, the rankings of other towns have deteriorated further. An alleged marginal improvement to yields is being heralded as solid proof the town is on the up, yet that claim is as misleading as is the claim that Zone A rental levels have increased.

216. The data reports utilised, such as Verdict, Experian and Promis, are indicative and have been submitted without full knowledge of how that data is captured or the subsequent margin of error. In essence, the property market most accurately reflects the true state of the town centre. Rents and yields are linked and these are the primary indicators of vitality and viability and reflect the other indicators such as ranking, footfall and vacancies. Zone A rents have reduced by half, which result in a corresponding reduction in capital values. Whilst the level of actual vacancies provided by the Applicants is disputed, it cannot be claimed to be anything other than depressing for the town.

217. The evidence reflects that Southport has suffered a traumatic response to the post-Lehman's 2008 recession. It follows that whether the impact is as claimed by the Applicants, Tesco or Asda the application should fail due to the current state of the town centre and its inability to react to any level of negative impact.

218. Up-to-date evidence has been submitted showing a 10% yield on the sale of the Next premises at 287-291 Lord Street in January 2016. Marble Place, which is described by the Applicants as being part of the main focus for typical mass market comparison shopping was sold at a yield of 12.6% in August 2013 (***Documents INQ/33b; INQ/58; POE/10, Paragraph 8.16***). This is primary factual evidence, not a third party survey where the provenance of the evidence is disputed. As such, more weight should be attached to these facts.

Impact on the town centre

219. The draft Southport Development Strategy identifies the difficulty of linking the two main shopping streets of Chapel Street and Lord Street. The Chapel Street area has seen rents drop to a level that, with its more modern premises better suited to retailers' demands, has achieved higher occupancy levels. The difficulty for the town is the differential impact this is having on Lord Street, which is the poorer of the two areas but the main tourist draw for the town. The impact of the new Sainsbury's would naturally hit the secondary areas of the town more, meaning the impact would be concentrated on Lord Street.

220. The existing Sainsbury's store is a valuable asset to the town and the Applicants have provided a commitment to keep it open for a period of five years. They claim that the remaining 67 year lease would make the cost of closure prohibitive. However, the lease permits and a market exists for the property to be under-let. The rent for the premises has increased in most of the five yearly reviews but at April 2014 the review was determined at nil increase, which reflected the state of the market in Southport. This means that a market exists for the property on a long lease and the lease can be assigned. This defeats the Applicant's claim that closure of the store would be a prohibitive cost. Sainsbury's could let the property to another tenant and make a profit rent, which is an incentive in itself to close the store after five years. It is likely that it will try and re-let it to a non-food operator rather than a competitor, as Morrisons has done in respect of 91 Lord Street.

221. It would be very unlikely that Booths would be interested in the existing store in the knowledge that Sainsbury's was only letting it because it was not able to trade there itself due to its out-of-centre store. Aldi is unlikely to be interested due to its strict requirements. Parking charges would be an issue and it is looking for a site on one of the main arterial routes in Churchtown, Birkdale or Ainsdale rather than in Southport town centre. So, if the Secretary of State

considers that the town would suffer if either the existing store closed or it was let to an alternative non-food use, then permission should be refused.

222. Although Sainsbury's operate in-centre and out-of-centre stores in many towns not many will have an in-centre Morrisons and Asda in a town the size of Southport as well as Aldi, Lidl and a large Tesco.

Trade draw

223. The impact on the town centre is limited largely due to the trade draw claims of 35% and 10% from Tesco and Aldi at Meols Cop respectively. However, the Applicants have not produced any fact based evidence from Sainsbury's research department to back up these trade draw assumptions. Tesco have at least provided research-based evidence. In particular the claim that Aldi would lose so much of its trade to Sainsbury's is not credible. It is against all the opinions stated within the financial, retail and property markets that trade is being lost by the main supermarkets to the discounters, a position reflected in the position of Lidl[33]. The reason why Aldi has not objected to the planning application is because it expects trade to increase once the new store has been built. The Aldi at Meols Cop has increased its trade dramatically because it has taken a significant amount of trade from Tesco. This is the best example of why Sainsbury's will similarly not impact on Aldi's trade.

224. The Applicants rely on the fact that if Sainsbury's does not divert as much trade as anticipated from Aldi it would just trade below company average. However, it clearly desires to trade in this location, despite not going forward with other similar proposed stores. The benefit of the doubt should be given to the more likely scenario of more trade being drawn from the town centre rather than Sainsbury's trading below benchmark. This is especially as this area would become a "super centre" and the combined effect of having three food stores would mean they would gain more trade than they would lose in competition. This would be similar to other non-food operators who trade adjacent to their main competitors.

Impact on Meols Cop Retail Park

225. The impact of granting the application on the wider retail park is a material consideration. The application cannot be considered in isolation and the impact of the proposed new store on the retail area cannot be disregarded. Due to certificates of lawfulness, the retail park within the blue line benefits from 3,521m^2 of open Class A1 retail use in Units 2a, 2b and 2c. The impact of this has not been assessed in any prior retail impact assessment, as it was granted in error by the Council (***Document POE/33, Paragraphs 3.12, 3.15***). Neither has it been addressed in the retail impact assessment provided by the Applicants in support of the planning application.

226. It is agreed by the Applicants that there is mezzanine floorspace that has been permitted but not yet built. Tesco considers there is an even more extensive amount of extant mezzanine floorspace that has been permitted (***Documents INQ/62; POE/33, Table 10***). This has not previously been addressed in the retail assessments. Furthermore, Savills is marketing the vacant units on Meols Cop

[33] Inspector's Note: Mr Carney was employed by Lidl for 3 years. His experience in the property sector is recorded at ***Document POE/34, Paragraphs 1.3-1.6***.

as being capable of sub-division in order to provide units from 400m^2. The combination of the open planning permission on the remaining retail park, with the ability to sub-divide units to accommodate tenants and an ample supply of mezzanine space, is sufficient to create a shopping park. The construction of a large food store on site would breathe life into the retail requirements for the scheme from high street retailers.

227. Once developed the wider retail park would provide approximately 1,000 free car parking spaces at grade. That represents a major attraction in itself over and above the town centre. The fact that the landlord has granted Sainsbury's a five year restriction against other convenience outlets, is indicative that Sainsbury's believes these units would be attractive to other retailers such as Marks and Spencer and Lidl. Next is currently at the Central 12 Retail Park but its lease is due to expire in December 2016. It has made no decision yet on the lease renewal until it becomes clear what is happening at Meols Cop (***Document INQ/59***).

228. It is common-place for retail parks to include users such as Marks and Spencer and Next as local planning authorities have come under intense pressure to widen existing retail park permissions. Savills is far from being alone in sub-dividing units, being gifted unrestricted retail use or putting pad foundations into a unit to preserve the ability to build mezzanines at some later stage. As a result Savills has let two units on Meols Cop to High Street retailers Argos and Home Bargains. The latter were paid a significant premium to enter into the lease, since the letting would drive footfall and increase the capital value of the scheme (***Document POE/34, Paragraphs 3.3.13-3.3.17***).

229. The recent letter from the Savills letting agent at Meols Cop on the scheme contradicts all of the above and states that the current and future letting strategy will not include operators that would compete directly with the offer within the town centre. This is contradicted by the Applicants refusing to restrict the wider retail park by planning condition (***Document INQ/40***).

230. If the above points are considered to be a material consideration, the convenience and unrestricted comparison goods for the combined application site and wider retail park should be limited to 3,809m^2 convenience floorspace and 1,765 m^2 sq.m unrestricted comparison goods floorspace. The retail sales area for Argos and Home Bargains then needs to be added to those figures. A condition is also necessary to prevent further sub-division and limit further mezzanine floorspace. However, the only way to protect Southport town centre is to refuse planning permission (***Document POE/36***).

HIGHWAYS

231. The impact on highways was a major cause of concern to Members of the Planning Committee because this is a major junction with an existing retail park and two food stores served by the immediate network. It is inconceivable that adding another major food store to an already extremely busy junction would not have a major detrimental impact on highways.

232. Prior to the June 2016 assessments, the Applicants put forward 8 different assessments. There were a number of errors relating to the Aldi floorspace, the floorspace of the retail park and the areas of the proposed new store adopted for trip generation. These were basic errors, all in favour of the Applicants, yet still approved by the Highways Officer, which should undermine

the weight given to his support for the proposal (***Document POE/34***). The treatment of the Aldi store has continually skewed the Applicants' conclusions. It is not accepted it is standard practice to adopt an average between food and non-food trip rates on a retail park. Various car park surveys have been undertaken by the Applicants to ascertain the correct proportion of the retail park traffic to be attributed to Aldi. The Applicants' final position as a result of a traffic survey in November 2015 is that this amounts to 47% on a Friday evening peak and 33% on Saturday (***Document POE/21, Paragraph 3.6.3***).

233. The November 2015 survey accounted for the Aldi traffic, but inexplicably did not survey the Tesco traffic movements. The impact of the Tesco traffic is a major determinant of the Applicants' case as they claim that up to 35% of the Sainsbury's traffic movements would be diverted from that store. The Applicants state that survey data trumps TRICS data and this is particularly important because Tesco has three points of access. Tesco traffic using Southport Road or Town Lane currently has no need to encounter the roundabout. That situation would be reversed if that traffic diverts to the new Sainsbury's junction. The Secretary of State is now being asked to accept an assessment, which does not factually account for a major contributor to the traffic. However, the diversion of that same traffic is central to the Applicants' case. Reliance has now been placed on the theoretical based assessment of the Sainsbury's trade diverted trips when it could have relied on the actual trips resulting from a survey of the Tesco traffic. On this basis alone, the highways assessment should be rejected.

Five year traffic impact assessment

234. The Applicants' analysis does not include the impact of the Southport and Formby District General Hospital development site on the Saturday peak assessment. No account has been taken of the housing allocations identified in Policy MN2 (as proposed to be modified) in the emerging LP. In particular the 450 dwellings at Moss Lane, Churchtown; the 678 dwellings on land at Crowland Street, Southport; the 174 dwellings on land adjacent to Dobbies Garden centre, Benthams Way, Southport; the 13.1 hectares identified at Southport Business Park (***Document POE/2, Appendix A***). The Applicants claim that there has been no growth between the survey dates. However, the sites identified in the emerging LP will result in that background growth going forward. The appropriate approach should be to either account for the sites in the assessment or apply background growth to reflect the position. The Applicants have made no allowance for either.

Trade Draw Assumptions

235. The June 2016 retail assessment adopts 35% impact on the Tesco convenience goods and a 15% comparison goods impact. The June 2016 highways assessment adopts the 35% convenience goods trade diversion only rather than the effective 30% combined convenience and comparison trade draw, to calculate the impact on traffic. In larger supermarkets, there is a smaller proportion of convenience goods and a greater proportion of comparison goods. As Tesco is such a large store, applying a convenience only estimate to the entire traffic generated by that store, falsely reduces the traffic generation associated with the Applicants' scheme. The traffic diversion from the Tesco store is over stated if all traffic is diverted based on convenience goods trade draw by 5%. The highways assessments need to reflect the combined impact.

236. Further, if it is concluded that the 35% trade draw from Tesco is unrealistic and that 20% is more appropriate, the traffic figures would again alter significantly. This has not been remodelled using the latest traffic survey.

Non-Food Trip Generation Rates

237. The Applicants' assessment includes trip rates for the existing retail park, excluding Aldi, that are 16% and 25% respectively below the TRICS average weekday evening and Saturday afternoon trip rates for similar parks. Although it is self evident not every store can be above average, it should also be noted that 2 units are currently vacant and will have a negative impact on that rate. The 25% below average Saturday peak traffic is of most concern, given that the proposed Meols Cop Road traffic junction would be under duress at that time. Lifting the trip levels from an impaired non food-retail park to the TRICS database average for a non-food retail park would be appropriate and rectify the vacant units impact issue.

Linked Trips

238. The Applicants have presented TRICS research that multi-use sites with four or more units reduce, on average, the total number of external trips by approximately 20%. However, their assessments all state, for robustness, there would be no allowance for a reduction in vehicular trips as a result of linked trips. Non-food retail parks experience significant linked trips, which increase with the size and number of retailers occupying the park, which increases again with the inclusion of a food store. That opinion is a conventional property industry wide view and based on the increased demand by non-food retailers to locate on food store anchored retail parks, which results in higher rents and a greater investment value. Consequently, it is agreed that there would be a trip reduction of 20% due to linkages.

239. However, advice in *Trip Attraction Rates of Developments with Multiple Retail and Leisure Use* is that the generous supply of parking at multi-use developments was shown on average to generate an additional 25% more car trips. For comparable sites with a generous supply of parking, the trip reduction benefits of multi-use development were, on average, lost completely (***Document POE/21, Appendix AJSA, Appendix D***). The wider retail park would have approximately 1,000 car spaces once the proposed development was completed so the reduction in trip rates due to linked trips would be lost completely and a 5% increase would be warranted.

Extant planning permissions

240. Units 2a, 2b and 2c benefit from open A1 food and non-food use. Unit 2a is vacant, 2b is occupied by Argos on a lease that expires in March 2023 and Unit 2c is occupied by Home Bargains on a lease that expires in July 2026. The leases can be assigned. The extent of the mezzanines is not agreed by the Applicants and Tesco (***Documents INQ/50; POE/33, Table 10***). If the Applicants will not concede restricting the wider retail park by condition, then the extant permissions for both the open A1 units and the mezzanines fall to be included in the highways assessment, which has not been done.

Foodstore Primary Trip Comparables

241. The Sainsbury's trip calculations are apportioned between primary, pass-by and diverted trips. The assessments adopt 50% and 70% primary trips for the

weekdays and Saturday respectively. This rate has been derived from apparent comparable stores in Christchurch, Poole, Swindon, Thanet, Hampton and Croydon. None of the stores are from the North of England or from towns remotely similar to Southport. It is better to have one good comparable than a range of dissimilar stores. The TRICS Research Report 95/2 concludes the proportion of pass-by and diverted trips is generally accepted to be 30% and would not be expected to exceed 40%. It follows that the primary trip rate should not drop beneath 60%, illustrating the 50% weekday rate adopted by the Applicants is too low.

242. The obvious stores which distort the averages are Hampton and Croydon on weekdays and Thanet on Saturdays, with the other stores providing a cluster around a primary trip rate of 60% on weekdays and 75% on Saturday. These rates should have been adopted.

Proposed new junction with Meols Cop Road

243. The Applicants' evidence indicates that in some scenarios the junction arms of the proposed signalised junction would operate in excess of 90% capacity. That would exceed the accepted industry norm of allowing 10% leeway for unforeseen or unusual traffic flows.

244. The provision of a pedestrian crossing incorporated into the new junction would be of significant benefit and this has been raised by both Councillors and local residents. It would be more convenient and much safer than crossing Meols Cop Road at its junction with the roundabout. The omission would not deter pedestrians from crossing at the lights in an unsafe manner, particularly on a Saturday with the two football fields located opposite and the allowance for associated parking in the retail park car parks. The existing pedestrian crossing at Fine Jane's Brook is "call on demand", which the Applicants have advised could be linked to the lights at the proposed site access junction in order to ensure the two sets of lights are coordinated. Further explanation of the benefits of this arrangement to pedestrians is required and whether or not there would be impacts on the capacity of the junction.

245. In each of the traffic assessments it is assumed that all of the Sainsbury's related traffic would enter and exit the site via the new junction and this makes for robustness. However, that is just a statement of the obvious when the proposed layout plan is considered. The Applicants have not correctly assessed the level of traffic that would use the new junction in connection with the other units on the retail park. If a fair and reasonable split of traffic based on the layout plan is adopted, it becomes self evident that the new junction would be more convenient for many of these units and this would dictate the traffic flows. As this new junction is already shown to be under duress, this point alone would take the junction over capacity.

246. The entire highways assessment is based on a number of subjective decisions by the Applicants' transport consultants in an endeavour to interpret a number of subjective decisions by their planning consultants. The distribution of traffic movements is based on an assumed distribution of trade from various zones, yet that itself is not factual and should be treated with some caution. The margin for error is significant and it is consequently not acceptable for the junction design not to provide any contingent capacity to accommodate any degree of mis-judgement. This would be a major junction with an existing retail park and now potentially three food stores to be served by the

immediate network. Planning permission should be refused. To do otherwise, would result in unacceptable risks, especially given the playing fields opposite.

OTHER ORAL REPRESENTATIONS TO THE INQUIRY

Unless otherwise stated, the oral representations reported below were made at the Inquiry in September 2015. They do not therefore take account of the present policy position in the emerging LP (as proposed to be modified), the new household survey or the 2015 SRSR. The main points are:

247. **Dr J Pugh** was previously Leader of the Council and is now the Member of Parliament for Southport. He was closely involved in the study of the economic vitality of seaside towns undertaken by the Department of Communities and Local Government. He considered that the core of the town's economy is its leisure and retail offer. Whilst Southport has bucked the trend in terms of decline, it nevertheless has suffered in recent years. He commented that many shops are undertrading, there are many short term tenants and charity shops and the retail environment is generally fragile. The number of empty shops was the most common issue raised by his constituents. Dr Pugh is particularly concerned about retail development outside the town centre and was actively involved in the location of Morrisons and Asda on their present sites as well as objecting to the proposal by Tesco to increase their comparison goods floorspace. He referred to his written submission at ***Document WR/1***.

248. Dr Pugh considered that the health of Lord Street, with its smaller quality shops and unique shopping environment, is crucial to the economy of the town as it cannot compete with the large malls in Trafford or Liverpool. He is a regular customer of the Lord Street Sainsbury's and observed that people do trolley shopping as well as making small basket purchases. He commented that many park in the store's free car park and shop within the town. He believed that if planning permission was granted, the town centre store would close and that this would have a serious adverse impact on the town centre both in terms of convenience and comparison goods shopping. He was very concerned that more closures would ensue with the potential loss of stores such as British Home Stores and Debenhams, which would be disastrous.

249. Dr Pugh was disparaging of the Council's handling of the application and the independence of its retail consultants. He commented that there had been no support for the scheme from Southport councillors. Dr Pugh considered it an abuse of the sequential test for a developer to define store specification in such a way that it cannot be accommodated on a town centre site. He contended that Booths are looking for a town centre site.

250. He also raised traffic and congestion issues, which were already considered a problem in the vicinity of the retail park. The Kew roundabout is poorly designed, difficult to negotiate and extremely hazardous. Dr Pugh believed it should be signalised. He did not think that the road system could cope with the additional traffic and did not consider that the Council had critically assessed the traffic modelling undertaken by the Applicants. He commented that if the envisaged diversion of sales from Tesco was correct then the traffic previously entering that store by its slip road would all come through the Kew roundabout. In addition those residents of new housing being built to the south of the site would also have to travel through the roundabout to access the new store. Even routes from the north were congested and passed a large

secondary school. Dr Pugh contended that the Council had a poor record of enforcing planning conditions and so he feared that restrictions on the new superstore may not be effective.

251. Dr Pugh also spoke at the resumed Inquiry in June 2016 and pointed out several changes that had occurred. The draft Southport Development Strategy focused on economic regeneration and the centrality of Lord Street and its bespoke retail offer. It made suggestions about the reconfiguration of the retail environment such as the redevelopment of the B&M Bargains site. It sought to encourage better links between the various parts of the town. Sainsbury's should stay indefinitely in Lord Street as it offers people the opportunity for linked trips with wider comparison shopping. If Lord Street failed, the economic outlook of the town would be in jeopardy. Although the occupation of the Tulketh Street premises would provide some benefit, the closure of British Home Stores would result in a major vacuum in the heart of the town. In order to avoid continually rising parking charges, improvements to rateable value will have to be encouraged.

252. Aldi is not concerned about the new Sainsbury's as it relishes trading head-to-head. More people are doing their food shopping online and so the big out-of-centre stores will have to increase their sale of comparison goods. This would be wholly to the detriment of Lord Street.

253. **Councillor T Dawson** is a local resident, Councillor for the Dukes ward, which includes the town centre, and Deputy Leader of the opposition party at Sefton Council. He made the point that Southport councillors did not support the scheme and had not voted to approve it. He contended that retail and leisure uses underpinned the local economy but whilst the former are doing well, the latter are suffering. The Household Survey in the 2012 SRSR did not take account of expenditure from those living north east of the Study Area in places such as Tarleton and Hesketh Bank. They use Southport as their main shopping destination (***Documents CD/19; INQ/8***). He also pointed out that several foodstores had been omitted from the assessment, including the Co-op store at Ainsdale and the new Booth's store on the outskirts of Ormskirk.

254. He said that the train was a cheap form of transport and that Asda is close to the station. Shoppers walk up and down London Street to the Central 12 Retail Park. He also pointed out that the main taxi rank in the town centre is outside the Lord Street Sainsbury's. By contrast he considered that people would not tend to walk or cycle to Meols Cop, especially when travelling from the south. The Kew roundabout was dangerous to cross and sight lines were very poor. Also any bus journey to the town centre would entail a change. This was not considered a sustainable location or in line with the Local Transport Plan, which encouraged shorter journeys.

255. He considered that the retail axis was being extended to the south east. There is housing development planned near to the application site and the concern is that Meols Cop would become a new centre. He believed that if the retail environment in the town centre is damaged this will also adversely impact on its leisure offer.

256. Councillor Dawson spoke again at the resumed Inquiry in June 2016. He considered that Lord Street had been showing increased signs of stress with more cafes and charity shops. He pointed out that it is a tourist destination as well as a retail centre and that if it becomes unattractive tourists will not

come. He did not consider that Sainsbury's would continue to trade its Lord Street store beyond the five years if it made a large loss. With the Referendum vote to leave the European Union there was further uncertainty, which could lead to economic consequences even in the short term.

257. He also believed that Meols Cop Road and the Kew roundabout were likely to become busier. Modifications to the emerging LP included more houses at the Canning Road site because the commercial element was to be replaced with housing and this would mean more peak hour travel. Those who have jobs in the Lancashire towns or the new industrial area in Formby would travel through the Kew roundabout and past the site. The failure to provide a new pedestrian crossing at the proposed junction would not accord with Government policy to discourage car travel. Those who use the recreation area opposite and park in the new car park would not have a safe place to cross.

258. **Miss C James** is a resident who lives near to the Tesco store and her main concern was with the traffic impact. She commented that the Kew roundabout was originally intended to be signalised but this never happened. The roundabout had to cope with traffic from all directions, including the hospital and Kew Industrial Estate. There was also parking along Meols Cop Road associated with the use of the playing fields for football matches and this narrows the road considerably resulting in difficulties, especially for ambulances trying to get through. She did not consider that the local bus service was particularly good. She commented that not many people did their shopping by bike and that she would not be inclined to walk to the new store.

259. **Mrs K Roberts** is a resident living nearby and regularly experiences traffic backing up along Meols Cop Road, particularly between 0840-0905 hours, 1500-1520 hours and 1700-1800 hours. She provided information about road safety (***Document INQ/12***). She was concerned about the constant noise, especially from lorry traffic, which would only get worse. Many lorries also travel from the Ormskirk and Preston directions between 0530-0200 hours and this has considerable impact on the lives of those living along this route. Mrs Roberts is also concerned about the rear loading facility. Unlike at present this would be elevated with a ramp. Those living in Argameols Close would be particularly affected by noise, especially when enjoying their gardens facing towards the site. A set of photographs were provided (***Document INQ/9***). Mrs Roberts has lived in Southport for 33 years and seen many shops close down. She agrees with Dr Pugh and believes that an impact assessment of what is happening in Southport should be undertaken.

260. Mrs Roberts spoke again at the resumed Inquiry in June 2016 and commented that it would be many years before the proposed trees in the amended landscaping proposal would grow sufficiently to provide an effective screen to the homes in Argameols Close. She was concerned that when one of these properties came to be sold it would be necessary to divulge the private nuisance that would be caused by the development. This would affect property values.

261. **Mrs L Roberts** has lived in Argameols Close for 37 years. She also organised a petition of those opposed to the scheme. She is not in good health and spends much time in her garden as she is now retired and does not drive. She was very concerned about the proximity of the proposed elevated delivery

ramp and service yard, which would be between 100-150m away. She felt that its use would damage the tranquillity of her outdoor space, which she values greatly. In addition she believed she would be overlooked by the offices and staff relaxation area. She pointed out in her written representations that when the original retail park was built there was serious harm to the foundations of the adjoining houses and garages. She was very worried about the effect of construction, including pile driving, on her property and also the effect of the development on local wildlife. She did not consider there was a need for another supermarket or petrol filling station and was worried about more traffic on Meols Cop Road (***Documents CD/10; INQ/11***).

262. **Miss K Owen** was represented by Mrs K Roberts who read out her statement (***Document INQ/10***). She was particularly worried about the additional traffic and pointed out that it could take up to 20 minutes to turn right out of Argameols Close where she lives. If there was an event in the town this delay could be doubled. There was a fatal accident involving Ms Owen's neighbour five years ago and she was very concerned for the safety of local schoolchildren and those playing football on the playing fields opposite. The associated parking narrows the roads and the new junction into the site would reduce the width even further. There is no need for a further recycling centre as there is already one nearby. The centre at Tesco was closed recently due to the incidence of fly tipping and litter. Rats associated with the brook are already a problem and the recycling centre would make matters worse. There are already two petrol filling stations nearby and another one would be unnecessary. Miss Owen also raised concerns about the impact on local wildlife from the demolition and building activity, the noise from the extra traffic and night time deliveries and the impact on town centre shops and employment.

263. Miss Owen considered that the noise and dust would have serious harmful consequences for herself, her children and elderly neighbour who suffer from serious health issues. She was also concerned about the effect of construction, including pile driving, on nearby homes and consequent loss of value.

264. **Mrs L Sprigings** is a resident of Argameols Close and also raised the difficulty of turning right into Meols Cop Road. She wondered where parking along Meols Cop Road that is associated with the football matches would be able to go. She was very concerned about safety at the Kew roundabout and its accident history. She raised similar issues about the recycling facility, the petrol filling station and structural damage to her property as Miss Owen. She pointed out that Morrisons were closing shops and so questioned why more were needed.

265. **Mrs S Krinks** has been a resident of Argameols Close for 40 years and was born in Southport. She considered that the new building would tower over the residential properties to the north. The increase in traffic was considered a fundamental issue which would cause more accidents, congestion, noise and pollution. She was very concerned about the elevated loading bay and the noise from refrigerated lorries and the pollution from floodlights. She made similar points to others about pile driving and property values.

266. **Ms P Lawson** spoke at the resumed Inquiry in June 2016 in support of the scheme. She pointed out that the Kew roundabout had been a problem for the

past 40 years or so but had not been raised until the Sainsbury's application was submitted. Many people travel on foot and only recently dropped kerbs had been installed. The Council had permitted large scale housing developments in the area and it is these that would cause traffic problems by bringing more people into the area. The new store would allow people greater choice. There had been no objection to increased traffic or noise when Aldi expanded. If need be, Foul Lane could be opened to through traffic.

WRITTEN REPRESENTATIONS

The written representations reported below were submitted prior to the commencement of the Inquiry in September 2015. They do not therefore take account of the present policy position in the emerging LP (as proposed to be modified), the new household survey or the 2015 SRSR. The main points are:

267. **Wm Morrison Supermarkets Plc** (Morrisons) objections were made in July and October 2014 (***Document CD/10***). Its foodstore is considered to be in an edge-of-centre location some 120m walk from the Primary Shopping Frontage. There is a direct pedestrian link to Lord Street and its bus stops and services. A second link is to the north-east and emerges onto Lord Street at the Kingsway junction. The Morrisons car park costs £1.20 for 2 hours parking and this is redeemable with a £5 spend in the store. Morrisons plays an important role in increasing footfall by facilitating linked trips and there is thus plenty of time to shop in the foodstore as well as the town centre. The new development would have a significant impact on Morrisons through trade diversion and also due to the reduction in linked trips. The latter has not been sufficiently considered by the Applicants.

268. The sequential test has not been adequately addressed. As a need for the size and scale of development proposed has not been demonstrated there should be greater flexibility when looking at alternatives. Units 7 and 8 at Central 12 Retail Park would provide a suitable opportunity for a foodstore to meet any residual need.

269. Southport town centre has higher than national average vacancy rates and this situation has persisted for a number of years. The number and floorspace of charity shops is also above the national average, which is another important indicator of town centre health. Retail rents have declined and the town's retail ranking has dropped significantly. It is not a vital or viable centre or a strong retail destination. The proposed development, with its extensive offer of clothing and homeware, would make it less likely that retailers would wish to invest in the town centre.

270. The 2011 household survey was considered to be out of date. Shopping patterns had changed with the greater use of on-line shopping, the growth of discounter stores and the increased popularity of smaller convenience shops. Also since 2011 there have been further retail developments. The assessment of turnovers and shopping patterns is thus not sufficiently up to date to form an adequate basis for the impact assessment. No evidence has been submitted that overtrading occurs in qualitative terms and in any event Morrisons trades in line with its company average. However even on the Applicant's figures there would be an impact of 16.2% on convenience turnover in 2019. This would be significantly adverse as Southport relies on its foodstores to anchor the centre and generate footfall. The 2012 SRSR shows that 88% of the turnover of the Lord Street Sainsbury's was derived from main

food shopping. So it is not the case that it caters mainly for top-up or basket shopping and that the new store would have a complementary function.

271. Southport town centre, Central 12 Retail Park and Ocean Plaza collectively retain a high proportion of non-bulky comparison goods expenditure. The future success of the centre depends on it continuing to attract a high market share in this sector which includes clothing and homeware. The out-of-centre retail parks at present mainly provide a bulky goods offer. However the new development would include a significant amount of floorspace selling clothing and homewear, which would compete directly with the town centre. The Applicant's assumption that 60% of this expenditure would derive from other out-of-centre facilities is not credible given the small amount of market share they currently achieve (14.6%). It is also considered that a more realistic inflow figure for both comparison and convenience expenditure would be 5% rather than the 15% and 10% respectively claimed by the Applicants.

272. The Applicants' retail assessment was significantly flawed. The sequential test has not been complied with and there would be a significant adverse impact on the town centre. Planning permission should therefore be refused.

273. Morrisons also raised objections on transport grounds and submitted a report by a highways consultant (***Document POE/19, Appendix 10***). This questioned the assumptions in the Transport Assessment relating to the trip generation of the existing units and Aldi store. The accessibility of the location was also questioned, along with the lack of a suitable pedestrian crossing facility across Meols Cop Road at the site access and the loss of the bus stop to allow its construction. These deficiencies did not allow the traffic impact to be reliably considered.

274. **Local residents** submitted representations both supporting and objecting to the application proposal. There were also 2 petitions opposing the proposal and one petition in favour of it. Some correspondence was submitted to the Council and some was submitted following the call-in. Many people have made similar points and the main issues they have raised are summarised below. The original correspondence is at ***Documents CD/10; WR/1-WR/25***.

275. The main points made by those supporting the application were:

275.1 The provision of 400 new jobs would be a great benefit to the Kew area where a large amount of additional housing is being built.

275.2 The proposal would increase product variety and choice. Tesco has a monopoly in this vicinity and more competition would be a good thing.

275.3 The town centre is not far away and demand for the bus service could increase as a result of the development.

275.4 Parking policy needed to be reviewed in order to encourage people to drive into the town centre rather than using the shops on the edges of the town.

275.5 The Lord Street Sainsbury's carried insufficient product range for all needs and one customer travelled about 20 miles to do his Sainsbury's main food shopping. A large store close to home would be welcomed by many, including elderly residents.

275.6 The commitment to keep the Lord Street Sainsbury's store open was welcomed as it is valued by those using town centre facilities and those who do not own a car.

275.7 The impact would be mainly on the other large foodstores like Tesco, Aldi and Morrisons who are trying to compete for customers with Aldi and Lidl. There would be little impact on the town centre.

275.8 Fuel prices are high in this part of Southport and the new petrol filling station would provide competition and fuel prices would fall.

275.9 The redevelopment would revitalise the local area and improve its appearance, including better landscaping and improvements to the footpath.

275.10 The improvements would attract new occupiers to other empty units. This would improve footfall on the retail park overall and increase the number of local jobs.

275.11 Existing traffic issues were recognised as an issue. However many considered that the new signalised junction to the retail park would alleviate the pressure on the Kew roundabout.

275.12 There was dissatisfaction with the process that had caused delays to a scheme that the Council had voted to approve.

276. The main points made by those opposing the application were:

276.1 Traffic issues were raised by most objectors.

- Meols Cop Road carries a large volume of traffic but is relatively narrow and already has a number of signal controlled junctions causing queues and congestion. The addition of another would make a bad situation worse.

- The northbound queue already backed up through Kew roundabout at times. Allowing right turning traffic would make this worse and increase the risk of shunt accidents.

- There is a large amount of housing being built in the vicinity, which will generate additional traffic. An independent traffic study was needed.

- Meols Cop Road is an emergency route for ambulances travelling to Southport and Ormskirk A&E departments. Further congestion would cause greater delays with the risk that this would entail.

- Additional traffic would risk the safety of children coming to play football at the park.

276.2 Increased traffic would result in a reduction in air quality and a danger to health. There would also be an increase in carbon emissions which contribute to climate change.

276.3 Parking restrictions along Meols Cop Road would inconvenience those using the park for football matches and tournaments and the school. There would be the potential for parking along residential streets such as Argameols Close or on the pavement further along Meols Cop Road.

276.4 A few respondents suggested that traffic flows could be eased by opening up Foul Lane to through traffic.

276.5 Residents of Argameols Close whose houses backed on to the site would suffer from overlooking from windows on the northern elevation of the new building. There would also be light intrusion and glare from external lighting.

276.6 The elevated ramp and service area was close to a number of properties in Argameols Close. Residents would suffer noise and disturbance from lorries waiting with their engines running, reversing beepers, refrigeration units and the like. The effectiveness of the new acoustic fencing was questioned.

276.7 Cars manoeuvring in the parking area would cause noise and disturbance to nearby residents.

276.8 The structural stability and safety of houses in Argameols Close would be at risk, particularly through the use of pile driving. There had already been a serious impact when Homebase was built and houses and garages had subsided. The soil conditions were unsuitable and the same problem would occur again.

276.9 The recycling facility would result in rubbish spilling into the adjoining brook, parkland, trees or gardens. Vermin would be attracted from the brook. Similar problems occurred at Tesco.

276.10 There is no need for a further supermarket or petrol filling station in Southport as this area is particularly well served already. Sainsbury's has changed its national policy with regards to large out of town stores. The superstore may never be completed causing devastation to the local community.

276.11 One objector suggested that there were other more suitable sites, including the former park and ride facility in Foul Lane. It was pointed out that the Council itself envisages alternative employment uses on this land.

276.12 The new development would exacerbate the decline in the town centre, in particular Lord Street. This has now been placed on the "at risk" register by Historic England.

276.13 Increases in jobs have to be set against job losses from businesses that cannot compete and close down as a result of the new development.

276.14 An objector living in Argameols Close considered that his rights under Article 8 of the Human Rights Act would be infringed. This particularly related to his concerns about overlooking, overshadowing, performance

of existing south facing solar panels and proximity of the recycling facility.

276.15 There would be damage to wildlife. One objector was worried about damage to protected water voles in Fine Jane's Brook.

CONSULTATION RESPONSES

277. Responses from external consultees are at ***Document CD/11*** and in the Committee Report at ***Document CD/7***.

The main points are:

278. **The Environment Agency** has raised no objection, subject to conditions that the development should be in accordance with the Flood Risk Assessment and that a sustainable drainage strategy should be employed with details of future maintenance and management. It is pointed out that Fine Jane's Brook is a Main River.

279. **United Utilities** comments that the foul and surface water drainage systems should be separate and conditions are suggested requiring a scheme to be approved. Permeable paving should be used on hard surfaced areas to reduce the volume of surface water draining from the site. It is confirmed that a water supply can be provided to the development but that the Applicants may be required to pay for a capital contribution as it is a long way to the nearest water main.

280. **The Merseyside Environmental Advisory Service** comments that the site is about 350m from Martin Mere Mosslands Biological Heritage Site, which is a non-statutory designated site. Pink footed geese associated with the Martin Mere Special Protection Area forage here. A Habitats Regulations Assessment was undertaken but concluded there would be no likely significant effect from noise either during the construction or operational phase due to the distance and the intervening raised redundant landfill site, which acts as an audio and visual screen. The Extended Phase 1 Habitat Survey submitted with the application is acceptable. The lighting scheme and Landscape Management Plan are welcomed and are sufficient to ensure no significant negative impact on local ecology. It is suggested that the Applicants may wish to consider installation of pied wagtail nest boxes on the north and west elevation of the development. A Construction Environmental Management Plan is recommended to mitigate and manage risks to the watercourse arising from the development.

281. **Merseytravel** wishes to be assured that traffic generated by the proposed development would not impede bus services along Meols Cop Road and the wider area. Appropriate arrangements should be made for dial-a-ride vehicles to get close access to the store entrance. A Travel Plan should be facilitated to promote the use of sustainable travel, including public transport and this should be regularly audited by the developer. Merseytravel agree that the southbound bus stop should be relocated between the new entrance and the roundabout and provided with access kerbs for those with disabilities. The northbound bus stop adjacent to the playing fields should also be fitted with access kerbing. Real Time Passenger Information should be funded by the developer at the 2 nearest bus stops and the installation and operational cost would be £12,000. At present Meols Cop Road is served by the Arriva 300 half

hourly bus service. Merseytravel will encourage local bus operators to consider the potential for additional commercial services.

282. **Network Rail** comments that if pile driving, vibro-compaction machinery or ground treatment works are employed, then a risk assessment of the impact on the railway and a method statement should be submitted for its approval.

283. **Police Architectural Liaison Officer** is supportive of the scheme but makes some specific points. The under storey car park should be well lit, covered by CCTV surveillance and have clear pedestrian pathways to the store access. The trees close to the footpath should be pruned to a height of 2m to keep as light and open as possible. Bollards should be designed to withstand ramming.

PLANNING CONDITIONS

284. The Council and the Applicants produced a list of agreed conditions (***Document SCG/3, Appendix 3***). The conditions were discussed at the Inquiry and I suggested various changes in the interests of precision, enforceability and otherwise to accord with the provisions of the Framework and Planning Practice Guidance. In some cases I have found conditions overly complex and prescriptive and I have recommended shorter and more focused alternatives. The conditions that I commend to the Secretary of State if he is minded to grant planning permission are contained in the Schedule in Annex Three. The numbering does not accord with that within ***Document SCG/3*** as some conditions have not been recommended as I explain below. For the avoidance of doubt the condition numbers in this section of the Report and referred to in my Conclusions concur with those in the Annex Three Schedule.

285. **Condition 1** relates to the implementation period. Despite a 5 year period being suggested, the Applicant agreed that there was no reason why the statutory 3 year implementation period should not be used. This would ensure that development is carried out expeditiously. **Condition 2** lists the application plans to be approved and is necessary for the avoidance of doubt and in the interests of proper planning. The revised landscaping proposals are clearly stated to be illustrative in the Statement of Common Ground (***Document SCG/3, Paragraph 2.8***). In the circumstances I have not included them as application plans in Condition 2. In order to ensure a satisfactory appearance **Condition 3** requires details of materials as these are not sufficiently precise on the submitted plans.

286. A number of conditions are necessary to ensure that the living conditions of nearby residential occupiers, especially those living in Argameols Close, are protected. Whilst there is an existing bulky goods store on the site, the proposal is for a considerably taller building and the nature of a foodstore use would also be different. **Condition 4** relates to plant and equipment on the site such as chiller and air conditioning units. It requires noise control measures to be instigated in line with the relevant background report. The customer café and kitchen would be on the northern side of the building and so **Condition 5** requires a scheme of odour control to be approved.

287. The service ramp and elevated servicing area would be on the eastern side of the building. **Condition 9** requires details of the acoustic screen and surfacing materials of the ramp as well as management measures during servicing activity in accordance with the background report. I have combined the suggested conditions into a single re-worded condition in the interests of

precision. There would also be an acoustic fence to the north of the parking areas and **Condition 12** requires details of its height, finish and density. I have re-worded the suggested condition because the barrier is a fence rather than a wall and is best shown on the site layout plan rather than the elevations.

288. A recycling centre is proposed in the north-western corner of the site. **Condition 20** requires that the emptying of the containers should not take place during the late evening or night when the noise environment quietens down. It was suggested that a condition should be imposed preventing external speakers. However this seems to originate from the existing use when customers in the garden centre area were reminded over loud speakers that the store was about to close. No such arrangement would be present in the proposed store and a condition to this effect is unnecessary.

289. There are various highway works that are considered necessary by the Highway Authority in order for the traffic generated by the proposed development to be safely accommodated on the highway network. There are also works required to improve the accessibility credentials of the site. These would be undertaken through an Agreement under Section 278 of the Highways Act. However they are required to make the development acceptable and their timing should be tied to the planning permission by **Condition 6**, which is a Grampian style condition. The parties suggested a raft of conditions and the requirement for Traffic Regulation Orders. Such detail seems to me unnecessary and I have combined the requirements into a single and more focused condition.

290. The site plan shows a dedicated lay-by for Licensed Hackney Carriages. It is understood that unlike private hire vehicles they are allowed to idle and wait. **Condition 14**, which requires the lay-by to be provided and retained for this specific purpose is therefore a reasonable provision. Whilst it seems likely that signage would be provided it seems unnecessary to make this a requirement of the condition in order for it to be effective. In order to meet the needs of the development and prevent parking on the public highway it is necessary to ensure that the car parking spaces shown on the site plan are provided and thereafter retained. **Condition 15** also includes a requirement relating to cycle parking to encourage sustainable travel modes by staff and customers. The suggested condition regarding the Travel Plan has been re-worded in **Condition 16** because the document submitted thus far is only a Framework Travel Plan. This makes clear that the Travel Plan itself will not be finalised until after the store has opened, although the Co-ordinator will be appointed beforehand. The background document is referred to in the condition that I have put forward.

291. A development of this scale is likely to cause inconvenience and disturbance to other users of the retail park as well as to residents living nearby during the construction period. Furthermore the site is close to Fine Jane's Brook, which is designated a Main River by the Environment Agency. I have incorporated the suggested conditions relating to construction into **Condition 7**. This requires a Construction Method Statement to be approved and implemented. The Highway Authority requires submission of a Construction Traffic Management Plan as set out in **Condition 8**. In view of the proximity of the site to a busy stretch of road, including the Kew roundabout, this seems necessary. Whilst it is not unreasonable to require details of the routes that

construction traffic would take, the matter is notoriously difficult to control, especially with sub contractors' vehicles. It seems probable with a development on stilts of this kind that pile driving and ground compaction processes would be employed. These could cause vibration, dust and noise, which could have an adverse impact on the amenity of those living nearby, especially in Argameols Close. It is also noted that Network Rail has concerns about impacts on its railway infrastructure. **Condition 13** requires details of the methodology, hours and mitigation in the event that such techniques are used.

292. The Flood Risk Assessment shows that there is some risk of pluvial or groundwater flooding. However the store itself would be raised on stilts and in any event the retail use is defined as a "less vulnerable" form of development in the Planning Practice Guidance. A sustainable drainage system is proposed and would be a considerable improvement on present arrangements, which are around 30 years old. **Condition 10** requires details of the surface water drainage system, based on the principles set out in the Flood Risk Assessment. Such a system can only be effective in the long term provided it is properly managed and maintained. The condition requires such details to be submitted for approval as well. **Condition 11** deals separately with foul water drainage. Whilst the statutory provider, United Utilities, has raised no objection on this matter, the background documents do not make clear the means by which foul water would be disposed of. I have reworded the suggested conditions to be more concise and focused.

293. The proposed landscaping has been included on the revised drawings (***Document SCG/3, Paragraph 2.8, Appendix 1***). However, notwithstanding that two of them include detailed planting proposals they are stated to be illustrative and to provide a framework for the final landscaping scheme. The conditions agreed in the Statement of Common Ground require full details of hard and soft landscaping to be submitted (***Document SCG/3, Appendix 3***). Whilst information was provided about landscape design objectives and subsequent aftercare with the original application the proposals have now been revised and the matter warrants being considered afresh. It will, for example, be important to ensure that the tree planting is chosen to achieve an expedient screening outcome. This will entail careful choice of species, suitably sized stock and appropriate aftercare. **Conditions 17 and 18** cover these matters.

294. It is necessary to ensure that provisions for refuse storage and recycling are properly made in the interests of visual amenity and the effective functioning of the development. The matter is covered by **Condition 19**.

295. **Condition 22** is necessary to ensure that the development is energy efficient. The background document on renewable energy sets out how the development could reduce its energy consumption by 35% and its carbon emissions by just under 10% through the use of ground and air source heat pumps. This would exceed the requirement in saved Policy DQ2 in the UDP and comply with draft Policy EQ7 (as proposed to be modified) in the emerging LP. The document also includes ways in which water consumption would be minimised. It seems to me unnecessarily onerous for further evidence of compliance to be provided once the store is operating as the condition requires that the measures in question are incorporated into the design of the store.

296. The proposal would not affect any designated nature conservation site. However the background report that deals with ecology indicates that Fine Jane's Brook is suitable habitat for kingfisher and water vole. The former was observed during the survey and there are records of the latter. Both are Protected Species under the Habitats Directive. It is also considered to be suitable habitat for bat foraging. Section 5 of the document sets out recommended actions for mitigation both during construction and once the site is operating. An important provision will be to ensure that there is no pollution to the water environment, especially from the petrol filling station. **Condition 21** is necessary to ensure that the scheme does not have adverse impacts on ecological interests. However, it is not considered necessary to include a condition relating to breeding birds as it is unlawful to disturb them during the breeding season under the Habitats Directive.

297. Saved Policy NC3 in the UDP encourages the enhancement of wildlife habitats. The Applicants confirmed that bird nesting boxes would be installed but it is difficult to conclude that this is necessary in order for the development to go ahead. **Condition 23** concerns external lighting and requires that its effect on areas outside the site is minimised in the interests of visual and residential amenity.

298. The retail assessments specifically relate to the floorspace of the application proposal. Clearly if the floorspace were to increase or the balance between comparison and convenience goods were to change, the impacts may well be different. **Conditions 24, 25 and 26** are necessary to ensure that the development accords with the assessments. It was suggested at the Inquiry that additional conditions should be imposed to restrict the future use of the other retail units under the control of the Applicants on the retail park. The objectors believe that if permission is granted for the application development the retail park will become much more attractive to non bulky comparison goods operators and that it would be much harder for the Council to resist open A1 uses becoming established as has happened already with Units 2a-2c (***Document POE/36***). I have considered this matter in Paragraphs 384-389 of my Conclusions. For the reasons given it is considered that some control on the existing retail park would be reasonable and necessary. **Conditions 27 and 28** thus prevent further subdivision of the existing units and their use for convenience retailing. However, it is not considered that the suggested further restriction on comparison retailing or controls on permitted but unbuilt mezzanines would be reasonable or necessary.

299. It is understood that there were landfill operations in Foul Lane that ceased in 1990 and that an old railway crossed the site (***Document CD/11***). However since this time the existing Homebase store and other units in the retail park have been developed and it seems unlikely that there would be contamination on the site. Whilst it is appreciated that the suggested condition is precautionary it is difficult to conclude that it is necessary. In any event if unexpected contamination was found it would be in the interests of the Applicants to take the necessary measures to deal with it properly. It was agreed at the Inquiry that a condition restricting permitted development rights to erect walls or fences was not required. The purpose of retaining an open frontage would not be offended because any enclosure over one metre in height would require planning permission.

PLANNING OBLIGATION BY AGREEMENT

300. The fully executed document is in the form of 3 identical counterpart agreements dated 21 July 2016 (***Document INQ/72***). These have been certified as true copies. The three parties to the agreement are the site owner, Sainsbury's and the Council. I queried why the Trustees for the Triton No 2 Property Unit Trust (Jersey) were Applicants but not signatories. This is because BNP Paribas Securities Services Trust Company Ltd and BNP Paribas Securities Services Trust Company (Jersey) Ltd act as the Trustees (***Document INQ/2***). Sainsbury's has no liability for the obligations unless and until it occupies the site.

301. There is a blue pencil clause in the Deed whereby a planning obligation will cease to have effect if the Secretary of State concludes that it does not comply with Regulation 122 of the Community Infrastructure Levy (CIL) Regulations.

302. Schedule 2 contains the covenants of the site owner and Sainsbury's, which are as follows:

302.1 A Real Time Passenger Information Contribution of £12,000 to be paid to the Council prior to the commencement of development.

302.2 An undertaking not to trade at the new store unless the Lord Street store continues to trade for a period of five years from the opening of the new store. There is a clause allowing temporary closure of the existing store for refurbishment or the like and also if there is a major catastrophe such as a flood or a fire.

302.3 An undertaking to agree a labour plan with the Council that identifies the skills and employment needed during the construction and operating phases of the development. Amongst other things reasonable endeavours will be used to procure local labour, including school leavers and unemployed people.

INSPECTOR'S CONCLUSIONS

The numbers in square brackets refer back to earlier paragraph numbers of relevance to my conclusions.

303. Taking account of the matters on which the Secretary of State wishes to be informed, the oral and written evidence and my site observations, the main considerations in this application are as follows:

- **Consideration One**: Planning policy context and approach to decision making
- **Consideration Two**: Whether there is a sequentially preferable site on which the retail proposal could be accommodated, bearing in mind the need to demonstrate flexibility.
- **Consideration Three**: The effect of the application proposal on the vitality, viability and retail function of Southport town centre.
- **Consideration Four**: Whether the proposal would be in a sustainable location that would be accessible by means of travel other than the car and encourage linked trips to the town centre.

- **Consideration Five**: Whether the proposed development would give rise to unacceptable highway impacts.
- **Consideration Six**: Other matters
- **Consideration Seven**: Whether any conditions and obligations are necessary to make the development acceptable.
- **Consideration Eight**: Overall conclusions and planning balance to determine whether the proposal would be a sustainable form of development, taking account of the three dimensions in the Framework.

CONSIDERATION ONE: PLANNING POLICY CONTEXT AND APPROACH TO DECISION MAKING

The development plan

304. The UDP was adopted in 2006. The strategic objectives in saved Policy CS1 relate to development and regeneration. These, along with the development principles in saved Policy CS3 seem to me to generally accord with Framework policy concerning sustainability. There are several other relevant UDP policies concerning matters such as nature conservation, energy efficiency and noise. These include saved Policies NC3, DQ2 and EP6, which are not considered at odds with the thrust of Framework policy [***15, 16***].

305. The UDP includes a number of retail policies. The Framework indicates that in drawing up local plans the extent of the town centre and the PSA should be defined for each designated centre. This is important because the PSA is the area where retail development is concentrated. It is not necessarily equivalent to the Primary Retail Frontages but can include adjoining and closely related secondary frontages too. It is unsurprising of course that the UDP does not define or refer to a PSA in Southport town centre because it preceded the publication of the Framework by some years. However, it does have implications for the treatment of the retail policies in the UDP [***16; 94***].

306. Saved Policy R1 sets out the retail strategy. However, the sequential approach gives edge-of-town centre sites priority over district and local centre sites. The Framework does not make such a distinction. Furthermore, the UDP does not define edge and out-of-centre sites with reference to a PSA. In the circumstances it seems to me that saved Policy R1 is out-of-date in the terms of Paragraph 215 of the Framework [***16***].

307. Saved Policy R2 is directed specifically to Southport town centre and refers to its boundaries on the Proposals Map. It is here that is the preferred location for new retail development. However, as already discussed above, the Framework indicates that for retail uses it is the PSA that is the preferred location and not the wider town centre. The latter has been drawn considerably more widely than the defined Primary Retail Frontages and has no equivalence with what could reasonably be considered as a PSA. In the circumstances saved Policy R2 is out-of-date [***16; 91***].

308. Saved Policy R9 deals with retail proposals on edge and out-of-centre sites. Again, the definition of such sites cannot accord with the Framework in the absence of a defined PSA. That aside, the first policy requirement is that there should be a demonstrable need for the proposal. A requirement of this kind is not included in the Framework and whether or not there is retail capacity in

the catchment is no longer a relevant policy test. The policy also refers back to saved Policy R1 and for these reasons it also is out-of-date [***16; 28; 91***].

Approach to decision making

309. Paragraph 14 of the Framework makes clear that where relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against Framework policy taken as a whole. This is the approach to decision making that should be taken in this case[34].

Emerging policy

310. The emerging LP is relatively well advanced in the adoption process and the Examining Inspector has issued his initial findings. These comprise two Notes, one of which specifically deals with retail matters. The plan has subsequently been modified to take account of the Inspector's findings and its policies can thus be given substantial weight as a material consideration. Bearing in mind the level of scrutiny it has already been given, it would be expected that its draft policies, as proposed to be modified, are in accordance with Framework policy. The various UDP policies mentioned above will be superseded by the policies in the new plan once it has been adopted [***17; 29; 91***].

311. As would be expected the Policies Map identifies not only a town centre boundary for Southport, but also a PSA. All retail matters are dealt with under Policy ED2 (as proposed to be modified), which sets out the provisions for retail development and other town centre uses in various sections, the first three of which are relevant in this case. The first part establishes the retail hierarchy, which is similar to the UDP, with Southport and Bootle as the two town centres and a number of smaller district and local centres [***18; 95***].

312. The second part sets out the sequential test, with PSAs being the most favourable locations for retail uses. There is a second tier above edge-of-centre locations, which comprises town centres, district and local centres. It is unclear where town centres fit in here because, for retail uses, edge-of-centre sites are defined by their relationship to the PSA. Considering Paragraph 24 of the Framework and its Glossary, it is clear that the defined centre is the first port of call and that in the case of a retail use this means the PSA. It is only in the case of district or local centres with no PSA that the sequential preference would mean the whole geographic unit. For out-of-centre sites the draft policy prefers accessible sites that are well connected to the defined centre followed by designated retail parks, of which Meols Cop is one [***18; 96; 191***].

313. The third part of the draft policy deals with the impact test. In what circumstances it applies is clear, at least in relation to the town centres. An impact assessment will be required for any retail proposal on a site outside the PSA that exceeds 500m^2 gross floorspace. What the impact test entails mirrors Paragraph 26 of the Framework and concerns the effect on existing planned investments and the vitality and viability of existing defined centres. The geographic area where impact is assessed was disputed and led to a great

[34] There are no specific policies in the Framework that indicate this development should be restricted, with reference to Footnote 9. The second limb of this part of Paragraph 14 is thus not engaged in this case.

deal of discussion at the Inquiry. The Applicants and the Council consider that it is assessed on the PSA whereas Tesco and Asda believe that it is on the whole town centre. There is no disagreement that indirect impacts, relating to linked trips, should be applied to the whole town centre [***18; 30***].

314. The town centre boundary on the Policy Map of the emerging LP is slightly more extensive than that on the Proposals Map of the UDP. It is understood that the extent of the town centre boundary was debated during the Examination because the Council, on the advice of its retail consultants, had proposed to reduce its extent and omit Central 12 Retail Park. It is noted that the Examining Inspector endorsed the inclusion of this area within the town centre but not within the PSA. In the circumstances, it seems to me that the most up-to-date and appropriate boundary for the town centre and the PSA is as shown on the Policy Map to the emerging LP and this does not appear to be controversial or disputed by any of the main parties [***32; 95; 97-98; 192-194***].

The Framework and the relevance of the PSA

315. Paragraph 24 of the Framework requires a sequential test for retail, leisure and office uses outside of town centres. For retail uses, it is the PSA that is the "town centre" as it is from this that edge and out-of-centre locations are defined. For office and leisure uses the wider town centre is the appropriate geographic unit. The objectors do not dispute that a proposal outside the PSA is subject to the impact test but they say that the impact should be assessed on the whole town centre and not just the PSA [***30; 96; 138; 187-189; 191***].

316. Tesco referred to the Secretary of State's decision in Braintree in support of its interpretation of the impact test. It is the case that the Inspector considered it appropriate to assess the impact of that retail proposal on the town centre as a whole and the Secretary of State did not demur from that. However, it is also clear that there was no dispute about the matter and that both parties agreed this was the appropriate geographic area over which to consider impact. The matter did not appear to have been debated at that Inquiry. No other relevant decision was put forward by any party on the matter. The reasons why I have taken a different stance to my colleague in the Braintree appeal has been explained below [***34; 138-140***].

317. There are a number of other reasons why the objectors say that the PSA is not the appropriate geographic area over which to assess impact. One of these relates to the difficulties of obtaining relevant data. The household survey, for example, relates to the town centre as a whole although it does identify the larger retail destinations separately. Whilst the small shops are not differentiated between those in the PSA and those in the wider town centre, in reality their turnover is relatively modest. In any event the difficulty in obtaining data does not necessarily mean that the policy interpretation of the objectors is correct [***33; 138; 141; 142***].

318. It is difficult to understand why Paragraphs 24 and 26 of the Framework would make reference to different geographic areas for the "town centre". To my mind it is reasonable to surmise that the consideration of town centre vitality and viability in Paragraph 26 is referring to the PSA, which is the area where retail development is concentrated. However, Paragraph 26 makes specific reference to the "wider area" in respect of local consumer choice and trade.

319. This is particularly relevant in the case of Southport because there are several foodstores that are outside the PSA but in the wider town centre. These include Morrisons, which is just to the rear of Lord Street and is on an edge-of-centre site. Asda is on the Central 12 Retail Park and is well in excess of 300m from the PSA. Lidl is further out still and these are, to my mind, out-of-centre stores, despite their location in the wider town centre. So it will be relevant to consider what impact any loss of turnover would have on these foodstores because if they were to close down, for example, consumer choice and trade would be diminished. Furthermore, insofar as they generate linked trips to the PSA, there would be indirect impacts arising from the diversion of trade to the proposed retail development. So the wider town centre is clearly relevant to the consideration of impact, but not to the extent that the objectors contend. This will be further addressed under Consideration Three below.

CONSIDERATION TWO: WHETHER THERE IS A SEQUENTIALLY PREFERABLE SITE ON WHICH THE RETAIL PROPOSAL COULD BE ACCOMMODATED, BEARING IN MIND THE NEED TO DEMONSTRATE FLEXIBILITY

320. At the time the application was made there was a considerable amount of surplus expenditure to support additional convenience goods floorspace in North Sefton. This was made clear in the 2012 SRSR and the iteration of the emerging LP that was current at the time. In particular there was available capacity in Zone S, which is centred on Southport. The Council therefore agreed that this should be the focus for the sequential assessment. By 2015, as recorded in the updated SRSR, the surplus convenience expenditure had considerably diminished [***99; 156***].

321. It remains the case that there is a high degree of self containment within Zone S and the most recent retail assessments by all parties show that the proposed store would still draw the majority of its expenditure from within it. No-one has suggested that Southport does not remain the appropriate area to consider sequential sites and no suitable or available sites were suggested in more distant centres. In the circumstances I am satisfied that the sequential assessment has been properly applied in this case.

322. In September 2015 the only site that was a serious possible alternative was the premises at Tulketh Street. However, by June 2016 the site had been purchased by Sports Direct and planning permission had been secured for the use of part of the premises as a gym. The Applicants did not consider that this site would be sufficient in size but, in any event, all now accept that it is no longer available. Other sites were considered and it seems to me that the search criteria were robust and smaller buildings and sites were considered. Even adopting a flexible approach in terms of format and scale, The Range at Central 12 Retail Park and the B&M Bargains site in Lord Street are clearly not suitable and the latter is unlikely to be available. British Home Stores in Chapel Street is likely to become available soon but its layout over several floors and its restricted size would not make it a suitable candidate for a foodstore of the type envisaged by the Applicants [***35; 100; 101; 210; 268; 249***].

323. In the circumstances it is concluded that there are no sequentially preferable locations and the sequential test is passed.

CONSIDERATION THREE: THE EFFECT OF THE APPLICATION PROPOSAL ON THE VITALITY, VIABILITY AND RETAIL FUNCTION OF SOUTHPORT TOWN CENTRE.

324. There is no dispute that the application site is out-of-centre. It is located about 2.5 km from Southport's PSA on the Meols Cop Retail Park [***11; 14***].

325. The 2015 SRSR, like its 2012 predecessor, adopted a Study Area that comprised a number of zones extending beyond the Borough Boundary. Based on the household survey it is clear that there is a considerable amount of self containment in terms of main food shopping expenditure, especially in the zones on the western side of the Study Area, which are centred on the coastal towns. It is thus reasonable to surmise that the proposed store would derive most of its expenditure from Zone S, which comprises the area around Southport. This is confirmed by both the 2012 and the 2015 SRSR, which both show a continuing high rate of zonal expenditure retention, albeit that a significant proportion is going out-of-centre[35]. Although the objectors dispute a number of the trade draw assumptions, there is no disagreement that the proposal would draw a relatively small proportion of its expenditure from other centres outside Zone S. There was therefore no contention from either the Council or objectors that there are centres other than Southport that would be relevant to the impact assessment [***37; 102***].

Capacity and the Council's consideration of the planning application

326. There is no dispute that the capacity or need for a retail development is no longer a relevant policy test. Such a requirement is not included in Policy ED2 (as proposed to be modified) or the Framework. Insofar as it appears in UDP saved policies, it is out-of-date [***16.3; 42; 157***].

327. When the planning application was considered by the Planning Committee there was spare convenience expenditure capacity in the catchment to support further retail floorspace. However, the Officer's Report made clear that the need for the proposed development was not a relevant consideration. Whether there is spare expenditure capacity in the catchment is not of importance. What matters is from where the proposed new store would draw its expenditure and the impact that this would have on the designated centre [***42; 115; 157***].

328. I note that some objectors and the local Member of Parliament criticised the handling of the application by the Council. The point was also made that the Southport Councillors did not vote in favour of it. However, there is no evidence that the Council acted in an undemocratic or improper way or that the Planning Committee failed to understand the correct approach. It cannot be concluded that the Council would have reached a different conclusion on the application if the capacity situation had been as it is today [***26; 115; 249; 253***].

329. The Applicants have undertaken a new retail impact assessment, which reflects the up-to-date position regarding expenditure capacity. It identifies that whilst the larger foodstores in North Sefton are overtrading, this is to a large extent attributable to the performance of Waitrose in Formby district centre and Aldi

[35] See the 2015 SRSR (Document CD/33, Paragraphs 4.13, 4.14 and Tables 4.2 and 4.3).

at Meols Cop. There is no dispute that very little of the new store's turnover would be derived from the former. The extent of the trade draw from the latter is not agreed and this is considered further below. The general point here is that the situation at the time the Council considered the application has moved on. The issues have been thoroughly scrutinised at the Inquiry and in evidence and the decision will be made by the Secretary of State, having regard to planning policy and all material considerations [***44; 159; 161***].

The health of the town centre

330. Existing shopping patterns indicate that Southport town centre should be the focus of the impact assessment for the reasons given in Paragraph 325 above. The Planning Practice Guidance makes clear that it is important to assess the state of the relevant centres. The reason for this is that generally a strong centre can successfully withstand higher retail impacts than a weak one. The guidance suggests that there are a number of indicators that will be relevant to the assessment of health and that consideration should be given to how they have changed over time. Local circumstances are highly relevant when considering the significance of impacts.

331. There has been a great deal of evidence provided on the health of Southport town centre and it is relevant to note that this covers the whole town centre and not just the PSA. There is historic information from the various reviews undertaken on behalf of the Council, the most recent being the 2015 SRSR. Bespoke health checks have also been undertaken in connection with the application itself and these were updated by Tesco and the Applicants in April/May 2016. I visited Southport town centre myself on many occasions during the course of the Inquiry in September 2015 and June 2016 and so have also formed my own impressions about its health [***47; 102; 145; 195-196; 215-218***].

332. It is clear that Southport has fallen in the retail rankings. PMA rank 200 town centres in terms of how they are performing in relation to their retail offer. As I understand it, the town was ranked as a "sub-regional centre" until the latest Promis Report in 2016, which categorised it as an "average weak town". On the face of it this would seem clear evidence of a serious dip in the town's status. However, it needs to be appreciated that the current Promis Report has reclassified the four town types into six town types. In a ranking exercise this re-categorisation would inevitably lead to some towns moving from one town type to another without necessarily changing their ranking score. There is no such score available for 2016, which leads to the conclusion that the change in Southport's town type does not necessarily have much to do with a change in its performance [***48.8; 146.2***].

333. Nevertheless, the evidence is clear that Southport has been declining in the retail rankings from 60 in 2005 to 86 in 2015 based on the non-food retail provision score, which includes the quality and quantity of retail provision. It is though relevant to note that there has been an overall fall in the Promis average score for all of the towns over these dates and this reflects the position with the national economy. It is fair to say that Southport has fared worse than the Promis average for all town types although the differentials are not that great. Performance in Southport is considerably stronger than the average for the average weak towns, which include a number of comparable towns in the North West [***48.8; 146.2***].

334. There has been a small drop in the town centre's market share in the comparison and convenience sector of 1.1% and 1.6% respectively between 2011 and 2015. To put this in perspective the Borough as a whole fared worse, losing 2.2% of market share in comparison goods and Meols Cop lost 1.9%. In terms of convenience goods Meols Cop fared better experiencing a gain of 0.2%, which is likely to be due to the strength of Aldi's trading performance. It seems to me that the town centre has remained relatively stable in terms of this indicator, bearing in mind that this information was derived from the household surveys, which by their very nature are subject to a margin of error [***48.9; 147***].

335. The 2016 Promis Report records Zone A rental values as being £50/ft^2. This is a considerable fall from the £95ft^2 in the 2009 Promis Report, although this may well have related to the period immediately preceding the start of the economic recession. Even so, in 2011 rental values were recorded as £70/ft^2 and so the fall has been significant notwithstanding that there appears to have been stability since mid-2015. A report by Colliers International was purported to show a further recent 10% fall in rental values in Southport, which was said to be the largest such fall in the North West. However, this information was obtained from a local newspaper article and the Colliers International Report itself had not been published when the Inquiry closed. The empirical data behind the headline figure could not therefore be scrutinised and little reliance can be placed on it at this time. [***48.4-48.5; 146.4; 216***].

336. The Promis Report indicates that yields appear to either be stable or slightly improved since 2009, presently standing at 7.25%. The Marble Place shopping centre in Chapel Street was sold in March 2007 for just under £17m reflecting a yield of 5.9%. In October 2013 it was sold for just 3.9m with a yield of 12.6%. The sale of the Next premises in Lord Street has resulted in a yield of 10%. Whilst it is appreciated that these provide evidence of actual transactions they are also site specific and will be reflective of the particular circumstances of the property sale. It would not be appropriate to draw any general conclusion on yields from these two examples, which will no doubt feed into future Promis reports in due course [***48.6; 146.5; 218***].

337. Vacancies were the subject to a great deal of debate at the Inquiry and the retail consultants representing the Council, the Applicants and Tesco undertook a joint survey in June 2016 to try and agree the number of vacant units in the town centre. GOAD vacancies are recorded on the basis of the situation at the time of the survey and therefore represent a snapshot in time. On that basis there were agreed to be 115 empty units. If though the units that are shortly to be occupied, which include the Tulketh Street premises, and those shortly to become vacant, which include British Home Stores, are taken into account, the number would reduce to 107. There are 5 further units that are in contention. It is difficult to tell whether the garages to the rear of 113 Eastbank Street and the unit to the rear of 581A Lord Street are being used for storage or not. In any event both are tucked away behind the main retail frontage. The other three disputed units appear to be occupied and have window displays. It seems to me that there is a reasonable argument for not treating these units as vacant [***48.1; 148***].

338. The parties' position on the number of vacant units is thus either 107 or 115. It seems to me that in order for a comparison to be undertaken the higher figure, which provides a snapshot in time, is the most representative. On this

basis the similar exercise in June 2015 recorded 104 units. Looking back, in 2005 the figure was 64, in 2009 it was 125, in 2011 it was 102 and in 2013 it was 117. This paints a fluctuating picture and I am not convinced that there is a discernable long term downward trend, although the vacancy rate is above the national average and does negatively impact on the appearance of the town centre. A glance at the GOAD plan shows that at the time of the latest survey there were a relatively high proportion of small vacant units along the north-western side of Lord Street whereas in Chapel Street there were very few [***48.1; 108; 110; 148; 151; 195***].

339. A relatively high proportion of the vacant floorspace is invested in the long term vacant unit at Tulketh Street, the Victoria Baths on the Promenade and the Genting Casino on Lord Street. The former is about to be re-occupied but the other two are large vacant leisure buildings and may prove difficult to re-let due to their size and heritage status. There is also the British Home Stores building, which is likely to fall vacant soon. This is in the centre of Chapel Street and therefore in one of the main shopping streets in the PSA. The Applicants consider it will be easy to re-let and the objectors have an opposing view. It is not possible to know what the future holds for this building. Its position on a prime pitch should be an attraction although its layout on several floors with structural piers and a central staircase may deter some potential retail occupiers [***48.2; 48.3; 108; 150; 151***].

340. Southport is a tourist destination as well as a shopping centre. Its vitality and viability is underpinned by its comparison and leisure offer. Although its convenience shops are important the proportion of this type of floorspace is well below the UK average. This is not unusual in a higher order centre like Southport and does not seem to me to indicate weakness. I have referred to the various foodstores in the wider town centre and the Lord Street Sainsbury's in the PSA. In addition there are a range of smaller food shops, including Marks and Spencer, Iceland and Farmfoods [***103-107; 247***].

341. There is a good representation of different retailers within the town centre, including 21 of the 27 major comparison retailers identified by GOAD. A number of national retailers have left the town over the past two years or will be leaving shortly. Some like East and British Home Stores have gone into administration whilst others such as Next and Wallis have retracted and are moving out to the retail parks. These are changes happening nationally that are not specific to Southport. There also needs to be a balance with new operators coming into the town. These include national multiple clothing stores such as Trespass and Lavitta who have opened in Lord Street and Costa Coffee who has opened a flagship store in Chapel Street. As previously mentioned, Sports Direct will shortly be occupying the Tulketh Street premises, along with two other retailers and a health and fitness club [***48.10; 49; 109; 153***].

342. The 2015 SRSR records the town centre as having reasonably good levels of pedestrian activity and that was confirmed by my various visits during the Inquiry. There have though been ups and downs and between 2013 and 2014 there was a 3.6% decline in footfall across the town centre overall and this was above the national average. Since then there has been a more positive story in Chapel Street with improved pedestrian activity, although Lord Street fared less well with a decrease of 5.3%. Whilst a press article was submitted

to indicate a recent improvement, the source of this information is not known and it can therefore be given very little weight [***49; 152***].

343. From my site visits I acknowledge that improvement is needed to the town centre environment, especially along Lord Street, which is an iconic and distinctive attraction to both shoppers and tourists. However, it seems to me that the Council itself is now taking a pro-active stance. The placement of Lord Street on Historic England's Heritage at Risk Register was, as I understand it, the Council's own initiative and a dedicated Heritage at Risk Officer has been appointed. From my visits to Lord Street I could see that work has already been done to refurbish some of the buildings and their distinctive ironwork and canopies. The green spaces and gardens, which are also an important feature of Lord Street are generally well tended and attractive. Clearly there is much more to do and a further Heritage Lottery Fund bid is expected to be made. Whilst the Conservation Area Appraisal pointed out a number of weaknesses, this was published over 10 years ago. My recent impression of Lord Street does not concur with the rather gloomy portrayal of physical deterioration and poor quality public realm that many of the objectors sought to portray [***48.11; 112; 114; 154; 248; 256***].

344. From all of the above I have reached the conclusion that Southport is a relatively vital and viable centre although it does suffer from a number of weaknesses. A comparison with the situation prior to 2009 shows that there has been a deterioration in many of the key indicators. This is partly reflective of the national economy and the effect of an economic situation that is not unique to Southport. Towns such as Southport are not as resilient as those in the more buoyant parts of the South East, for example. Competition from other higher order centres such as Liverpool and Trafford and the rise of online retailing have also played their part. Southport is not faring as badly as many other similar towns in the North West. More recently there has been an improvement in some indicators whilst others have stayed relatively stable. There is certainly no room for complacency and the Council will need to continue with its initiatives in order to safeguard the long term health of the centre. However, the conclusion that the town centre is undergoing a spiral of decline and deterioration is not, in my judgement, supported by the evidence and is unreasonably pessimistic [***49; 111; 146; 155; 248; 269***].

Impact on planned public and private investment

345. Southport and Windsor Properties LLP referred to commercial properties that it owns at 91 Lord Street and Cambridge Road, Churchtown. These are sites in the town and local centre respectively and I was told that foodstore operators are interested in their development. Whether or not Booths remains engaged with the Lord Street site is not very clear. Even if it is there is no evidence that occupation of the site by Booths would be influenced by the outcome of the application scheme. As for the Churchtown site it would appear that an offer has been made by a discount food retailer but that the owner has not yet accepted it. It is therefore difficult to understand how the application proposal has had a negative effect on this potential investor [***211-214***].

346. The draft *Southport Development Strategy* has been commissioned by the Council in order to guide future development opportunities and provide a catalyst for further change and investment in the town. It is intended as a high level document and will not have any policy status or be adopted as a

supplementary planning document. The premises at Tulketh Street are one of the sites included in the draft strategy. However, it is clear that the application proposal has not deflected Sports Direct from its planned investment in the refurbishment and conversion of the building to provide three retail units and a health and fitness club. There are a number of other development sites that have been included but there is no evidence that any would be put in jeopardy by the proposed Sainsbury's store at Meols Cop. [***37; 114; 117***].

Impact on the vitality and viability of the town centre

Time frame

347. Both the Framework and the Planning Practice Guidance indicate that up to a five year time frame would be appropriate for assessing whether the impacts on the vitality and viability of the town centre would be significant adverse. For major schemes a longer period is required but it was agreed by all parties that the application proposal would not be a major scheme and that the impacts should be able to be assessed within five years.

348. The Framework indicates that the five years is measured from when the application was made. The Planning Practice Guidance is not specific on this point. In this case the application was made in May 2014. It is generally accepted that a mature trading pattern should be established two years from the date the store opened. Assuming that would not be until 2017 at the earliest, a design year of 2019 would seem appropriate. However any planning permission may not be implemented expeditiously and it seems to me to also be relevant to consider the position in 2021.

349. The Planning Obligation by Agreement contains a covenant to keep the existing Lord Street Sainsbury's open for five years and that this dates from the time of the store opening. There was some debate about whether a longer time period would be applicable and I consider the necessity of the covenant further below. However, taking account of Framework policy a five year period should be sufficient to assess the impact on that town centre store [***67; 179***].

Area to be considered

350. The Framework requires assessment of the impact of the proposal on town centre viability and viability, including local consumer choice and trade in the town centre and wider area. For the reasons already given I consider that in retail cases the primary focus of impact should be the PSA. However, in the case of Southport, the reference to the wider area means that it is also relevant to consider impacts on the town centre overall, particularly in relation to any effect on consumer choice and loss of linked trips.

Retail impact assessment

351. The updated retail assessments utilise the 2015 SRSR, which was based on a new household survey. There are five main disputes between the main parties, which will be considered in turn:

- The amount of inflow of expenditure that comes into the town centre from outside the Study Area.
- The amount of floorspace and turnover in the town centre.

- The trade draw to the proposed new store.
- The loss of expenditure as a result of lost linked trips.

Inflow

352. Some turnover will result from expenditure by tourists or those living outside the Study Area who visit Southport for their shopping. The 2012 SRSR assumed 5% and 10% inflow for convenience and comparison goods expenditure respectively. In the 2015 SRSR this was considered to be too low for Southport due to its strong tourist economy. An uplift of 10% and 20% was therefore applied although it should be noted that for other centres in North Sefton the inflow assumptions did not change [***50; 119***].

353. The actual difference that inflow adjustments make to the retail assessments is relatively small, especially for convenience expenditure. For convenience and comparison goods respectively the Applicants' inflow figures were £9m and £34m whereas for Tesco they were £8.05m and £23.5m [***55; 160***]

354. It is clear from the household survey that there is a significant amount of expenditure deriving from the area to the north-east and east of the Study Area. There are people in places like Hesketh Bank and Tarleton who look to Southport rather than Preston as their main shopping destination. The *Retail and Leisure Review for Central Lancashire* adopts a Study Area with no overlap with the SRSR. Its Zone 15 includes the area to the north-east of Southport and shows that about £22m of comparison goods expenditure found its way to Southport town centre and its retail parks. The West *Lancashire Retail and Leisure Study* does include more overlap with the SRSR Study Area. However, Zones 3a and 3b, which cover Skelmersdale and the area to the north, are discrete. This indicates that about £8.3m of comparison goods expenditure flowed into Southport town centre. These studies are not very up-to-date, being published in 2010 and 2011, and the Central Lancashire study does not differentiate between the town centre and retail parks. Nevertheless, they do confirm that a significant number of people outside the Study Area were shopping for comparison goods in Southport and there is no reason why they would not be continuing to do so. Furthermore, it is a reasonable assumption that some of these people would also use Southport for their convenience shopping [***51; 119; 120; 160; 253***].

355. As a tourist destination it seems likely that visitors to Southport will also contribute to the turnover of shops in the town but that this would not necessarily be picked up by the household survey. In order to try and discern the amount of expenditure deriving from visitors, reliance was placed on the STEAM Report. In 2014 this indicated that £146m was spent on shopping in Sefton. This related to the whole of the Borough although it is reasonable to surmise that a significant part would be spent in Southport as it is the main tourist destination. The Applicants have assumed that 20% of this spend would be on convenience goods and 80% on comparison goods. It seems likely to me that the convenience spend is too low when one considers that, on the basis of the STEAM figures, it would amount to a spend of just £2.89 per person per visitor day. Even though the majority were day visitors some were staying in the town. In any event the assumption for convenience expenditure attributable to inflow in the Applicants' retail assessment is £9m. If all inflow

came from tourists, this would only equate to an equivalent spend of just 89p per person per visitor day, which seems unrealistically low [***54; 119; 160***].

356. It is acknowledged that the data source to justify the £146m of tourist spend in the STEAM Report is not transparent. Nevertheless, it appears from the available information that STEAM is a model of tourism flows that is widely used and has some provenance. In the absence of any better evidence some weight can be given to it. Clearly the £43m that the Applicants have assumed for the combined comparison and convenience expenditure inflow is only a small proportion of this available expenditure. Taking this piece of evidence with that from the two retail and leisure studies from the adjoining areas, I consider that the inflow assumptions adopted by the 2015 SRSR, and consequently the Applicants, are not unreasonable [***53; 55; 120; 160; 271***].

Floorspace and turnover of smaller stores

357. The argument put forward by Asda and Tesco is that some convenience goods floorspace attributable to small shops or outlets with a mixed offer such as B&M Bargains and Poundworld, has not been taken into account in the Applicants' retail assessment. It is contended that some of this floorspace is included in the household survey but recorded with an unrealistically low turnover or no turnover at all [***43; 162***].

358. It is reasonable to surmise that these small shops or mixed offer stores mainly function as a localised service to provide small-scale top-up purchases. Many are located in stand alone locations or small local parades and there was no allegation or evidence that the proposed new store would draw expenditure away such as to adversely impact on their viability. The only land use consequence could be loss of footfall but in view of their function and size this would seem unlikely to be significant. The floorspace concerned is relatively small and this therefore seems to be mainly a capacity exercise to support the objectors' allegation that the turnover of the larger stores has been over-inflated. However, that does not seem to be supported by the evidence because Asda, Tesco and Sainsbury's have confirmed that the turnovers used in the retail assessments are broadly correct. Whilst Morrisons has not commented on this specifically, its detailed representations did not identify that there had been any error in this respect. [***43-45; 119; 163; 164; 198***].

Trade draw

359. The derivation of the expenditure needed to support the turnover of the proposed new store would determine where the impacts are experienced. As has been discussed above a small proportion would result from inflow but the remainder would come from the surrounding area. The majority would derive from other large nearby foodstores on the principle that is expounded in the *Planning Practice Guidance* that retail uses tend to compete with their most comparable competitors. The contribution from the large foodstores is of course important because the remaining turnover would need to come from elsewhere and this in large part means from town centre shops. In the case of Southport the only large foodstore in the PSA is the Lord Street Sainsbury's. Morrisons and Asda are within the wider town centre but for the purpose of retail policy are edge-of-centre and out-of-centre respectively [***121; 161***].

360. Until the new store has developed a mature trading pattern it cannot be known definitively from where its expenditure would come from. The trade draw

assessment is a matter of informed judgement. There was a suggestion from the Applicants that if their trade draw assumptions were considered too high, especially in relation to the contribution from Aldi and Tesco, the new store would merely trade below benchmark level rather than take more trade away from the town centre. In this case, apart from the discount foodstores, the relevant large supermarkets are trading around their benchmark levels[36]. Following the trade draw assumptions of either the Applicants or the objectors these stores would be trading below company average. The benchmark or company average is a means by which individual store performance can be compared. However, by its very nature there will be some stores that are doing better than others and it does not mean that a store operating below benchmark would necessarily be unviable. Nevertheless, it seems to me that Sainsbury's would not be likely to contemplate a foodstore of this size, within what is already a competitive and mature trading environment, if it were not confident of securing a turnover at benchmark level. Indeed this is the basis of the Applicants' retail evidence [***64; 128; 165; 224***].

361. Proximity, brand loyalty and similarity of trading format are important factors in assessing the effect that a new store would have on an incumbent as is confirmed in the *Competition Commission's Report: The Supply of Groceries in the UK Market Investigation*. It is agreed by all of the retail consultants that the majority of the turnover of the new store would be derived from the four major foodstore operators in Southport – Asda, Morrisons, Tesco and the Lord Street Sainsbury's. However the amount of trade draw from each is not agreed and I consider this below [***56; 121***].

Trade draw from Tesco

362. The closest comparable store would be the Town Lane Tesco Extra and it seems to me reasonable to surmise that its customers would be particularly likely to switch to the new Sainsbury's. The Applicants consider that 35% of the new store's turnover would derive from this competitor. Tesco considers that this is far too high and prefers a trade draw figure of 20%. However, this would be similar to its trade draw assumption from Asda and Morrisons, which seems rather unlikely. Asda and Morrisons are about 2-2.5km further away and Morrisons is a much smaller store that offers a restricted range of comparison goods [***56; 57; 58.1; 122***].

363. In justifying its trade diversion figure Tesco draws on information from its Property Research Team. It is noted that the company considers that this is precious evidence not normally released within the forum of a public Inquiry, presumably due to commercial confidentiality. The four examples given show impacts ranging from about 12% to 22%, although the latter is considered by Tesco to be associated with the least comparable situation. The Property Research Team considered that a trade draw of about 15% would be realistic although in the present case Tesco has relied on a 20% trade draw from its Town Lane store [***60; 123; 169***].

364. Tesco has pointed out that in its four examples, Sainsbury's consultants had predicted considerably higher levels of trade draw than proved to be the case

[36] The Waitrose in Formby is considerably overtrading but this is not expected to contribute a significant amount of expenditure to the new store due to its distance and the comparability of its offer

in actuality. Conversely the Applicants have referred to several other instances where the retail consultants for Tesco had suggested impacts of over 40% on nearby incumbent superstores although there is no information as to what happened once these stores had opened [***61; 168***].

365. It would have been helpful if Sainsbury's had submitted some research of its own based on what has happened on the ground. The only information that it did provide was in relation to an unnamed London Sainsbury's store where there was a 30% drop in turnover following the opening of a new Tesco Extra store in 2013. Whilst Tesco's evidence from its Property Research Department is helpful, the weight that it can be given is moderated by the fact that these are said to be examples but it is not known how they were chosen. Furthermore, the actual sales information underpinning them is not transparent. The expected sales, for example, are said to reflect a "no development" scenario but they are noticeably lower than the actual sales for the store prior to the arrival of the newcomer. The expected sales seem to derive from not only the store in question but also the sales from similar unnamed stores. Furthermore it is stated that unrepresentative weeks like Christmas were not included but clearly that was not the case. Finally, as Tesco itself comments, the four examples are not located on retail parks, where the trade draw may well be expected to be higher. In the circumstances, this information does not provide definitive support for the argument that the trade draw assumed by the Applicants is likely to be unrealistic [***60; 123; 125; 165-167; 175; 223***].

366. Tesco asserts that on the basis of the four examples provided by its Property Research Department the generally accepted "like-for-like" principle expounded in the Planning Practice Guidance may not be that accurate. That is an interesting argument but not one that seems to be borne out by the available evidence. For all of the above reasons I do not agree with its conclusion and I am more inclined towards the Applicants trade draw figure in respect of the Tesco store, which I note is also broadly corroborated in the retail assessment of Asda. I consider Tesco's mid-point analysis in Paragraph 373 below [***169***].

Trade Draw from Aldi

367. Aldi is the nearest store to the proposed Sainsbury's as it is located immediately to the south of Meols Cop Retail Park and shares an access off Foul Lane. It has recently been extended and is clearly a very successful store. It is trading well above its benchmark level and, along with Waitrose in Formby and Lidl in the town centre, it is responsible for the majority of the overtrading now taking place in North Sefton. The Applicants assume a trade draw of 10% from Aldi and even then it would still be trading very strongly and well above its company average. It is therefore not surprising that the company did not object to the planning application [***223***].

368. The trade draw figure from Aldi has been challenged as too high by the objectors. This is on the basis that it has a particular customer profile and the 2013 Verdict Report indicates that Aldi customers tend to favour Tesco and Morrisons. Traditionally Sainsbury's was not a popular choice for switching Aldi customers. However, shopping patterns are changing and the Big Four grocers can no longer rely on customer loyalty to support their trading position. One of the main threats that they face is the tremendous success of the discount

foodstore operators who are now a well established part of the grocery sector [***58.2; 172; 223***].

369. The Applicants' evidence is that Sainsbury's is seeking to compete for some of the discount market by focusing its price structuring to emphasise the quality of its product at an affordable price. Whilst discount stores were traditionally the newcomers, in this case Aldi is the incumbent store. In the case of Meols Cop its high levels of trading is likely to have a negative effect on its customers' shopping experience in the store. For example, there will be longer queues at the tills in peak periods, congestion in the aisles and difficulty finding convenient and proximate car parking space. The new Sainsbury's would provide a convenient alternative opportunity and there is no reason why Aldi customers should not find it attractive if it can offer products at competitive prices. The 10% trade draw suggested by the Applicants does not seem unachievable. However, even if it were considered too high, a sensitivity test has been undertaken with a 5% trade diversion and small adjustments to expenditure flows from other stores. The analysis shows that this would make little difference to the resultant impact on the PSA resulting in an increase in the region of 0.2% in 2019 and 0.3% in 2021 [***57.6; 126; 172***].

Trade draw from Morrisons and Asda

370. Morrisons and Asda are some distance from Meols Cop. Asda has a comparable trading location on a retail park and also it is a large store with a significant comparison goods offer. Morrisons on the other hand is a smaller store closer to the town centre. In the circumstances it is reasonable to assume that more trade would be drawn from Asda but not as much as from the proximate and comparable Tesco. The Applicants' trade draw analysis is reasonable in respect of these two existing stores [***57.2; 57.3; 58.1; 122; 125; 173***].

Trade draw from the Lord Street Sainsbury's

371. The Lord Street Sainsbury's is a relatively small store and I visited it on several occasions during the course of the Inquiry. The evidence and my own observations show that it does not primarily function as a store where customers do a single large weekly main food shop. Generally its clientele seem to favour smaller baskets on a more frequent basis. This is a different way of shopping where the main food purchases are spread over a number of visits. The store has a relatively small comparison offer and a high proportion of the people who use it also undertake a trip to the town centre. The car park at the back is free for a two hour period, subject to a small minimum in-store spend, and its central location in the PSA is an additional attraction to its customers [***58.3; 124; 130; 171; 248; 251***].

372. It is inevitable that some of the store's turnover would be lost to the new store. For those whose loyalty is specifically to the Sainsbury's brand, the new development would offer a very much larger range of convenience items as well as a complementary comparison goods offer. However, the trade diversions assumed by the objectors seem to me to be too high if the nature of the Lord Street store and its core customer base are properly understood. There are many examples of small Sainsbury's stores in a town centre, which happily co-exist with a larger company store out-of-centre. The 25% trade draw assumed by Tesco seems to me to be excessive in comparison with what it believes its own proximate and comparable superstore would contribute.

Asda's assessment assumes that the Lord Street Sainsbury's, its own store and Morrisons would all make a similar contribution to the turnover of the new store. This seems to me unlikely, especially in relation to Asda, for all the reasons I have already given. Taking account of the circumstances described above, the 13% trade draw proffered by the Applicants seems to me the most reasonable assessment. [***58.3; 65; 124; 170; 171***].

The mid-point analysis

373. Tesco has undertaken an analysis that offers an alternative impact analysis on the basis of taking the mid-point between its own assumed trade draws and those of the Applicants. Whilst I am sure this was intended to be a helpful exercise, the resultant mid-point trade draws are not supported by any evidence. I acknowledge that the Inspector in the Braintree appeal appeared to consider that in some cases the impacts were likely to fall somewhere between the positions of the two parties concerned. I do not know what evidence existed in the Braintree appeal but I consider that such an approach would be untenable here, for the reasons given above [***59; 127; 174***].

Direct impacts

374. The Framework says that where an application has a significant adverse impact on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, it should be refused. For the reasons given above, I consider that the Applicants' assessment of trade draw and inflow is the most credible. Even if the trade diversion from Aldi is considered too high, the sensitivity assessment shows that there would be an insignificant increase in impact on the PSA.

375. On this basis, the overall direct impact on the combined convenience and comparison goods turnover of the PSA would be 3.8% in 2019 and 3.6% in 2021. In 2019 the impact on convenience turnover would be 29.5% and the impact on comparison turnover would be 1.5%. Comparison goods provide the focus of the retail offer in the PSA and the vast majority of the convenience expenditure loss would fall on a single supermarket, which is the Lord Street Sainsbury's. Whilst there are some small convenience outlets in the PSA, including Marks and Spencer, there is no allegation or evidence that they would become unviable or close as a result of the application proposal. Whether these impacts would be significant depends not on their numerical expression but on the local circumstances as advised in the Planning Practice Guidance [***44; 62; 129***].

376. The main land use consequence in terms of direct impact would be the loss of turnover from the Lord St Sainsbury's and whether it would be likely to suffer as a result. This store makes an important contribution to the convenience choice and variety in both the PSA and the wider town centre. It is also important due to its central location for generating linked trips to other shops in the town centre as has already been noted. The store is currently trading strongly and above its benchmark level. In 2019 and 2021 with the new store in place, its trading performance would reduce to about 76% of its benchmark level. However, this would still be a relatively strong trading performance and on this basis there was no allegation from any of the retail consultants that the store would close. As has already been mentioned, there are many instances where Sainsbury's and other operators successfully trade a smaller in-centre foodstore with a superstore in an out-of-centre location. Whilst in the case of

Southport there is also a choice of several large foodstores, these are more akin to the proposed new store in terms of size and function rather than to the smaller in-centre Sainsbury's [***65; 129; 177; 222; 248; 251***].

377. The Planning Obligation by Agreement includes a covenant with the effect of requiring Sainsbury's to keep its Lord Street supermarket open for trading for a five year period after the proposed new store had opened. I can understand that this would give the Council some comfort in case the retail assessments turn out to be incorrect and trade draw proved much greater from the Lord Street store. It is acknowledged that trade draw is a matter of judgement but the conclusions I have reached have been based on the evidence and my reasoning has been carefully explained. The consequences for the Lord Street Sainsbury's are an important part of the impact consideration. To support the argument that a safeguard was justified in case the retail assessment had got it badly wrong, would beg the question of whether it had been worth doing in the first place or whether it had been necessary to spend a large amount of public money scrutinising it through the Inquiry process [***67; 132; 179***].

378. It appears that Sainsbury's has a long lease remaining on the property. Whilst various options for sub-letting it to new uses were explored at the Inquiry there would seem no reason why this would happen in this case where a viable business would remain. In the circumstances it is difficult to conclude that the obligation relating to this matter would be necessary [***68; 69; 180; 204; 220***].

379. The wider town centre also includes a number of small convenience stores, mixed-use shops and Morrisons, Asda and Lidl. The combined impact on convenience and comparison turnover would be just over 8% and the convenience impact would be around 23% in 2019. Apart from the Lord Street Sainsbury's this would fall mainly on Asda and Morrisons, which would trade at around 76% and 80% of their company averages respectively in 2019. However, there is no evidence or allegation that either would close or become unviable. It is appreciated that there are other small shops that would also have their turnover reduced but these generally provide a local service and, again, there is no suggestion that there would be closures as a result. Whether or not the stores outside the PSA enjoy specific policy protection, the main point is that local consumer choice and trade would not diminish if the proposed development went ahead [***62; 64; 129***].

Indirect impact: Linked trips

380. The loss of linked trips would not only result in a reduction in footfall but also a further loss of expenditure currently going to town centre shops. This also needs to be taken into account when considering overall impact. The 2015 household survey shows that customers to Morrisons, Asda and the Lord Street Sainsbury's also undertake trips to the town centre for other purposes. By far the most are connected to the Lord Street Sainsbury's, which is hardly surprising in view of its location. One of the reasons why I have supported a lower trade draw from this store is because many of its customers undertake multi purpose trips and there is no reason why they would not continue to do so. Asda also generates some linked trips but interestingly Morrisons' customers appear less inclined to link, despite the store being closer to the PSA [***73; 105; 130; 181; 267***].

381. Asda undertook a linked trip analysis for the purpose of the Inquiry. This was found to be flawed for a number of reasons, some of which related to the

pedestrian survey itself and some of which related to the interpretation of the results. An updated analysis was submitted by Asda, which calculated that the loss of expenditure through linked trips associated with its own store would be about £3m or about £6.9m if Morrisons and the Lord Street Sainsbury's are included. This addressed some of the criticisms that were made at the Inquiry in September 2015 but it relies on the same survey and still seems to me to be a likely over-estimation. This is mainly because it relies on the assumption that there would be a direct correlation between the customers who divert to the proposed new store and those who make a linked trip. However, I consider that would not be likely to be the case. The new store would have a significant amount of comparison floorspace and so for some it would be a convenient "one stop shop". There are though many things that would not be available and the range and choice of goods such as clothing and homewear, electrical items and cookware would necessarily be limited. It seems to me that a good proportion of those who use the existing town centre foodstores as well as the other shops and facilities would not be the same customers that would divert to the new store, at least on the occasions when they are linking trips. Even if they did, it cannot be assumed that they would stop visiting the town centre. Undoubtedly there would be some loss of expenditure associated with the loss of linked trips but I do not consider it would be anything like the amount that Asda has contended [***70; 71.3; 131; 205; 206; 205; 206; 269; 271***].

382. Tesco has also undertaken its own linked trip assessment, which takes account of a shopping survey by Aviva, the owners of the Central 12 Retail Park, submitted in connection with its representation to the LP Examination. Tesco has concluded that £5.8m would be lost through linked trips to the town centre stores and that this would add 1.6% in terms of overall impact. The analysis also assumes that 25% of linked trips would not be lost to the town centre. Tesco has provided a cross-tabulation of the Aviva shopping survey. It is clear from this that not all of those surveyed were shopping at Asda; not all were using Asda for main food shopping; only about half of the main food shoppers had visited, or were intending to visit the town centre; and just under half of them had or would undertake the journey by car. On the basis of this survey it is difficult to support the view that Asda generates large numbers of pedestrian trips to the town centre. It is appreciated that Meols Cop is further away from the town centre, but is a relatively easy journey so there is no reason why many of those travelling by car between Asda and the town centre would not do so from Meols Cop [***71; 181***].

383. A pedestrian count and survey was conducted by the Applicants to capture those walking between Central 12 in a northerly direction towards the PSA. On the assumption that shoppers spent £37.74 per linked trip and that all associated linked trips were lost, the expenditure loss would be just under £0.8m. For the reasons already given it seems unlikely that all those Asda customers who currently undertake linked trips on foot would divert to the proposed new store. However assuming that they did it is still likely that some would continue to visit the town centre, albeit by car. The 2015 SRSR identifies that 4% of Tesco's customers link trips to the town centre in comparison with 8% of Asda's customers. In the circumstances it is not unreasonable to surmise that 50% of the linked trips would still take place from the proposed new store. On that basis the Applicants conclude that expenditure loss in relation to linkages by Asda customers would be about £0.4m [***70; 71; 72***].

384. From the above it is clear that estimating the amount of turnover lost as a result of linked trips is fraught with difficulty. For the reasons I have given the empirical data has concentrated on linked trips associated with Asda and it seems inappropriate to assume that similar numbers would apply to Morrisons and the Lord Street Sainsbury's. The 2015 SRSR shows that the former has a lower proclivity to engender linkages and the latter has a very different function from the other two large foodstores. In addition, Asda and Tesco in their assessments give insufficient consideration to the question of why people make linked trips and whether those that do are likely to stop doing so with the proposed new store in place. My conclusion overall is that in this case, due to the particular local circumstances involved, the loss of linked trips is likely to be relatively low. This would be an additional consideration to take into account but its effect would not be particularly significant in my opinion.

Indirect impact: Added attraction of Meols Cop as a retail destination

385. Meols Cop Retail Park is about 2.5 km to the east of Southport town centre. It is located off the northern segment of the Kew roundabout, around which are a number of other commercial uses. These include B&Q and the Kew Retail Park to the east and Tesco and McDonald's restaurant and drive-through to the south. The Meols Cop was built as a large bulky goods retail warehouse park with an extensive surface car park. Some units have subsequently been subdivided so there are now 11 shops. Four of these are currently vacant, two being within the application site. The retail park overall appeared to me slightly down at heel and, although people clearly use it, the shops were not particularly busy. This is despite the proximity of Aldi, which is trading very strongly and the Tesco superstore, which is also nearby [***11; 13; 14***].

386. The application proposal would result in a small net increase in the floorspace on the retail park but more importantly it would increase the available non bulky goods comparison offer. This is presently restricted by condition on the existing retail park to 15% of the floorspace and it would be reasonable to impose a condition restricting the amount in the new store as well. Unit 2 has been subdivided into three smaller units and these have an open A1 use, which the Council seems to have permitted by default rather than by design. Mezzanine floorspace has been permitted in many of the units and some of this has not yet been built. I observed that the upper level in Unit 2c, which is occupied by Argos, appeared to be a racking system rather than a mezzanine. Unit 1 was subdivided by virtue of a planning permission granted in 2013. This also has approved but unbuilt mezzanine floorspace but it is not clear how the non material amendment referred to in the Tesco evidence would result in an additional 162m^2. In the circumstances, I consider that the most reliable evidence is that there is 932m^2 more mezzanine floorspace that has been permitted but remains unbuilt [***11; 21; 74; 185; 225; 226; 230***].

387. The Applicants, who include the owners of Meols Cop Retail Park, have said that they are not seeking to materially change its role, function or offer. However, it is reasonable to surmise that they would wish to maximise their investment and attract good quality occupiers, especially to the vacant units. There is strength in the argument that the introduction of a Sainsbury's superstore would increase the attractiveness of the retail park to other retail operators. The new foodstore would generate a large number of additional customer trips, although it should not be forgotten that it would replace existing trip generating uses. Nevertheless footfall on the retail park would be

likely to increase. If the Argos currently occupying Unit 2b is absorbed into the new Sainsbury's store there would be the opportunity for another retailer to occupy that open A1 unit. The currently vacant Unit 2a also enjoys an open A1 use. The Applicants have indicated that their target tenants would be brands such as Pets at Home, DFS, Maplin and American Gold, which are usually found on retail parks rather than in the town centre. [***75; 183; 229***].

388. The extent to which the application proposal would be responsible for a loss of footfall and linked trips to the PSA or wider town centre would depend on whether shoppers prefer what an enhanced Meols Cop would have to offer. It was suggested that the open A1 units could be occupied by Next, Boots or Marks and Spencer as these operators all favour retail park locations. Although Next appears to be moving from Lord Street, it is already established on the Central 12 Retail Park. There is no evidence that it would wish to move to Meols Cop. The lease to Sainsbury's precludes the landlord from granting a lease to a food operator wishing to occupy another unit on the retail park for five years. However, Sainsbury's itself is not bound by the same restriction. It seems to me that a convenience outlet like Marks and Spencer could widen the appeal of the retail park and it is evident that it does trade in such locations alongside larger foodstores. It is also acknowledged that further subdivision of existing units would have the potential to allow smaller High Street comparison goods retailers to become established, albeit subject to the 15% floorspace restriction. In the circumstances it would be reasonable and necessary to impose planning conditions to prevent such changes occurring [***75; 76; 185; 226; 227; 228***].

389. Subject to the aforementioned controls, I do not consider that the new development would act as a catalyst for Meols Cop to become a shopping centre in its own right. There would be an improvement to the physical environment at its northern end but the remainder would retain the layout and appearance that is typical of its genre. It is appreciated that Meols Cop Retail Park offers a large amount of free parking but it would neither replicate nor rival the PSA or wider town centre. Lord Street and Chapel Street offer quite different shopping environments with a diverse comparison and convenience offer. The shopper or tourist can also enjoy a variety of different food and drink outlets and a range of other services and facilities all within a relatively small area. A trip to Meols Cop to undertake the main food shop in Sainsbury's may involve a browse round one or two of the retail warehouses and a visit to the Sainsbury's café or McDonald's but it seems to me that it would result in an altogether different shopping experience [***184; 255; 227***].

390. The objectors claim it would be hard for the Council to resist other open A1 uses if the impact of the application proposal on the town centre was not considered to be significant. That is clearly not an argument that the Council supports. Furthermore, my conclusions on the impact in this case have flowed from the evidence. Any proposal for other development at Meols Cop would be of a different nature and would need to be considered on its own merits [***186***].

Conclusions on retail impact and the health of the town centre

391. Drawing together all of the above points, the overall impact on the PSA would be relatively low. Although the convenience impact would be much higher this would mainly fall on the Lord Street Sainsbury's. This store would still be trading at about 76% of its benchmark level and there is no reason why it

should close. Other small shops in the PSA would lose convenience turnover, including the Marks and Spencer in Chapel Street. However, this would be a relatively small amount and no-one has alleged that they would become unviable or be adversely affected as a result.

392. A high proportion of customers shopping at Lord Street Sainsbury's also undertake trips to other shops and services in the PSA. The store is particularly popular for smaller frequent purchases and these people would not necessarily be the ones who would be attracted to the out-of-centre superstore, which would mainly cater for larger main food shopping visits. Furthermore, the assumption that those using the new store would abandon the town centre does not seem to me well founded. These may be separate visits rather than linked trips, but it would mean that shoppers would still spend in town centre shops.

393. Meols Cop itself, subject to the various safeguards discussed above, would not become a major attractor and shopping centre in its own right. There may be some improvement in the current range of outlets and the amount of non bulky comparison goods floorspace would increase. However, in my opinion the retail park would not have the same variety and range as the town centre, including its other services and facilities.

394. The foodstores in the wider town centre would lose trade to the proposal but all would continue trading and there is no suggestion that any would close. Local consumer choice and trade would not be diminished. There would be some loss of linked trips arising from the trade draw from these foodstores, which include Asda and Morrisons. However, I consider that the objectors have greatly overstated its importance for the reason given above that those linking trips to the town centre would be likely to continue doing so. It is probable that there would be some additional impact but this would, in my opinion, be small.

395. Southport town centre is relatively vital and viable and thrives on being both a shopping and a tourist destination. There are undoubted weaknesses and it was badly hit by the economic downturn, like many other similar towns in the North West. The number of empty units is clearly not ideal but the occupation of the Tulketh Street premises is good news for the town after its long period of vacancy. However, Southport's recent performance is encouraging and the Council is now taking a pro-active stance in strengthening its position further. It is to be hoped that the British Home Stores premises will be occupied speedily in their prime pitch position in Chapel Street. I do not consider that the town is experiencing a spiral of decline as some observers have claimed. Although there is much work left and there is no room for complacency, this particular town centre seems to me to be sufficiently resilient to withstand the scale of impact that has been identified on its PSA and its wider town centre.

396. In conclusion, the application proposal would not have a significant adverse impact on the vitality and viability of the PSA or on local consumer choice and trade in the wider town centre. It would thus accord with the Framework in this respect and comply with saved Policy CS1 in the UDP and Policies SD2 and ED2 (as proposed to be modified) in the emerging LP [***16.1; 18.1; 18.2***].

CONSIDERATION FOUR: WHETHER THE PROPOSAL WOULD BE IN A SUSTAINABLE LOCATION THAT WOULD BE ACCESSIBLE BY MEANS OF TRAVEL OTHER THAN THE CAR AND ENCOURAGE LINKED TRIPS TO THE TOWN CENTRE

397. For most customers visiting a large foodstore to do a main food shop the preferred mode of travel would be the private car, even in a central location. Nevertheless, there is an extensive residential area close to the site and for those undertaking smaller purchases there are pedestrian or cycle routes. The increased choice and competition that the proposal would offer was a point that many supporters made in its favour. Secure provision for cycle parking would be made close to the store entrance. Tactile paving would be provided across the Argameols Close bellmouth, which would help those walking with young children in pushchairs or those using a wheelchair or mobility scooter, for example. Improvements are also proposed to the foot and cycle way that runs immediately to the south of Fine Jane's Brook. This would include widening and enhanced lighting. At the western end of this route, which runs between Foul Lane and Meols Cop Road there is a signal controlled pedestrian crossing, which stops the traffic on demand [***266; 273; 275***].

398. Some local objectors considered that the new signal controlled junction should incorporate a pedestrian phase across Meols Cop Road. This is not being proposed and I note that the Highway Authority would not wish to see such a crossing facility to be incorporated. Those using the football pitches and parking in the store's car park would be able to use the crossing at Fine Jane's Brook and enter the site and its car park through the pedestrian walkway at the northern end. It is appreciated that crossing in the vicinity of the Kew roundabout is not easy, despite the dropped kerbs and tactile paving. I observed that northbound traffic exits the roundabout quite fast, although there is no recent record of pedestrian accidents at this point. Those walking from the south would be able to cross Meols Cop Road at the new junction by virtue of the traffic islands that would provide a refuge between the two carriageways [***82.9; 84; 244; 254; 257; 262; 266; 273***].

399. There are also bus routes along Meols Cop Road that provide half hourly services into the town centre. The bus stop on the eastern side of the road would be relocated to the south to accommodate the proposed new access. The bus stops on both sides of the road would be proximate to the site entrance and the northbound stop would be upgraded to provide accessibility for those with disabilities. There would be pedestrian crossing facilities across the site access allowing easier movement for those using the footway along the eastern side of Meols Cop Road. There would also be funding towards Real Time Passenger Information at the two nearest stops and this would improve the travel experience for those using the bus. For those wishing to travel by taxi or minicab, there would be stopping provision close to the store entrance [***83; 254; 258; 275; 281; 289; 290; 302.1***].

400. It is proposed to introduce a Travel Plan which would encourage staff in particular to travel in a sustainable way. Taking account of the covenant in the Planning Obligation by Agreement to use local labour wherever possible, it is considered that there would be good opportunities for those working in the store to travel to work by bus, cycle or on foot [***290***].

401. For all of the above reasons it is considered that this is a reasonably sustainable location that would offer staff and customers the opportunity to travel by non-car modes. Many would undertake their shopping by car but, taking account of the large resident population nearby, such journeys would be likely to be short. Also, those shopping in the new store would be able to make trips to the town centre by bus, cycle or a short car journey. The proposal would thus comply with saved Policy CS1 in the UDP as well as Policy EQ3 (as proposed to be modified) in the emerging LP and Framework policy in terms of accessibility.

CONSIDERATION FIVE: WHETHER THE PROPOSED DEVELOPMENT WOULD GIVE RISE TO UNACCEPTABLE HIGHWAY IMPACTS

402. The Council, in its role as Highway Authority, is satisfied that the proposal could be safely accommodated without detriment to the local highway network. The application was accompanied by a transport assessment and the modelling was also reviewed by consultants to the Highway Authority. A number of amendments were suggested and these were incorporated into the scheme [***78; 90; 133; 134***].

403. The transport assessment has been updated to take account of the 2015 household survey and SRSR as well as the Applicants latest trade draw assumptions. A traffic survey was undertaken in November 2015 and this gives valuable information on actual trip rates generated by the retail park, including the Aldi store. Whilst trip rates are available through TRICS it seems unnecessary to use them when the bespoke information is available. The important point to consider is the trip generation of the proposed new store and from where those trips are derived. Although Southport and Windsor Properties LLP considered that Tesco traffic should also have been surveyed this would be difficult in view of the shared access with McDonald's and in any event would appear unnecessary [***79; 82.1; 82.4; 233; 237***].

404. The evidence shows that there has been no increase in the background levels of traffic. The various residential commitments have been taken into account and so any additional uplift would have resulted in double counting. It would not be appropriate to include draft site allocations as they are not committed developments at the present time. Various sensitivity tests were also undertaken. These included a 5% increase in traffic flows along Meols Cop Road to account for holiday peak periods. Also, the Aldi trade draw was reduced and the trade draw from Tesco and other stores was increased. Finally, the additional unbuilt mezzanine floorspace of 932m^2 was included and additional trips associated with it added to the model. These sensitivity tests indicated that there would be little significant difference to the operation of the proposed new junction [***80; 81; 82.2; 82.6; 234; 240***].

405. It does not seem to me unreasonable for the assessment to use the trade diversion for convenience expenditure rather than a combined figure that includes comparison expenditure. This is not unusual in transport assessments for new foodstores and is justified by the fact that whilst comparison goods may occupy a significant amount of floorspace they do not generally provide the main reason for customer visits [***82.3; 235***].

406. The proportion of primary trips in comparison with trips already on the network is considered by Southport and Windsor Properties LLP to be too low. This has been derived from other comparable stores although the objector did not

consider that they were sufficiently similar. The TRICS Research Report 95/2 has been cited as evidence that primary trip rates should normally not drop below 60% but this report is now quite dated and shopping patterns have changed. Furthermore, it will be a matter of expert judgement and the only available expert evidence comes from the Applicants' highway consultant [***82.7; 241; 242***].

407. It is likely that the new development would generate some linked trips within the retail park as customers visiting the foodstore may also visit the existing retail units. No allowance has been made in the transport work for such trip reduction even though this could be as much as 20%. Southport and Windsor Properties LLP consider that this would be more than balanced out by the 25% increase in trips that they contend would result from the generous amount of free car parking. The TRICS Report from which this figure was drawn makes clear that it is a statistical average and that local circumstances are important. The retail park already exists and I consider it unlikely that the new store would generate additional trips at anything like this level, especially with the various controls on future uses that have been recommended. In my opinion these factors make the trip generation analysis robust [***82.5; 238; 239***].

408. During my site visits I drove across the local highway network on several occasions and noted that at certain peak times there is some queuing along Meols Cop Road and on the approaches to the Kew roundabout. At present all traffic leaves Meols Cop Retail Park from Foul Lane. It will either pass through the Kew roundabout or the roundabout further south on Southport Road. For those entering the retail park there is a left only turn in from Meols Cop Road. The proposal would remove this and there would be a new signal controlled junction. This would accommodate the traffic using the new store and the modelling has assumed that all traffic coming to the existing retail park from the north or leaving the retail park and travelling north, would also use the new access [***82.10; 245***].

409. It is acknowledged that local objectors consider that the Kew roundabout is difficult to negotiate and dangerous. It has several arms that are relatively closely spaced but there is no evidence that it has a poor accident history or is unsafe for drivers. In any event the Applicants' modelling shows that there would be an overall reduction in the amount of traffic passing through the Kew roundabout. This takes account of the trade diversion from Tesco and the three points of access that customers to that store currently use [***78.4; 233; 250; 254; 257; 258; 264; 266***].

410. The evidence shows that overall the new signal controlled junction would operate satisfactorily. The only time that it may exceed 90% capacity would be in peak holiday periods during the Saturday peak. This would be a worse case scenario and the Applicants consider it would amount to about 12 hours a year. On these relatively infrequent occasions there would be some increased queuing. However, this would be contained within the lanes of the junction itself and would be unlikely to have wider implications for the network [***81; 82.8; 243***].

411. I appreciate that residents of Argameols Close are concerned about the difficulties of turning right onto Meols Cop Road. I did not experience such delays myself but have no doubt that they happen on occasion. However, it

seems to me that the new traffic light controls at the site access would actually improve the situation by providing breaks in the traffic flows [***262***].

412. It is appreciated that there are genuine concerns about highway matters by local people, local Councillors, the Member of Parliament and Southport & Windsor Properties LLP. However, there is no convincing evidence that the development would cause unacceptable impacts on the safety and free flow of traffic on the local highway network. Paragraph 32 of the Framework makes clear that planning permission should only be refused on transport grounds where the residual cumulative impacts of development would be severe. That would not be the case here and there would be no conflict with saved Policies CS3 and EQ2 in the UDP or draft Policy IN2 (as proposed to be modified) in the emerging LP [***16.1; 18.4; 19; 231; 246***].

CONSIDERATION SIX: OTHER MATTERS

Residential amenity

413. The residential properties most directly affected would be the semi-detached houses on the southern side of Argameols Close. At present the rear elevations are about 35-40m away from the rear of the Homebase building on the far side of Fine Jane's Brook. The new development would be further away from most of these properties and it would stand further back from the road. The houses with the shortest gardens at the western end of Argameols Close would therefore benefit from a more open outlook. The new building would be considerably higher but due to the distances involved I do not consider that it would be overbearing to the houses in Argameols Close. Furthermore, the revised landscaping proposal shows enhanced tree planting on the northern side of the new building. Whilst this would not be sufficient to hide it from view, they would soften the appearance of this elevation once the trees reach maturity. There is no reason why the trees should not begin to be effective as a screen relatively quickly provided good heavy standard stock is used and there is diligent and effective aftercare. These matters could be controlled by a planning condition [***22; 23; 25; 260; 293***].

414. The new building would be due south of the Argameols Close properties. The planning application was accompanied by a daylight and sunlight report although this did not consider the effect on the rear gardens. It seems likely that the increased height of the building would cause some overshadowing when the sun is low in the sky. Indeed the report indicated that there would be a reduction in the sunlight received to rear windows in winter mornings but not in spring or summer. The BRE Report: *Site Layout Planning for Daylight and Sunlight – A Guide to Good Practice* includes advice on the protection of day and sunlight of adjoining land and buildings. The Applicants' report concluded that the rear windows would receive sufficient sunlight hours to exceed the recommended level in both summer and winter. There is no evidence that the function of solar panels on the south facing roofslopes of these houses would be adversely affected [***135; 265; 276***].

415. There would be high level windows on the northern elevation of the new building, including to the colleague area. The potential for overlooking towards the houses in Argameols Close would thus be limited. There would be larger windows to the café, but the distances would ensure that unreasonable loss of privacy would not occur to the residential occupiers to the north [***261; 276***].

416. The car park would be partly underneath the new building. An acoustic fence is proposed along the northern boundary of the parking area in order to mitigate the vehicle noise emanating from this area. The service yard would be at first floor level at the eastern side of the new building and it would be reached by means of a ramped access. The edge of the ramp would be some 50m from the corner of the nearest residential property. There would be an acoustic screen and the proposed tree planting would also act as a noise and visual buffer. The Applicants are also proposing special surfacing to reduce noise emission as well as imposing controls on the speed of vehicles using the ramp. A management plan would also be put in place to control the operation of the service yard. These matters would be controlled through planning conditions [***22; 25; 87; 136; 259; 261; 265; 276***].

417. Noise and inconvenience can also occur during the construction period. This cannot be eliminated but it can be mitigated by good practice. The approval of a Construction Method Statement would control such matters as hours of work, where loading and unloading would take place and how dust and dirt would be dealt with. Pile driving can be particularly intrusive in terms of noise, vibration and the like. Residents in Argameols Close are concerned about damage to their properties during the construction period. Whilst this may have happened when the Homebase was originally built, that was some years ago. A planning condition is proposed to ensure that any pile driving or ground compaction processes are subject to control by the Council [***87; 261; 263; 264; 265; 276***].

418. There have been local objections to the inclusion of a recycling facility. I note that the need for it has been questioned but the relevant matter is whether it would cause undue harm. Such facilities can be noisy when they are being emptied and this can be controlled by a planning condition. Fly tipping and litter would be a management issue and it seems unlikely that Sainsbury's would fail to take action to prevent such anti social activities in such public view of their new store. The recycling centre would not involve food waste and there is no reason why it should attract rats to the site [***262; 264; 276***].

419. The proposed development would not unacceptably harm the living conditions of adjoining residential occupiers. It would comply with saved Policies CS3 and EP6 in the UDP and Policy EQ4 (as proposed to be modified) in the emerging LP (***16.1; 16.4; 18.3***].

Wildlife

420. The application proposal would not affect any designated wildlife sites. However, Fine Jane's Brook is a habitat suitable for protected species such as kingfishers and water voles and the trees and vegetation along the watercourse would be a suitable area for foraging bats. It would be important to prevent pollution from entering Fine Jane's Brook during construction and also when the development becomes operational, especially the proposed petrol filling station. Planning conditions would ensure that suitable mitigation measures are implemented and it is considered that the proposal would comply with saved Policy NC3 in the UDP [***16.4***; ***262; 276; 280; 291; 296***].

Job creation

421. Homebase currently employs about 20 people and the proposal would generate about 308 full-time equivalent positions. There would also be many jobs

during the construction phase. The Planning Obligation by Agreement includes a local labour clause, whereby the Applicants would use best endeavours to employ people from the local area wherever possible. It seems to me that the jobs created would be a benefit to the local economy and there would be a variety of positions available including part-time opportunities and work for those currently without a job, school leavers and people wanting to re-enter the job market. This would accord with saved Policy CS1 in the UDP and Policy SD2 (as proposed to be modified) in the emerging LP [***16.1; 18.1***; ***77; 88; 275***].

Human Rights and the Rights of the Child

422. A local objector living in Argameols Close considered that the development would be contrary to Article 8 of the European Convention of Human Rights. This states that everyone has a right to respect for their private and family life, their home and their correspondence. The argument made is that the development would result in overlooking, overshadowing and diminished performance of solar panels. Also that there would be adverse impacts arising from the proximity of the recycling centre. For the reasons given above, I do not consider that there would be interference with Article 8 rights in relation to these matters [***263***].

423. The point was also raised by a resident of Argameols Close that the proposed development would create dust and noise and that this would adversely impact on her own health as well as the health of her children and elderly neighbour. Again Article 8 is engaged as well as Article 3(1) of the United Nations Convention on the Rights of the Child. There is no evidence that the dust and noise created during the construction process or thereafter would be sufficient to impinge on the health of the persons concerned. Furthermore, planning conditions are proposed that would specifically address these matters during the construction and operational phases. In the circumstances it is not considered that there would be an interference with the aforementioned rights [***86; 263***].

CONSIDERATION SEVEN: WHETHER ANY CONDITIONS AND OBLIGATIONS ARE NECESSARY TO MAKE THE DEVELOPMENT ACCEPTABLE

Planning conditions

424. The planning conditions are at Annex Three and the justification for them is provided in Paragraphs 284-299 and also in various parts of my Conclusions.

425. It is considered that the conditions are reasonable, necessary and otherwise comply with Paragraph 206 of the Framework and the provisions of the Planning Practice Guidance.

Planning obligations

426. A fully executed Planning Obligation by Agreement has been submitted. The Deed creates planning obligations for the purposes of Section 106 of the 1990 Act and seems to me to be legally correct and fit for purpose [***300-302***].

427. The policy justification is provided by saved Policy CS3 in the UDP. Policy IN1 (as proposed to be modified) in the emerging LP also refers to developer contributions. However, it is necessary to consider whether the obligations meet the statutory requirements in Paragraph 122 of the CIL Regulations in order to determine whether or not they can be taken into account in any grant

of planning permission. The requirements are that the obligations must be necessary, directly related and fairly and reasonably related in scale and kind to the development in question [***16.1; 18.4; 301***].

428. In April 2015 the pooling restrictions in Regulation 123 of the *Community Infrastructure Levy Regulations* 2010 came into effect. The relevant provision is that a planning obligation cannot constitute a reason for granting planning permission to the extent that it provides for the funding or provision of an infrastructure project or type of infrastructure for which five or more separate planning obligations have been entered into.

429. It is noted that the Deed provides a "blue pencil" clause. This would become effective in the event that the Secretary of State does not consider that the obligations would meet the requirements of the CIL Regulations.

430. The obligation to provide Real Time Passenger Information to the two nearest bus stops to the site would be a necessary improvement that would make bus travel to the store more attractive and thus enhance accessibility. The contribution itself has been worked out on the basis of the cost of delivery and a maintenance period thereafter. There are no other contributions to the provision of these particular facilities and so Regulation 123 of the CIL Regulations would not be offended [***281; 302.1***].

431. I have already considered the obligation relating to the existing Lord Street Store in Paragraph 377 above and concluded that it would not be necessary. It would not comply with Regulation 122 and therefore cannot be taken into account in any grant of planning permission [***302.2***].

432. The obligation relating to the use of local labour would serve a local purpose because it would encourage local employment and benefit the local economy. In that regard it seems to me to accord with Policy SD2 (as proposed to be modified) in the emerging LP, which seeks to promote economic growth and jobs. This would not relate to the provision of infrastructure and so Regulation 123 is not applicable [***18.1; 302.3***].

CONSIDERATION EIGHT: OVERALL CONCLUSIONS AND PLANNING BALANCE TO DETERMINE WHETHER THE PROPOSAL WOULD BE A SUSTAINABLE FORM OF DEVELOPMENT, TAKING ACCOUNT OF THE THREE DIMENSIONS IN THE FRAMEWORK

433. The Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development. It establishes that this has economic, social and environmental dimensions, which give rise to the planning system performing a number of roles. Paragraph 14 of the Framework establishes the presumption in favour of sustainable development and what that means. For the reasons given under Consideration One, it is considered that the relevant retail policies in the UDP are out-of-date. In such circumstances Paragraph 14 states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

434. The proposed development would contribute to economic growth and generate a significant number of new jobs both during the construction phase and once the store was operational. The latter would include both full and part time

opportunities with a variety of different posts available. Furthermore, the Applicants have covenanted to use labour from the local area wherever possible. As there is no longer much expenditure surplus in the catchment, the new foodstore would derive its turnover mainly from other convenience stores and this may result in some loss of jobs. It also has to be borne in mind that the existing Homebase and the two vacant retail units that are within the application site, are or were employment generating uses. The net increase in employment would therefore be less than the Applicants contend but nevertheless would still represent a significant benefit.

435. The proposal would increase the choice and variety of convenience offer and many in the local community welcome the introduction of a Sainsbury's in their locality. Customers and staff would have sustainable travel choices and the site is relatively accessible even though many would undertake their journeys by car. There is no objection to the appearance of the building and it would bring some improvement to the physical environment of the retail park, especially at its northern end.

436. The application proposal would not harm existing, committed or planned investment. Whilst there would be some adverse impact on the PSA and wider town centre this would be relatively small for the reasons concluded under Consideration Three. Taking account of its existing health it is not considered that the impact on vitality and viability would be significantly adverse. None of the existing foodstores, including the existing Lord Street Sainsbury's, would be likely to close and local consumer choice and trade would not be diminished in the PSA or wider town centre.

437. Taking account of all of these factors it is considered that the economic, social and environmental roles would be satisfied. There would be no adverse impacts that would significantly and demonstrably outweigh the benefits. My overall conclusion is that the application proposal would therefore be a sustainable form of development in accordance with Framework policy and Policy SD1 (as proposed to be modified) in the emerging LP.

INSPECTOR'S RECOMMENDATION

438. That the application should be granted planning permission, subject to the conditions in Annex Three.

Christina Downes

INSPECTOR

ANNEX ONE: APPERANCES

FOR THE LOCAL PLANNING AUTHORITY

Mr Vincent Fraser	Of Queen's Counsel, instructed by Ms J Coule, Head of Regulation and Compliance, Sefton Metropolitan Borough Council
He called:	
Mr R D Shepherd MRTPI	Associate Director of WYG Planning
Mr B Mason MBA MCMI	Team Manager in Highways Development and Design at Sefton Metropolitan Borough Council
Mr S Faulkner BA(Hons) DipTP	Team leader in Development Management at Sefton Metropolitan Borough Council
*Mr N Mackie BA(Hons) DipEP	Senior Planning Officer with Sefton Metropolitan Borough Council

FOR THE APPLICANT

Mr Paul G Tucker	Of Queen's Counsel
Mr Freddie Humpreys	Of Counsel, both instructed by Mr T Price of Savills UK Ltd
He called:	
Mr T Price BA(Hons) MRTPI	Director of Savills UK Ltd
Mr A J Smith BA(Hons) DipTP MIHT	Director of Vectos
*Mr R Aitkin-House BA(Hons)	Solicitor with Mishcon de Reya

FOR THE RULE 6 PARTY: ASDA STORES LTD

Mr Simon Pickles	Of Counsel, instructed by Thomas Eggar LLP
He called:	
Mr S Tibenham MTCP MRTPI	Director of Pegasus Group
*Ms N Gooch LLB (Hons)	Associate Solicitor with Thomas Eggar LLP

FOR THE RULE 6 PARTY: TESCO STORES LTD

Mr Christopher Young	Both of Counsel and instructed by Mr G Sutton of DPP Planning
**Mr James Corbet Burcher	
He called:	
Mr G Sutton BSc(Hons) DipTP MRTPI MBA	Director of DPP
*Mr J Burns MTCP MRTPI	Principal Planner with DPP

FOR THE RULE 6 PARTY: SOUTHPORT AND WINDSOR PROPERTIES LLP

Mr Gerard Carney MRICS	Partner of Southport and Windsor Properties LLP

**Contributed solely to the conditions and obligations round table sessions*
***Present for the 6th and 7th day of the Inquiry in place of Mr Young*

INTERESTED PERSONS:

Dr J Pugh	Member of Parliament for Southport
Mr T Dawson BSc(Hons)	Borough Councillor of the Dukes ward
Miss C James	Local resident
Mrs K Roberts	Local resident
Mrs L Roberts	Local Resident
Miss K Owen	Local resident
Mrs L Sprigings	Local resident
Mrs S Krinks	Local resident

ANNEX TWO: DOCUMENTS

Please note that all documents with a strikethrough are superseded

Core documents	
CD/1	National Planning Policy Framework
CD/2	National Planning Practice Guidance
CD/3	Sefton Metropolitan Borough Council Unitary Development Plan (2006)
CD/4	The Secretary of State's Directions relating to saved Sefton UDP Policies
CD/5	Supplementary Planning Document 'Ensuring Choice of Travel'
CD/6	Supplementary Planning Document 'Trees, Greenspace and Development'
CD/7	Report to the Planning Committee of Sefton MBC of 15 October 2014 in respect of the application (including documents submitted as late representations)
CD/8	Minutes of Planning Committee 15 October 2014
CD/9	Drawings & supporting documents submitted by the applicant in respect of the planning application
CD/10	Representations received from 3rd parties including the local MP, Sefton Councillors, other retailers and local residents
CD/11	Observations of all statutory and non-statutory consultees
CD/12	Research commissioned by Sefton MBC from WYG regarding the sequential approach to and the retail impacts of the proposals
CD/13	Tesco Stores Limited v Dundee City Council [2012] UKSC 13 Supreme Court Judgment
CD/14	R (Zurich Assurance Limited) v North Lincolnshire Council [2012] EWHC 3708 (Admin)
CD/15	Rushden Lakes Decision (PINS reference APP/G2815/V/12/2190175)
CD/16	Peel Centre Decision (PINS reference APP/U1620/A/14/2214917)
CD/17	Sefton Local Plan Publication Draft
CD/18	Preferred Option, Sefton Local Plan
CD/19	Sefton Retail Strategy Review (2012)
CD/20	Sefton District Centres, Local Centres and Shopping Parades Study 2012
CD/21	Experian Retail Planner Briefing Note 12.1
CD/22	Sefton Retail Strategy Review Update 2009
CD/23	Regional Spatial Strategy for the North West
CD/24	Dawlish appeal decision 2101147
CD/25	Competition Commission: The Supply of Groceries in the UK Market Investigation from 2008
CD/26	Thaxted Road, Saffron Walden appeal decision 2152457

CD/27	Lower Bristol Road Bath Appeal Decision 2191952
CD/28	Winchester Road Appeal Decision 2182975
CD/29	Braintree Appeal Decision 2219101
CD/30	Extract of CIL regulations
CD/31	Lord Street 2005 Conservation Area Appraisal
CD/32	Verdict Sector report 2014
CD/33	Sefton Retail Strategy Review 2015
CD/34	Experian Retail Planner Briefing Note 13
CD/35	Southport Development Strategy – Draft Report (December 2015)
CD/36	Sefton Council Threshold Policy for Main Town Centre Uses Impact Test – Evidence and Justification Report (October 2015)
CD/37	Sefton Local Plan Examination – ASDA Stores Limited Hearing Statement – Matter 5 (October 2015)
CD/38	Sefton Local Plan Examination – Aviva Investors Pensions Limited Hearing Statement – Matter 5 (December 2015)
CD/39	WYG Advice Note February 2016 to Inspector's Comments and Retail Representations
Call-in administration	
ADMIN/1	Call-in letter (6 January 2015)
Statements of Case	
SOC/1	Council's statement of case
SOC/2	Applicant's statement of case
SOC/3	Tesco Stores Ltd statement of case
SOC/4	Asda Stores Ltd statement of case
SOC/5	Southport & Windsor Properties LLP statement of case
Statements of Common Ground	
~~SCG/1~~	~~Statement of common ground between the Council and Applicant~~
~~SCG/2~~	~~Addendum to statement of common ground between the Council and Applicant~~
SCG/3	Statement of Common Ground between the Council and Applicant (June 2016)
SCG/4	Technical Statement of Common Ground between the Council, Applicant and Tesco Stores Ltd (June 2016)
Proofs of evidence	
POE/1	Mr Faulkner's proof of evidence
POE/2	Mr Faulkner's supplementary proof of evidence and appendices A-E
POE/3	Mr Mason's proof of evidence
POE/4	Mr Shepherd's summary proof of evidence

POE/5	Mr Shepherd's proof of evidence
POE/6	Mr Shepherd's appendices RS1-RS16
POE/7	Mr Shepherd's rebuttal proof of evidence with appendices RS1-RS2
POE/8	Mr Shepherd's supplementary proof of evidence and appendices 1-2
POE/9	Mr Price's summary proof of evidence
POE/10	Mr Price's proof of evidence
POE/11	Mr Price's appendices TP1-TP25
POE/12	Mr Price's rebuttal proof of evidence and Appendices RE1-RE6
POE/13	Mr Price's Technical Update Note
~~POE/14~~	~~Mr Price's draft Technical Statement of Common Ground (not agreed by any of the other main parties)~~
POE/15	Mr Price's note on the sequential assessment: land at Tulketh Street (28 October 2015)
POE/16	Mr Price's supplementary proof of evidence
POE/17	Mr Price's supplementary appendices
POE/18	Mr Smith's proof of evidence and appendices AJS1-AJS6
POE/19	Mr Smith's appendices AJS7-AJS19
POE/20	Not used
POE/21	Mr Smith's supplementary proof of evidence
POE/22	Mr Tibenham's summary proof, proof of evidence and appendices 1-24
POE/23	Mr Tibenham's note on his updated economic tables and combined impact
POE/24	Mr Tibenham's rebuttal proof of evidence (2 versions – track changed and clean)
POE/25	Mr Tibenham's amended retail tables (revision to Appendix 6 to Document POE/22)
POE/26	Mr Tibenham's amended sales densities (revision to Appendix 10 to Document POE/22)
POE/27	Mr Tibenham's email and Verdict tables concerning sales densities and VAT (12 October 2015)
POE/28	Written statement and correspondence from Mr Tibenham concerning Asda's final position at the resumption of the Inquiry (20 June and 27 June 2016)
~~POE/29~~	~~Mr Sutton's proof of evidence and appendices GS1-GS11~~
~~POE/30~~	~~Mr Sutton's rebuttal note~~
~~POE/31~~	~~Mr Sutton's rebuttal proof of evidence (2 versions – track changed and clean)~~
~~POE/32~~	~~Mr Sutton's amended retail tables (revision to Appendix GS4 to Document POE/17)~~
POE/33	Mr Sutton's updated proof of evidence and appendices 1-26

POE/34	Mr Carney's proof of evidence
POE/34A	Correspondence from Mr Carney concerning the traffic assessment (August and September 2015)
POE/35	Correspondence from Mr Carney and plans relating to the Tulketh Street sequential site
POE/36	Correspondence from Mr Carney regarding conditions (16 October 2015)
POE/37	Mr Carney's planning proof of evidence with oral comments added
POE/38	Mr Carney's highways proof of evidence
Written representations to the application after the call-in	
WR/1	Representations from Dr Pugh MP
WR/2	Letter from Revd Alex Galbraith
WR/3	Letter from Avon Galbraith
WR/4	Letter from Mrs J Devers
WR/5	Letter from Adrianne Trench
WR/6	Letter from Mr and Mrs Cotterill
WR/7	Letter from Mrs P Lawson
WR/8	Letter from Mrs J Robinson
WR/9	Letter from Vivienne Isherwood
WR/10	Letters from Mrs R Norman
WR/11	Letter from W G and A Cavanagh
WR/12	Letter from Mrs C Fletcher
WR/13	Letter from Mr J Fletcher
WR/14	Letter from Mr J Greenwood
WR/15	Letter from Mrs C Farnworth
WR/16	Letter from Mrs A Yates
WR/17	Letter from Mrs H E Holding
WR/18	E mails from Mr R Collins
WR/19	Letter from Mr R Teesdale LLB
WR/20	Letter from Mrs M Salisbury
WR/21	Letter from Mr A Lang
WR/22	Letter from Mr and Mrs Batho
WR/23	Letter from A L Barber (signature difficult to read)
WR/24	Letter from Mrs R Norman
WR/25	Unsigned response
Documents submitted at the Inquiry	
INQ/1	Council's Notification of the Inquiry and list of persons notified

INQ/2	Clarification of the signatories on the Planning Obligation (submitted by Mr Tucker)
INQ/3	Extract from UDP Proposals Map (submitted by Mr Pickles)
INQ/4	Land interests of Southport and Windsor Properties LLP (submitted by Mr Carney
INQ/5	Planning permission and Committee Reports relating to the retail development of the Teardrop Site, Central 12 Retail Park, Southport (submitted by Mr Tibenham)
INQ/6	Extract from the Southport PROMIS Retail Report, 8 September 2015 (submitted by Mr Tibenham)
~~INQ/7~~	~~Definitions attached to Verdict 2015 sales densities (submitted by Mr Pickles)~~
INQ/8	Map extract of the survey zones in Appendix 1 to the *Sefton Retail Strategy Review Update 2012* (submitted by Councillor Dawson)
INQ/9	Photographs of the area to the north of the site, including Argameols Close and its junction with Meols Cop Road (submitted by Mrs K Roberts)
INQ/10	Statement by Miss K Owen read to the Inquiry by Mrs K Roberts
INQ/11	Statement read by Mrs L Roberts to the Inquiry
INQ/12	Information obtained from the Council on casualties and collisions (submitted by Mrs K Roberts)
INQ/13	Aerial photographs of the proximity of Tesco and Sainsbury's stores in Bognor Regis, Irvine, Ely and Penzance (submitted by Mr Young)
INQ/14	Information on prime rents in Southport, Property Market Analysis LLP (submitted by Mr Young)
INQ/15	Prime rent tracking data for Southport 1987-2015, Property Market Analysis LLP (submitted by Mr Young)
INQ/16	Cross tabulation of Questions 01 and 06 from the 2011 Household Survey showing normal mode of travel by customers of Sainsbury's Lord Street (submitted by Mr Young)
INQ/17	Letter from Tesco indicating the convenience turnover of the Southport store (10 September 2015) (submitted by Mr Young)
~~INQ/18~~	~~Draft list of planning conditions~~
INQ/19	Site plans of the new Sainsbury's store in Crosby (submitted by Mr Carney)
INQ/20	Photographs and sales details of 409-411 Lord Street, Southport (submitted by Mr Carney)
INQ/21	Letter from Mr Smith to Mr Carney concerning traffic matters (26 August 2015) (submitted by Mr Tucker)
INQ/22	Note on revised floor area assessment and its effect on the traffic assessment, dated September 2015 (submitted by Mr Smith)
INQ/23	Note on revised traffic assessment, September 2015 (submitted by Mr Smith)

INQ/23A	Further technical note on traffic assessment, 23 October 2015 (submitted by Mr Smith)
INQ/24	Schedule of pooled contributions for Regulation 123 of the CIL Regulations (submitted by Ms Gooch)
INQ/25	Cycle routes map (submitted by Mr Fraser)
~~INQ/26~~	~~Definitions attached to Verdict 2014 sales densities (submitted by Mr Price)~~
INQ/27	Crib sheet for evidence-in-chief of Mr Tibenham
INQ/28	Revised linked trip tables following sensitivity testing (submitted by Mr Tibenham)
INQ/29	Traffic impact assessment calculations (submitted by Mr Carney)
INQ/30	Map showing the 300 m distance from the front door of Asda and up London Street (submitted by Mr Price)
INQ/31	Plan of Ormskirk (submitted by Mr Tibenham)
INQ/32	Unaccompanied site visit schedule agreed between the main parties
INQ/33	Details of Lord Street properties available to let (submitted by Mr Carney)
INQ/34	GOAD plan of vacant properties agreed between the retail consultants (September 2015)
INQ/35	Accident data update, September 2015 (submitted by Mr Smith)
INQ/36	Plan of the Primary Shopping Area as considered by Mr Price
~~INQ/37~~	~~Verdict figures and VAT (submitted by Mr Price and Mr Tibenham)~~
~~INQ/38~~	~~Suggested new wording for draft Conditions 12, 35 and 36 and suggested additional conditions concerning removal of Use Class Order rights and subdivision~~
INQ/39	Correspondence from UBS (17 June 2016)
INQ/40	Correspondence from Savills (20 June 2016)
INQ/41	Correspondence from Sainsbury's (20 June 2016)
INQ/42	Liverpool Echo Article (15 December 2015)
INQ/43	Mr Sutton Trade Draw assumptions sensitivity assessment – mid-point.
INQ/44	West Lancashire Borough Council *Retail and Leisure Study* (December 2011)
INQ/45	Central Lancashire *Retail and Leisure Review* (March 2010)
INQ/46	Atlas Mapping Blog: *A review of supermarket locations* (1 August 2015)
INQ/47	Email and Overview of STEAM Report by Global Tourism Solutions (UK) Ltd
INQ/48	Comparison table of Key Health Check Indicators for Southport, submitted by Mr Young
INQ/49	Errata sheet to Mr Sutton's evidence

INQ/50	Evidence-in-Chief speaking note by Mr Price
INQ/51	CIL compliance schedule
INQ/52	Court of Appeal decision dated 24 June 2016: *Warners Retail (Moreton) Ltd v Cotswold DC, Minton Healthcare Ltd, Glamar Leisure Ltd and Sainsbury's Supermarkets Ltd* [2016] EWCA Civ 606
INQ/53	Evidence-in-Chief speaking note by Mr Sutton in response to Mr Price's speaking note
INQ/54	Photographs of vacant units, submitted by Mr Sutton
INQ/55	List of stores within Southport Town Centre but outside its PSA, submitted by Mr Young
INQ/56A-INQ/56E	Planning policy extracts and Proposals Map relating to the Braintree appeal (Refer to CD/29)
INQ/57	Statement of Common Ground relating to the Braintree appeal (CD/29)
INQ/58	Information concerning the sale of Marble Place Shopping Centre, Southport, submitted by Mr Carney
INQ/59	Emails concerning Central 12, submitted by Mr Carney
INQ/60	Statement of Common Ground on highways matters between the Applicant and Mr Carney
INQ/61A-INQ/61C	Evidence-in-Chief speaking note by Mr Smith, including traffic flow diagrams
INQ/62	Errata Note by Mr Price
INQ/63	Extract from the Southport Visiter relating to Southport rental values (29 June 2016), submitted by Mr Young
INQ/64	Note from Tesco to explain the graphs in Appendix 25 to Mr Sutton's proof, submitted by Mr Young
INQ/65	Note about vacancies produced by Mr Sutton, Mr Shepherd and Mr Price showing areas of agreement and dispute
INQ/66	Comparison of inflow assumptions, submitted by Mr Tucker
INQ/67	Impact comparison table submitted by Mr Tucker
INQ/68	Impact comparison table submitted by Mr Young
INQ/69	PROMIS retail town types agreed between Mr Sutton, Mr Shepherd and Mr Price
INQ/70A-INQ/70B	Combined convenience and comparison expenditure trade draw produced by Mr Carney and corrected by Mr Price
INQ/71	Responses by the Main Parties to the issue of Article 8 of the European Convention of Human Rights (October 2015)
INQ/72	Executed Planning Obligation by Agreement
INQ/73	Written closing submissions by Mr Fraser on behalf of the Council
INQ/74	Written opening and closing submissions by Mr Tucker on behalf of the Applicant

INQ/75	Written opening and closing submissions by Mr Young on behalf of Tesco Stores Ltd
INQ/76	Photographic supplement of disputed units, submitted by Mr Price, Mr Shepherd and Mr Sutton
INQ/77	Written opening submission by Mr Pickles on behalf of Asda
INQ/78A-INQ/78B	Inspector's questions and written responses between the conclusion of Inquiry sitting and its closure
INQ/79	Written response by Mr Price to The Asda letter of 20 June 2016 (Document POE/28) and press article on rental levels submitted by Tesco (Document INQ/63)
INQ/80	Letter closing the Inquiry in writing (22 July 2016)

PLANS

A/1-A/15	Application Plans
B/1-B/4	Revised landscaping proposals (Document SCG/3, Appendix 1)

ANNEX THREE: CONDITIONS

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 2012-002 A-PL-01 Rev B; 2012-002 A-PL-02 Rev B; 2012-002 A-PL-03 Rev D; 2012-002 A-PL-04 Rev A; 2012-002 A-PL-05 Rev B; 2012-002 A-PL-06; 2012-002 A-PL-07; 2012-002 A-PL-08; 2012-002 A-PL-09; 2012-002 A-PL-10 Rev L; 2012-002 A-PL-11; 2012-002 A-PL-12 Rev A; 2012-002 A-PL-13; 2012-002 A-PL-14.

3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) A scheme of noise control for any plant and equipment to be installed on the site shall be submitted to and approved in writing by the local planning authority prior to its installation. The scheme of noise control shall demonstrate compliance with the maximum noise emission limits set out in Section 7 of the *Combined Environmental Noise Survey and Noise Impact Assessment Report* by Hann Tucker (12 August 2014). The approved scheme shall be implemented and shall thereafter be retained and operated in accordance with the manufacturer's instructions.

5) A scheme of odour control for any kitchen or other extraction systems shall be submitted to and approved in writing by the local planning authority prior to their installation. The approved odour control scheme shall be implemented on site before the extraction system is brought into operation. Thereafter it shall be retained and operated in accordance with the manufacturer's instructions for so long as the retail use continues to operate.

6) The development hereby permitted shall not be open for trading until the following highway works have been completed:

- Construction of the new vehicular access and left turn lane off Foul Lane together with the realignment and reconstruction of the pedestrian footway and the installation of flush kerbs and tactile paving either side of the access.
- Closure of the redundant vehicular access on Meols Cop Road together with the realignment and reconstruction of the pedestrian footway.
- Construction of the new traffic signal controlled junction incorporating controlled pedestrian crossing facilities across the access to the car park.
- Removal of the existing bus stop within the lay-by on the east side of Meols Cop Road and introduction of a replacement bus stop within the existing carriageway alignment on the east side of Meols Cop Road, including the installation of access kerbs, a raised footway area, a new bus stop post and timetable and appropriate carriageway markings.
- Upgrading of the existing northbound stop on Meols Cop Road, to the north of Fine Jane's Brook with access kerbs and a raised footway area.
- Installation of flush kerbs and tactile paving either side of Argameols Close at its junction with Meols Cop Road.

- Reconstruction and widening to 3.0m of existing pedestrian/cycle path on the south side of Fine Jane's Brook between Meols Cop Road and Foul Lane, including the provision of a scheme of lighting.
- Introduction of waiting restrictions on both sides of the section of Meols Cop Road between the Kew Roundabout and Fine Jane's Brook.

7) No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to, and approved in writing by, the local planning authority. The CMS shall be carried out as approved and adhered to throughout the construction period. The CMS shall provide for:

- The parking of vehicles of site operatives and visitors.
- Loading and unloading of plant and materials.
- Storage of plant and materials used in constructing the development.
- The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- The drainage of the site whilst ensuring the protection of the surface water system, including Fine Jane's Brook, from pollutants, contamination and construction debris.
- Hours of work.
- Wheel washing facilities.
- Measures to control the emission of dust and dirt during construction.
- A scheme for recycling/disposing of waste resulting from demolition and construction works.

8) No development shall take place until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include details of how construction traffic will be managed during the construction period to ensure the safety of highway users and the free flow of traffic on the highway network. The CTMP shall be carried out as approved and remain in place throughout the construction period.

9) A scheme of noise control for the servicing and delivery areas shall be submitted to and approved in writing by the local planning authority. This shall include details of the acoustic screen, the surfacing treatment to be used on the ramp and the management measures to minimise noise from deliveries as set out in Section 8 of the *Combined Environmental Noise Survey and Noise Impact Assessment Report* by Hann Tucker (12 August 2014). The approved scheme shall be implemented before the store is open for trading and shall thereafter be retained for so long as the retail use continues to operate.

10) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles, has been submitted to and approved in writing by the local planning authority. This shall be based on sustainable drainage principles in accordance with the principles and provisions set out in the *Flood Risk Assessment* by George Harwood Ltd (17 July 2014). It shall also include details of future management and maintenance to ensure it remains effective for the lifetime of the development. The approved surface water drainage scheme shall be carried out before the store is open for trading

and shall be managed and maintained in accordance with the approved details for so long as the retail use continues to operate.

11) No development shall take place until a scheme for the disposal of foul sewerage has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

12) No development shall take place until details of the acoustic fence along the northern boundary with the parking area as shown on Drawing No: 2012-002 A-PL-03 Rev D, including its height, finish and density has been submitted to and approved in writing by the local planning authority. The acoustic fence shall be constructed in accordance with the approved details before the store is occupied and open for trading and shall thereafter be retained for so long as the retail use continues to operate.

13) No pile driving or ground compaction works shall take place unless details of the methodology to be employed; the hours and duration of the works; and the means by which dust, vibration and noise is to be mitigated, have first been approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.

14) The development hereby permitted shall not be open for trading until the Hackney Carriage lay-by as shown on Drawing No: 2012-002 A-PL-03 Rev D has been provided. It shall thereafter be retained for its intended purpose for so long as the retail use continues to operate.

15) The development hereby permitted shall not be open for trading until the areas for car parking and cycle parking have been provided in accordance with the details on Drawing No: 2012-002 A-PL-03 Rev D. These parking areas shall be retained for their intended purpose during the lifetime of the development.

16) The development hereby permitted shall not be open for trading until a Travel Plan Co-ordinator has been appointed. Within 6 months of the opening of the foodstore hereby permitted, a Travel Plan shall have been submitted to and approved in writing by the local planning authority. This shall follow the general principles, strategies, review and monitoring arrangements set out in the Framework Travel Plan, ref VN20135, dated August 2014. The approved Travel Plan shall be in place for so long as the retail use continues to operate.

17) Full details of hard and soft landscaping, including a timetable for implementation, shall be submitted to and approved in writing by the local planning authority prior to the commencement of development. This shall follow the principles in the illustrative Drawing Nos: 1003-05 Rev D and 1003-07 Rev C. Development shall be carried out in accordance with the approved details and timetable. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.

18) A Landscape Management Plan, which sets out long term design objectives, management responsibilities and maintenance schedules for all landscaped areas approved under Condition 17 shall be submitted to and approved in writing by the local planning authority before the development is first occupied. The Landscape Management Plan shall be carried out as approved

and its provisions implemented during the lifetime of the development hereby permitted.

19) No development shall take place until a scheme for refuse storage and recycling has been submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out before the store is open for trading and shall be retained for so long as the retail use continues to operate.

20) The collection of waste from the recycling centre shall not be undertaken outside the hours of 0800 and 2000.

21) The mitigation measures in Section 5 of the *Extended Phase 1 Habitat Survey* by RPS (30 January 2014) relating to habitats, protected species and invasive species shall be carried out both during the course of construction and during the operation of the retail use.

22) The measures in the *Renewable Energy & Energy Efficient Assessment* by Sustainable Design Solutions Ltd (24 February 2014) shall be incorporated into the design of the store and shall be available for use before it is open for trading. The measures shall be retained for so long as the retail use continues to operate.

23) All external lighting on the building and within the site boundary shall be housed in full cut-off lanterns with an angle of elevation set no higher than 5 degrees from the horizontal to limit sky glow and glare.

24) The foodstore hereby permitted shall be subject to the following floorspace restrictions:

- The total gross internal floorspace shall not exceed 10,942 m^2 including any mezzanine floorspace.
- The net retail floor area (excluding checkouts, lobbies, concessions, restaurants, customer toilets and walkways behind the checkouts) shall not exceed 5,574 m^2 including any mezzanine floorspace.
- The total retail sales area for the sale and display of convenience goods shall not exceed 3,809 m^2 including any mezzanine floorspace.
- The total retail sales area for the sale and display of comparison goods shall not exceed 1,765 m^2 including any mezzanine floorspace.

25) The development hereby permitted shall be used as a single unit and shall not be subdivided into two or more retail units.

26) The 2 concession units contained within the building hereby permitted shall not exceed 145 m^2 (gross internal floor area).

27) Apart from the development hereby permitted, no other retail unit on the retail park, as defined by the blue line on Drawing No 2012-002 A-PL-01 Rev B, shall be used for the sale or display of convenience goods.

28) No other retail unit on the retail park, as defined by the blue line on Drawing No 2012-002 A-PL-01 Rev B, shall be further subdivided into two or more retail units.

End of conditions

Department for
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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act
With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act
Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.