

**NOTICE OF MEETING**

**COMMITTEE : DEVELOPMENT CONTROL COMMITTEE**

**DATE : MONDAY, 11 MARCH 2019**

**TIME : 16:00**

**PLACE : COMMITTEE ROOMS 1 AND 2**

<b>COUNCILLORS:</b>	<b>D. TAYLOR (CHAIR</b>	<b>M. J. DOLLING</b>
	<b>LEWIS (VICE-CHAIR)</b>	<b>FRANKS</b>
	<b>AGBLEY</b>	<b>HUSSAIN</b>
	<b>M. AYUB</b>	<b>RIVERS</b>
	<b>CAMPBELL</b>	<b>DR. R. SALEEM</b>
	<b>CHOWDHURY</b>	

**QUORUM : 3 MEMBERS**

Matthew Hussey (01582 546032)

**INFORMATION FOR THE PUBLIC**


**PURPOSE:** This Committee determines applications for planning permission; applications for consent to the display of advertisements; and applications for Hazardous Substances Consent. It also has authority to authorise action in respect of any breach of planning control


This meeting is open to the public and you are welcome to attend.

For further information, or to see the papers, please contact us at the Town Hall:

**IN PERSON**, 9 am to 5 pm, Monday to Friday, or

**CALL** the Contact Officer (shown above).

An induction loop  facility is available for meetings held in Committee Room 3.

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Members of the public are entitled to take photographs, film, audio-record and report on all public meetings in accordance with the Openness of Local Government Bodies Regulations 2014. People may not however act in anyway considered to be disruptive and may be asked to leave. Notice of these rights will be given verbally at the meeting.

# AGENDA

<i>Agenda Item</i>	<i>Subject</i>	<i>Page No.</i>
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## EMERGENCY EVACUATION PROCEDURE

### **Committee Rooms 1, 2, 4 & Council Chamber:**

Turn left, follow the green emergency exit signs to the main town hall entrance and proceed to the assembly point at St George's Square.

### **Committee Room 3:**

Proceed straight ahead through the double doors, follow the green emergency exit signs to the main Town Hall entrance and proceed to the assembly point at St George's Square.

## INTRODUCTIONS, PHOTOGRAPHY, FILMING & AUDIO RECORDING

### 1. **APOLOGIES FOR ABSENCE**

### 2. **MINUTES**

#### 1. 16th January 2019

4 - 28

### 3. **SECTION 106, LOCAL GOVERNMENT FINANCE ACT 1992**

Those item(s) on the Agenda affected by Section 106 of the Local Government Finance Act 1992 will be identified at the meeting. Any Members so affected is reminded that (s)he should disclose the fact and refrain from voting on those item(s).

### 4. **DISCLOSURES OF INTEREST**

Members are reminded that they must disclose both the existence and nature of any disclosable pecuniary interest and any personal interest that they have in any matter to be considered at the meeting unless the interest is a sensitive interest in which event they need not disclose the nature of the interest.

A member with a disclosable pecuniary interest must not further participate in any discussion of, vote on, or take any executive steps in relation to the item of business.

A member with a personal interest, which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the member's judgment of the public interest, must similarly not participate in any discussion of, vote on, or take any executive steps in relation to the item of business.

Disclosable pecuniary interests and Personal Interests are defined in the Council's Code of Conduct for Members and Co-opted members.

5. **URGENT BUSINESS**  
The Chair to report on any business which is considered to be urgent and which should be discussed at the meeting in accordance with Section 100B(4)(b) of the Local Government Act 1972 and to determine when, during the meeting, any such business should be discussed.

6. **REFERENCES FROM COMMITTEES AND OTHER BODIES**

**SERVICE ISSUES**

7. **LAND ADJACENT JUNCTION 10 TO 10A M1  
NEWLANDS ROAD, LUTON** 29 - 160  
(Report of the Development Control Manager)

8. **DEPOSITED PLANS AND APPLICATIONS FOR  
PLANNING PERMISSION AND OTHER  
PROPOSALS**  
(None This Time)

9. **LOCAL GOVERNMENT ACT 1972, PART VA**  
To consider whether to pass a resolution under Section 100A(4) of the Local Government Act 1972 to exclude the public from the meeting during consideration of any item listed above if it is likely that if members of the public were present during those items there would be disclosure to them of exempt information falling within the Paragraphs of Part 1 of Schedule 12A to the Local Government Act 1972.

**DEVELOPMENT CONTROL COMMITTEE**

**16<sup>th</sup> January 2019 at 6.00 P.M.**

**PRESENT:** Councillors D. Taylor (Chair), Lewis (Vice-Chair), Agbley, M. Ayub, Campbell, Chowdhury, Franks, Hussain, and Rivers.

**10. APOLOGIES FOR ABSENCE (REF: 1)**

Apologies for absence from the meeting were received on behalf of Councillors MJ Dolling and R. Saleem.

**11. MINUTES**

**None this time.**

**12. POWER COURT LUTON – OUTLINE PLANNING PERMISSION (REF: 7)**

The Planning Consultant reported on Application No. 16/01400/OUTEIA submitted by 2020 Developments Luton Ltd on behalf of Luton Football Club for planning permission in relation to power court, Luton - outline planning permission, with all matters reserved except for access, for mixed use development comprising: a new football stadium (use class D2), with ancillary stadium-related facilities (including spectator and media facilities, conference rooms, catering facilities and commercial space); residential floor space (Use Class C3); flexible educational/community/commercial uses (Use Class D1/D2/B1(A)); hotel accommodation (Use Class C1); retail and food and drink (Use Class A1-A5); a food store (Use Class A1) car and cycle parking; and associated access, highways, utilities, public realm, landscaping, river works and associated ancillary works and structures at Power Court, Luton.

He further reported that 3047 adjoining occupiers had been notified of the application, site notices and a press notice had also been issued, and 8,869 letters of representation to the proposal had been received (62 objections, 80 anonymous and 8727 in support).

In accordance with the right to speak procedure the Applicants addressed the Committee. Two people also spoke and expressed concerns in regards to specific aspects of the application but were generally in support. In addition, a letter from Capital & Regional was read out at the meeting.

Also, a summary from Sport England's consultation response was read out at the meeting.

**Resolved:** That Application No. 16/01400/OUTEIA be granted subject to referral to Secretary of State and to the satisfactory completion of a S106 Agreement to secure on-site affordable housing, phasing development plans, provision of public realm, construction, employment and training initiatives/schemes, the provision of Controlled Parking Zones and financial

contributions to affordable housing, transport/highway improvements, railway signage, waste infrastructure, and education; and subject to the following conditions some of which were amended pursuant to delegated authority being given to the Development Control Manager to amend the wording of conditions to ensure their effectiveness including but not limited to the s:278 conditions; to ensure the consistency of the conditions in the Appendix within the list set out in the report; add further conditions thought to be reasonably required including but not limited to the provision of Public Realm and Stadium Management conditions, and further to matters of clarification as set out in resolution (b)(i) to:-

- The completion of a S106 in respect of a Controlled Parking Zone – this shall seek a contribution towards potential consultation and the extension of the CPZ if it is required.
- Addition of wording in S106 phasing plans to ensure the Stadium is brought forward in parallel with/completed before the residential and commercial phases.
- The administration and monitoring fee set out be increased from £2,000 (two thousand pounds) to £6,000.00 (Six thousand pounds).

**(a) The Committee further Resolved as set out below:-**

**(01) The requirements of Part II of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (as amended) are satisfied by reason of the Environmental Statement and the Addendum, attached thereto including at least the following information:**

- (i) A description of the development comprising information on the site, design and size of the development;**
- (ii) A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;**
- (iii) The data required to identify and assess the main effects which the development is likely to have on the environment;**
- (iv) An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects;**
- (v) A non-technical summary of the information provided under paragraphs i) to iv) above.**

**(02) An Addendum Environmental Statement was submitted whose conclusions do not differ from those in the originally submitted Environmental Statement.**

**(03) That it be recorded that, in making the decision on the application, the Committee has taken into account the environmental information comprising the Environmental**

Statement and Addendum and that this information meets the minimum requirements of Part II of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (as amended).

(b) Grant planning permission subject to:-

(i) The satisfactory completion of an agreement under Section 106 of the Town and Country Planning Act 1990 to contain the following:

- Affordable Housing: 10% provision on site – (50% affordable intermediate to buy, and 50% affordable rent) and 10% (£21000 per unit) as a financial contribution
- Phasing development plans.
- Provision of public realm
- Construction, employment and training initiatives/schemes;
- The provision of Controlled Parking Zones (CPZ)
- Financial contributions towards:
  - Transport/Highways – contributions amounting to £2.1 million to be used as follows:
    - £700,000 St Marys Roundabout improvements
    - £300,000 Kimpton/ Windmill junction improvement
    - £400,000 Hucklesby/Hitchin Rod junction improvement
    - £100,000 Sustainable Transport contribution.
    - £300,000 Crawley Green Road/ Crescent Road junction contribution,
    - £300,000 Highways Improvements consisting including street lighting in the vicinity of Power Court
  - Waste - £19500 towards waste infrastructure
  - Education – to be calculated upon the following formula:
    - 2 bed dwelling – £5778.00 per dwelling
    - 3 bed dwelling – £11295.00 per dwelling
    - 4 bed dwelling – £19297.00 per dwelling;

To be used as follows:

**The remodelling of the York street site external areas to provide playground space. The secondary contribution will be put towards the new Chiltern academy school at the Brache for offsite service provision of the new school.**

- **£6000 administration and monitoring fee**
- **Railway signage – Contribution to be agreed towards pedestrian walkways and signage**

**(ii) To the refer the application to the Development Control Committee if a S106 Agreement to secure the Heads of Terms identified in (b)(i) of this report has not been satisfactorily completed by 30th April 2020 (or another date as agreed with the Development Control Manager) for the reason that the proposed development would not be accompanied by associated infrastructure improvements.**

**(c) Grant planning permission subject to the imposition of the following conditions:-**

(01) A Masterplan for each phase of the development (each phase to be specifically determined/approved within the related s106 agreement) as set out in the Design and Access statement shall be submitted to and approved in writing by the Local Planning Authority prior to the submission of the details reserved for subsequent approval. The plan shall identify all aspects of the phasing of the proposed development, and should set out the details of both the public realm, the elements of the built form and the works to the River Lea. The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Masterplan. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).

(02) Details of a Design Code as indicated in the Design and Access statement shall be submitted to and approved in writing by the Local Planning Authority prior to the submission of the details reserved for subsequent approval. The plan shall identify all details to maximise the quality and legibility of the spaces, to help reinforce local character and accessibility, the details should ensure that these areas would be high quality and suitable for both match and non-match day use. In this regard the concourse areas and footpaths should be of high quality, with durable landscaping that has a good amount of detail and infrastructure. The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Design Code. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).

- (03) The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the latter. (Reason: To accord with the provisions of section 91 of the Town and Country Planning Act 1990).
- (04) Applications for approval of all reserved matters for the first phase of the outline development hereby permitted shall be made to the Local Planning Authority before the expiration of three years from the date of permission. Thereafter, applications for approval of all subsequent reserved matters relating to all additional phases shall be made to the Local Planning Authority before the expiration of two years from the date of approval of the reserved matters of the preceding phase. (Reason: To accord with the provisions of section 91 of the Town and Country Planning Act 1990).
- (05) Approval in writing by the Local Planning Authority of the details of the layout, scale and appearance of the building(s), and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority before any phase of the development is commenced. The development shall be carried out in accordance with the approved details. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. The development shall be carried out in accordance with the approved details. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan).
- (06) The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the parameter plans submitted therewith or as shall have been otherwise approved in writing by the Local Planning Authority. For the avoidance of doubt, the approved plans are 400\_PCT (0) 001C, 400\_PCT (0) 002C, 400\_PCT (0) 003C, 400\_PCT (0) 101C, 400\_PCT (0) 100C 400\_PCT (0) 102B, 400\_PCT (0) 103B, 400\_PCT (0) 104B, 400\_PCT (0) 105C, 400\_PCT (0) 106C, 400\_PCT (0) 107C, 400\_PCT (0) 108B, 400\_PCT (0) 109B, 400\_PCT (0) 110D, 400\_PCT (0) 120C and 400\_PCT (0) 121C. (Reason: To ensure the development is carried out in accordance with the planning permission and to ensure that any development that is carried out is that which has been assessed. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan).
- (07) Development composition  
The development hereby approved shall be limited to the following:
- A community stadium with a capacity of up to 23,000, with ancillary stadium-related facilities Stadium;
  - Up to 550 residential units (use class C3), distributed across eight blocks;



- An entertainment, music and conference venue (use class D2) of up to 2,700 sq. m;
- Up to 2,800 sq. m of educational / community / commercial floorspace (use class D1 / B1(a));
- Up to 2,600 sq. m of other entertainment (use class D1 / D2) floorspace;
- Up to 12,000 sq. m of hotel accommodation (use class C1);
- Up to 10,800 sq. m of retail and food and beverage floorspace (uses class A1 - A5);
- A foodstore (use class A1) of up to 3,000 sq. m;
- Up to 1,200 car parking spaces; and
- Associated access, highways, utilities, public realm, landscaping, river works and other associated works and structures.

(Reason: to ensure the development is carried out in accordance with the planning permission and to ensure that any development that is carried out is that which has been assessed. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan).

- (08) In respect of any of the above Class D1 uses hereby approved, notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification; the use shall not be changed to a place of worship without further approval in writing from the Local Planning Authority. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan).
- (09) In respect of the above D2 uses hereby approved, notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification; the use shall not be changed to a cinema, music and concert hall, dance hall, skating rink, bingo hall and casino without further approval in writing from the Local Planning Authority. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan).
- (10) Prior to commencement of any A3, A4 or A5 use hereby permitted, details of any kitchen extraction system shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be in place prior to occupation of the units. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan).
- (11) In respect of the Class D2 use of the stadium hereby approved, notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that

Order with or without modification; the stadium bowl (i.e. the pitch and spectator terraced seats.) shall not be used for events for the purpose of:

(i) A standalone musical performance.

(Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).

- (12) Apart from the stadium and its ancillary uses, the non-residential floor space and uses hereby permitted shall not be open to customers/members of the public outside the hours of 8.00am to 11.00pm Monday to Saturday and 9.00am to 9.00pm on Sundays, Public Holidays and Bank Holidays. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).
- (13) The stadium shall not hold major events (i.e. football matches) outside the hours of 9.00am to 11.00pm. Ancillary uses within the stadium building shall not be open to customers/members of the public outside the hours of 8.00am to 1.00am (the following day) Monday to Saturday and 10.00am to 9.00 pm on Sundays, Bank Holidays and Public Holidays, unless otherwise agreed in writing by the Local Planning Authority. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).

#### Archaeology

- (14) A) Each phase of the development shall not commence until the applicant has secured the implementation of a programme of archaeological evaluation in accordance with a written scheme which has been submitted to and approved by the Local Planning Authority.
- B) if heritage assets of archaeological interest are identified by the evaluation under Part A, then before development of each phase commences the applicant (or their heirs and successors in title) shall secure the implementation of a programme of archaeological investigation in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved by the Local Planning Authority in writing.
- C) No development or demolition for each phase shall take place other than in accordance with the Written Scheme of Investigation approved under Part B.
- D) Each phase of the development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part B, and the provision for analysis, publication and dissemination of the results and archive deposition has been secured.

(Reason: to ensure satisfactory regard is given to archaeological heritage. To accord with the objectives of Policies LLP1 and LLP30 of the Luton Local Plan).

### Demolition/Construction

- (15) No demolition or construction works shall take place on the site except between the hours of 8.00am to 6.00pm on Monday to Friday and 9.00am to 1.00pm on Saturdays and none shall take place on Sundays, Bank Holidays and Public Holidays without the prior written agreement of the Local Planning Authority. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).
- (16) A Construction Environmental Management Plan for each phase of the development as in the agreed phasing plan (unless otherwise agreed in writing), shall be submitted to and approved in writing by the Local Planning Authority prior to the implementation of each phase of the development. The plan shall identify all aspects of construction that could have an environmental impact and provide management controls to eliminate and/or minimise those identified impacts, with impacts to be addressed including but not being limited to piling, traffic, construction dust and noise and any disturbance to vegetation. The plan shall also include details of the arrangements for the temporary use and/or management (as appropriate) of those parts of the sites awaiting redevelopment. The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Construction Environmental Management Plan. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).
- (17) No development of each phase shall commence until a Construction Logistics Plan (CLP) for the relevant phase has been submitted to and approved in writing by the Local Planning Authority. Heavy vehicles are to be routed to avoid travelling through the residential areas near the site. The CLP should include for the relevant phase:
- a) Booking systems
  - b) Consolidated or re-timed trips
  - c) Secure, off-street loading and drop-off facilities

The CLP shall be carried out as approved.

(Reason: In order to ensure that deliveries to the site during construction are managed effectively so as to minimise impact upon the road network and to safeguard the amenities of residential properties in the locality and in the interest of road safety. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).

- (18) No impact piling shall take place until a piling method statement (detailing the type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement. (Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP36 of the Luton Local Plan).
- (19) No development of each agreed development phase shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details. (Reason: In order that the Council may be satisfied as to the details of the development relating to appearance in the interest of the visual amenity of the area and having regard to the site's sensitive location. To accord with the objectives of Policies LLP1, LLP25 and LLP30 of the Luton Local Plan).
- (20) No development of the stadium shall take place until samples of all materials to be used for the external surfaces of the stadium, including materials to be re-used, have been submitted to and approved in writing by the Local Planning Authority. The stadium shall be built and completed using the approved materials. (Reason: In order that the Council may be satisfied as to the details of the development relating to appearance in the interest of the visual amenity of the area and having regard to the site's sensitive location. To accord with the objectives of Policies LLP1, LLP25 and LLP30 of the Luton Local Plan).
- (21) Construction work shall not begin until a scheme for protecting neighbouring amenity from noise from the works has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be carried out during the duration of all construction works. (Reason: To protect the amenities of neighbouring properties. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).

#### Contamination and remediation

- (22) No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the

site has been submitted to and approved in writing, by the Local Planning Authority.

1. A preliminary risk assessment which has identified
  - a. all previous uses
  - b. potential contaminants associated with those uses
  - c. a conceptual model of the site indicating sources, pathways and receptors
  - d. potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the local planning authority. The scheme shall be implemented as approved. (Reason: To protect ground water and ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).

- (23) Prior to any part of the approved development being occupied, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing, by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. (Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).
- (24) The development hereby permitted shall not commence until a monitoring and maintenance plan in respect of contamination, including a timetable of monitoring and submission of reports to the Local Planning Authority, has been submitted to, and approved in writing by, the Local Planning Authority. Reports as specified in the approved plan, including details of any necessary contingency action arising from the monitoring, shall be submitted to, and approved in

writing by, the Local Planning Authority. The maintenance plan shall be carried out as approved including any contingency works required. (Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).

- (25) If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the Local Planning Authority. The remediation strategy shall be implemented as approved. (Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).
- (26) Before the development hereby permitted commences:
- a) A contaminated land Phase 1 desk study report shall be submitted to, and approved in writing by the Local Planning Authority. Should the Phase 1 report recommend that a Phase 2 site investigation is required, then this shall be carried out and submitted to, and approved in writing by the Local Planning Authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report should include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary.
  - b) If required, a scheme for decontamination of the site shall be submitted to the Local Planning Authority, for written approval. The scheme shall account for any comments made by the Local Planning Authority before the development hereby permitted is first occupied. During the course of the development:
  - c) The Local Planning Authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination, and shall submit appropriate amendments to the scheme for decontamination in writing to the Local Planning Authority for approval before any work on that aspect of development continues. Before the development is first brought into use:
  - d) The agreed scheme for decontamination referred to in clauses b) and c) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the Local Planning Authority for approval.

(Reason: Contamination is known or suspected on the site due to a former land use. The Local Planning Authority therefore wishes to ensure that the development can be implemented and occupied with

adequate regard for public and environmental safety. To accord with the objectives of Policies LLP1, LLP28 and LLP38 of the Luton Local Plan).

## Drainage, Water Supply and River Lea

- (27) No drainage systems for the infiltration of surface water to the ground are permitted other than with the written consent of the Local Planning Authority. Any proposals for such systems must be supported by an assessment of the risks to controlled waters. The development shall be carried out in accordance with the approved details. (Reason: To prevent pollution of the water environment. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).
- (28) Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details. (Reason: To prevent pollution of the water environment. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).
- (29) A scheme for managing any borehole installed for the investigation of soils, groundwater or geotechnical purposes shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide details of how redundant boreholes are to be decommissioned and how any boreholes that need to be retained, post-development, for monitoring purposes will be secured, protected and inspected. The scheme as approved shall be implemented prior to the occupation of any part of the approved development. (Reason: To ensure that redundant boreholes are safe and secure, and do not cause groundwater pollution or loss of water supplies. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan).
- (30) The new channel for the River Lea must be fully functional before any flows are diverted into it. (Reason: To prevent the risk of flooding upstream should the River Lea be diverted before the new channel is correctly constructed. To prevent the increased risk of flooding and to prevent pollution of the water environment. To accord with the objectives of Policies LLP1 and LLP36 of the Luton Local Plan).
- (31) No occupation of any part of the approved development shall take place until a scheme for the provision and management of a buffer zone alongside the River Lea has been submitted to and agreed in writing by the Local Planning Authority. Thereafter the development shall be carried out in accordance with the approved scheme and any subsequent amendments shall be agreed in writing with the Local Planning Authority. The buffer zone scheme shall be free from built development including lighting, and formal landscaping; and could form a vital part of green infrastructure provision. The schemes shall include:
- plans showing the extent and layout of the buffer zone.
  - details of any proposed planting scheme (for example, native species).



- details demonstrating how the buffer zone will be protected during development and managed/maintained over the longer term including adequate financial provision and named body responsibility for management, plus production of a detailed management plan.
- details of any proposed footpaths, fencing and lighting.

(Reason: Land alongside watercourses is particularly valuable for wildlife and it is essential this is protected, and to safeguard drainage interests. To accord with the objectives of Policies LLP1, LLP25, LLP28 and LLP36 of the Luton Local Plan).

- (32) No occupation of any part of the approved development shall take place until the newly proposed section of the River Lea is constructed in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. (Reason: To ensure that the proposed section of the River Lea is developed in a way that contributes to the nature conservation value of the site, and to safeguard drainage interests. To accord with the objectives of Policies LLP1, LLP25, LLP28 and LLP36 of the Luton Local Plan).
- (33) Prior to commencement of development, impact studies of the existing water supply infrastructure shall be submitted to, and approved in writing by the Local Planning Authority (in consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point, and where new infrastructure is required this shall be implemented in accordance with approval given in writing, prior to occupation of each phase of the development. (Reason: To ensure that the water supply infrastructure has sufficient capacity to cope with the/this additional demand. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).
- (34) No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency and Thames Water. The design should generally be in accordance with the Flood Risk Assessment and Drainage Strategy dated August 2016, prepared by Peter Brett Associates LLP and subsequent Technical Notes 3244 4001/001 (dated 30/09/2016) and 3244 4001/002 (dated 13/10/2017) and contain the agreed principles and details of:
- Appropriate plans showing the detail of the proposed drainage system including levels, locations and detailed drawings;
  - Flow control, conveyance and attenuation features;
  - Exceedance route in the event of the drainage system becoming blocked or overwhelmed;
  - Clear demonstration of roof, car park and road drainage with appropriate water quality treatment stages and pollution control devices;

- Clear demonstration of relationship between the drainage and landscape strategy and their integrated approach to at source attenuation and treatment, open and/or overground conveyance features, biodiversity and amenity;
- Details of the pitch drainage system;
- Clear demonstration how water harvesting and recycling has been incorporated into the drainage strategy, especially for the football pitch.

(Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP30 of the Luton Local Plan).

- (35) Prior to the commencement of development, the drainage system approved under Condition 34 above, shall be implemented in accordance with the approved detailed design. Implementation of the approved drainage system shall be checked by a suitably qualified person and confirmation submitted in writing to the Local Planning Authority that the system operates as designed, together with a set of “as built” drawings. (Reason: To prevent an increased risk of flooding and surface and ground water pollution and ensure the long term maintenance of sustainable drainage systems to accord with the objectives of Policy LLP36 of the Luton Local Plan and the National Planning Policy Framework (NPPF)).

#### Sustainability and Design

- (36) No above ground works of any phase shall take place until a detailed scheme of feasible on-site sustainability measures covering:
- (a) The sourcing of materials to be used in the construction of and fitting out of the building (involving reuse, recycling and other sustainable sourcing);
  - (b) Certification that the stadium would achieve a BREEAM Good rating for the relevant areas of stadium;
  - (c) The use of passive ventilation and other passive measures;
  - (d) Reducing carbon emissions from the total energy needs (heating, cooling and power) by 25% from the 2010 Part L Building Regulations Standards for the overall outline phases (including from the on-site generation of renewable energy);
  - (e) Details of arrangements to allow future connection to a centralised energy centre either on the site or in the locality (district heating network);
  - (f) Details of ecological enhancements including biodiversity and habitat planting, provision of bird boxes, bat roots; and
  - (g) Rainwater harvesting.
- Has been submitted for each phase and approved in writing by the Local Planning Authority. The scheme as approved for each phase shall be implemented prior to occupation of that phase unless otherwise approved in writing by the Local Planning Authority and retained and maintained thereafter.

(h) Within 3 months of first use of the stadium a BREEAM Post Construction Certificate for the relevant aspects of the stadium, issued by the BRE or equivalent licensing organisation, must be submitted for the stadium to the Local Planning Authority to demonstrate that a BREEAM Good has been achieved. All the measures integrated shall be retained for as long as the development is in existence.

(Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP37 of the Luton Local Plan).

- (37) Prior to the commencement of any above ground works of each phase of the development, a scheme shall be submitted to and approved in writing by the Local Planning Authority, giving details of how the buildings, open spaces and car parking shall address 'Secured by Design' principles. Each phase of the development shall be carried out in full accordance with the approval details and maintained thereafter. The scheme shall include adequate provision for emergency access to the football pitch and 'real time' travel information for spectators. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).

#### Landscaping/Trees

- (38) (i) Full details of hard and soft landscaping works for each phase of the areas covered by the outline planning permission shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of that phase on the site. An appropriate area of communal amenity space shall be provided on site, and each dwelling shall have a private balcony that meets minimum standards.
- (ii) The landscape details shall include provision of on-site children's play space for children under five years old and children aged six to eleven years old. The children's play space shall be completed prior to the first occupation of residential units in each phase of the development and shall be permanently maintained thereafter.
- (iii) For both (i) and (ii) above, hard landscaping details shall include hard surfacing materials, proposed finished levels or contours, means of enclosure and boundary treatments, vehicle and pedestrian access and circulation area, minor artefacts and structures (including benches, lighting, CCTV, works of art and other similar aspects of the development), proposed and existing functional services above and below ground (including drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports and other similar aspects of the development), walls, gates, fences and boundary treatments.
- (iv) All hard landscape work shall be carried out in accordance with the approved details prior to any occupation of the relevant phase and retained and maintained thereafter.
- (v) Soft landscaping details shall be carried out in accordance with the approved details within 12 months of the occupation of the relevant

phase and shall include proposed finished levels or contours, planting plan, written specifications (including cultivation and other operations associated with plant and grass establishment), plant schedules (noting species, plant sizes and proposed numbers/densities) and tree pits and species proposed to be planted therein and measures to ensure protection from services routes and tree species that assist in the mitigation of air pollution. (vii) If within a period of five years from the date of planting any tree or specimen shrub or green roof area or green roofing planted in replacement for it is removed, uprooted or destroyed or dies (or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective), another tree or specimen shrub of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.

(Reason: To enable the Local Planning Authority to monitor the implementation of the approved landscaping scheme. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).

- (39) A landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for each phase of the areas covered by the outline permission for all hard and soft landscape areas shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of that phase. The maintenance schedule shall be for a minimum period of ten years and include details of the arrangements for its implementation. The landscape management plan shall be carried out as approved. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).

- (40) The plans and particulars submitted in accordance with condition (39) above shall include:
- (a) A plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
  - (b) Details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
  - (c) Details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
  - (d) Details of any proposed alterations in existing ground levels, and of the position of any proposed excavation; and
  - (e) Details of the specification and position of fencing (and of any other measures to be taken) for the protection of any retained tree from damage before or during the course of development.

In this condition “retained tree” means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above. *(Reason: In order that the Local Planning Authority may be satisfied as to the arrangements for protecting trees in the interests of visual amenity area and to accord with policies. To enable the Local Planning Authority to monitor the implementation of the approved landscaping scheme. To accord with the objectives of Policies LLP1 and LLP25 and of the Luton Local Plan).*

#### General Servicing Provisions

- (41) Prior to carrying out any above ground works of development on any phase an external lighting strategy and details of CCTV for that phase of the development shall be submitted to and approved in writing in the Local Planning Authority. Lighting and CCTV for each phase shall be completed in accordance with the approved strategy for each phase prior to occupation of that phase, and shall be maintained in accordance with the approved details permanently thereafter. *(Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan).*
- (42) Prior to commencement of any above ground works of each phase of development, a 'Signage Details Strategy' for any non-residential uses within that phase shall be submitted to and approved in writing by the Local Planning Authority for use in the determination of any subsequent applications for Advertisement Consent. The Strategy shall include details of a universal fascia size, means of projection, the use of materials and the form of illumination. The development shall proceed in accordance with the agreed details unless otherwise agreed in writing with the Local Planning Authority. *(Reason: In the interests of visual amenity by securing some uniformity in the signage of the development whilst not preventing a successful corporate branding. To accord with the objectives of Policies LLP25 and LLP26 of the Luton Local Plan).*
- (43) Prior to the commencement of any above ground works of each phase of the development, details of the arrangements for storage and collection of refuse and recycling for the approved dwellings and uses, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details prior to occupation of each phase, and shall be maintained permanently thereafter. *(Reason: To ensure adequate provision is made for storage and management of refuse and recycling, and to ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan).*

- (44) Prior to commencement of any above ground works a report that details arrangements for accessibility to the Football Stadium, covering matters detailed in the 'Stadium Management Report' shall be submitted to and approved in writing by the Local Planning Authority. No above ground works shall commence until details of arrangements for accessibility of disabled people to the buildings and facilities for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved details shall be carried out prior to occupation of the Football Stadium and maintained permanently thereafter. (Reason: To ensure satisfactory inclusive access is provided to the development. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).
- (45) No above ground works shall commence until details of anti-terrorism measures for the stadium building and access thereto have been submitted to and approved in writing by the Local Planning Authority. Approved measures shall be implemented prior to the first use of the stadium and maintained permanently thereafter. The approved scheme shall be carried out prior to occupation of each phase and maintained permanently thereafter. (Reason: In the interests of public safety and to ensure a satisfactory standard of development and in the interests of security and the prevention of crime. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).
- (46) Floodlighting to the stadium shall only be permitted if details are submitted to and approved in writing by the Local Planning Authority before the stadium is first used. Development shall be carried out in accordance with the approved details. The approved floodlighting shall not be used before 8.00am or after 11.00pm on any day or within 30 minutes of the end of any major event. (Reason: To minimise impacts on the surrounding environment, to ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan).
- (47) Prior to first use of the stadium; details of the location and type of cycle parking for the stadium, (in accordance with the Local Plan cycle parking standards) to provide a minimum of 400 free cycle parking spaces, shall be submitted to and approved in writing by the Local Planning Authority. Cycle parking shall be provided in accordance with the approved details prior to the first use of the stadium, with these facilities to be permanently maintained thereafter and available free for members of the public to use outside match times. (Reason: To maximise cycling as a mode of travel to the site and to ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP32 of the Luton Local Plan).
- (48) Save in respect of the stadium cycle parking specified in condition 47 above, no occupation of any phase shall commence until details of cycle parking in accordance with the Local Plan cycle parking

standards for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved cycle parking shall be implemented prior to occupation of buildings within that phase. (Reason: To maximise cycling as a mode of travel to the site. To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP32 of the Luton Local Plan).

- (49) Prior to the first use of the stadium, details of the location and type of car parking for the stadium, in accordance with the Local Plan parking standards shall be submitted to and approved in writing by the Local Planning Authority. Parking shall be provided in accordance with the approved details prior to the first use of the stadium, with these facilities to be permanently maintained thereafter and available free for members of the public to use outside match times. (Reason: To avoid the creation of traffic congestion on the highway in the interests of safety and convenience of pedestrians and other road users. To accord with the objectives of Policies LLP1, LLP2 and LLP31 of the Luton Local Plan)
- (50) Save in respect of the stadium car parking specified in condition 49 above, no occupation of any phase shall commence until details of parking in accordance with the Local Plan parking standards for that phase has been submitted to and approved in writing by the Local Planning Authority. Parking shall be provided in accordance with the approved details prior to the first use of the approved phase, with these facilities to be permanently maintained thereafter. (Reason: To avoid the creation of traffic congestion on the highway in the interests of safety and convenience of pedestrians and other road users. To accord with the objectives of Policies LLP1, LLP2 and LLP31 of the Luton Local Plan).
- (51) No part of the development hereby approved shall be brought into use until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority (who shall consult with Highways England on behalf of the Secretary of State). The Travel Plan shall be in line with the prevailing policy and best practice and shall include as a minimum:
- The identification of targets for trip reduction and modal shift;
  - The methods to be employed to meet these targets;
  - The mechanisms for monitoring and review;
  - The mechanisms for reporting;
  - The penalties to be applied in the event that the targets are not met;
  - The mechanisms for mitigation;
  - Implementation of the travel plan to an agreed timetable and its operation thereafter; and
  - Mechanisms to secure variations to the Travel Plan following monitoring and review, in particular whilst the Stadium has an initial capacity of 17,500, and prior to the consideration of an increase to 23,000 capacity.

The Travel Plan shall be implemented as approved before occupation of the development. (*Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan*).

- (52) Prior to the first use of the Stadium, details of arrangements for and management of coach parking, and taxi pick up and drop off areas for the Stadium shall be submitted to and approved in writing by the Local Planning Authority. The parking management scheme shall be implemented as approved before first use of the Stadium. (*Reason: In the interests of highway and pedestrian safety. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan*).
- (53) Save for the Stadium parking management scheme set out in condition 52 above, no occupation of any phase shall commence until details of arrangements for taxi pick up and drop off areas for that phase, including any coach parking necessary for the hotel, has been submitted to and approved in writing by the Local Planning Authority. The parking management scheme shall be implemented as approved before occupation of the approved phase. (*Reason: In the interests of highway and pedestrian safety. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan*).
- (54) The vehicular and pedestrian access identified on the Masterplan shall be laid out and made ready for use prior to the occupation of the relevant phase of the development hereby permitted. (*Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan*).
- (55) Prior to the first use of the Stadium a Framework Car Park Management Plan shall be submitted to and approved by the Local Planning Authority in writing. The Management Plan shall provide details as to the use of the transport facilities available to provide match day car parking on site and other park and ride facilities. The approved Management Plan shall be implemented before first use of the Stadium. (*Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan*).
- (56) Prior to first use of the Stadium, an updated Framework Stadium Travel Demand Management Strategy based on the plan prepared by PBA and dated August 2016 is to be submitted to the Local Planning Authority for review in consultation with Highways England to take on board conditions prevailing at the time and adjustments made to accommodate them. The approved strategy shall be carried out as approved upon first use of the Stadium. (*Reason: To avoid the*



creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan).

### Operations

- (57) Deliveries and servicing of the non-residential elements of the site shall only take place between the hours of 6.00am and 9.00pm Monday to Saturday and 7.00am to 9.00pm on Sundays, Bank Holidays or Public Holidays, apart from servicing of the stadium on match-days, where deliveries and servicing may occur from 6.00am to 11.00pm. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).
- (58) A Stadium Management Plan, shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the stadium. The Plan shall identify all aspects of stadium administration and operation that could have an impact and shall provide management controls to eliminate and/or minimise those identified impacts. Such impacts to be addressed include but are not limited to the use of the stadium on match days, traffic, crowd management and potential disturbance in the area. The Plan shall also include details of the arrangements for the use or management (as appropriate). The management of the stadium development shall then be carried out in accordance with the details within the Stadium Management Plan. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).
- (59) The Stadium shall only be used for association football events using the football pitch hereby approved and shall be limited to the following, unless otherwise agreed in writing by the Local Planning Authority:
- (a) Luton Town Football Club first team competitive league games in accordance with fixture lists as agreed by the relevant football authorities (e.g. Football League);
  - (b) Luton Town Football Club first team cup games in accordance with fixtures agreed by the relevant football authorities (e.g. the Football Association);
  - (c) Luton Town Football Club pre-season friendlies, reserve, youth and ladies team matches; the screening of Luton Town Football Club's first team away Association Football matches;
  - (d) Three international matches plus three international pre match training sessions per annum;
  - (e) Two charity matches per annum; and
  - (f) Local community matches including local leagues and schools, Luton Town Community Sports Trust related sporting activities and corporate matches.

No other professional competitive sport or other uses shall be permitted to be played on the pitch. (*Reason: To minimise disruption*)

*to the local environment. To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan).*

- (60) The Stadium capacity of 23,000 shall be limited to an initial capacity limitation of 17,500. The initial capacity may be increased pending the submission of a Transport Assessment to the Local Planning Authority to determine and assess the impact of the use of the development on the highway network. Any approval given to increase capacity may require measures to be carried out before the initial capacity is permitted to be increased. (Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan).
- (61) Before any above ground works of the relevant phase, details of the public realm works and the future management of these areas, shall be submitted to and approved in writing by the Local Planning Authority. The approved public realm works shall be implemented in accordance with these details prior to occupation of the buildings within the relevant phase. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).

#### Noise

- (62) No residential unit shall be occupied until details of a scheme of acoustic insulation for each unit has been submitted to an approved in writing by the Local Planning Authority, and the approved details have been completed, with internal noise levels not to exceed 'reasonable' during daytime and 'good' at night as detailed in BS 8233:2014 for all units. The scheme shall take account of any noise from mechanical ventilation necessary for the units. (Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan).
- (63) Noise emitted from any fixed plant on site shall be at least 10dB lower than the existing background noise level as measured at the nearest noise sensitive location outside the site and the measurement should be made in accordance with BS4142:1997. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan).
- (64) Full details, including location and noise levels of any visual display, Public Address System (PA), or amplified sound system for the stadium shall be submitted to and approved in writing by the Local Planning Authority prior to the use of the stadium as set out in

condition 59 above. The approved PA system shall only be used during events that take place within the Stadium two hours prior to the event commencing (apart from for testing purposes) and within 30 minutes of the completion of the event. No PA system, other than for transmission and travel information or emergency use shall take place outside the stadium building. The PA system shall be operated in accordance with the approved details. (Reason: To minimise impacts on the surrounding environment, to ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan).

### Residential restrictions

- (65) Detailed drawings of windows, balconies and privacy screens for all dwellings in each phase shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of above ground works in this phase. The development shall be carried out in accordance with the approved details prior to occupation. (Reason: In order that the Local Planning Authority may be satisfied as to the details of the development in respect of privacy and outlook for occupants. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).
- (66) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no aerials or satellite dishes shall be erected on a building of the development hereby approved without first securing the approval in writing by the Local Planning Authority. (Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan).

### Section 278

- (67) No development which affects the public highways shall commence until the Local Authority (as the Highway Authority) has approved in writing full details of works affecting the public highway including:
- (i) Construction of the proposed buildings inclusive of any basement levels, covering structural works and support for adjoining land;
  - (ii) New pavement surfacing;
  - (iii) Any proposed street tree planting; and
  - (iv) Maintenance of pedestrian access on the footpaths past the site during construction.

The approved works shall be completed in accordance with the Local Planning Authority's written approval and have been certified in writing as complete on behalf of the Local Planning Authority prior to occupation of any part of the development. (Reason: To avoid the creation of traffic congestion on the highway in the interest of safety)

*and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan).*

**(Notes: (i) One Item Agenda Item 7 – Power Court Outline Planning Permission Application.**

**(ii) Councillor David Franks (Liberal Democrat Group Leader) on behalf of the Group read out a statement which acknowledged that at Liberal Democrat local party meetings, discussions in relation to the proposed Power Court 2020 application had taken place, although the application was supported by those present, elected Councillors who were at the meeting did not take part in the discussion relating to the application.**

**(iii) Councillor Hussain on behalf of the Labour Group Development Control Members informed the Committee that they had made no public statements either in support or against the Power Court 2020 Development Application nor participated in any discussion relating to the application prior to the meeting.**

**(iv) Following Councillor Hussain's statement, the Solicitor advised that each member of the Committee should individually make such a declaration if they thought it prudent to do so. Consequently, the following members of the Committee; Councillors; Agbley; Chowdhury; Lewis and Rivers confirmed Councillor Hussain's statement.**

**(v) The meeting ended at 21.30)**

**COMMITTEE:** DEVELOPMENT CONTROL

**DATE:** 11 MARCH 2019

**SUBJECT:** LAND ADJACENT JUNCTION 10 TO 10A M1  
NEWLANDS ROAD LUTON BEDFORDSHIRE –  
OUTLINE PLANNING PERMISSION, WITH ALL  
MATTERS RESERVED EXCEPT FOR ACCESS,  
FOR MIXED-USE DEVELOPMENT COMPRISING:  
OFFICE FLOORSPEACE (USE CLASS B1(a);  
RETAIL FLOORSPEACE (USE CLASS A1); FOOD  
AND BEVERAGE FLOORSPEACE (USE CLASS A3-  
A5); LEISURE FLOORSPEACE (USE CLASS D2); A  
HOTEL (USE CLASS C1); CAR AND CYCLE  
PARKING; AND ASSOCIATED ACCESS,  
HIGHWAYS, UTILITIES, PUBLIC REALM,  
LANDSCAPING AND ASSOCIATED ANCILLARY  
WORKS AND STRUCTURES.

**APPLICANT:** 2020 DEVELOPMENTS (LUTON) LTD  
(ON BEHALF OF LUTON FOOTBALL CLUB)

**APPLICATION NO:** 16/01401/OUTEIA

**REPORT BY:** DEVELOPMENT CONTROL MANAGER

**CONTACT OFFICER:** DAVID HALL 546317

**IMPLICATIONS:**

**LEGAL**

**COMMUNITY SAFETY**

**EQUALITIES**

**ENVIRONMENT**

**FINANCIAL**

**CONSULTATIONS**

**STAFFING**

**OTHER**

**WARDS AFFECTED:** FARLEY

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## **PURPOSE**

To advise Members of an outline application for planning permission and to seek their decision.

## **RECOMMENDATION(S)**

### **1. Development Control Committee is recommended to:-:-**

#### **(a) Resolve that:-**

**(01) The requirements of Part II of Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (as amended) are satisfied by reason of the Environmental Statement, and the Addendum, attached thereto including at least the following information:**

- (i) A description of the development comprising information on the site, design and size of the development;**
- (ii) A description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;**
- (iii) The data required to identify and assess the main effects which the development is likely to have on the environment;**
- (iv) An outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for the choice made, taking into account the environmental effects;**
- (v) A non-technical summary of the information provided under paragraphs i) to iv) above.**

**(02) That it be recorded that, in making the decision on the application, the Committee has taken into account the environmental information comprising the Environmental Statement and the Addendum that this information meets the minimum requirements of Part II of Schedule 4 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (as amended).**

#### **(b) Grant planning permission subject to:-**

- (i) The satisfactory completion of an agreement under Section 106 of the Town and Country Planning Act 1990 (S106) to contain the following:**
  - 1. Retail Restrictions: (Permitted user list, no poaching clause, exclusion list and anchor Store)**
  - 2. Power Court delivery up to and including podium level.**
  - 3. Safeguarding land for a park and ride facility.**
  - 4. Regulating car parking charges at Newlands Park**

5. Monitoring fees of £15000.00 per annum for 8 years).
6. Payment of (amount to be provided) towards public services/busses.
7. Phasing plans

- (ii) Grant planning permission subject to the imposition of the conditions as detailed in the appendix to this report (Appendix 1.)
- (iii) To refer the application to the Development Control Committee if a S106 Agreement to secure the Heads of Terms identified in (b)(i) of this report has not been satisfactorily completed by 30th April 2020 (or another date as agreed with the Development Control Manager) for the reason that the proposed development would not be accompanied by associated infrastructure improvements.

**c) The summary reasons for granting planning permission are:**

- i) It is considered that with the S106 retail restrictions proposed, the development is unlikely to have significant adverse impact upon the vitality and viability of Luton, St Albans and Harpenden town centres.
  - ii) It is considered that the benefits of the proposal outweigh the non-compliance with the development plan and the less than substantial harm to heritage assets.
- d) In the event that Members resolve to grant planning permission for the development, the subject of this application, then this would be subject to its referral to the Minister, as required by The Town and Country Planning (Consultation)(England) Direction 2009).**

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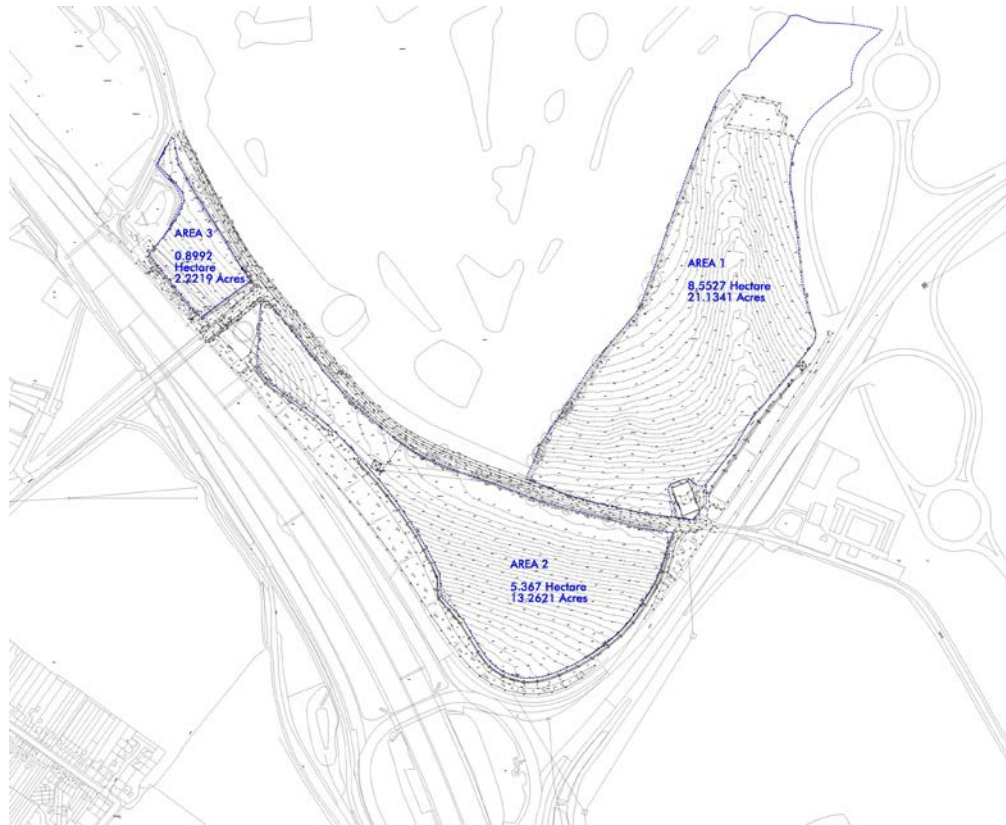
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## **REPORT**

### **The Site and Surroundings**

2. The site comprises approximately 16.20ha of greenfield land in the southern part of Luton, positioned at Junction 10A of the M1 and the A1081. The site comprises three parcels of land separated by Newlands Road, which runs across the site from north-west to east.
3. The majority of the site is semi-improved grassland bounded by a network of hedgerows. The larger parcel of land to the north east of Newlands Road is designated as an 'Area of Great/Local Landscape Value' in the adopted Local Plan.
4. The land is bound by the Stockwood Park Golf Centre to the north, London Road to the east, the A1081 to the south and the M1 to the east. Stockwood Park (to the north) is an Area of Local Landscape Importance as well as partly a County Wildlife Site. To the south east is the Luton Hoo estate (approximately 350m away) and the Chilterns Area of Outstanding Natural Beauty lies over 2km to the west of the site.





### Relevant Planning History

5. The site has been allocated for mixed-use development since the mid-1990s. This allocation originated when the Council identified the site as its preferred location for a new football stadium for the Club. Policy ST01 of the 1997 Luton Local Plan allocated the application site for sports facilities including the relocation of Luton Town Football Club's new stadium
6. Policy SA1 of the adopted 2006 Luton Local Plan again allocated the site for a new stadium for the Club, sports facilities and a park and ride facility.
7. An outline application was made for a multi-use indoor stadium and supporting hotel, leisure and education facilities with car parking and park and ride facilities (known as the Kohlerdome Scheme) (LPA ref: L/21389/0). The application was submitted in April 1995
8. An application for a multi-use stadium, arena and supporting hotel, retail and petrol filling station facilities, also with car parking and a park and ride facility (LPA ref: L/21389/A/0). This application was submitted in September 1995
9. Both of these applications were called in by the Secretary of State and were refused planning permission, in August 1998, on highway grounds.

## The Proposal

10. The application seeks outline planning permission for a mixed-use development, with all matters reserved for future consideration except for access.
11. The development will comprise a leisure hub, along with retail, entertainment, hotel, conference centre and offices. The Proposal also comprises public open space, including an active green roof with provision for outdoor leisure.
12. The principles for the Proposal are set out in the submission drawings and floorspace schedule which include the maximum building envelopes. These, together with the Design and Access Statement for the development, illustrate principles for future detailed design of the development, whilst allowing flexibility to be retained in design.
13. Maximum dimensions have been set as parameters for each proposed land use. The maximum effectively limits the development that can be constructed within the building envelope established by the parameters. The maximum building envelope allows for flexibility in the detailed design of individual buildings, e.g. façade treatment and roofscape, etc.
14. The following parameters, shown on the accompanying plans, which accompany the application, are as follows:
  - Up to 42,000sqm of office floorspace (Use Class B1a);
  - Up to 13,000sqm of hotel (Use Class C1) (up to 350 beds);
  - Up to 16,000sqm of leisure floorspace (Use Class D2);
  - Up to 37,000sqm of comparison retail floorspace (Use Class A1);
  - Up to 300sqm of convenience retail floorspace (Use Class A1);
  - Up to 8,500sqm of food and drink floorspace (Use Classes A3-A5);
  - Up to 8,500sqm of retail/leisure servicing and ancillary floorspace;
  - Between 3,000 – 3,600 car parking spaces; and
  - Associated access, highways, utilities, public realm, landscaping and associated ancillary works and structures.

## Planning Policy Implications

### *National Planning Policy Framework (NPPF)*

15. The National Planning Policy Framework (NPPF) was published in February 2019. It sets out to rationalise national policy guidance and how the government's planning policies are expected to be applied. So that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development (paragraph 11). However, this does not change the status of the development plan as the starting point for decision making. Planning law requires that applications must be determined in accordance with the

development plan unless material considerations indicate otherwise. The Framework is a material consideration in planning decisions.

16. Paragraph 11 of the NPPF sets out that for the decision maker “Plans and decisions should apply a presumption in favour of sustainable development”. For the decision taker, this means:
  - c) approving development proposals that accord with an up-to-date development plan without delay; or
  - d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
    - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or
    - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.
17. At paragraph 38 of the Framework, there is advice that local planning authorities should approach decision taking in a positive and creative way. The Framework encourages an engagement with “applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.”
18. Paragraph 47 states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
19. The NPPF sets out that planning policies and decisions should support the role that town centres play at the heart of communities and seeks that a positive approach to town centre growth, management and adaptation is applied.
20. Planning policies in the NPPF “*support the role that town centres play at the heart of local communities by taking a positive approach to their growth, management and adaptation.*” (Para 85).
21. Applications for main town centre uses which are not within a town centre and not in accordance with an up to date plan are required to be considered against two national policy tests:
  - the sequential approach to site selection (paragraphs 86 to 88); and
  - impact test (paragraph 89)

22. The NPPF, in paragraph 90 advises that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact it should be refused.
23. Paragraph 91 of the Framework encourages planning policies and decisions to achieve 'healthy, inclusive and safe places'. These places should promote social interaction, be safe and accessible and enable and support healthy lifestyles.
24. Paragraph 92a) builds on this point further, requiring local planning authorities to 'plan positively for the provision and use of shared spaces, community facilities and other local services, to enhance the sustainability of communities and residential environments'.
25. Paragraph 92d) continues that local planning authorities should ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community and that an integrated approach is used when considering the location of housing, economic uses and community facilities and services.
26. Chapter 9 of the Framework positively promotes sustainable transport. Paragraph 103 requires that the planning system actively manages patterns of growth and ensures that significant development should be focused on locations, which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes.
27. Paragraph 109 advises that the development should only be refused on highway grounds if there an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
28. Paragraph 110 continues that development should give priority first to pedestrian and cycle movements, and second, to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use. Additionally such development should also create safe and secure places.
29. Paragraph 117 states that "Planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions. Strategic policies should set out a clear strategy for accommodating objectively assessed needs, in a way that makes as much use as possible of previously-developed or 'brownfield' land".
30. Paragraph 118 states that planning policies and decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land.

31. Paragraph 121 states that “Local planning authorities should also take a positive approach to applications for alternative uses of land, which is currently developed but not allocated for a specific purpose in plans, where this would help meet identified development needs. In particular, they should support proposals to “use retail and employment land for homes in areas of high housing demand, provided this would not undermine key economic sectors or sites or the vitality and viability of town centres, and would be compatible with other policies in this Framework; and make more effective use of sites that provide community services such as schools and hospitals, provided this maintains or improves the quality of service provision and access to open space”.
32. Paragraphs 124 to 127 deal with the matter of, and positively promotes design, requiring proposed development to function well, and to add to the overall quality of the area, not just for the short term but over the lifetime of the development. Such development should be visually attractive as a result of good architecture, layout and appropriate and effective landscaping, and it should be sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation.
33. The said paragraph sets out further parameters in respect of design and states that new development should establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit. Development should optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks, and create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.
34. It is a fact that design is a matter which falls to be considered throughout the evolution of proposed development, in particular applicants are encouraged to work closely with those affected by their proposals so that designs can evolve to take account of the views of the community. Applications that can demonstrate early, proactive and effective engagement with the community should be looked on more favourably than those that cannot (paragraph 128).
35. Paragraph 189 requires that “Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation”.

36. Paragraph 196 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Paragraph 197 continues; “The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”
37. There is additionally the Statutory requirements of the Planning (Listed Buildings and Conservation Areas) Act 1990, Section 66, which relates to listed buildings, and which requires that where development affects a listed building or its setting, that the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
38. Alongside the NPPF, Planning Practice Guidance (PPG) provides further information pertaining to town centre use planning policy and decision making.

#### National Planning Practice Guidance

39. The NPPG amplifies the policy topics raised in the NPPF.

#### Luton Local Plan 2011-2031

40. The site is allocated as a Category B Employment Area in the Adopted Local Plan. The relevant policies of the Adopted Local Plan, are as follows, LLP1, LLP2, LLP3, LLP9, LLP13, LLP15, LLP16, LLP21, LLP22, LLP24, LLP25, LLP27, LLP28, LLP29, LLP30, LLP31, LLP32, LLP36, LLP37, LLP38 and LLP39 and LLP40,
41. Policy LLP1 sets out that a ‘presumption in favour of sustainable development’ will be applied to development management decisions. Criteria A of the policy explains that planning permission will be granted where applications accord with Local Plan policies when taken as a whole, unless other material considerations indicate otherwise.
42. Policy LLP2 sets out the Spatial Development Strategy for the Borough Identifying that “There is a need for 17,800 net additional dwellings to support the population growth of Luton Borough over the period 2011 – 2031. Over the same period there is a need for 31,800 net additional dwellings in the Functional Luton Housing Market Area (which includes the need for 17,800 dwellings in Luton Borough).” The Local Plan states in policy LLP2 that provision will be made for 8,500 net additional dwellings over the plan period in the Borough and requires 20% of all qualifying

housing developments under policy LLP16 (Affordable Housing) to be affordable dwellings.

43. Policy LLP2B states that “employment in B Class uses will be delivered through 69 hectares of employment development on Strategic Allocations at Land South of Stockwood Park, London Luton, Airport, Butterfield Technology Park, Power Court, Napier Park, High Town and the Creative Quarter”.
44. Policy LLP2C states that “Town Centre and Retail uses will be directed in accordance with the Centre Hierarchy (Policy LLP21) reinforcing and enhancing the vitality, viability and regeneration of Luton Town Centre as a regional centre\*\* and the network of 6 District Centres and 12\*\*\* Neighbourhood Centres serving the Borough. The Town Centre, District and Neighbourhood network will be a focus for future investment provision including transport access and linkages, community facilities, opportunities for shared services as well as appropriate scale housing, retail and employment development.”
45. Policy LLP2E states that “The natural environment, historic environment and heritage assets of the borough will be protected and enhanced as set out in Policies LLP27, LLP28, LLP29, and LLP30 in the Local Plan”.
46. Policy LLP3 sets out the “Luton Town Centre Strategy”, identifying specifically in the narrative (paragraph 4.33) the two strategic allocations which are contained within the Town Centre, namely Power Court LLP9 and the Creative Quarter LLP11. The policy is predicated by the premise that “Luton Town Centre will be a location for positive change and will be a focus for economic and residential growth and an improved natural and built environment. Building on the town’s rich heritage this mixed use area will provide a balanced offer of high quality residential development, offices and studios, creative industries, independent and national retail, education institutions and thriving public spaces with a vibrant café culture and night time economy.”
47. Policy LLP5 identifies Land South of Stockwood Park as a 14 ha prestige gateway site strategic allocation. It identifies development to be undertaken according to the following scales; “i) B1 business use on 9.5 ha of land to meet an identified shortfall of office employment space over the plan period, and ii) the safeguarding of 2 ha of land for a park and ride facility which will allow scope to secure enhanced public transport to the town centre.” The criteria against which such development falls to be assessed is set out in B of the policy and requires a comprehensive masterplan for approval, which includes an indicative layout and phasing plan, landscape and biodiversity schemes and includes an analysis of impacts from and on the surrounding landscape and heritage asset. The impact on the strategic highway network, particularly the impact on Junction 10a will be required to be assessed. Public transport services are required to be secured to meet the expected demand arising from the development.

48. The development will provide a high quality southern gateway to the town and will use green space, built design, lighting and topography to conserve and enhance the appearance of the adjoining Green Belt, Area of Great Landscape Value, County Wildlife Site, QE II playing fields, the Registered Park and Garden of Luton Hoo and the Chilterns AONB. The criteria continues that the development will be of a height and with lighting that does not compromise the safety of the operations of London Luton Airport, Finally, the development will protect conservation interest and heritage assets;
49. Policy LLP9 sets out the policy framework for the allocated site Power Court. The key issues in respect of the policy highlight as part of the policy approach the main objective which is to maximise the redevelopment opportunity. The policy states as follows. "Land at Power Court, as shown on the Policies Map is allocated for town centre uses in a mixed use redevelopment. Any scheme should include around 600 dwellings and a need for circa 3,393 sq. m net retail convenience floorspace. The site could provide for a proportion of the borough's overall identified need for comparison floorspace within the town centre."
50. Policy LLP13A sets out the fundamental policy guidance on the Plan's Economic Strategy, and states that "Planning applications will be granted where they deliver sustainable economic growth and prosperity to serve the needs of Luton and the wider sub region. Jobs will be generated through business and industry development on strategic employment allocations". It goes on to say that "The strategic allocations for delivery are: i. Land south of Stockwood Park: B1 office and light industry (Policy LLP5)" LLP13E states; "Planning permission for proposals that would increase and improve tourism and visitor attractions will be granted provided that it does not cause an adverse impact on the road network, any town centre use accords with the sequential approach and is in conformity with the policies in the Local Plan."
51. Policy LLP21 – Centre Hierarchy, identifies, specifically, a 3 tier structure, comprising Town Centre, District Centre and Neighbourhood Centre. The policy in this respect states that "Proposals for main town centre uses will address the identified scale of retail need over the plan period, distributed at a scale appropriate to the centre hierarchy functions, and the allocated Power Court and Northern Gateway retail developments." The basis of the policy is that "Main Town Centre Uses" defined in the NPPF, as follows: "Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment and more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, nightclubs, casinos, health and fitness centres, indoor bowling centres and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities)." Should be located in a hierarchy of locations starting in the Town Centre. The policy states that for all retail ('A' use classes) the extent of



Luton town centre comprises the town centre shopping area, while the extent of centre use is the wider boundary as marked on the policies map.

52. Policy LLP25 addresses the matter of “High Quality Design”. The policy requires that both buildings and spaces will be of a high quality design and distinctive character and be safe and easily accessed by all members of the community. Proposals will need to demonstrate adherence to the best practice principles of urban design to create quality places in the Borough. The policy sets out a number of criteria, which essentially seek to enhance the distinctiveness and character of the area diversity, create or enhance attractive safe, accessible and active open public spaces, creatively using hard and soft landscaping, optimise and improve accessibility to walking and cycling and connections to public transport. Additionally, the use of land should be maximised, by providing sustainable development.
53. Policy LLP27 encourages the establishing of new Green Infrastructure within the Borough as well as the retention and safeguarding of existing green space. The policy continues that where there is a shortfall of open space to meet the needs of occupants of new housing development, proposals which generate demand for new or enhance open space and Green Infrastructure will be supported. Such support would be on the basis that such provision is in accordance with the open space standards.
54. Policy LLP28 considers biodiversity and nature conservation, and requires that development proposals that impact adversely on statutory or other designated sites, and ecological networks, will need to demonstrate that they have complied with sequential criteria which seeks to ensure that where possible there is avoidance of impact to sites of ecological importance, otherwise the benefits of the proposal outweigh the intrinsic nature conservation interest, mitigation and compensation through acquisition and management of an alternative habitat of equivalent wildlife value in the vicinity. Criteria D of the policy explains that where there is a reasonable likelihood of a development proposal having an adverse effect of habitats or species of biodiversity interest an ecological assessment will be required.
55. Policy LLP29 addresses Landscape and Geological Conservation. The policy is underpinned by the premises that “Development proposals will be supported where they protect, conserve or enhance the character, setting and natural beauty of national and local landscape areas.” There are three Tiers in the hierarchy, most immediately the Hart Hill Area of Local Landscape Value (ALLV).
56. Policy LLP30 seeks to protect, conserve and enhance Luton’s unique and rich heritage, identity and sense of place. Development proposals should take account of the character, setting, local distinctiveness (including materials and detailing) of local affected heritage assets and features of particular importance. The policy requires any degree of harm and benefit

arising from development proposals to be assessed against the significance of any affected heritage assets including both Listed Buildings and Conservation Areas, as well as non-designated heritage assets. The policy continues that “Any harm or loss to a heritage asset requires clear and convincing justification. Substantial harm to or loss of a designated heritage asset should be exceptional or wholly exceptional depending on the significance of the affected heritage assets. It will only be permitted where there are substantial public benefits that outweigh the harm or loss, less than substantial harm to the significance of the heritage asset should be weighed against public benefits.

57. Policy LLP31 sets out a Sustainable Transport Strategy. “The strategy for sustainable transport in Luton is based on the vision for the Local Transport Plan 2011-2026 which is to ensure that an integrated, safe, accessible and more sustainable transport system supports the economic regeneration and prosperity of the town.” There are a number of criteria by which the Council seeks to deliver in this respect, including, inter alia, working with developers to ensure the delivery of i) reduced congestion around the town centre (ii), there are sustainable connections via the Luton Dunstable busway serving the conurbation (iii), improved accessibility and connectivity for a more pedestrian friendly town centre environment for all users; (iv), controlled parking within the town centre to support sustainable development.
58. Policy LLP32 deals with parking, and requires that “Parking provision in Luton will be managed to ensure that a proportionate number of spaces are available to support the growth of the town centre.”
59. The overarching policy objective of LLP36 is to encourage development to reduce the overall flood risk, through design and layout of schemes, which replace flood plan and enhance natural forms of drainage. To achieve this, Section A of policy LLP36 directs development to areas with the lowest probability of flooding. It continues to say that development must also address flooding resilience with effective management of flood risk and it must be ensured that development does not increase the risk of flooding elsewhere, including cumulative impact on adjoining and surrounding land and in the wider catchment. The policy also states that development must provide wider environmental benefits in relation to flood risk and contribute towards delivering ‘good ecological status’.
60. Policy LLP37 addresses the issue of climate change, carbon and waste reduction and sustainable energy. It states that the Council will support development proposals, which contribute towards mitigation, and adaptation to climate change through energy use reduction and efficient and renewable and decentralised energy.
61. Policy LLP39 sets out the expectation of the Local Planning Authority regarding infrastructure and developer contributions to support development. The policy states that proposals should provide or adequately contribute towards the infrastructure and services needed to support them.

62. Policy LLP40 was added to the policies set out in the draft Local Plan as part of the Inspector's recommendations. The debate which took place as part of the EIP, focussed, inter alia, on the use of Power Court, in particular the use of the site for a football stadium. The Inspector concluded that there was insufficient information available at that time to allow the land at Power Court to be allocated for a football stadium per se. Accordingly Policy LLP40 allows for a review of the Adopted Local Plan to include a number of issues, but particularly; "(vi) Provision for the relocation of Luton Town Football Club; (vii) Retail needs of the Borough and how they will be provided for. (viii) Strategy and policies for the town centre; (ix) Uses and policies relating to the strategic allocation at Power Court (Policy LLP9).

### Consultation Responses

63. **Archaeologists** – The most recent correspondence received in response to the Addendum to the Environmental Statement advised that there was no objection in principle, however concern was expressed that there was not enough information on the impact of the development proposals on the archaeological resource to provide advice on how best to mitigate that impact of the development. The application is contrary to the requirements of paragraph 189 of the NPPF. The application has failed to demonstrate that appropriate analysis of the impact of the development on heritage assets (specifically the potential Palaeolithic resource) has been undertaken and has not set out how any impacts may be mitigated. This contrary to policy LLP5 of the Luton Local Plan (2011-31). The written scheme of investigation for the geoarchaeological evaluation does not provide sufficient information for the creation of a conservation strategy to be developed as required by policy LLP30E the Luton Local Plan (2011-31). This advice is in line with Chapter 16 of the NPPF (February 2019) and Policies LLP5 and LLP30E of the adopted Luton Local Plan 2011-2031 (dated November 2017).
64. **Historic England** – 28 November 2018 - The additional information relates to the Environmental Statement and we understand the proposals remain as previously presented. Within the revised Environmental Statement the historic environment section makes reference to the Luton Local Plan and updated National Planning Policy Framework together with reference to the consultation held with Historic England. The assessment of both the significance of the heritage assets and the impact of the proposals on this remain unchanged.

#### Historic England Advice

Historic England has provided advice on the application in letters dated 20 October 2016, 23 August 2017 and 18 October 2017 and emails of 18 October 2017. [The correspondence of the 18 October 2017, states that it is for the Local Planning Authority to assess the application in line with paragraph 134 (paragraph 196 of NPPF3)]. As the proposals and

assessment remain largely unchanged, we ask that our previous representations are taken into account. The National Planning Policy Framework has however been updated we make reference to this below to update the legislative and policy context of our initial letter.

Local planning authorities are still required to take account of the desirability of sustaining and enhancing the historic environment (paragraph 131). It is clear that the significance of heritage assets can be harmed by development in their setting (paragraph 194). Local authorities are asked to look for opportunities for new development within conservation areas and the setting of heritage assets to enhance or better reveal their significance (paragraph 200).

The section on Conserving and Enhancing the Historic Environment begins by saying that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations (paragraph 184). It continues that great weight should be given to the asset's conservation (and the more important the asset the greater that weight should be). The updated Framework makes it explicit that this is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (paragraph 193). It notes any harm should require clear and convincing justification (paragraph 194).

The purpose of the planning system remains to contribute to the achievement of sustainable development (paragraph 7). This means the planning system has three overarching objectives, economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways (paragraph 8).

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal (paragraph 196).

The revised Framework does not change our position on the application.

#### Recommendation

In conclusion, Historic England continues to object to the application on heritage grounds as it would result in a severe degree of harm to Luton Hoo. We also consider the parallel planning application at Power Court (16/01400/OUTEIA) would have a harmful impact on the adjacent heritage assets, the grade I Church of St Mary and the Plaister's Lea Conservation Area and have registered our serious concerns regarding this with you.

Your authority should take these and our earlier representations into account in determining the application. If there are any material changes to

the proposals, or you would like further advice, please contact us. Please advise us of the committee date in due course.

65. **Strategic Planning Heritage Consultants** – 19 October 2016 - The existing application does not provide the evidence and analysis necessary for an informed judgement about the development's impact on the historic environment. It is therefore contrary to the requirements of Section 128 of the NPPF which states that in determining applications local planning authorities should require an applicant to describe the significance of any heritage assets affected, including contributions made by their setting. The level of detail should be proportionate to the asset's significance.

Without this additional assessment and analysis the applicant's conclusions hold little value and accordingly it is not possible to determine whether the substantial harm of the development is necessary to achieve substantial public benefits which outweigh that harm.

Recommendations: The provision of additional information as detailed above is required before determination of the application can be made in order to address the potential impact of the development on the setting of Stockwood Park and Luton Hoo Registered Park.

66. **Conservation Advice** – 12 December 2018 - BEAMS does not agree with the conclusion of the Heritage Assessment that the development will cause no harm to the significance of the grade II\* Registered Park and Garden. BEAMS considers that the additional development in this location, and of this scale and form, is more prominent than, and adds to, the existing development (M1 / power lines etc etc), the cumulative impact of which is considered to cause some harm. The impact upon the significance of the Registered Park and Garden, through development within its setting, is considered to result in less than substantial harm. In line with the NPPF, para. 196:

'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'

In terms of Stockwood Park, there is not considered to be any impact upon the setting of the grade II listed stables within Stockwood Park. There is considered to be some visual impact upon the setting of Stockwood Park itself due to the scale of the development immediately to the south and its cumulative impact with the M1 and A1081 etc. However the park is a non-designated heritage asset so carries less weight in terms of heritage impact. Stockwood Park itself will remain in its current form.

In accordance with the NPPF, para. 196 it is recommended Luton Borough Council weighs the less than substantial harm to the significance of the

grade II\* Registered Park and Garden at Luton Hoo (through development within its setting) against the public benefits of the proposal.

- 67. **Bedford Borough Council** - No objection.
- 68. **Environmental Protection** - (Air Quality) of the overall opinion that the air quality assessment and its conclusions are not unreasonable.

With regards to the operational phase of the proposed development, going forward the Environmental Protection Team would hope to see a clear commitment to the adoption of relevant best practice measures as identified in Section 7.2 of the Air Quality Technical Report. The implementation of such measures would clearly demonstrate compatibility with the direction in the National Planning Policy Framework that “Development should, wherever possible, help to improve local environmental conditions such as air and water quality”.

- 69. **Highway Engineering Services** - The proposed access to the site is acceptable. The access and the on-site spine road will be adopted as public highway and as such will be subject to a combined Section 38/278 of the Highways Act Agreement to enable the construction and adoption of the same. The Transport Assessment mentions that offsite highway improvement works may be required on Newlands Road to cater for the development. In this respect it is anticipated that the junctions of Newlands Road with Farley Hill Road and with the A1081 will need to be signalised, together with reductions in the speed limit on Newlands Road. However, this will need to be confirmed once the final mix of development is known and as such will form part of the reserved matters application(s) for the site. For information the junction of Newlands Road and the A1081 falls within the Central Bedfordshire administrative area and any improvements to that junction will need to be approved by them. For the avoidance of doubt, any offsite highway improvement works will not go beyond the existing highway boundaries. The requirements for a Section 38/278 Agreement together with off-site highway improvement works, which given they are somewhat remote from the application site and therefore likely to be undertaken by the respective Highway Authorities, should be safeguarded by inclusion within any Section 106 of the Planning Act Agreement for the development.
- 70. **Highways England** - No objection subject to Conditions
- 71. **Environment Agency (Sustainable Places Team)** - No consultation response received.
- 72. **Bedfordshire Fire and Rescue Service** - No objection.
- 73. **Luton Investment Framework** - The framework has set out its 20-year vision to grow successful businesses through inward investment, build Luton's reputation as a vibrant place for people and families, maximise Luton's assets and realise its potential. A key part to unlocking Luton's

potential lies in the ability to increase job opportunities for Luton people. Generating 18,500 new jobs can only be achieved through development within our strategic sites. The express intention within the LIF is to develop four of the strategic sites by 2025. These comments are made in relation only to their relativity to the LIF. The LIF seeks to send a strong signal of commitment to Luton's future and give confidence to the investment community and construction industry in order to attract developers and investors to set part of their future business strategy to become heavily invested in Luton projects. The framework looks to attract £1.5 billion of investment. The LIF calls for prestigious gateway developments that capture the imagination of investors and that need for plans for the sites to reflect ambitions for the future of Luton and its businesses. The development at Newlands Park suggests it will reach a figure in excess of 10,000 direct and indirect jobs across the sites making a major contribution to the employment opportunities. Providing aspirational places to attract and retain Luton's residents is important for Luton's sustained future. Mixed use developments create new opportunities for attracting visitors, increasing retail spend and improving access to leisure. This cannot be done at the expense and to the detriment of Luton's existing developments which need to continue to improve and thrive. Whilst economic opportunity presents itself at Newlands Park, the scale of development should not be so large or so similar as to be a significant or lasting detriment to retail and leisure currently accessed in the town centre, which is also designated as a strategic site. We would ask planners to consider what arrangements could be agreed with 2020 Developments to assist in achieving this.

74. **Central Beds Council** - The application does not demonstrate an acceptable relationship with Luton Hoo or the Listed Buildings at Slip End. Further information is required as part of the Environmental Statement in order to conclude on the proposal in this regard. The development parameters, and subsequent detailed proposals, should be carefully designed to ensure no adverse impact on the significance of these designated heritage assets.

Appropriate measures should be put in place as part of any planning permission to avoid any uncontrolled overspill parking within Central Bedfordshire.

75. **Environmental Protection - Noise** - I agree with the conclusions of the Noise Assessment at chapter 5.4, that the noise levels as recommended in BS 8233:2014 can only be achieved within the proposed development, with the windows closed and the installation of high performing double glazing.

As compliance with BS8233:2014 requires windows to be closed, the applicant will need to install mechanical ventilation having regard to the self-noise of any proposed system. The system must be able to achieve 4 air changes per hour when required (equivalent to an open window – BS8233:2014), to assist the thermal comfort of occupants in warm weather.

## Building services Plant

The applicant must ensure that noise emitted by all building services plant operating together does not exceed -10dBA below the existing lowest LA90 back ground noise level. Where the noise source has a tonal spectrum it shall be -15dBA. Noise emitted shall be measured or predicted at 1.0m from the nearest residential window or at 1.2m above any adjacent residential garden, terrace, patio or balcony at any time when the units are operating. The plant shall be serviced regularly in accordance with manufacturer's instructions to ensure that the requirements of the condition are maintained

**Vibration** - The proposed development is close to a motorway, with a high volume of HGV. The applicant should be requested to submit an assessment that addresses the impact of vibration on the proposed development and demonstrate compliance with BS 6472-1:2008 Guide to evaluation of human exposure to vibration in buildings, including any proposed mitigation methods.

**Contaminated land** - Following completion of remediation works, the developer should submit a Verification Report to the Local Planning Authority for approval. The Verification Report should provide confirmation that all measures outlined in the approved Remediation Strategy have been completed including where appropriate validation testing.

**Construction Management Plan** - The applicant has not submitted a Construction Management Plan. The applicant should be requested to provide a Construction Management Plan that addresses how any impacts associated with the proposed works will be mitigated. It should give details of measures be taken to minimise the impact of their demolition and construction work on the surrounding community, both for the construction on site and the transport arrangements for servicing the site. The applicant should demonstrate compliance with BS 5228: Noise and vibration on construction and open sites.

**A3/A5 Use** - Where A3/A5 use is proposed at a later stage, details regarding the ventilation system must be submitted and approved by the Local Authority, prior to the commencement of any cooking. The applicant should be requested to provide information to include details of canopy design and face velocity, extract rate calculations, make-up air calculations, filter types with supplier's specifications, filter change frequency, servicing frequency, cleaning frequency, and noise and vibration control measures.

The applicant should be requested to demonstrate by calculation that noise from the system shall not exceed 43 dB LAeq(5min), 1m from any external part of the system and shall be without any noticeable tonal or impulsive features. Noise control should be implemented, where necessary, by either in-line acoustic absorbers or external acoustic insulation. If in-line absorbers are used, the effect of these on flow characteristics should be



taken into account. The system should also include suitable anti vibration mounts and flexible couplings to prevent structure borne vibration.

**External lighting** - No objection subject to following condition regarding external lighting:

No external lighting shall be installed on the site, other than in accordance with a scheme to be submitted to and approved by the Local Planning Authority beforehand. The scheme, lighting equipment and levels of illumination shall comply with guidance issued by the Institution of Lighting Professionals in their publication "Guidance Notes for the Reduction of Obtrusive Light Ref: GN01:2011" and shall be accompanied by a statement from the developer confirming that compliance. The scheme shall thereafter be retained and maintained for so long as the development remains in existence and shall not be varied without the prior written permission of the local planning authority.

- 76. **Houghton Regis Development Consortium** - Objection, development contrary to the principles of the Development Plan.
- 77. **Luton Primary Care Trust** – No comments received
- 78. **Police Architectural Officer** – No comments received
- 79. **London Luton Airport** – No comments received
- 80. **Sport England** – No comments received
- 81. **Housing Policy Officer** – No comments received
- 82. **Bedfordshire Health Authority** – No comments received
- 83. **Waste Management, Street Services** - No objection
- 84. **The English Football League** - The EFL wholeheartedly supports the proposals and we the co-signed submit this letter for consideration in the formal planning consultation.
- 85. **Children and Learning Department** - No objection
- 86. **Slip End Parish Council** - No objection
- 87. **Thames Water Utilities Ltd.** – No Objections subject to Conditions
- 88. **Lead Local Flood Authority** – No objection subject to Conditions;
- 89. **National Grid Transco** - No objections subject to an assessment of existing apparatus of the site.

90. **Sustainable Energy** – No comments received.
91. **The Wildlife Trust** – No comments received
92. **Dacorum Borough Council** – No comments received
93. **Watford Borough Council** – No comments received
94. **Milton Keynes Council** – Object to the proposal on the basis that the applicant's assessment has failed to take into account the latest available data from MKC Retail Capacity and leisure study and may be underestimating the impact of the proposal on shopping centres outside the LBC area and the City Centre of MK. Notwithstanding the objection if LBC is minded to grant planning permission it is requested that a mechanism is imposed which links the delivery of the two planning applications making sure that Power Court is delivered.
95. **Arriva**- No comments received
96. **Health and Safety** – No comments received
97. **Grant Palmer (Public Transport)** – No comments received
98. **Centrebus** – Comments received
99. **Street Services – Parks** – No comments received
100. **Building Control** – No comments received
101. **Affinity Water** - No objections
102. **Strategic Planning Team** – The latest advice has been updated to reflect adoption of the Luton Local Plan 2011-2031 on 7 November 2017, the new Corporate Plan in 2017, and publication of the new National Planning Policy Framework on 24 July 2018.

The key changes to the adopted local plan are:

The deletion of the provision of a football stadium and supporting enabling ancillary uses at Junction 10a, the retention of B1 business park and the park and ride allocation. There is also new policy which deals with the review of the Local Plan which specifically refers to the relocation of Luton Town Football Club and uses and policies relating to the strategic allocation at land south of Stockwood Park, including the provision of a park and ride facility which will be considered in the early review of the local plan (policy LLP40).

The comments go on to refer to the strategic priorities in the Corporate Plan including priority one, building economic growth and prosperity. The site is a prime gateway into Luton which is identified as a strategic allocation in the Local Plan. It is a site which has been allocated since 1997 and hasn't

come forward for development. Of particular note is the quantum of retail development. Significant weight should be given to the impact of the proposed level of retail on the vitality and viability of existing town centres within Luton and neighbouring authorities. This should consider not only current provision but also planned investment and regeneration objectives including the key regeneration area of Luton town centre between the rail station and The Mall. The sequential test will need to be carefully considered to demonstrate that the proposal meets the requirements set out in the National Planning Policy Framework paragraph 89 (NPPF).

With the exception of B1 office uses and park and ride, the scale and nature of other proposed uses represent a departure from the adopted local plan in terms of the role and function of Stockwood Park and the ambitions for development on this site. This is particularly the case in respect of the comparison retail development proposed, which appears to be contrary to policy objectives to ensure the vitality of town centres (National Planning Policy Framework chapter 7 and policy LLP21 of the local plan).

Similar consideration should also be given to the other main town centre uses being promoted (e.g. hotels and indoor leisure). Along with the retail, this will mean that the development effectively becomes a destination of a scale and function similar to being a new town centre that could draw trade, footfall and investment away from other locations. The Park and Ride facility appears to be some distance from the main access point (J10a), which would act as a real deterrent to its use. The Park & Ride element should be located so that it maximises its impact, convenience for users and connectivity to the town centre e.g. via the east Luton corridor.

The supporting economic evidence provided by KPMG requires further assessment as the job numbers envisaged (10,000) and other economic impacts appear to be significant. Table 5 of the Economy & Employment Background Paper to the local plan (LBC, April 2016) explains that the site is expected to support 1,728 office jobs.

When considering design, weight should be given to the impact on the setting of the Stockwood Park area of local landscape importance, nearby area of outstanding natural beauty and equivalent designations in Central Bedfordshire. We are broadly happy with the range of work undertaken by the ecological appraisal report and its findings. As expected, the survey report indicates that the site has limited ecological significance. In summary, the proposals at Land South Stockwood Park raise some significant concerns particularly focussing on potential adverse town centre impacts. These will have to be weighed carefully against the benefits of bringing forward a site that could bring investment and create a prestigious southern gateway into Luton.

## **STATUTORY PUBLICITY**

103. **Statutory Publicity:** The application has been notified to 528 adjoining occupiers. The said occupiers were consulted on the 10 October 2016. A site notice was displayed. A notice was also placed in the local newspaper.
104. There have 101 letters of objection, 73 anonymous letters have been received, and 8312 letters of support have also been received.
105. The matters raised by the representations are as follows:

### Objections:

Letters of objection raise the following points:

- Retail impact
- Create uncertainty that would significantly impact on the Town Centre
- Not viable
- No demand for the floorspace
- Highways,
- Linkage of the site to the site at Power Court (16/01400/OUTEIA)
- Retail impact on Luton Town
- Retail impact on Milton Keynes
- Impact on Luton Hoo registered Park and Garden
- Impact on potential archaeological remains
- Design
- Noise, air and light pollution
- Limited public transport
- Negative impact on wildlife
- Loss of agricultural land
- Loss of trees and hedgerows
- Construction will be disruptive
- Encroachment on Green Belt
- Site provides a green lung
- Anti-social behaviour
- Site should be used to locate a football stadium
- Underneath the flight path, danger and noise, and
- Against any development on the site

### Support

- Provides a new dimension to the retail offer, Luton currently lacks this type of development
- Provides accessible shopping, working and entertainment
- Overcome the negative reputation of the town
- Civic pride – will take Luton into the 21st century

- Springboard for more investment
- Employment opportunities for local people
- More visitors to increase spending and improve the local economy
- Limits the need to travel to other towns
- Iconic design/gateway location

## **MAIN PLANNING CONSIDERATIONS**

106. The key planning issues are considered to be as follows:

- **The principle of the development,**
- **Retail and Town Centre Uses Assessment comprising the Sequential and Impact Tests**
- **Delivery**
- **The Environmental Statement:**
  - **transport,**
  - **heritage and archaeology,**
  - **water resources, noise,**
  - **air quality,**
  - **socio-economic,**
  - **geotechnical and land contamination,**
  - **lighting,**
  - **wind,**
  - **energy sustainability**
  - **townscape and visual assessment,**
- **Economic Impact**
- **Urban design and the impact on the surrounding area**
- **Archaeology and Heritage**
- **Traffic and Parking**
- **Construction Impacts**
- **Other environmental matters**
- **Sustainable Design**
- **Accessibility**
- **Section 106**
- **Third Party Representations**

### **Principle of Development**

107. The legal test is whether the development proposed complies with the Development Plan considered as a whole and planning law specifically requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990).

108. Paragraph 2 of the National Planning Policy Framework, states that the Framework must be taken into account as a material consideration in planning decisions. And Paragraph 12 of the NPPF advises that:
- ‘12. The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.’
109. The Development Plan against which the application falls to be considered is the Luton Local Plan 2011 – 2031 Adopted in November 2017. The application site is identified on the Proposals Map of the Adopted Local Plan as a Strategic Policy Allocation. Policy LLP5 - Land South of Stockwood Park Strategic Allocation is in two parts.
110. Part A of Policy LLP5 - identifies the site at Junction 10a of the M1 as a prestige gateway development to provide B1 business use (9.5 ha) to meet an identified shortfall in office employment use over the plan period and land (2ha) to be safeguarded for a park and ride facility.
111. The application proposals for the site do provide B1 Office development of up to 42,000sqm of office floorspace (Use Class B1a) and in this regard comply with part A of Policy LLP5. However, the application also seeks planning permission for the following land uses:
- Up to 13,000sqm of hotel (Use Class C1) (up to 350 beds);
  - Up to 16,000sqm of leisure floorspace (Use Class D2);
  - Up to 37,000sqm of comparison retail floorspace (Use Class A1);
  - Up to 300sqm of convenience retail floorspace (Use Class A1);
  - Up to 8,500sqm of food and drink floorspace (Use Classes A3-A5);
  - Up to 8,500sqm of retail/leisure servicing and ancillary floorspace;
  - Between 3,000 – 3,600 car parking spaces; and
  - Associated access, highways, utilities, public realm, landscaping and associated ancillary works and structures.
112. The proposed retail, leisure, food and beverage and hotel uses are uses that are not identified within part A of Policy LLP5. It is the case therefore that the application proposals do not conform to the specific policy allocation for the site.
113. Part B of LLP5 sets out seven requirements for the development of the allocated site. The application proposals are considered to respond positively to these requirements as explained below.
114. Part B of LLP5 requirements:

i. development proposals should be accompanied by a comprehensive masterplan for approval, which includes an indicative layout and phasing plan, sustainable construction method and materials, landscape and biodiversity schemes and includes an analysis of impacts from and on the surrounding landscape and heritage assets and sets out details of how the Master Plan will be implemented and any identified impacts be mitigated; Response: The application is not accompanied by a Master Plan but objectives relating to a Master Plan can be secured by a planning condition.

ii. the development will not take place until Highways England is satisfied the proposals do not have an unacceptable impact on Junction 10a improvements and upon the M1 motorway, and shall not compromise the safety of road users; Response: Highways England have confirmed that the proposed development is acceptable subject to improvements being secured.

iii. Public transport services are secured to meet the expected demand arising from the development; Response: Public transport service needs arising from the development can be secured by legal agreement which requires a financial contribution to be made to secure the service(s).

iv. the development will provide a high quality southern gateway to the town and will use public art, green space, built design, lighting and topography to conserve and enhance the appearance of the adjoining Green Belt, Area of Great Landscape Value, County Wildlife Site, QE II playing fields, the Registered Park and Garden of Luton Hoo and the Chilterns AONB; Response: The development will provided a gateway to the town, the effects on the heritage asset and the landscape are considered in further detail below.

v. the development will be of a height and with lighting that does not compromise the safety of the operations of London Luton Airport; Response: Luton Airport/CAA have raised no objections to the application subject to the imposition of an informative relating to the height of tower cranes and lighting details.

vi. the development will protect features of nature conservation interest and heritage assets; Response: Matters of heritage and landscape impact are considered below.

vii. improving connectivity to nearby cycle and footpaths and existing public rights of way and the rights of public utility providers will be safeguarded; Response: these objectives can be addressed in a master plan which can be secured by a planning condition.

115. Other Local Plan Policies relevant to the proposed development are:

Policy LLP1 (Presumption in favour of Sustainable Development), Policy LLP2 (Spatial Development Strategy), Policy LLP3 (Luton Town Centre Strategy) and Policy LLP9 (Power Court).

116. Policy LLP1 sets out in A that a 'presumption in favour of sustainable development' will be applied to development management decisions. Wherever possible, the Council will work proactively and positively with all applicants to help shape development proposals to deliver growth and sustainable development which can be approved without delay. In this case the site has been the subject of discussion with the applicant since its submission on an ongoing basis to discuss the many issues which have arisen during the consideration of the application.
117. Category B of the policy requires all new developments in the Borough to contribute to enhancing a sense of place and to preserve or improve the character of the area. Development proposals should respond to and enhance local character, the natural environment, heritage assets, and identity of the Borough. Whilst the application is in outline form only with all matters save for access reserved for subsequent approval, parameter plans have been submitted along with illustrative drawings which provided an indication as to the scale mass and bulk of the development proposed. Details of design and appearance will be submitted for consideration.
118. The proposals include the provision of B1 office accommodation on a strategic site allocated for this purpose and in this respect comply with policy LLP1. They also provide a mix of retail and main town centre uses for which the primary and most sustainable location would be Luton Town Centre. The proposed retail and other main town centre uses do not comply with Policy LLP1.
119. Policy LLP2 sets out the Spatial Development Strategy for the Borough. Policy LLP2B states that employment in B Class uses will be delivered through 69 hectares of employment development on Strategic Allocations at Land South of Stockwood Park, London Luton, Airport, Butterfield Technology Park, Power Court, Napier Park, High Town and the Creative Quarter. The office component of the application proposals comply with Policy LLP2B.
120. Policy LLP2C states that: "Town Centre and Retail uses will be directed in accordance with the Centre Hierarchy (Policy LLP21) reinforcing and enhancing the vitality, viability and regeneration of Luton Town Centre as a regional centre and the network of 6 District Centres and 12 Neighbourhood Centres serving the Borough. The Town Centre, District and Neighbourhood network will be a focus for future investment provision including transport access and linkages, community facilities, opportunities for shared services as well as appropriate scale housing, retail and employment development."



121. The application is seeking to provide a substantial amount of retail and other town centre uses in an out of centre location whereas Policy LLP2C is seeking to direct these uses into Luton Town Centre and the network of other defined centres within the Centre Hierarchy. The application proposals are in conflict with Policy LLP2C.
122. Policy LLP2E states that: “the natural environment, historic environment and heritage assets of the Borough will be protected and enhanced as set out in Policies LLP27, LLP28, LLP29, and LLP30 in the Local Plan.” Since Policy LLP2E is addressed by compliance with the said policies LLP27 – LLP30, these matters will be addressed subsequently in this report.
123. Policy LLP3 sets out the “Luton Town Centre Strategy”. Identifying specifically in the narrative (paragraph 4.33) the two strategic allocations which are contained within the Town Centre, namely Power Court LLP9 and the Creative Quarter LLP11. The policy is predicated by the premise that “Luton Town Centre will be a location for positive change and will be a focus for economic and residential growth and an improved natural and built environment. Building on the town’s rich heritage this mixed use area will provide a balanced offer of high quality residential development, offices and studios, creative industries, independent and national retail, education institutions and thriving public spaces with a vibrant café culture and night time economy.”
124. With regard to retailing and other town centre uses, LLP3A.iii. Identifies the requirement in the town centre for: “circa 3,400 sq. m. net convenience retail floorspace in the current period and provide circa 4,420 sq. m. of non-bulky comparison goods for the period to 2020 and 30,096 sq. m. by 2025, together with hotels, and leisure uses to maintain and enhance the retail regional role of the town centre.” The sites to accommodate these uses are Power Court (LLP9) and the Creative Quarter LLP11.
125. Members will be aware that the Local Planning Authority at their meeting on 16 January 2019 resolved to grant planning permission at Power Court for a mixed use development including a football stadium and the capacity of this site to deliver any significant quantum of comparison goods retail floorspace has therefore diminished. If approved this application will require the delivery of the stadium at Power Court to podium level before any part of the retail and leisure elements on this site can be occupied. This is to ensure compliance with the sequential test for retail as set out later in this report. This will be dealt with through a S106 obligation.
126. The application proposals include up to 37,000 sq. m of comparison goods shopping floorspace and commercial leisure, food and beverage and hotel. This application would address the full need for Luton, but would be providing the required floorspace in an out of centre location rather than within the town centre. As such the application conflicts with Policy LLP3A.iii.

127. The foregoing review of compliance with the development plan has highlighted that the application conflicts with aspects of adopted policy. Specifically Policy LLP5 Part A, Policy LLP1, Policy LLP2 Part C and LLP3A.iii.
128. The applicant has identified a number of benefits which they consider are material to the consideration of the proposed development and which would outweigh conflicts with up to date development plan policy. The benefits identified comprise matters specific to the application proposals for Newlands Park and the interrelationship between this application and the applicant's development at Power Court.
129. The applicant's case for the benefits of Newlands Park can be summarised as:
- Meeting many of the Council's strategic aspirations in particular retaining and enhancing Luton's important sub-regional role as a place for economic growth and addressing wider issues such as social deprivation.
  - Economic benefits including the equivalent of around 9000 full time jobs.
  - Contributing a gross value of around of £235million per annum to the Luton economy between 2020 and 2040.
  - Providing high quality office floor space to meet an identified need.
  - Delivering a mixed use scheme combining high quality employment floorspace together with retail, leisure and hotel uses that provides the right combination to attract occupiers.
  - Providing new retail floorspace to meet identified retail need. This will be a high quality shopping and leisure destination which will fulfil a different role to the town centre therefore catering for a different market. As identified within the accompanying Main Town Centre Uses (MTCU) Assessment.
  - Claw back of retail expenditure leaking to other centres to help Luton compete with the significant new retail development at Houghton Regis, Milton Keynes and Watford and mitigate against existing leakage to neighbouring towns.
  - New leisure facilities which together with restaurants and a hotel will provide a destination that cannot be found elsewhere in the sub region.
  - Environmental benefits including green roofs and ecological enhancement.
  - Safeguarding of a park and ride facility at the southern gateway into Luton.
  - Creation of a gateway into Luton, close to London Luton Airport, the M1 and Luton itself will support the wider regeneration of the area.
130. The applicant in addition claims linked benefits between Newlands Park and Power Court:

- Assisting to facilitate the development of a new home for Luton Town Football Club at Power Court which is cross funded by the Newlands Park development.
- Bringing about the regeneration of a long time vacant town centre site at Power Court.
- Enhancing the River Lea
- Power Court will “transform the image and reputation of Luton, locally, regionally, nationally and internationally”
- Community integration and well-being from Power Court

131. However, this application is to be determined on its own merits. The material benefits of the proposal which are independent from Power Court relate to delivering retail and office floorspace; clawing back trade that is leaking from Luton to other centres and the economic benefits that development of this scale will bring in terms of creating employment and generating local economic stimulus. Further there is no viability information (relating to either Newlands Park or Power Court) supporting a case for cross-funding.

132. Providing new retail floorspace and clawing back leaking expenditure would be a stronger material benefit if the proposals were located within Luton town centre where existing town centre occupiers (and investors) would derive direct and linked benefits from the increased attraction of new retail (and leisure) development in the town centre would deliver. As an out of centre development, the level of linkage in spending and footfall terms with the town centre is reduced and this needs to be considered in the context of trade diversion and impacts that the development will have upon the town centre. The impact of the application on existing established town centres is considered in the following Retail and Town Centre Uses Considerations section.

133. The delivery of office development is accepted as a material benefit. Policy LLP5 allocates the site for 9.5 ha of business use. The proposal provides for 42,000sqm and therefore delivers approximately half of the office requirement.

134. The safeguarding of a park and ride facility is also considered a material benefit in keeping with the strategic objectives for sustainable transport. The site is one of the few available on the strategic road network into Luton and policy LLP5 identifies a P&R at this location which offers opportunities for improved public transport links to the town centre and Luton Airport Parkway railway station. However in this context the preferred location of a Park & Ride facility within the overall site would be at its north-eastern end.

135. The demand for hotel rooms in Luton significantly exceeds supply as identified in the Hotel Study undertaken by WYG in 2015. The proposed hotel would cater for the mid to upper market. This demand is predicted to grow further given the continuing growth of the airport. A prestigious hotel in this location is also seen as an additional benefit.
136. The economic stimulus of the development of Newlands Park in providing jobs boosting GVA and delivering other economic benefits is considered later in this report.
137. Although in outline form only the proposals do provide the potential for a prestigious southern gateway development on this high profile site. Whilst the shape of the site acts as a constraint to more traditional forms of development, the applicant has sought to utilise this as an opportunity to incorporate innovative design. This is in keeping with the aspirations of policy LLP5.

#### Retail and Town Centre Uses Assessment

138. The Newlands Park site is located outside a designated town centre and the proposals include retail and other main town centre uses. In these circumstances, it is required that these retail and other town centre use components are assessed against the NPPF Sequential Test and Impact Test.
139. The applicant has provided detailed assessments of the Retail and Main Town Centre Uses against these two policy tests. This has comprised five detailed Retail and Town Centre Uses Assessment Reports. These are in chronological order:
- Main Town Centre Uses Assessment, Newlands Park, Luton 2020 Developments (Luton) Ltd (on behalf of Luton Town Football Club) July 2016 Indigo.
  - Addendum Main Town Centre Uses Report Newlands Park, Luton Planning Application Ref. 16/01401/ OUTEIA, March 2017 Indigo.
  - Main Town Centre Uses Second Addendum Report Newlands Park and Power Court, Luton Planning Application Refs. 16/01400/OUTEIA and 16/01401/OUTEIA May 2018 Indigo.
  - Main Town Centre Uses Third Addendum Report Newlands Park and Power Court, Luton Planning Application Refs. 16/01400/OUTEIA and 16/01401/OUTEIA November 2018 Indigo.
  - Response to Turley's Final Submissions Newlands Park and Power Court, Luton, January 2019 Indigo.
140. These five documents represent an evolution of the applicants assessment of the retail and other town centre use components with the Addendum Assessments being prepared to address matters highlighted in critique work

prepared by WYG and Graham Chase on behalf of the Council and to respond to a number technical representations by third parties which questioned the validity of the applicants retail and town centre use assessment work. In addition, the applicant's agent Indigo provided a letter with enclosures dated 25 January 2019 which provides their final responses to retail impact and retail restriction (S106) matters.

141. The work prepared for the Council comprises:

- i) WYG Planning Appraisal of Main Town Centre Uses Assessment - December 2016.
- ii) WYG Planning Appraisal of Newlands Park Main Town Centre Uses Assessment and Power Court Retail Impact Assessment (2nd Appraisal) - September 2017.
- iii) Chase & Partners Assessment of Occupational Demand for the proposed development of a Shopping Centre with an aspirational User Mix profile In Respect of Land at J10 M1, Newlands Park, Luton - March 2018.
- iv) Chase & Partners Assessment of Occupational Demand for the proposed development of a Shopping Centre with an aspirational User Mix profile In Respect of Land at J10 M1, Newlands Park, Luton (Supplemental Report) - May 2018.
- v) WYG Planning Supplemental Retail Appraisal Report - July 2018.
- vi) WYG Response to Indigo's Third Addendum Report - letter dated 4 January 2019.
- vii) WYG Response to further information submitted by the applicant in relation to town centre use matters - letter dated 7 February 2019.

142. Third party representations that have been made on the application proposals relating to retail and main town centre uses are summarised in the third party representation section of this Report and have been considered in this section of the Report also.

143. The third party representations have primarily been from development and investment companies with interests in Luton town centre and other nearby town centres. They have made objections on the basis of the proposals non-compliance with development plan and national policy; failing the sequential test; and impact upon impact upon town centres.

### **Sequential Test - Consideration of Suitable and Available Alternative Sites**

144. The sequential test as set out in the NPPF (paragraphs 86 to 88) and amplified in the NPPG (Ensuring the vitality of town centres) responds to the Town Centre First Approach which seeks to ensure that retail and other main town centre uses are wherever possible located within town centre locations. Where there are no sites that are suitable or available to accommodate the proposed uses the Sequential Test directs that edge of centre sites should be considered before sites that lie outside town centres can be contemplated.

145. In undertaking the sequential test there is a requirement for the applicant promoting development in a non-town centre location to be flexible in their approach to reviewing alternative sequentially preferred sites. This means that issues such as format and scale of development should be flexibly considered and the potential of the proposed development to be fitted onto a smaller more central site must be assessed.
146. Case law [Dundee; North Lincs; et al] and Secretary of State decisions [Rushden Lakes etc] have clarified the extent of flexibility required when assessing the suitability of alternative sites and this has established that disaggregating a proposed development into its component land use parts in order to fit these components onto an array of more centrally located sites is not what the Sequential Test requires. The sequential test is to be undertaken as a 'real world' examination of sites that are capable of accommodating what the developer is proposing and not some artificial or theoretical examination.
147. Recognising that Newlands Park is out-of-centre and not allocated for large scale retail and commercial leisure uses in the Development Plan, the applicant provided sequential site analysis [within their July 2016 Main Town Centre Uses Assessment] to consider the suitability and availability of alternative more centrally located sites. Adopting flexibility relative to the application proposals, search criteria were based upon a site requirement of 10.5 hectares which would accommodate a development 25% smaller than what is proposed at Newlands Park. The area of search for alternative sites was confined to Luton Borough on the basis that there is significant unmet need in the Borough and the focus was upon Luton town centre as the highest order centre with regional significance. This approach has been agreed by WYG and officers.
148. The Creative Quarter and Power Court as the two strategic allocations within Luton Town Centre were considered by the applicant as part of their sequential approach assessment.
149. The Creative Quarter's three development opportunity sites, namely Northern Gateway; Station Gateway; and north of St. Georges Square were reviewed. The applicant concluded that none of these sites would be large enough in isolation to accommodate the proposals and they also are not available in a reasonable time period. In addition, the sites cannot be considered for wholesale redevelopment without the loss of important heritage assets and significantly impacting the architectural setting and fabric of this area which is protected by Conservation Area status.
150. Power Court was identified by the applicant as the only site within the town centre that is capable of delivering a reasonable quantum of new retail floorspace. However the sites capacity was considered to fall short of the amount of floorspace required to achieve the 'step-change' in retail provision that is required to enable Luton to attract quality, high profile retail

anchors, and be able to compete effectively with surrounding sub-regional and regional centres. The Power Court site was not considered suitable.

151. Regarding availability, the applicant advised that Power Court is not available stating that:

'3.37 More fundamentally, however, the key issue is that Newlands Park is linked with the redevelopment of Power Court for the Club's new stadium, as part of an exciting mixed-use regeneration scheme that seeks to rejuvenate a redundant industrial site and create a vibrant residential, leisure and retail extension to Luton town centre. If Newlands Park is approved, the redevelopment of Power Court will be delivered. It will create a landmark sporting and leisure facility as well as delivery of the convenience retailing and residential dwellings anticipated by the emerging Local Plan.

3.38. In short, Power Court is not available to accommodate the same amount of retail floorspace as Newlands Park even if a reasonable amount of flexibility is allowed. Power Court cannot accommodate the quantum of new comparison floorspace proposed at Newlands Park in addition to the stadium, other leisure, convenience retail and residential uses. However, in combination, the two schemes will ensure Luton secures the regeneration of its key town centre site for a landmark development, and a step change in retail provision that will enable it to compete effectively on a sub-regional and regional basis.'

152. Capital & Regional in their representations to this application have provided a sequential assessment prepared by Turley [Final submissions and rebuttal of Indigo Retail Assessment on behalf of Capital & Regional December 2018]. This is critical of the analysis undertaken by the applicants and advises that there is ample sequential opportunity within the town centre if the flexibility required by policy is applied and legal arguments which are considered to depart from policy wording are disregarded.

153. In particular, the Turley submission considers that development of a reasonably comparable scale to Newlands can be accommodated in Luton town centre, together with a stadium on Power Court. They consider that this is the framework set out in Local Plan Policies (LLP3, LLP9 and LLP11) which seeks a maximum comparison floorspace need of circa 30,000sqm is to be located on sites within the town centre.

154. Capital & Regional's criticism of the applicant's sequential work is made under the following inter-related issues:

- Lack of sequential analysis - the applicant has not undertaken any additional sequential testing since the 2016 work.
- Newland Park is out-of-town so least preferred sequentially.

- The testing for alternative sites should be on the retail and leisure elements of the proposals only not the whole development proposal.
- Lack of need - there is no pressing need for additional retail floorspace in Luton, Newlands Park is not required at this time.
- Inflexible approach - reducing the floorspace and site area is not considered to demonstrate sufficient flexibility. A more sophisticated and comprehensive approach is required.
- Lack of comprehensive assessment - with the publication of NPPF2 it is considered that the opportunities to use town centre and edge of centre sites need to be fully explored where they can be delivered in a reasonable time period.
- Power Court (sequentially preferred site) - the recently adopted Plan allocates Power Court for mixed use development including retail. By choosing to propose an alternative form of development at Power Court the applicant is in effect removing the site as an obstacle to their sequential analysis thus circumventing the test. However, Capital and Regional have since given their full support for the proposal at Power Court as outlined in their statement submitted to the Development Control Committee considering Power Court on the 16th January 2019.
- Lack of legal agreement - No legal linkage between Power Court and Newlands Park applications is within the public domain.
- Misrepresentation of Inspector's Report - The Inspector did not conclude that alternative provision should be made out-of-town to accommodate any need. Policies in the plan have been adopted in the form proposed and examined by the Inspector, including the town centre strategy and the allocation of Power Court not including a stadium (policies LLP3 and LLP).

155. In summary, it is Capital & Regional's case that:

'Turley's sequential assessment demonstrates that such concerns are, in any event, unfounded. On the basis of a comprehensive sequential testing exercise, incorporating an analysis of the capacity of town centre sites; and consideration of issues of linkage, movement and place-making; we demonstrate that the quantum of development proposed at Newlands can be accommodated in its entirety in the town centre together with a stadium on Power Court (Newlands Park Retail Assessment - Part 1: Sequential Assessment, Turley, August 2018).'

156. Capital & Regional's submission on sequential test also identifies as relevant the recent call-in decision at Cribbs Causeway where planning permission was refused by the SoS for the expansion of Cribbs Causeway out of town regional shopping centre near Bristol. As well as being refused on impact grounds, the Cribbs Causeway proposals also failed the sequential test with an alternative site within central Bristol being



considered suitable/available when assessed with flexibility on form and scale.

157. The applicants sequential test analysis was subject to review by the Council's retained retail planning consultants WYG [Appraisal of Newlands Park Main Town Centre Uses Assessment and Power Court Retail Impact Assessment September 2017 (2nd Appraisal)] and their review concluded that:

'4.7.2 In terms of the Newlands Park proposed development, the sequential site search parameters and sites to be assessed as part of the sequential test have been agreed between WYG/the Council and the applicant's planning agent, Indigo. Our conclusions on the two sites are summarised below.

- Creative Quarter - The three redevelopment opportunity areas are not considered physically capable of accommodating the proposed Newlands Park development. Even combined, the opportunity areas would not be able to physically accommodate the proposed development without requiring an unreasonable level of flexibility in terms of format and scale. The site is therefore considered to be unsuitable for the proposed development.
- Power Court - at the current time, given the current planning application on the site and stated 'linkages' with the proposed Newlands Park development, we consider that the site cannot be considered to be available to accommodate the Newlands Park development.

4.7.3 Whilst further information on flexibility in terms of format and scale has not been provided by Indigo given the limited size of the Creative Quarter sites and our conclusions with regard to the availability of the Power Court site, additional information would not have materially altered our assessment and overall conclusions. However, if the Council finds itself in the unlikely position that it is minded to approve the Newlands Park planning application, but refuse the current Power Court planning application, it should not do so until a further sequential approach assessment/appraisal of the Power Court site is undertaken.

4.7.4 On the basis that our conclusions on the Power Court site are based on the current planning application at Power Court being delivered alongside the Newlands Park proposals we would advise that the Council, should it be minded to approve the Newlands Park planning application, investigate a mechanism which links the two planning application proposals to ensure the delivery of the Power Court site.

158. WYG's conclusions that the application has satisfied the sequential test were predicated on the understanding that the Power Court site was not available for the Newlands Park development as it was at that time subject to a planning application (also by Luton 2020) for a mixed use redevelopment including a new football stadium for Luton Town FC.
159. This position has evolved since WYG reported on sequential site matters. This is because the Council have very recently resolved to grant planning permission for the redevelopment of Power Court (16/01400/OUTEIA - 16 January 2019) and this confirms that the site would be unavailable to accommodate the retail and leisure elements of the Newlands Park development.
160. Further, any planning permission for Newlands Park will be subject to a S106 obligation which will prevent occupation of any retail or leisure floorspace until the development of Power Court (application number: 16/01400/OUTEIA) is secured by requiring a level of development which will show commitment. This being so, Power Court will therefore become committed to its stadium led development and therefore not available for significant comparison retail and leisure led development.
161. A consequence, therefore of those arrangements will be that the development of Power Court as proposed would occur, with the consequent benefits of that proposal.
162. In conclusion it is considered that the sequential test has been satisfied.

### **Impact of Retail [and Other Main Town Centre Uses]**

163. The impact test as set out in the NPPF (paragraph 89) and amplified in the NPPG (Ensuring the vitality of town centres) has two limbs. Applications which are located outside a main town centre and are not in accordance with an up to date development plan are required to provide an impact assessment which considers:
- 'a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
  - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).'
164. The NPPF at paragraph 90 advises that where an application is likely to have a significant adverse impact upon one or more of the impact considerations it should be refused.

165. There is no policy prescribed degree at which an impact is definitively considered to be significantly adverse; that is a matter of judgement for the decision maker based upon consideration of anticipated level of impact relative to local circumstances such as the existing health of town centres that are subject to trade diversions and turnover impacts and evidence of investment in a centre which could be held back as a consequence of an applications impact.
166. Therefore, the existing health of Luton town centre and other town centres subject to retail impact is important to understand. Health checks of Luton town centre have been prepared by the applicant and WYG and these conclude that Luton town centre is vital and viable (a view accepted by officers). Third parties dispute this conclusion and point to weaknesses in the health of the town centre and therefore greater susceptibility to impact.
167. The trading conditions for retailing and the town centre economy are also an important backdrop to the assessment of impact. Advice provided by WYG/Chase & Partners (Section 3, Supplemental Retail Appraisal Report, July 2018, WYG) is that these are very challenging and competitive times for retailers, which is evident from a number of retailers providing poor trading results and updates and announcements about retail restructuring and administrations of some high profile retail businesses. An example of the challenging trading conditions is provided by the announcement in January by M&S that the retailer is rationalising their store portfolio and as a consequence would be closing 17 of their stores including Luton.
168. Equally important to the consideration of impact is the extent to which a proposed development will compete with established town centres for turnover/trade and this depends upon both proximity to the proposed development and the level of overlap on the retailers/goods that will be sold. Generally, the closer a town centre is to a proposed development the more likely it is to have trade diverted from it and more distant centres will have lesser degrees of trade diversion.
169. However with comparison goods shopping particularly, the degree to which a proposed development will be similar to existing town centres is highly relevant, this is often described as 'like competes with like' and a proposed development which is going to provide a similar retail offer and experience to an existing town centre would draw a greater proportion of trade from that centre compared to an existing centre which is not similar in its retail offer.
170. The applicant is proposing that the Newlands Park development will be a high-quality comparison goods retail offer and this will be restricted in net floorspace terms to 27,750sqm. The applicant was originally proposing two retail restrictions which would be secured by S106 legal agreement. These comprised a 'permitted user list' (PUL) of retailers that would be allowed to trade at Newlands Park and a 'no poaching' clause which would prevent retailers currently in Luton town centre from relocating to Newlands Park unless they maintain their existing presence in the town centre i.e. dual

commit. These retail restrictions were intended to control/reflect the intention to deliver a high quality-retail scheme as distinct from general or mainstream retailing which is to be found in Luton town centre and other nearby centres. These restrictions were offered by the applicant to reduce the potential for impact upon existing town centres. Through the processing of the application and reflecting the advice of the Councils retail advisors these retail restrictions have been refined. Retail restrictions would need to be secured by legal agreement and would be required to control the proposed development and mitigate potential adverse impacts. This is explained further below.

171. Legal agreements to control occupiers of retail developments have been used in a number of situations across the UK. The specific detail of the legal controls considered for the Newlands Park development, their enforceability and effectiveness; together with an assessment of the strengths and weaknesses thereof are considered later in this report under the heading "Section 106 retail restrictions - Legal Officer's view".
172. Other aspects relevant to assessing retail impact include technical considerations such as the year at which impact is tested; establishing the trading patterns of existing centres into which the proposal (and other committed retail developments) is added on the basis of a reasonable and evidenced trade draw pattern; assessing impact on a cumulative basis taking account of other permitted/committed development (which comprise Houghton Regis new shopping development and Luton 2020's Power Court Development); and quantifying impact as monetary trade diversion (reduction in turnover of existing centres) and as a percentage reduction in the turnover of an existing centre.
173. The applicant and WYG (for the Council) have been through this technical process and reached broad agreement on impact study inputs and parameters. That there are differences of monetary diversion and percentage impacts is not uncommon and the process of critical analysis between consultants narrows down the points of difference.
174. The applicant has provided retail impact assessment work which has been updated and refined during the application period as a result of critical reviews by the Councils retail advisors WYG and Chase and Partners and to respond to third party representations which have made technical retail impact observations and objections. The various evolutions of the applicant and Council advisors retail assessment reports have been identified earlier in this report and third party representations have been summarised in this report.

**Impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal.**

175. The first limb of the retail impact test was considered by the applicant in their 2016 Main Town Centre Uses Assessment.
176. This work reviewed the Council's long term aspirations for the redevelopment of town centre sites particularly Power Court and the Northern Gateway sites highlighted that although promoted for over 10 years no development has been delivered.
177. It is the applicant's case that the Newlands Park proposals will facilitate the redevelopment of Power Court for a mix of uses that will contribute significantly to the vitality, viability and diversity of the town centre. Alongside the Newlands Park proposals, Power Court will be redeveloped to accommodate the new football stadium for Luton Town, together with a new foodstore, leisure and entertainment facilities as well as new residential dwellings and offices.
178. As such they consider that through this application and Power Court, planned investment in Luton town centre will come forward rather than be jeopardised. Power Court will also increase the prospects of the Northern Gateway, Cultural Quarter sites and other town centre regeneration schemes being delivered in the future.
179. In reviewing the applicant's position on impact on planned investment, WYG advised that: "NPPF requires applicants to demonstrate that there will be no significant adverse impact on any in-centre existing, planned or committed investment proposals. The only known existing, planned and committed in-centre investment proposals for Luton town centre is that currently proposed by the applicant (Luton2020) at Power Court. Accordingly, the proposed planning applications are not considered to result in any significant adverse impact on investment at the Power Court site. On the contrary, they will deliver investment on the site." (paragraph 5.2.5 WYG Second Appraisal, 2017). There is to be a S106 obligation restricting occupation of retail and leisure at Newlands pending a commitment to deliver development at Power Court (details are referred to below).
180. In connection with impact upon investment at the Creative Quarter, WYG advised that they were not aware of any progress being made by landowners towards securing investment for future proposals. There is therefore no planned investment which could be impacted upon by the proposal.
181. WYG are not aware of any other notable existing, planned and committed in centre investment outside Luton Borough which have the potential to be adversely affected by the Newlands Park proposal. No neighbouring Council or third party with land/business interest in centres outside Luton

Borough have raised concern or objection on the basis that Newlands Park will adversely affect in-centre investment in other centres outside Luton Borough.

182. Accordingly it is concluded that the proposal will not have a significant adverse impact on town centre investment.

**Impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).**

- Impact on vitality and viability of Luton BC town centres

183. The trade diversion assessment aspects of the retail impact assessment analysis have been an evolution over the duration of the application. The most recent impact position of the applicant is provided within their Main Town Centre Uses Third Addendum Report - November 2018.
184. The Council advisor's latest position is contained within the WYG letters dated 4 January 2019 and 7 February 2019 together with the WYG Supplemental Retail Appraisal Report July 2018 which took account of the commercial retail advice commissioned by the Council from Chase & Partners and was provided by the same in their Assessment of Occupational Demand March 2018 and Supplemental Report May 2018.
185. The most recent third party representation on retail impact (and other commercial matters) was provided by Turley on behalf of Capital & Regional (Final submissions and rebuttal of Indigo Retail Assessment on behalf of Capital & Regional, December 2018) and a letter of 14 February 2019.
186. These documents reflect the latest retail impact position of the parties. It must however be emphasised that in preparing this report Officers have considered and had regard to all of the technical retail work submitted by the applicant, the Council's advisors and Third Parties.
187. Having initially undertaken their own retail impact assessment, the Applicants agents Indigo in their most recent Third Addendum partially accept the WYG retail impact work. They are however critical of elements of the WYG assessment as they consider that the impacts are overstated but have not provided any detailed quantitative trade diversion or impact analysis to substantiate these criticisms.
188. WYG's assessment of the impact on the vitality and viability of existing centres was that the level of impact upon defined town centres varies depending upon how the proposed development will operate, based upon the nature of comparison goods shopping that will be provided. Two impact scenarios were considered comprising:

Scenario 1 - a high quality and restricted comparison goods retail offer (which the applicant is proposing)

Scenario 2 - general and unrestricted comparison goods retailing.

189. WYG reported in September 2017 that a high quality restricted comparison goods scheme at Newlands Park would have a solus impact of -1.1 to -1.4% on Luton town centre. Cumulatively, with other retail permissions factored in that impact was -5.3 to -5.7%.
190. If Newlands Park was unrestricted and no control was in place to limit the extent to which mainstream comparison goods retailers could occupy the development the Solus impact upon Luton town centre was predicted to be -7.7 to -7.9% and cumulatively -11.7% to -12.5%.
191. It is important to note that the impact assessment work has taken account of and places importance upon the Power Court development within the town centre because that in-centre development will mitigate the quantitative impact of Newlands Park on Luton town centre. The retail turnover generated by Power Court is added to the overall turnover of Luton town centre in assessing impact. Without the delivery of Power Court, the quantitative impact upon Luton town centre would be significantly higher. This emphasises the importance of a S106 obligation which will prevent occupation of any retail/leisure floorspace at Newlands Park until the development at Power Court has reached a level of development that demonstrates commitment.
192. Impact percentages on Dunstable town centre assessed by the same method showed impacts around -6.8 to -5.9% if Newlands was restricted and -7.8 to -6.8% if unrestricted.
193. Both of the quantitative impact scenarios tested by WYG and described above were based on the assumption that no retailers would relocate from Luton town centre (or any other centres) and undertaken in the context of the PUL and no-poaching clause (in place for 5 years) restrictions offered by the applicant to control the retail nature of the development.
194. The level of quantitative impact on a centre (including indirect impacts from potential loss of footfall/trade) will vary depending on the number of retailers that potentially may relocate and which retailers relocate. WYG could not be sure what might happen post 5 years (when the proposed no poaching clause came to an end) and it was difficult to provide quantitative impact assessment modelling of potential store relocations because there could be numerous scenarios.
195. Due to this uncertainty over commercial aspects of the retail market place, the Council instructed Chase & Partners a retail property agency to provide commercial retail advice to inform the WYG impact work and test the

appropriateness of the PUL and no-poaching clause being put forward by the applicant.

196. The Chase & Partners work considered inter alia occupier demand for the application scheme; commercial impact if Newlands Park is developed; and the likelihood of existing Luton town centre retailers relocating to Newlands Park and closing their town centre stores in 5 years' time once the applicants proposed 'no poaching' clause had expired.

197. Chase & Partners advice on occupier demand was:

- The applicants PUL included retailers that were considered to be standard or mass market retailers and not luxury/aspirational with a recommendation that the list be amended.
- Many retailers on the PUL were already represented particularly in Milton Keynes, Watford and St Albans.
- There was negligible interest from retailers on the PUL to locate in Luton town centre.
- It was assumed that House of Fraser would be an anchor for Newlands Park trading a high-class format store rather than their traditional middle market offering.
- Luxury/aspirational brand retailers are focused upon London. Newlands Park did not satisfy their locational criterion and those luxury/aspirational brands already present in Milton Keynes, Watford and St Albans showed little interest in Newlands Park.
- It was unlikely that Newlands Park would secure full letting from the PUL.
- In order to attract more retailers from the PUL, Newlands Park will have to secure mass market retailers like Marks & Spencer, Primark and H&M - all of which are currently within Luton town centre and may only consider a single store rather than maintaining two stores within Luton.
- There is insufficient demand for Newlands Park based upon the applicants proposed PUL list and it is necessary to include more mass market fashion retailers. This will require a reduction in the proportion of high-end retailers and a corresponding increase in unrestricted comparison goods retailing. Suggested reduction from 85% to 65-75%.

198. On commercial impact, Chase & Partners advice included:



- Retailers on the revised PUL have no requirement for Luton Town Centre so their location at Newlands Park would not impact on demand for space in the town centre and would therefore not have any commercial impact.
  - If retailers such as Marks & Spencer, Primark, H&M and Next were permitted to be represented at Newlands Park, there would be an adverse commercial impact on Luton town centre which requires careful consideration.
  - St Albans and Harpenden would be impacted upon to a notable degree.
199. Chase & Partners advice on what might happen when a no poaching clause comes to an end was that Dunstable would not face any notable migrations to Newlands Park but that Luton town centre could see some migration of retailers.
200. Further clarification was provided by Chase & Partners on their advice in respect of which specific retailers (utilising the proportion of unrestricted floorspace) might relocate to Newlands once a no poaching clause had expired. Their view was that Marks & Spencer would, if they opened at Newlands Park, close their town centre store and New Look would do the same.
201. A further Chase & Partner recommendation was that consideration be given to an exclusion list which would prevent certain retailers from the proposed scheme as this could help to balance retailer representation between Luton town centre and Newlands Park.
202. To reduce the potential for impact, in terms of overlapping retail provision with existing established retail centres, the applicant initially provided a PUL, from which at least 85% of the retail floorspace at the application would be occupied. This list predominantly comprised high-end/luxury/aspirational retailers, but also included some 'bridging retailers' and service/utility retailers including Next and Boots.
203. Following discussions with Chase and Partners, this PUL was amended to only comprise high-end/luxury/aspirational retailers and has excluded other retailers or service providers. The list of PUL retailers is provided in the Chase and Partners Supplemental Report of May 2018 (see Appendix GFC23) and a copy of the PUL is provided in Appendix 3 of this Report.
204. Reflecting Chase and Partners advice to the Council that between 65% and 75% of the total floorspace proposed in the application should be occupied by retailers from the PUL the applicant now proposes that a minimum of two thirds (66%) of the comparison goods retail floorspace will be occupied by retailers from the PUL.
205. Chase & Partners confirmed that based upon their revised PUL that there would be no commercial overlap with:

- Luton town centre
- Dunstable town centre
- Hemel Hempstead town centre
- Stevenage town centre
- Bedford town centre

There would be minimal overlap with:

- Hatfield and Galleries town centre
- Hitchin town centre
- Welwyn Garden City

206. Chase and Partners considered that Newlands Park controlled by a PUL would have greatest commercial impact upon St Albans and Harpenden town centres. We return to impact with regard to St Albans and Harpenden later in this section of the report under the sub-heading Impact on other non Luton Borough Council centres.
207. WYG's assessment of impact provided in Section 4 of their Supplemental Retail Appraisal Report, July 2018 took account of the Commercial Advice from Chase & Partners and the revisions to the PUL.
208. For Luton town centre, having regard to Chase & Partners commercial advice, WYG expressed concerns about the potential for Newland Park to attract a high end department store to anchor the scheme, citing recent trading updates from House of Fraser as evidence of their retrenching from opening new stores and Chase & Partners finding limited demand from other high end department store operators. C&P advised that securing a high end department store is critical to the strategy for Newlands Park to be a high quality aspirational comparison shopping scheme.
209. Having regard to Chase & Partners commercial advice, WYG considered that:

"....there is potential risk of comparisons goods retailers relocating from Luton town centre to Newlands Park after the 5 year no poaching clause expires. The closure of one or a number of town centre anchor retail stores cannot therefore be ruled out." (Paragraph 4.2.3 WYG July 2018).

"The proposed 65%/35% floorspace split at Newlands Park would allow up to 35% (i.e. 12,950sqm gross) of the proposed Class A1 floorspace to be occupied by unrestricted/mass market comparison goods retailers (those not included on the Revised Permitted User list). It is possible therefore that this floorspace could accommodate a range of retailers which could include e.g.: M&S, Debenhams, H&M, Next, Primark, Monsoon, Topshop, River Island, New Look, JD Sports and

Sports Direct etc. All of the aforementioned retailers are represented in Luton town centre. C&P notes ladies fashion is a category which drives the retailing profile and attraction of Luton town centre and is the area where the most likely conflict will occur between the town centre and Newlands Park. In our view 12,950sqm gross is sufficient to accommodate for example, an M&S and Debenhams store. The loss of two key anchor retailers such as these from Luton town centre would adversely impact town centre turnover and lead to in-direct adverse effects such as the loss of footfall and linked-trips. We consider that this potential risk could result in a significant adverse impact on the vitality and viability of Luton town centre." (Paragraph 4.2.4 WYG July 2018).

210. It is clear from the technical advice provided to the Council that a completely unfettered comparison goods shopping development would have a significant adverse impact not just upon Luton town centre but potentially other nearby centres.
211. However as explained earlier, the applicant is not seeking an unfettered retail planning permission and the intention is for Newlands Park to be a high end and aspirational shopping development which would be a different and distinct offer compared to existing shopping provision in Luton town centre and surrounding centres.
212. Alongside the PUL controlling the restricted 66% floorspace, a 'No Poaching' clause will be required which controls the 34% unrestricted floorspace (12,580 sq. m gross). The no poaching agreement would place a restriction on retailers currently trading in Luton town centre from taking space within Newlands Park. Such a 'No Poaching' clause would require that no retailer can go to Newlands Park that is trading in the town centre unless that retailer provides commitment to the Council that it will continue to trade from the town centre.
213. A further potential obligation suggested by WYG is the imposition of a trader exclusion list which would identify main space occupiers within Luton town centre and exclude them from Newlands Park's 34% unrestricted floorspace for a period of time.
214. Consideration must also be given to a mechanism to secure as a main anchor store a 'high end' department store for Newlands Park. This is considered of critical importance by the both WYG and Chase & Partners and the securing of a department store which is identified on the PUL and is included in the 66% restricted floorspace needs to be secured to set the retail tone for Newlands Park. The department store operators on the PUL are Fenwick, Fortnum and Mason, House of Fraser, John Lewis, Harvey Nichols and Selfridges. This commitment will be secured by legal agreement.

215. The applicant has confirmed in their 25 January 2019 letter that they are prepared to accept the retail restrictions as set out above. Specifically, they have advised:

"As we stated in our Third Addendum Report, we do not consider that an exclusion list is necessary given the controls provided by the Permitted User List (PUL) and the 'no poaching' clause to be secured in the section 106 agreement.

However, in order to assist the Council and provide further comfort, the applicant is willing to accept a restriction to ensure that key town centre major space users will be prevented from occupying space at Newlands Park.

With regard to the 'high end' department store, again we are confident such a tenant will come forward from the PUL and, on that basis, are happy that the section 106 agreement includes such a requirement.

However, in addition to the additional provisions suggested above, and if the Council consider it necessary, we are also willing to extend the time period within which these provisions take effect from 5 years to 8 years. This is notwithstanding that 5 years is in line with Secretary of State approved precedents and the planning practice guidance, which states that most of the retail impact would occur in the first five years."

216. WYG for the Council have reviewed the retail impact position in light of the acceptance by the applicant of the four retail restrictions and those restrictions being applied for an extended period from 5 years to 8 years. The WYG advice is set out in their 7 February 2019 letter.

217. This latest and final advice provides a summary of WYG's previous advice and then responds to the applicants updated position on retail restrictions and provides their conclusions upon impacts upon Luton town centre. The WYG advice is set out fully below:

"We have been clear early on in our advice to the Council that a key determining point with regard to whether a likely significant adverse impact arises is:

- whether the comparison goods retailers at Newlands Park will compete with the retail offer provided in Luton Town Centre; and
- whether Newlands Park would attract retailers that would otherwise seek to locate in or relocate from Luton Town Centre.

218. As noted in our January 2019 letter, having regard to Council's commercial agents, Chase and Partner's (C&P) advice, we advised the Council that we considered that:

- there is a potential risk of comparison goods retailers relocating from Luton Town Centre to Newlands Park after a 5 year no poaching clause expires. The degree of impact on the vitality and viability of the centre is likely to vary depending on how many and which retailers potentially relocate.
- there is a potential risk for the 35% (12,590 sq. m gross) unrestricted comparison goods floorspace at Newlands Park to attract new 'mass market' that would otherwise seek to locate to Luton Town Centre.

We considered that this potential risk could result in a significant adverse impact.

As a consequence of the above, we advised the Council that should they be minded to approve the Newlands Park planning application, in addition to a 'permitted retailer list' and a mechanism which links the delivery of Power Court and Newlands Park proposals, consideration should also be given to the following mechanisms:

- a 'retailer exclusion list' which could minimise the potential risk of retailers relocating from the town centre; and
- a mechanism which makes sure Newlands Park is anchored by a 'high end' department store.

Since our 4th January letter, M&S has announced that they will be closing their store within Luton Town Centre. The closure of this town centre anchor store demonstrates the importance of our recommendations to the Council.

At the time of our 4th January letter the applicant had stated that they were not agreeable to a mechanism which excludes certain retailers from Newlands Park and/or restricts the anchor department store to 'high end' retailers from Newlands Park. Indigo's latest letter (dated 25 January) now confirms that the applicant is agreeable to such a mechanism and is also willing to extend the time period for the proposed 'town centre retailer no poaching clause' from 5 years to 8 years.

We understand that the Council are currently seeking legal advice on whether the mechanisms are enforceable. Assuming that the mechanisms are enforceable, and they successfully restrict Newlands Park to a 'high end' shopping destination which differs from Luton Town Centre, we consider it unlikely that significant adverse retail impacts will arise on Luton Town Centre."

219. Subject to legal advice on effectiveness and enforceability, WYG's advice to the Council regarding retail impact upon Luton town centre is that Newlands Park will not be likely to have a significant adverse impact upon Luton town centre provided the S106 retail restrictions set out below are secured for a minimum of 8 years.

- Permitted user list (PUL) covering 66% of comparison goods retail occupiers;
  - A no poaching clause is imposed to cover the 34% of comparison goods floorspace to ensure that this element of Newlands Park floorspace is not occupied by retailers relocating from within Luton town centre, unless they dual commit to the town centre and Newlands Park.
  - Retailer exclusion list to ensure that key town centre major space users will be prevented from occupying space at Newlands Park.
  - Mechanism to ensure Newlands Park is anchored by a 'high end' department store on the PUL.
220. The specific detail of the legal controls considered for the Newlands Park development, their enforceability and effectiveness; together with an assessment of the strengths and weaknesses thereof are set out in Appendix 2 'Section 106 retail restrictions - Legal Officer's view'.
221. The officer's view recognises the Legal advice set out in Appendix 2, in particular the lack of guarantee in the retail market. The Officer's view, as a matter of judgement, is that the safeguards stated by the Council's retail advisers as being essential to ensure that the proposals would not be likely to result in a significant adverse impact on the Luton Town Centre, nor indeed other relevant centres, the surrounding area, can be sufficiently robust for that purpose to offer the safeguards required by the Council's advisers. Furthermore, the said measures have been accepted by the Applicant, who will enter into a planning obligation to secure same.
222. With regard to Dunstable Town Centre, WYG conclude in that there is unlikely to be a significant adverse impact upon vitality and viability.
- Impact on vitality and viability of other non-Luton BC town centres
223. The retail impact that Newlands Park would have upon the vitality and viability of other town centres has been considered by WYG and Chase and Partners.
224. Some potential concerns were raised by Chase and Partners in relation to the commercial overlap of Newlands Park with Harpenden and St Albans given their retailer profile would be similar.
225. The applicant has considered the potential for impact and advises that the level of impact (based upon WYG's trade diversions) would be a reduction in St Albans turnover of £10.3m which is equivalent to 2.2% trading impact and Harpenden's turnover would be reduced by £1.6m which is equivalent to an impact of around 1.1 % on Harpenden's 2022 turnover.
226. Based upon health checks which identify both town centres as healthy, the applicant considers that these levels of trading impact would not give rise

to significant adverse impact upon the vitality and viability of St Albans or Harpenden. The applicant has also provided information (Indigo 25 January 2109 letter) from their commercial/retail agent McMullen Wilson regarding the potential for impact upon St Albans and Harpenden. The commercial agent's advice was that both are strong centre with unique characters and varied and successful additional uses. They concluded that Newlands Park would not attract retailers (high end or mainstream) that would otherwise seek to locate/re-locate in St Albans or Harpenden.

227. WYG's February 2019 advice to the Council reviewed the McMullen Wilson information and other submitted evidence. WYG confirmed that Newlands Park is unlikely to result in any significant adverse impact on the centres of St Albans and Harpenden thus:

"In our 4th January letter, we noted that whilst updated vitality and viability health checks of both centres had been provided by Indigo, no information was provided by the applicant's commercial agents which would, in our opinion, allow the Council to be satisfied that Newlands Park would not attract retailers (be it high-end/mass market) that would otherwise seek to locate/re-locate in St Albans or Harpenden centres and in turn whether a significant adverse impact arise.

The applicant's commercial agent, McMullen Wilson, has now provided information on this matter. Given the evidence and information provided by McMullen Wilson, the healthy levels of vitality and viability in both centres, and the levels of quantitative impact assessed, we consider that Newlands Park is unlikely to result in any significant adverse impact on the centres of St Albans and Harpenden."

228. Milton Keynes Council raised an objection to the application on the basis that the applicant has not taken account of the latest empirical data from the latest Milton Keynes Council Retail Capacity and Leisure Study (March 2018) and may be underestimating the impact of the proposals on shopping centres outside the Luton Borough Council (LBC) area, such as the city centre of Central Milton Keynes.
229. The applicant has responded to this objection and provided updated trading impact analysis to show that taking account of the MKC retail data impacts on Milton Keynes would increase marginally with impacts of 1.8% or 2.4%. Given the health of Milton Keynes, these levels of trading impact are not considered to be at a level that would be significantly adverse.
230. WYG have also considered Milton Keynes Council's retail objection and having reviewed the 2018 Milton Keynes Retail Capacity and Leisure Study maintain their advice that Newlands Park will not result in a significantly adverse impact on Milton Keynes.

231. In conclusion, it is considered that Newlands Park will not be likely to have a significantly adverse impact upon any established town centres outside Luton Borough Council.

## **VIABILITY AND DELIVERY**

232. Third party representations have been received questioning the viability and delivery of Newlands Park. These representations comprise two technical assessments prepared by CBRE and Cushman & Wakefield which cover both development viability and commercial delivery.
233. The assessments contend that it is not possible to produce a viable and lettable scheme. Further, there is insufficient land to produce a commercially viable layout, based on the scale of the development.
234. It is considered that there are significant flaws in the proposed design in terms of layout, configuration and the reliance on basement parking which render the scheme as conceived unlettable.
235. CBRE comment in detail in its Commercial Assessment on the principle, ineffectiveness and subjectivity of the Permitted User List (PUL) and consider that the PUL is flawed, containing many mass market retailers, some aspirational retailers and a handful of high-end/luxury retailers.
236. CBRE's appraisal shows a substantial loss of £130 million. CBRE claim there is no possibility of the scheme delivering a profit at all and certainly not to fund a stadium even on the most optimistic (and unrealistic) commercial assumptions.
237. CBRE have carried out sensitivity analyses which show that drastic and unattainable swings in cost and value would be required to break even. Even more optimistic assumptions would be required to generate a normal minimum developer's profit.
238. The submission also includes a 'Peer Review' prepared by Cushman & Wakefield. The findings of this review concur with the views expressed in the CBRE report that there are significant flaws in the proposed design in terms of layout, configuration and the reliance of basement parking which render the scheme as conceived as unlettable.
239. C&W highlights that deficiencies in design and retail layouts and suggest only 44% of proposed floor space would be let with remaining floor space being unlettable.
240. C&W's retail investment team has no confidence in the scheme proposal even on a hypothetical basis and their appraisal show a substantial loss indicating the scheme is unviable.



241. In response, the applicant points to the substantial investment they have already made and have provided a costs report which challenges some of the build cost assumptions that the objectors have made. In particular, the applicant highlights that 2020 Developments have demonstrated their commitment to delivering both Newlands Park and Power Court by spending approximately £30million to become the freehold owners having purchased both sites unconditionally. Further, the s106 agreement for Newlands Park will contain an obligation that prior to occupation of any retail and leisure floorspace at Newlands Park, a significant element - of the stadium (namely the podium) must be completed, a build contract for the whole stadium will have had to have been entered into and decontamination of the stadium site addressed satisfactorily. This secures the position that Newlands Park can and will only come forward if Power Court also comes forward.
242. In light of these contentions delivery cannot be assumed. This is the case for many developments. Members should have in mind inevitable uncertainties on delivery and viability. Any assessment of benefits must have regard to these uncertainties.

### **The Environmental Statement:**

243. Each chapter shall be briefly summarised below

#### **Transport**

244. The transport chapter considers the potential effect of the proposed development on traffic and transport. In accordance with guidance, the impact of the development on the transport network has been considered through assessing the impact on severance, driver delay, pedestrian amenity and delay, cyclist amenity and delay, fear and intimidation and accidents and safety.
245. Baseline conditions have been assessed through considering the traffic flows and committed development flows in the Luton area have also been incorporated.
246. During construction, effects include construction vehicle trips, with a calculation of a maximum of 50 one-way vehicle trips per day. It has been concluded that the construction traffic impacts on the local road network is low when compared to the context of wider traffic volumes in the area (after considering percentage change in traffic volume). The greatest impact is considered to be on a section of London Road where it passes under Airport Way where there is an increase in HGV movements of 63%. Overall the impact is considered to be negligible. Based on this, there would be negligible effect on driver delay and pedestrian amenity.
247. Additional effects during construction include noise and vibration from vehicles, exhaust emissions from lorries and plants, traffic and restrictions

to where pedestrians can walk. Without mitigation there would be temporary minor adverse effects. To prevent this, mitigation is proposed including dedicated access for construction vehicles, preparation of a Construction and Logistics Plan and invoking measures such as letting all suppliers and contractors know arrangements for delivery's and any parking restrictions.

248. During the operational phase, the highest percentage change in total daily traffic resulting from the development would be a 19% increase on London Road. Further afield the increase in traffic flow ranges between 1% and 15%. In total, the impact is considered to be negligible and would not generate a perceptible change.
249. The impact on the road network during the operational stage is considered to be as follows: driver delay (minor adverse effect at the M1 Junction 10 and negligible adverse at all other junctions), pedestrian amenity and delay (negligible effect), cyclist amenity and delay (negligible, fear and intimidation (negligible effect) and accidents and safety (negligible effect).
250. There would be an increase in demand for existing public transport networks, with an anticipated increase in bus trips and rail trips. However, the impact is found to be negligible.
251. Mitigation is proposed through a Framework Travel Plan, which seeks to encourage sustainable modes of transport. Pedestrian and cycle infrastructure would be provided to enhance connectivity and encourage use.

### **Heritage and Archaeology**

252. The heritage and archaeology chapter considers the potential impact of the development on the cultural heritage. The chapter is informed by an Archaeological Desk-Based Assessment and additional research. Baseline information is obtained from desk-based assessments.
253. Effects during construction include an impact on archaeological remains of probable post-medieval agricultural boundaries and drainage ditches and gullies (causing less than substantial harm). It is concluded that there would be no harm caused to the residual findspots within the site topsoils, Luton Hoo Grade II\* registered park, Stockwood Park and impact on the historic landscape.
254. During the operational phase it is not considered there would be any harm caused to archaeological remains, the Luton Hoo Grade II\* registered park, Stockwood Park or the historic landscape.

### **Water Resources**

255. The water resources chapter assesses the effects of the development on the environment in respect of water resources, including flood risk to the site and surrounding area, impact of the proposed drainage system, surface

water and groundwater quality and potable and foul water systems. The assessment has been considered against three identified receptors: surface water, groundwater and human health.

256. Baseline conditions on the site have been considered, using a combination of site observations and desk based assessments.
257. During construction, effects are likely to include the removal of existing field drains and subsequent alteration of the surface water runoff regime on site. Without mitigation this could be adversely affected during both construction and operational phases. During construction the effect would be of temporary minor adverse impact. Groundwater quality could be impacted through the mobilisation of contaminants and creation of new pathways during excavation; this would have a temporary minor adverse impact. Flood risk and surface water drainage could be impacted through the increase in the impermeable area of the site which could increase surface water flooding within the site or catchment. Without a drainage system in place this effect would be of temporary minor adverse. Finally, surface water quality effects, through contaminants and the creation of new pathways, could cause a temporary minor adverse effect.
258. During the operational phase, the same scenarios have been considered with it concluded that the effect on surface water bodies would be permanent minor adverse, the effect on flood risk and surface water drainage would be permanent minor adverse and the effect on groundwater and surface water quality would be of permanent minor adverse significance.
259. To prevent adverse impacts, mitigation is proposed in the form of a Construction Environmental Management Plan (CEMP) which would be prepared during construction. This plan would identify measures to mitigate adverse impacts on flood risk, drainage, water quality and water resource. A Phase 2 intrusive geo-environmental ground investigation would also be undertaken to identify the need for any remediation works. During the operational phase mitigation would include setting floor levels above surrounding plot levels, preparation of an overall strategy for surface water drainage and provision of SuDS.

## **Noise**

260. The noise chapter considers the noise impact of the development at nearby sensitive locations. Four potential noise sources within the development have been considered: building services plant; noise intrusion of operational noise impacts on surrounding sensitive locations; noise intrusion from existing and operational noise impacts on proposed sensitive locations; and traffic noise assessment.
261. Baseline conditions of both noise and vibration have been assessed with on-site measurements undertaken. Existing ambient noise levels are

dominated by road traffic from local roads, including the M1 and low flying aircraft.

- 262. During construction, the most notable effects would be during periods of earthworks, construction and through HGV movements. These effects would be temporary in nature and adverse with levels of noise dependent on the location of the construction activities on the site each day and equipment being used.
- 263. During operational use, noise effects would stem from noise from the building plant and road traffic noise. The exact location and type of the building plant would be determined at the detailed stage and would be of neutral significance. Noise intrusion at nearby sensitive properties were tested with windows open and closed with the effects considered to be major-moderate adverse significance. Mitigation would include glazing and ventilation. Finally, road traffic noise would experience a minor change compared to the baseline conditions with the impact deemed neutral and not significant.

### **Air Quality**

- 264. The air quality chapter assesses the effects of the proposal on local air quality, including dust arising during construction, exhaust emissions from construction vehicles and vehicles generated through the proposed development and the suitability of local air quality for proposed users. Effects have been considered on two sensitive receptors: existing residential properties which may experience a change in traffic flow and receptors within the proposal which may expose future residents to poor air quality. Ecological receptors have also been considered.
- 265. Baseline conditions have established background concentrations of NO<sub>2</sub> and PM<sub>10</sub> across the site. Traffic movements are the most significant local source of pollutants affecting the site and surroundings.
- 266. During construction, impacts are likely to include dust emissions and surface soiling which would be of temporary significant effect.
- 267. During the operational phase, the increase of nitrogen oxide resulting from changing traffic is considered to be of slight significance with the effect of particulate matter causing a negligible effect.
- 268. To reduce the impact on air quality, mitigation during construction is proposed, in the form of dust management, construction practices and communication. During the operational phase, mitigation includes traffic management measures to reduce vehicle trips.

## **Socio-Economic**

- 269. The socio-economic chapter considers all socio-economic effects of the proposed development.
- 270. Baseline conditions have taken into account population and demographic change, economic activity, education and skills, housing, health conditions, deprivation and poverty and crime.
- 271. During construction, impacts include construction employment (temporary beneficial impact of moderate significance); gross value added by construction employment (temporary beneficial impact of moderate significance); construction training opportunities (temporary beneficial impact of minor to moderate significance) and disruption from construction (temporary adverse impact of minor significance).
- 272. During the operational phase four permanent effects have been considered: revenue effects from non-domestic business rates (permanent beneficial impact of major significance); employment effects with an additional 9,780 full time jobs by 2030 resulting from the proposed development (permanent beneficial impact of major significance); economic effects with the gross value added to the local economy by the development (estimated to be £4,701.1million between 2021-2041) (permanent beneficial impact of major significance) and finally the training and skills development opportunities which could be provided once the commercial space is operational (permanent beneficial impact of moderate to major significance).

## **Landscape and Visual Impact Assessment**

- 273. The landscape and visual impact assessment chapter assesses the likely landscape and visual effects of the proposed development.
- 274. To the north of the site is Stockwood Park which is an Area of Great Landscape Value and a District Park. Part of this area also forms a County Wildlife Site. To the east of the site is an Area of Great Landscape Value and to the south of the site lies the Bedfordshire Green Belt. The landscape value of the existing site has been assessed as being of medium to low landscape value.
- 275. A visual baseline has been established through a visual appraisal and photographs of the site. It is concluded that the site has a reasonably limited visual envelope with limited visual receptors. The M1 forms a prominent visual feature, as do the electricity pylons passing through the site.
- 276. During construction, landscape effects include clearance and set up of compound areas, works to existing highways, earthworks, building works and construction traffic. Visual effects are those countered by visual receptors, such as residents on London Road and users of Newlands Road.

Any construction impacts on visual effects would be temporary and of limited severity, ranging from moderate-minor adverse significance for receptors adjacent to the site and moderate-negligible significance for receptors at a greater distance to the site.

277. During the operational stage the chapter considers that the site and immediate landscape can accommodate change and the proposals would not result in any unacceptable harm to the landscape character. The proposal would result in the loss of open fields with green infrastructure created as part of the redevelopment. Landscape effects are considered to be of moderate adverse significance. Whilst some of the perimeter landscaping is to be removed, planting would be incorporated through the development and the impact is considered to be of moderate adverse effect. Other impacts have been considered with a moderate adverse effect on landform, moderate adverse effect on water features and water courses and moderate adverse effect on land use and open space.
278. The visual effect during operational use has also been considered from public rights of way, with the conclusion that effects would range from minor adverse to moderate significance. The impact on residential properties are considered to be moderate-minor adverse and the impact on road users is considered to range between minor adverse and moderate adverse significance.
279. To reduce impact during construction, mitigation is proposed in the form of site hoarding, a Construction Environmental Management Plan and Construction Logistics Plan. During the operation stage, mitigation includes the proposed green roof, high quality architecture and planting. Such details shall be determined through the Reserved Matters stage.

## **Lighting**

280. The lighting chapter considers the impact of the development on sensitive locations within the vicinity of the site.
281. Baseline conditions have been determined through a site survey. Existing light sources surrounding the site include street lighting along London Road, New Airport Way and Junction 10. A lighting model has been created which enables the impact of light from the proposed development on sensitive locations to be calculated.
282. When considering the impact of lighting, a number of receptors have been identified, including residential, ecological and glare rating observers (those driving on nearby roads).
283. During construction, lighting effects will result from fixed and temporary lighting installations, perimeter lighting and lighting from construction vehicles. The effect would be temporary moderate significance.

284. During the operational phase the impact on residential receptors would be negligible; on ecological receptors would be minor. The impact on the dark sky would be minor, with the conclusion drawn that the lights from the site would not have an impact on the flight path of Luton Airport. Finally, there is the potential for there to be significant impact on glare for road users. To prevent this mitigation is proposed, including use of LED luminaires and ensuring they are inward and downward facing. These mitigation measures would reduce the effect to minor adverse impact.

## **Sustainability**

285. The sustainability chapter outlines the strategy undertaken to meet sustainable design standards including achieving BREEAM Good. Three BREEAM pre-assessments were undertaken, with two indicating that 'Very Good' could be achieved and the other indicating 'Good' could be achieved.
286. Baseline conditions have been considered against green and open space and the current ecological value of the site. To enhance the natural landscape, the proposed development will aim to provide green infrastructure throughout the site with proposals also incorporating a green 'leisure roof' over the retail park. Such infrastructure would seek to create biodiversity and ecological enhancements.
287. Sustainability measures for the proposed development include SuDS, a reduction in potable water demand (through using water efficient sanitary ware and low water demand landscapes) and using efficient materials. Sustainable transport has also been considered, with a target within the Travel Plan to reduce private vehicle trips by 5%.
288. The chapter considers social sustainability and emphasises the socio-economic elements of the proposal including employment and workforce (with a Community Strategy and Community Liaison officer appointed) and health and wellbeing (with the working conditions for office workers considered).

## **Wind**

289. The wind chapter considers the impact of the proposed development on the local wind microclimate and within the surrounding area. This was modelled using a 3D model to analyse and predict areas of the site which may experience adverse wind conditions once constructed. The model included buildings within a radius of 500m of the site.
290. Baseline conditions were collected at 9 key reception locations around the site.
291. During construction it is difficult to determine impacts on the wind climate due in nature to the impacts being temporary but also the impact from using hoarding and scaffolding.

292. During operational use, results demonstrate that all key receptor areas would be suitable for longer periods of standing or sitting as per the Comfort Criteria. This remains the same as the baseline conditions. Although windspeeds would be suitable, localised screening would be provided for external seating areas.

## **Ecology**

293. The ecology chapter identifies ecological impacts associated with the proposed development and considers mitigation measures and ecological enhancements.
294. Baseline conditions have been identified through desk surveys and an Extended Phase 1 Habitat survey (incorporating bats, dormice, great crested newts, reptiles, badgers and nesting birds). It was determined that no invasive plant species are recorded on site. With regards to protected species, no dormice, great crested newts, reptiles or badgers were found present on the site. While no bats were recorded in the emergence survey, a number of trees with the ability to support roosting bats were identified. In addition, habitat on the site was identified to be suitable for use by nesting birds.
295. Mitigation measures incorporated within the development include avoidance of specific species rich hedgerows and avoidance of mature and semi-mature trees on-site. In addition, mitigation includes the preparation of a Construction Environmental Management Plan (CEMP) which would seek to control construction impacts and influence lighting and landscaping for the operational phase.
296. The impact of development is considered against a number of receptors with the conclusion reached that there would be no significant effect during the operation phase on the County Wildlife Site; no significant effects on overall hedgerow resource and no significant effects on the overall bat roost resource.

## **Cumulative Impacts**

297. The Cumulative Impacts chapter considers the impact of the development when taking into account cumulative effects (combined effects such as dust, noise and visual effects) and cumulative effects of other development sites. The other site taken into account is at Napier Park.
298. Table 15.1 within the chapter sets out a summary of impacts for all topics considered within the ES and concludes that any adverse environmental effects associated with the development can be minimised to an acceptable level through appropriate mitigation.



## **ECONOMIC IMPACT**

299. The application proposals will provide a range of economic benefits during both construction and operational phases.
300. It is estimated that the development will, once completed, and operational and fully occupied create 9,780 full time equivalent jobs and make an annual gross value added contribution to the Luton economy of £235m per annum. Jobs created will be varied and comprise a mix of full and part time across all of the proposed land uses from office based jobs to employment opportunities in retail, leisure, hotel and food and beverage sectors.
301. The applicant has not provided any specific details as to the value of the construction project so it is not possible to assess the likely construction jobs or the GVA contribution.
302. Local fiscal benefits will be provided in the form of Business Rates revenue and the indicative estimate of the business rates that will be payable annual across the whole development is estimated to be £10.3m.
303. As a greenfield development site, these job and GVA contributions to the local economy are net as no adjustment is required to reflect existing activity on site. It should however be recognised that there will be some potential for displacement as a result of impact upon other businesses within the local and wider area.
304. The application proposals will provide a range of economic benefits during both construction and operational phases.
305. The Council's economic strategy identifies the need to retain and enhance Luton's important sub regional role as a place for economic growth and opportunity. The key issue that the borough faces in terms of planning for growth and prosperity is the need to plan for growth of around 18,000 jobs over the period of the Local Plan to 2031. This includes 8000 B class jobs and 10,000 non B class jobs. The quantum of jobs proposed by this application will, if they are delivered, provide a significant proportion of this target covering both B and non B class employment. The application therefore complies with Policy LLP13 of the Local Plan which states "that planning applications will be granted where they deliver sustainable economic growth and prosperity to serve the needs of Luton and the wider sub region".
306. As a greenfield development site, these job and GVA contributions to the local economy are net and no adjustment is required to reflect existing activity on site. It is also envisaged that given this is an important gateway site and the proposal provides a type of development not currently available in the town, it could act as a stimulus for further business investment and the wider regeneration of the area potentially driving further economic and employment growth.. It should however be recognised that there will be

some potential for displacement as a result of impact upon other businesses within the local and wider area.

## **URBAN DESIGN AND IMPACT ON THE SURROUNDING AREA,**

### Design assessment and impacts

307. As all matters except for access are reserved, appearance, layout, scale and landscaping will be dealt with as part of future reserved matters applications for the proposed development. Nevertheless the outline planning application must still demonstrate that the quantum of development being proposed can be satisfactorily accommodated on the site. To this end the applicant has submitted parameter plans to accompany the application, which are discussed below.

#### (i) The Site Layout

308. The site's physical characteristics have been set out previously. The scheme seeks outline planning permission for a mixed-use development, with all matters reserved for future consideration except for access. The development will comprise a leisure hub, along with retail, entertainment, hotel, conference centre and offices. The proposal also comprises public open space, including an active green roof with provision for outdoor leisure.

309. The layout of the proposed development revolves around two focal points, namely the leisure hub to the north and the office and hotel hub to the south.

310. The office and hotel hub comprises of five individual buildings clustered around a plaza. Four of the buildings accommodate the proposed office space, whilst the fifth houses the proposed hotel. The buildings themselves are 'U' shaped and contain a central light atrium to allow natural light to enter the proposed floorplates. The elevations of the proposed buildings will accommodate vertical fins to reduce light glare and motorway noise, whilst also assisting in breaking up the external elevation of the proposed building and incorporating additional visual interest.

311. The leisure element of the scheme, situated to the north of the site, incorporates an innovative design, which seeks to act as the focal point of the development. The building has a flexible geometry and is shown in the illustrative drawings to be clad in perforated metal.

312. Across the development the car parking associated with the future users of the site has been concealed in the lower levels of the buildings, which in turn is obscured as a result of the existing topography of the site.

313. Policy LLP25 promotes opportunities designing out crime, and therefore requires proposals to take account of the principles of Safer Places and

Secured by Design. The detailed design will need to clearly mark private and public spaces and incorporate appropriate security features and be well managed. A benefit of the scheme's density is it will provide good natural surveillance of public spaces whilst the mix of uses will maximise activity across the site at different times of the day thereby, reducing the risk of crime and contributing to a sense of security.

314. On the basis of the foregoing the proposed development will result in the intensification of the site and this is reflected in the density and built form of the proposal. However, the proposed development will deliver a mix of uses across the site and introduce active uses at a variety of levels within the development. The proposals will also deliver a significant quantum of public realm and the scheme has the opportunity to create a number of individual character areas. Planning conditions to secure a Design Code to focus the final design and establish a suitable palette of materials are therefore crucial in order to achieve high quality architecture and design integrity.

(ii) The public realm

315. Policy LLP25 seeks to ensure that both buildings and spaces will be of high quality. Other Local Plan Policies including LLP31 – Sustainable Transport Strategy encourage cycling and walking and also support public realm improvements. In this context the proposals seek to provide continuous and accessible public space throughout the development and create safe, legible and attractive spaces.
316. The spaces surrounding the proposed built form are key to ensuring that the development is a cohesive and legible space. The application site is a long and thin irregular shape and the proposed development responds to this by situating two focal areas at each end of the site, namely the leisure hub on the northern area and the business cluster on the southern side. These areas are linked with significant areas of landscaping and public realm.
317. The link itself is derived from the architectural desire to complement the undulating topography of the site. As a result the linkage between the north and south focal areas takes the form of a 'bridging' element which is split in two with an open boulevard in the central space. The bridging element is envisaged to feature active functions including bars and restaurants at the lower levels which will be complemented by a green roof. The green roof will be accessible on the western side and it is therefore, envisaged that this portion of the bridge would therefore, act as a leisure entity in itself as well as providing a linkage between the leisure and business hubs. This would be complemented by the central open boulevard, which would provide an additional area of public open space within the development as well as providing a different character and form of public open space thereby providing further interest within the scheme.
318. By seeking to integrate the built form and the proposed landscaping across the site, the design of the proposed development ensures that appearance

of the built form will be softened, whilst creating character and ensuring the development has a legible and permeable layout as recommended by Policy LLP25.

319. Whilst the shape of the site acts as a constraint to more traditional forms of development, the applicant has sought to utilise this as an opportunity to incorporate innovative design. In doing so the proposed development seeks to deliver not only a significant quantum of leisure, employment and retail floorspace but also a substantial quantum of public open space, including a publically accessible green roof. This adds interest to the proposed development and assists in harmonising the scheme with the surrounding landscape.
320. It is important that any future reserved matters applications ensure that the proposed public realm is both durable and attractive. It is considered, on the basis of the information submitted that this is achievable and high quality landscaping will be important to ensure the delivery of the architectural vision for this site. As a result of the scale of the proposed buildings and the shape of the site landscaping will also be important to soften the built form and avoids sparse areas that would be stark and uninviting. Conditions requiring further details to secure details of public realm works are recommended to ensure a high quality development is delivered on this site.
321. In summary, the development will create a significant quantum of new public realm in a variety of forms, which will provide a number of new opportunities for those visiting or working in the scheme.

(iii) Impacts on the character of surrounding areas

322. Whilst the application site itself is not the subject of any significant designations in respect of landscape, and is identified in the submitted ES as having Medium to Low landscape value, as the policy framework discussed above sets out, the development cannot be considered in isolation. Consideration must therefore be given to the potential impact of the proposed development on these areas particularly in respect of any intervisibility.
323. The ES submitted with the application incorporates a Landscape and Visual Impact Assessment (LVIA). This considers the impact of the proposed development and the loss of the existing arable fields and their replacement with the new built form. Whilst the LVIA acknowledges that the development will incorporate "*new large buildings*" the design of the scheme is considered to reflect the existing landform and provide new opportunities for extensive planting across the site.
324. The LVIA acknowledges that in the short term and particularly during the construction phase of the development there will be some adverse effects on local visual receptors as a result of the construction vehicles, machinery

and earthworks required. Existing vegetation would however, contribute towards minimising views during the construction phase, which in itself is a short term event.

325. During the operational phase of development the proposed built form will be a prominent landmark feature, however, it will be contained by the localised landform and structure of the mature woodland. The most significant effects of the proposed development are therefore restricted to the site itself, with impacts on the wider surrounding context being far more limited. The site has a relatively restricted visual envelope and as such there are a low number of sensitive receptors.
326. In accordance with the conclusions of the ES, it is therefore, considered that the proposed development could be accommodated within the local landscape with limited adverse impacts upon the wider landscape character and visual resources. Over time the proposed vegetation will mature and the development will settle within the landscape.

#### (iv) Mitigation

327. As all matters except for access are reserved, appearance, layout, scale and landscaping will be dealt with as part of future reserved matters applications for the proposed development. As a consequence the final design of the scheme is not currently fixed, albeit the applicant has provided illustrative material and development parameters to provide an indicative overview of the proposed layout, scale, massing and appearance of the proposed built form.
328. Given the scale of the proposed development and the variety of uses to be incorporated within the scheme it is proposed that a Design Code is required to be prepared and submitted to the Local Planning Authority for approval. This would be secured through a planning condition and would ensure that the external finishes, materials, hard and soft landscaping, and the public realm are given due consideration to assist in producing a high quality design.

#### Conclusion

329. It is apparent from the above, and a review of the supporting drawings and documentation, which accompanies the application, that the proposals would represent a new landmark scheme within the local area. As members will be aware all matters, except for access, will be the subject of future reserved matters applications. It will be these application, which Members will consider which will establish the appearance, layout, scale and landscaping of the proposed development.
330. In order to deliver the high quality scheme envisaged by the Design and Access Statement and the overall architectural vision for the site significant consideration will need to be given to the building form and the materials

palette for the development. The overall landscaping strategy for the scheme will also be crucial to ensuring that the proposed development harmonises successfully within the existing landscape. It will be important in this regard that the design of the development balances the desire to act a landmark development, whilst at the same time being respectful and compatible with the sensitive surrounding uses, including nearby heritage assets. On the basis of the foregoing the development is consistent with Policies LLP1, LLP25 and LLP38 of the adopted Local Plan.

## **ARCHAEOLOGY AND HERITAGE**

331. The NPPF and Policy LLP 30 emphasise that the conservation of archaeological interest is a material consideration in the planning process. Paragraph 189 of the NPPF states that applicants should submit appropriate desk-based assessments, and where necessary undertake field evaluation, to describe the significance of heritage assets and how they would be affected by the proposed development. Paragraph 190 of the NPPF also requires local planning authorities to take into account the significance of any heritage asset when considering the impact of a proposal and seek to avoid or minimise any conflict between the proposal and conservation of the asset.
332. There is additionally the statutory requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990, (LBCA 1990) Section 66, which relates to listed buildings, and which requires that where development affects a listed building or its setting, that the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
333. With regards to archaeology the ES which accompanies this application is informed by desk based assessments including an Archaeological Desk-Based Assessment. The ES identifies likely effects arising as a result of the proposed development during construction. This includes impacts on archaeological remains of probable post-medieval agricultural boundaries and drainage ditches and gullies which are assessed as causing less than substantial harm.
334. The Archaeology team have given due consideration to the information submitted by the applicant and have confirmed in their most recent response (dated 27 November 2018) that they do “*not object to the principle of development at this site*”. The Archaeology team do however, consider that further analysis on the impact of the proposed development on the potential Palaeolithic resource is required in addition to a comprehensive conservation strategy.
335. It is proposed that the submission of this information is secured through a planning condition. Given that the findings of the additional work may impact upon the implementation of the proposed development it considered

appropriate that this is a pre-commencement condition. This will ensure adequate consideration is given to this matter at the early stages of the development process. This is an approach which was adopted by the Examining Authority in the matter of the alterations to grade separation of M1 junction 10a Luton. At that time it was deemed that a condition was sufficient mitigation to address concerns about archaeological remains on the site.

336. The scheme which will be required by the condition must identify areas where field work and/or a watching brief are required, and the appropriate measures to be taken to protect, record or preserve any significant archaeological remains that may be found. The archaeology response does not present any evidence of archaeological remains of value. In these circumstances it is considered that a condition should lead to sufficient protection of any archaeological interests there may be.
337. Whilst there are no listed buildings within the site, to the south is Stockwood Park. Situated within “the Park” is the Grade II Listed Stockwood House Stable Block. To the west of the application site is Luton Hoo, a grade 1 listed mansion dating from the eighteenth century and reworked in the early twentieth century. The mansion sits within its historic landscape designed by Lancelot ‘Capability’ Brown which is on the register as grade II\*. Within the historic landscape are many listed buildings and structures. Whilst the summary and conclusions of the ES indicate that there would be no harm, this is disputed by both the Council’s Heritage adviser and Historic England.
338. The consultation responses from both Historic England and the Council’s Conservation adviser both conclude, after assessment, that the proposed development would not impact on the Grade II Listed Stockwood House Stable Block, and would result in “less than substantial harm” to the grade II\* historic landscape heritage asset at Luton Hoo. In consequence it is therefore a matter for the Local Planning Authority to consider whether the benefits arising from the proposed development outweigh the harm to the heritage asset (paragraph 196).
339. Given the location it should be acknowledged that the setting of these heritage assets has already been compromised by the existing road infrastructure which cuts through the centre of the rural landscape.
340. The indicative design of the proposed development demonstrates that consideration has been given to these potential constraints. In particular, as a result of the existing topography of the site, the valley dips down at the centre. This will result in part of the development sitting lower than the adjoining land. Furthermore, the lowest elements of the proposed development, in terms of height, are those located in closest proximity to Stockwood Park. It is also of course a fact that the site has been previously allocated to accommodate a football stadium.

341. Careful consideration will still however, need to be given to the proposed layout, scale, appearance and landscaping of the proposed development to minimise harm to Stockwood Park and Luton Hoo Registered Park and Garden. In particular the form of the development which is proposed to be situated adjacent to the south eastern boundary of Stockwood Park. These are however, matters which will be dealt with through the submission of details which will ensure that there is sufficient scope in this application that the design and layout of the proposed development is appropriate to the site's location.

## **TRAFFIC AND PARKING**

### Transport Assessment

342. The NPPF includes a core principle on the need to actively manage patterns of growth to make the fullest possible use of public transport, walking and cycling, and focus significant development in locations that can be made sustainable. It requires all developments that would generate significant levels of movement to be supported by a transport assessment and says that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.
343. Paragraph 109 of the NPPF states that “development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impact on the road network would be severe”.
344. Policy LLP31 provides the policy context for transportation matters. The policy aims to ensure traffic generated by development provides a sustainable opportunity and does not prejudice the free and safe movement of pedestrians, cyclists, public transport services or existing traffic by providing congestion on the traffic network.
345. The Transport Assessment submitted addresses the impact of the development, and accounts for cumulative impacts from other committed development schemes in the locality. The transport impact of the development has been considered in some detail with the applicant's transport consultant and there are no objections raised to the findings of their transport assessment.
346. The matter of transport was also the subject of the ES, where it states as follows; “Overall, it can be concluded that the proposed development can be satisfactorily accommodated on the transport network and is compatible with the receiving environment. Adoption of travel demand management measures and proposed mitigation will ensure that the impacts on the local and strategic highway network are further mitigated to the satisfaction of the developer and the responsible authorities.”



347. Overall, in terms of traffic impact the Transport Assessment has concluded that the following junctions are anticipated to operate within capacity in the future design year following the opening of the full development.
- Junction 10a North Roundabout assuming southbound movements between London Road arms can use two of three approach lanes in order to fully utilise the three circulatory lanes;
  - Junction 10a South Roundabout assuming left turners towards Airport Way can use two of the three approach lanes;
  - Newlands Road / London Road Junction assuming conversion to signals;
  - Newlands Road / Church Road Priority Junction assuming visibility improvements;
  - Newlands Road / Farley Hill Priority Junction assuming traffic calming or improved minor arm flare;
  - Eastern Leisure / Retail Car Park Access Priority Junction assuming right turner can choose to turn left and U-Turn round the retail access roundabout;.
  - Western Leisure / Retail Car Park Access Roundabout;
  - Newlands Road / New Link Road Mini Roundabout;
  - Office Access / Service Yard Access / Newlands Road Roundabout.
348. The M1 motorway junction (J10) is shown to operate at capacity currently during some peak periods. In the future design year the junction is shown to operate with queue levels that do not extend back onto or therefore impede the motorway mainline. It is acknowledged that the mainline M1 motorway is busy during peak periods and therefore whilst queueing is predicted on Airport Way, this queueing will act as natural gating or ramp metering allowing traffic flow onto the mainline to be spread evenly.
349. Whilst queueing at M1 J10 is not expected to extend back onto the mainline, PBA have investigated a high level potential option that will improve the capacity of this junction. This option could include for an additional lane to be added to the southern circulatory section of the roundabout in addition to an additional lane on the northbound on slip. These potential improvements will allow greater capacity and through flow for northbound movements from Airport Way, which will in turn significantly reduce queues and delay on both Airport Way and the northbound off slip. However, additional traffic accessing the M1 rather than being 'gated' at Junction 10 may be less desirable for Highways England, and as such an approach where alternative sustainable measures may be considered a preferable mitigation strategy.
350. The following junctions are shown to already operate at capacity and beyond capacity in the future design years before any development is opened. Following the opening of the full development the impact at these junctions is much lower than general background traffic growth:
- Castle Street / Windsor Street

- Airport Way / Gipsy Lane

351. The proposed development site is already allocated for commercial and stadium use. The proposal to develop a mixed use employment, retail, F&B, hotel, and leisure on the site will allow for any future impact to be; spread-out across the day and week and also reduced through internal/linked and pass by trip opportunities.
352. The assessment undertaken takes no account of the large car park located within Slip End to the west of the development, which is currently used as an 'out of town' airport car park. Whilst the impact of this existing car park is at its greatest outside of the peak periods assessed within this TA, the proposed Newlands Park will offer a much better located out of town airport car park with direct access to the strategic road network.
353. The proposed development will not be fully built out overnight. Whilst the full retail component is anticipated to be constructed and opened as one entity, the office element will be constructed and opened in phases to match demand. This phased approach will allow for a 'monitor and manage' approach to be applied to the future transport strategy; whereby the impact and required mitigation associated with the development will be monitored, managed, implemented and reviewed accordingly. Overall, it can be concluded that the proposed development can be satisfactorily accommodated on the transport network and is compatible with the receiving environment. Adoption of travel demand management measures and proposed mitigation will ensure that the impacts on the local and strategic highway network are further mitigated to the satisfaction of the developer and the responsible authorities.

#### Parking

354. Although the application is in outline form at this stage, car parking across the development has been determined with consideration to local parking standards and aspirations to ensure effective parking provision to encourage sustainable travel.
355. In accordance with LBC parking standards and to ensure no overprovision of car parking, a maximum of 3,600 spaces will be provided across the whole Newlands Park site to accommodate office, leisure and retail parking demands.
356. The total number of spaces is some way below the maximum provision that could be provided, if all land uses were considered individually. The provision therefore reflects shared use and is considered a sensible planned approach to parking.
357. On this basis it is considered that this element of the proposed development does not offend policy LLP32.

## Conclusion

358. The proposed mitigation will essentially be by way of a Section 278 Agreement under the Highways Act, with other measures achieved by the Travel Plan to promote sustainable modes of travel to and from the site.

## **CONSTRUCTION IMPACTS**

359. The development would be comprised of two phases. There is not as yet an indication of the timescale, but these details will be addressed in a phasing plan which would be the subject of a condition. Some impacts from such large scale construction are an inevitable consequence of development. Expected construction traffic volumes would have a negligible impact on the wider road network though final details would not be determined until the full details comprised within the reserved matters are submitted.
360. The DAS suggests that there will be two construction phases. Phase 1 will involve the construction of the retail and leisure buildings and Phase 2 would involve the business cluster. In so far as Phase 2 is concerned this could be divided into sub phases. The ES concludes that the impact of the construction phase will be temporary, minor adverse and can be mitigated.
361. This site, which is close to the strategic road network, routeing of construction vehicles to avoid disruption is feasible, whilst hours of work, including for deliveries would be limited to reasonable hours, and other environmental controls including access management and wheel washing will further minimise impacts to a satisfactory level. These controls would be secured by conditions requiring a construction management plan (covering methods and routes of delivery), within this document, site management and environmental controls would be included.

## Conclusion

362. As the proposal relates to a substantial development scheme, it would clearly result in additional use of nearby public transport and traffic and parking on adjacent roads by new residents and visitors to the site. The site has a good number of public transport options available for use, including bus and rail. The development looks to maximise use of sustainable transport modes, by limiting parking and encouraging walking, cycling and use of public transport. There will be a requirement for travel plans.
363. Finally, it will be noted that there is no objection from the Council's Highway engineer, and mitigation measures can be provided via conditions to ensure that there is no adverse transport affects.

## **IMPACTS ON NEIGHBOURS**

364. The NPPF requires sustainable development, and as part of this development should aim to minimise adverse effects on the local

environment, which includes neighbouring properties. LLP25 requires development to “Enhance the distinctiveness and character of the area by responding positively to the townscape, street scene, site and building context, form, scale, height, pattern and materials, distinctiveness, and natural features including biodiversity”.

365. Accordingly the proposed development should not cause unacceptable harm to the amenity of the surrounding land and buildings, particularly residential buildings in relation to privacy, overshadowing, wind and microclimate.

#### Outlook and privacy

366. Given the layout of the development, and the characteristics of the site's location in relation to the siting and proximity of surrounding development the proposed buildings are on the whole not considered to be overbearing. In this regard, although apparent in views from the surrounding townscape, the proposed development would be viewed against the backcloth of the historic development, particularly the historic allocations for employment uses and the previously intended allocation for a football stadium.
367. In this respect the scale of the development on the site has always been anticipated as being substantial. The site is in a standalone location and, whilst matters of design are reserved for subsequent approval, given the nature of the development and the parameter and concept plans there is scope for ensuring that the internal spatial relationship can be appropriately considered through the required masterplan.

#### Conclusion

368. The proposed development, owing to its large scale and design, as well as the long period of construction, has the potential to be disruptive to the amenity of the surrounding areas. Whilst there is no built form in close proximity to the site it is important that the site is managed both responsibly and sensitively. This can be achieved via a construction management plan, and other management plans to ensure that the impact during construction works is minimised.

### **OTHER ENVIRONMENTAL MATTERS**

369. Consideration has been given to both wider and on-site environmental conditions and impacts, with these matters addressed in the ES as part of the Environmental Impact Assessment process.

#### Air quality

370. The NPPF says planning decisions should ensure that any new development in Air Quality Management Areas is consistent with the local air quality action plan. It also requires the planning system to prevent both

new and existing developments contributing or being put at unacceptable risk or being adversely affected by unacceptable levels of air pollution.

- 371. Policy LLP38 requires development to demonstrate that it will not individually or cumulatively significantly adversely effect, inter alia, air, land or neighbouring development.
- 372. WYG (for the applicant) have undertaken an air quality assessment for the proposed mixed use development at Newlands Park. Appropriate site-specific mitigation measures have been recommended based on Section 8.2 of the IAQM Guidance on the Assessment of Dust from Demolition, Earthworks, Construction and Trackout. It is anticipated that with these appropriate mitigation measures in place, the risk of adverse effects due to emissions from the construction phase will not be significant.
- 373. An assessment, of the assumed operational opening year of 2021, of the effect of emissions from traffic associated with the scheme, has determined that the maximum predicted increase in the annual average exposure to NO<sub>2</sub> at any existing receptor is likely to be 0.87 µg/m<sup>3</sup> at Newlands Farm (R6). All modelled existing receptors, are predicted to be within the AQO or the annual mean limit for non-residential receptors for NO<sub>2</sub>.
- 374. All proposed receptors are predicted to meet the annual mean criteria of 60 µg/m<sup>3</sup> for non-residential receptors. The significance of exposure for NO<sub>2</sub> is therefore determined to be 'negligible' to 'slight' at modelled existing receptors.
- 375. For PM<sub>10</sub>, the maximum predicted increase in the annual average exposure is likely to be 0.19 µg/m<sup>3</sup> at Newlands Farm (R6).
- 376. For PM<sub>2.5</sub>, the maximum predicted increase in the annual average exposure is likely to be 0.11 µg/m<sup>3</sup> at Newlands Farm (R6).
- 377. All modelled existing and proposed receptors are predicted to be below the respective AQOs for PM<sub>10</sub> and PM<sub>2.5</sub> in the 'do minimum' and 'do something' scenarios.
- 378. The significance of exposure for PM<sub>10</sub> and PM<sub>2.5</sub> is determined to be 'negligible' at all receptors.
- 379. In conclusion, following the adoption of the recommended mitigation measures, the proposed development is not considered to be contrary to any of the national and local planning policies.

#### Contamination

- 380. Policy LLP38 is relevant in the context of the policy guidance. The applicant has submitted a Phase 1 Ground Conditions Assessment (Desk Study) as part of the application. This identifies that potential sources of contamination

are currently limited to historical unidentified oval features within the site and beyond the site; electric substations to the north and east; historical clay and chalk pits to the west; and brick works and kilns to the west.

381. The report identifies that risks from other geological hazards are considered to be negligible to very low.

#### Flooding

382. Policy LL36 deals with flood risk, and requires that development would minimise flood risk. A Flood Risk Assessment (FRA) was submitted in support of the planning application. The Environment Agency (EA) flood map shows the site is outside the 0.1% annual probability flood extent. For planning purposes the site is within Flood Zone 1 and is considered at a low probability of flooding.
383. The site is identified as being in a critical drainage area. The relevant Surface Water Management plan for Luton indicates that Newlands Road, which is adjacent to the site currently acts as an overland route for surface water run-off, however, it suggests that the site itself is at low risk of surface water flooding.
384. It is proposed to discharge surface water from the proposed development along the natural drainage path into the adjacent highway ditches along Newlands Road, as per the existing greenfield surface water run-off regime. In addition, attenuation storage in the form of attenuation ponds, green roofs and modular storage will also be considered and incorporated.
385. This Flood Risk Assessment concludes that the development proposals are considered appropriate subject to the above measures being implemented on site, and are in keeping with recent development in the area.
386. Planning conditions will be required in order to secure a drainage strategy for the site, which shall be submitted to the Local Planning Authority prior to the commencement of development. This accords with the requests made by Thames Water in their consultation responses to this application. These conditions will also ensure that the additional information requested by the Councils Lead Drainage Officer is provided at an early stage of the proposed development.

#### Noise and Vibration

387. The NPPF lists noise pollution as a consideration, whilst policy LLP38 requires appropriate mitigation where adverse impacts have been identified. The ES chapter addresses this matter. This chapter summarised the outcomes of the noise assessment undertaken for the proposed development of Newlands Park. It is accompanied by a technical report which fully details all of the assessments.

388. Construction noise can be controlled through the use of best practice measures as detailed in the technical report accompanying the ES.
389. A cumulative assessment of the development site Napier Park was also undertaken with respect to traffic noise, and operational noise from the site. It was found that the development will not have a significant effect as a result of their operational use.
390. A tranquillity assessment also indicates that there would not be a detrimental effect on the tranquillity of the area as a result of the development. Accordingly, the proposed development satisfies the relevant policy considerations set out in the NPPF and the PPG: Noise and Luton Borough Council Local Plan.

## Ecology

391. The ES submitted with the planning application presents an ecological impact assessment in respect of the proposed development and is supported by baseline desk studies and survey data.
392. Habitats within the site are dominated by arable land and species poor semi-improved grassland of limited ecological value. The site has been identified as having the potential to support roosting bats within trees and is considered to be of local importance to the bat population. The hedgerow network is also considered to be important within the local context.
393. The ES identifies that suitable mitigation measures can be incorporated into the proposed development in order to limit and where possible avoid adverse impacts on protected species and habitats. At the operational stage it is considered that the proposed development would not give rise to any significant adverse effects and opportunities to deliver ecological enhancements within the development will be sought wherever possible.
394. A condition requiring the preparation and submission of a CEMP is proposed alongside mitigation, management and enhancement measures which will also be the subject of conditions.

## Conclusion

395. Although the site has historically served an agricultural role, in the modern era the construction of the M1 Motorway immediately to the west and south of this site has fundamentally altered the character of this area. The site is therefore subject to high levels of noise and air pollution, both of which would mean that mitigation will be required to provide a suitable standard of accommodation for future occupants. Other than those matters there are no significant environmental constraints that would preclude re-development of the site.

396. Impacts from the development itself on both neighbouring development and future occupiers are with mitigation, considered, satisfactory.

## **SUSTAINABLE DESIGN**

397. Policy LLP37 provides the policy framework for sustainable development. To address this issue the applicant has considered the Sustainable Drainage Systems (SuDS), in this context an overall surface water drainage strategy for the site has been prepared as part of the Flood Risk Assessment. The key principles of the strategy are as follows:

- A betterment of 50% on the existing surface water runoff rates for events up to and including the 1 in 100 year return period event with an allowance for climate change will be provided
- Surface water attenuation will be provided to accommodate the 1 in 100 year rainfall event, plus an allowance for 40% climate change increase in flows.
- All surface water attenuation features are to be located in Flood Zone 1.
- An appropriate level of water quality treatment measures will be included in accordance with the SuDS treatment train outlined in CIRIA C735 and to help minimise water pollution to meet targets in Luton's Surface Water Management Plan.

398. The site will make use of SuDS to reduce the rate and volume of surface water leaving site and improving its quality. These features will also provide green infrastructure benefits of natural cooling, enhanced biodiversity and social amenity, as well as increasing the amount of permeable surfaces compared to the current condition of the site.

399. Other possible SuDS features being considered include biodiverse roofs, permeable paving, ponds and street trees.

### Energy conservation and carbon reduction

400. Policy LLP37 Climate change, carbon and waste reduction and sustainable energy sets environmental assessment targets for new non-residential developments exceeding 1000 sq. m. The policy requires development to achieve at least a BREEAM Good Status.
401. Subsequent to the preparation of the initial planning documents, BRE have released an updated version of BREEAM. The updates contained within BREEAM 2018 are not expected to significantly impact on the approach presented for Newlands Park, and the scheme will target BREEAM Good under the revised 2018 criteria.



## Sustainability measures

402. The proposed development would seek to add to and enhance Luton's natural landscapes, aiming to incorporate green infrastructure throughout the Site. The provision of green and open space will follow the principles of green infrastructure, which seeks to create a network of multi-functional green spaces and features that provide wide-reaching ecological, health, amenity and other benefits. Carefully selected trees and planting throughout will contribute to improving the green space deficiencies in nearby areas and add to Luton's Green Infrastructure Network, providing natural shading and cooling, air quality improvements, enhanced drainage capacity and ecological enhancements.
403. The applicant has identified as a major feature of the new development the proposed green "leisure roof" over the retail park which links the leisure area in the north to the office and hotel cluster in the south. This feature is envisaged to serve two functions: first, to reduce the visual impact of this development on the surrounding landscape, and second, to be a landscape element in its own right with the associated environmental, ecological and amenity benefits.

## Reduce energy

404. Passive design measures, such as low U-values, use of insulation, high-performance glazing, external shading, good practice airtightness and use of exposed thermal mass will all be considered as part of Site-wide strategies to reduce energy demand first through building design. Building orientation, unit layouts and integrated landscape design will contribute. These efforts will reduce the need for heating in the winter while minimising overheating from solar gains in the summer.
405. Energy efficiency measures, such as LED lighting, white goods with high energy ratings, efficient building services (including efficient air handling units, fan coil units, chillers and gas boilers), efficient external and security lighting, where appropriate will be integrated to help to reduce the energy consumption required for lighting and power. Energy efficient lifts and escalators will be used where applicable.

## Low and zero carbon energy generation

406. The opportunity to generate low and zero carbon energy on site will be explored in detail at the next stage. Potential options for renewable energy generation to be explored include: PVs, solar water heating, ground source heat pumps, biomass heating and wind turbines.

## Off-site solutions

407. After a full assessment of the extent to which measures can be done on site to reduce energy use and generate renewable energy, opportunities to

achieve additional provision of solutions off-site will be explored. This could include provision of decentralised, low and zero carbon energy generation off-site or payment into funds, where available, to offset other offsite carbon reduction programmes.

## Materials and waste management

408. After reducing energy use and carbon emissions from the operation of the proposed development, the next priority for reducing carbon from the development is to consider the embodied energy and carbon present in the structures themselves. The thoughtful consideration of materials used for the construction of the proposed development and the handling of waste both during the construction of the proposed development and during its occupation and operation will lead to a strategic approach to reducing the carbon footprint of the building, reducing waste and ultimately reducing cost.

## Sustainability measures

409. While a full waste audit will be conducted in the next stage of design in the form of a resource management plan, the following outlines the approach to incorporating circular economy principles into the design. This strategy seeks to reduce the embodied carbon of the building structure and associated infrastructure with a multi-pronged approach of lean design, modern methods of construction, and sustainable procurement of materials, use of recycled materials and appropriate reduction of waste generated and landfilled during construction. Further, it incorporates design mechanisms to enable building tenants to continue that strategy by sustainably managing their waste.

## Reducing embodied carbon in design

410. The use of lean design principles will identify opportunities to design structures that optimise the amount of materials used so as not to expend unnecessary embodied energy, cost oversizing or over engineering elements.
411. Closely associated with the above, the principle of designing out waste will identify opportunities to select materials and sizes of elements in such a way that reduces the amount of waste produce from offcuts and packaging.
412. The principle of designing for durability and efficiency takes that further by identifying opportunities to select materials that will last for the duration of the building life cycle without the need for frequent replacement or maintenance.
413. The use of modern methods of construction and modular building techniques will also be explored to take advantage of prefabrication and off-site construction to optimize construction and reduce waste and cost.

414. All of this will need to be balanced against the need for flexible design for future expansion or change in use, particularly for aspects of the development that are built speculatively. This means waiting to specify finishes until tenants are identified or using elements that can flexibly accommodate multiple types of uses.

#### Sustainable procurement

415. Materials that are selected for buildings will be selected to prioritise responsibly, ethically and locally sourced materials. Working closely with supply chains and industries to co-develop solutions that achieve sustainability targets will be encouraged. Sustainability targets will be incorporated into procurement packages and tender documentation.

#### Construction site management of materials and waste

416. While a considerable amount can be done to reduce embodied carbon through design and procurement, waste management during construction will be key. The Waste Audit and Resource Management Plan will be developed and implemented by the contractor.
417. To the extent possible, the reuse of waste on site will be explored, such as reuse of hoarding for formwork or reuse of crushed concrete as subbase. When not possible, reuse of waste off site will be pursued, including return of offcuts to manufacturers for reuse, provision of materials to local groups and transfer of fill, when appropriate, for use on other sites.
418. These opportunities, as well as the segregation of waste on site and the use of waste or logistics managers could provide additional opportunities to reduce waste to landfill.

#### Operational waste management

419. The proposed development will be designed to incorporate appropriately sized and accessible waste and recycling facilities. Where possible, food waste recycling or composting facilities will be made available to further reduce waste to landfill.

#### Sustainable transport options:

##### Access to transit

420. A Framework Travel Plan, assesses the quality of the existing public transport network. The site is well located to enable users to access on foot from the adjacent suburbs. It is extremely well-served by local and strategic cycle network connections that operate between a range of local and inter-urban destinations via NCN6.

## Public transport access

421. Bus routes 30, 321, 636, 637 and 757 currently operate along London Road. The closest bus stops to the site are located along London Road. The 'Pepperstock, opp/adj Newlands Road' bus stops are situated at an approximately 925m (approximately 12 minute walk) from the centre of the site. The 'Pepperstock, o/s / opp Bull Wood' bus stops are an approximate 350m (an approximately 4 minute walk) from the most northern point of the site.
422. Bus routes 46 and 231 operate along Church Road and Newlands Road. The nearest bus stops on Newlands Road are approximately 975m (approximately 12 minute walk) from the centre of the site. The closest bus stop on Church Road is approximately 1.1km (approximately 14 minute) from the centre of the site.
423. The service frequencies of the six bus services available in the vicinity of the proposed site indicate that in the morning peak hour approximately nine to 12 services and in the evening peak hour approximately ten to 13 services are available within the vicinity of the application site on weekdays. Furthermore, on a Saturday approximately nine bus services and on Sundays approximately four bus services per hour and direction are available in the vicinity of the site.
424. The site benefits from excellent connections to the Midland Mainline providing direct access to the National Rail network. The station, services and car parking are operated Govia Thameslink Railway (GTR) who provides services at Luton under the brand name of Thameslink.
425. Luton Airport Parkway Station can be accessed in approximately 25 - 30 minutes on foot to the north east or 15 minutes cycle with direct and continuous provision connecting the site to the station via Cutenhoe Road. Controlled crossing points are provided across London Road facilitating safe and expeditious pedestrian movements east from the site with wide, well maintained and continuous footways provide on both sides of the carriageway illuminated by street-lighting providing a direct route to the Parkway station.
426. Luton Airport Parkway Rail Station provides access to London St Pancras International, Bedford, Nottingham and Sheffield. There are 815 car parking spaces provided at the Station and 100 cycle parking spaces.

## Parking provision

427. The intention is to provide 1,900 spaces for retail and leisure uses and 1,700 for office and hotel uses. The total number of spaces is some way below the maximum provision that could be provided if all land uses were considered individually. However this is justified on the basis that the

provision reflects shared uses and is considered as a sensible plan led approach to parking.

#### Cycle infrastructure

428. Opportunities for new cycling facilities will be fully considered during the early design stages. This includes the appropriate number of covered and secure bicycle parking spaces in accordance with the Council's minimum cycle parking standards. Auxiliary facilities for staff who commute by cycle will be provided where possible, such as showers, lockers or drying spaces. Additional cycle parking provision for employees and visitors will also be incorporated.

#### Pedestrian and cycle infrastructure

429. The development proposes to provide a pedestrian footway along the western site boundary fronting Newlands Road to tie into the existing pedestrian network at Church Street and to the existing footway on Newlands Road further north. This connection will then connect to a new shared footway/ cycleway that will run parallel to the access road from the Junction 10a northern roundabout where substantial pedestrian and cyclist infrastructure is located and access to Luton town centre and the major transport nodes can be achieved. It is considered that this enhanced pedestrian and cyclist connectivity will deliver good pedestrian and cyclist accessibility from the existing communities at Slip End and Farley Hill to the development and also to the employment hub at Capability Green meaning that some modal shift may occur amongst existing travel patterns.

#### Public transport

430. In addition to promoting walking and cycling to replace short- and medium-distance car trips, improving public transport provision will provide an alternative for longer distance trips.
431. The applicant proposes a number of 'hard' infrastructure measures. As set out previously the site is located close to existing bus routes serving Luton and it is concluded that the wider areas offer great potential for significant enhancements and diversion to existing services into the site with minimal impact on journey times.
432. Consultations with existing bus operators have been undertaken with the intention that local routes be diverted through the site. Subject to local operator agreement and further discussions it is proposed that the following services are brought through the site and additional measures and services be introduced:
- 321 Sapphire Service operated by Arriva and serving Luton Town Centre, London Road and Watford via Harpenden and St Albans;

- 30 operated by Grant Palmer which currently works on a loop serving Luton Town Centre, Capability Green and Luton Airport Parkway. This service is limited to two buses in a peak hour and an increase to 4 services in each peak may be required;
- Bus stops - will be provided within the site to encourage sustainable travel. The stops will have shelters equipped with real time passenger information to increase the attractiveness of bus travel to and from the site;
- New bus services – it is intended that a dedicated hopper bus service will be introduced between the site and Airport Parkway. This service will initially be introduced during peak periods and then extended to other times of the day when demand increases;
- P&R - the proposed improvements to public transport provision will offer customers and office staff the flexibility to; utilise the onsite car park, utilise the onsite retail/leisure/F&B uses and then utilise the high quality public transport that will service the site to access Luton town centre. This flexibility will significantly help reduce the number of vehicles trips into the town centre;
- The ES chapter on transport recognises Luton Local plan provides for the siting of P&R facility within the site allocation identified at Policy LLP5, since this is an allocation the Council will seek to safeguard.

433. Occupier travel plans will provide a comprehensive package of public transport-related incentives to encourage visitor and employee trips by bus and rail modes. The following 'soft' promotional and marketing measures will be implemented to encourage visitor and employee travel to Newlands Park by public transport modes:

- Discounted shopper bus/rail ticket discounts – The Travel Plan Co-ordinator (TPC) will engage with bus/rail operators to discuss the potential for shoppers to obtain discounts for visiting Newlands Park.
- Discounted staff bus/rail ticket discounts – The TPC will engage with bus/rail operators to discuss the potential for staff to obtain discounts for staff working at Newlands Park.
- Newlands Park Website - Travel information regarding train and bus travel will be made readily available online including the promotion of the existing and comprehensive 'Travel Luton' website that provides a convenient one-stop-shop bus/rail journey planning service including live national rail/bus feeds.

## Responsible construction:

### Air quality

434. The application site is not currently located in an Air Quality Management Area and measures should be implemented to ensure this condition does not change.

### Land contamination

435. The application site is a green field site, which has a history of agricultural use. As such, it is unlikely that the land will be contaminated.
436. The construction phase also has the potential to cause groundwater and surface water pollution through the mobilisation of contaminants and creation of new pathways during excavation and earthworks. Drainage from impermeable surfaces may include contaminants from vehicles, including oil, rubber and paint. Though the flood risk and drainage assessment this identified risk can be localised and temporary, appropriate mitigation measures should be implemented to reduce potential harm to local watercourses and wildlife.

### Sustainability measures

437. Due to the large and phased nature of the proposed development, the construction period is expected to last for some time. Construction provides a key opportunity for implementing sustainability measures as the bridge between design and operation. Opportunities for consideration during construction to be incorporated as part of the contractor's responsibility can be implemented.

### Environmental management, monitoring and reporting

438. The applicant has indicated that an onsite environmental manager will be assigned to monitor and mitigate noise/vibration, air/dust, and surface water and litter pollution during all stages of construction. The said party will also be responsible for monitoring energy, potable water and fuel use, and reducing where possible.
439. A BREEAM assessor will be appointed to monitor and certify that the proposed development achieves the targeted BREEAM ratings.

### Materials and construction waste

440. All materials used on site will be responsibly sourced and sustainably procured and waste on site will be managed under a Resource Management Plan to reduce waste to landfill.

441. In accordance with BREEAM Mat 03 Responsible sourcing, all timber used in the design and construction process must be 100% FSC certified. Contractors should also be requested to obtain Environmental Product Declarations (EPDs) for the products used onsite.

#### Drainage management and water quality

442. A Construction Environmental Management Plan (CEMP) will specify the water management measures to be implemented during construction. It will include the following:
- A suitable drainage scheme to control surface water run-off generated during construction so as not to increase flood risk downstream. The scheme will also include measures for managing silt that may be generated during construction, including wheelwashing.
  - Mitigation measures against contaminated water run-off arising from general construction activities and operation of construction vehicles. This may include temporary bunding and settlement ponds to allow for on-site treatment of any contaminated water prior to discharge.
  - Full briefing given to onsite operatives on best practice in minimising water use.

#### Land remediation

443. In the unlikely event that contaminated land is encountered on site, it will be managed carefully and remediated, removed or segregated as appropriate. Appropriate procedures, method statements and testing regimes will be developed to manage risk and eliminate potential pollution pathways during construction and for occupation. Construction practices will follow best practice guidance in order to limit any adverse impacts arising from construction activities. This may include protection from dust inhalation for the workforce on the removal of hardstanding areas and control of direct exposure to soils during earthworks excavations.

#### Ecology

444. A Construction Environment Management Plan will be implemented to ensure that construction phase-impacts on existing habitats are mitigated during site clearance and construction. This includes repeat external inspection prior to the demolition of particular buildings on the Site, to confirm that they do not house roosting bats. Common urban bird species are most likely to be affected by the construction phase; therefore, works should be timed to avoid the bird nesting period (usually March to August inclusive), and any demolition during the nesting season should be approved by an ecologist.



## Construction traffic

445. A Construction Traffic Management Plan will set the framework for construction traffic management in accordance with planning conditions and any other requirements. This will be the responsibility of the contractor to complete and will be agreed with the Council prior to the start of construction. As well as seeking to reduce the impact of heavy goods vehicles (HGVs), it will also seek to reduce the impact on workforce trips on the local highway network through a vehicle sharing strategy.

## Considerate Constructors Scheme

446. The contractor will be required to register the Site under the Considerate Constructors Scheme (CCS). This external assessment of site practices fosters improvements and innovations throughout construction. The Site will aspire to gain an innovation credit under BREEAM Man 03 Responsible Construction Practices by achieving a CCS score of at least 40.

## Social sustainability

447. The measures detailed above to improve the natural amenity value of the site and the surrounding area will have significant socio-economic benefits; easy access to greenspace and mitigating adverse microclimatic conditions will raise the wellbeing of the local community. In addition, more direct measures to raise the socio-economic standing of both the existing and new community will also be implemented.
448. This includes targets for employment and skills while recruiting construction workforce, ensuring health and wellbeing are considered during design, construction and operation and engaging the local community during development and once completed.

## Health and wellbeing

449. Comfortable working conditions for staff working within the development will be considered. Issues such as glare control, appropriate daylighting and adequate views out will be incorporated into design.
450. Noise impact assessments for non-domestic buildings will be done to address noise impacting for neighbouring properties.
451. Security consultants will be used to incorporate safe access and egress of the proposed development and ensure that buildings and landscapes are designed with security in mind.

## Conclusions

452. The proposed development seeks to achieve sustainability that incorporates, and exceeds BREEAM Good ratings for all non-residential

buildings. The various approaches to achieve these details will be delivered by management plans. Detailed approaches to achieving targets under each of the broad themes will be explored in upcoming stages of design and planning.

453. The proposal includes adequate measures to ensure the development is able to achieve current standards for energy efficiency and sustainable building design. Conditions will secure details of the various measures proposed and required.

## **ACCESSIBILITY**

454. Sustainable development includes meeting needs of the community. In so far as accessibility is concerned it is important that such development promotes inclusive access (Policies LLP1 and LLP25).
455. Office, retail, leisure and hotel – As the office, retail, leisure and hotel are outlined, full details of their design will be submitted with reserved matters and the above requirements would be the subject of conditions to ensure compliance. Ongoing arrangements for accessibility should be addressed in a management plan, with a further condition recommended in this regard.
456. More specifically the applicant has set out that the design has been refined towards the highest standards in terms of accessibility and sustainability. The scheme will optimise vehicular and pedestrian flows, integrate the development into the existing fabric of the immediate context of the site and reinforce this integration through landscape and public space design. The design approach, whilst indicative only at this stage, does provide an indication of the concept/approach. As this application is only in outline, further work on detailed design will have to be progressed through reserved matters stage.

## **Conclusion**

457. The proposed development provides opportunities for improvements in inclusiveness for different groups in the community and in particular people with disabilities. Further details of the outline elements and the proposed measures for the development will be secured by conditions.

## **PLANNING OBLIGATIONS**

458. A planning obligation may be required to control the impact of a development particularly in circumstances where the desired restrictions go beyond the scope of planning conditions. In accordance with section 106 of the Town and Country Planning Act 1990, the local authority will enter into a legal agreement with the applicant (including anyone else who has a legal interest in the land) to secure planning obligations.

459. Paragraph 56 of the NPPF says local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 56 advises obligations should only be sought where they meet all of the following tests:

- necessary to make the development acceptable in planning terms
- directly related to the development; and
- fairly and reasonably related in scale and kind to the development.

These tests reflect Regulation 122 of the CIL Regulations.

460. Planning obligations can include financial obligations requiring monetary contributions to the local authority to fund works or services as well as in-kind obligations requiring specific actions to be performed by specific parties.

461. The Council's Planning Obligations Supplementary Planning Document (SPD) sets out in principle what kinds of planning applications will require planning obligations and in broad terms how monies will be spent on projects related to the proposed development.

462. The following sections discuss the need for planning obligations arising from the development and its impacts. The application is in outline form, and the development parameters are set out in the description of the application.

#### Retail Restrictions

463. If members are minded to grant planning permission then it is suggested by the Council's retail advisers that there should be a requirement for mechanisms to mitigate the impact of the retail element of the development on the wider area.

464. The protective measures proposed are as follows:

- Permitted user list
- No poaching clause
- Exclusion list
- Anchor Store

#### Power Court Delivery

465. Mitigation of retail impact and addressing sequential site matters requires a planning obligation which will prevent the retail and leisure floorspace at Newlands Park from being occupied until the Power Court development pursuant to app ref 16/01400/OUT/EIA has been completed up to and including "podium level", "Podium level", includes a 120m structure at level

0 and level 1 including site decontamination, car parking, ring road, works to culvert the river, public areas and all other related “out of site” infrastructure, to deal with and mitigate the sequential and impact concerns.

#### Park and Ride Facility

466. The land at Newlands Park identified in policy LLP5Aii for the Park and Ride facility consisting of (2 hectares) is to be safeguarded.

#### Car Parking Charges at Newlands Park

467. A scheme of parking charges and details of their operation is required in order to ensure that the car parking facilities can operate in a fair and equitable manner in relation to other such facilities in the area generally and the town centre specifically.

#### Other Obligations

468. Monetary contributions will be required to cover monitoring fees (£15000.00 per annum for 8 years), and payment of (amount to be provided) towards pump priming of the expanded bus service to

469. Phasing plans will also be required to help ensure the delivery of the mixed development. This will ensure that at least 25% of the office space is brought forward at the same time as the leisure and retail elements.

### **THIRD PARTY REPRESENTATIONS**

470. The application has been the subject of representations which raise the following issues, specifically in relation to retail.

**Date:** 7/10/16

**Objector:** SREIT Property Limited

**Comment Summary:** Short note to endorse the objections raised by Capital & Regional. Letter attaches Barton Willmore objection letter prepared on behalf of Capital & Regional. (See below)

**Date:** 7/10/16

**Objector:** Capital & Regional (Barton Willmore)

**Comment Summary:**

- Development is contrary to the spatial approach set out in the adopted and emerging Local Plans. Local Plan allocates the site for the football stadium rather than retail development.
- Proposal is contrary to national and local planning policy. Applicant has put forward no justification for departure from Local Plan.

- Application is premature and should have been progressed through the emerging Local Plan first. Application should be refused until emerging Local Plan is adopted.
- Insufficient information provided on the impact of the Newlands Park and Power Court schemes and insufficient consideration given to alternative proposals.
- C&R consider the already consented retail scheme at Junction 11 of the M1, which forms part of the HRN scheme, meets the requirements for out-of-town retail in the sub-region.
- A more detailed sequential test should have been conducted.
- Only limited assessment provided on impact on in-centre investment.
- Concerns raised over technical aspects, assumptions and inputs adopted in the Town Centre Impact Assessment.
  - Design Year – 2022. C&R claim it should be 2021. 2022 would show greater turnover and therefore reduce impact on town centre.
  - Catchment Area – 70% of scheme turnover to come from local area is considered low. Questions whether other centres should be assessed sequentially.
  - Trade Draw – Claims 15% draw from existing town centre underestimates impact.
  - Power Court Scheme – The impact of Power Court is included in the town centre turnover figures for 2022 which inflates figures. C&R do not agree with this approach to the assessment.
  - Commitments/Cumulative Assessment – C&R claim the impact assessment discounts certain retail commitments (Napier Park) already consented (admits unlikely to be implemented).
  - The cumulative impact assessment is not considered robust. Provides insufficient detail on discrepancies in figures.
- C&R suggest the other Main Town Centre Uses is sought to be justified based on 'need' for leisure / F&B uses. Claims this does not consider the effect of linked trips to other A uses arising from the diversion of trade and need is already met by the Town Centre.
- Highways – C&R have sought advice from a highways consultant.
  - No evidence of agreement between PBA and LBC on scope and assumptions of TA.
  - Limited access to site via public transport. Proposal does not maximize sustainable transport opportunities.
  - Trip generation methodology has flaws or lacks evidence.
  - Junction modelling shows various junctions are currently constrained and would operate well above capacity. No mitigation proposed.
  - A cumulative impact assessment with Power Court proposals has not been undertaken.
- No design code submitted, therefore no comment provided on quality of design.

**Date:** 3/11/16

**Objector:** Hermes CMK General Partners Ltd (Turley)

**Comment Summary:**

- The proposed development represents a departure from the Local Plan and the emerging Local Plan.
  - Newlands Road site is allocated for a new football stadium. While enabling development may be required, Policy S1 states this should not threaten the vitality and viability of a shopping policy area and. Therefore, the regeneration of the central area.
  - The proposal will prejudice the delivery of the Power Court allocation in accordance with Policy CA7. Power Court is a long established retail allocation.
  - The Newlands Road scheme will undermine strategy for Luton town centre and prejudice its ability to deliver much needed step-change envisioned by adopted and emerging policy.
- The sequential test provides insufficient information to demonstrate that the Newlands Road site is sequentially preferable.
- They do not agree the proposals will increase market share within the town centre. Out of centre development will be to the detriment of other centres and is in conflict with the NPPF.

**Date:** 6/03/18

**Objector:** Capital & Regional (Barton Willmore)

**Comment Summary:**

The letter reiterates reasons for objections as submitted in October 2016. States that insufficient evidence provided to determine the impacts of the scheme on town centre retail and leisure. Continues to object to Newlands scheme on basis it will harm the performance and role of Luton town centre. However, supports the development of the business park (B1 Offices).

**Date:** 20/06/18

**Objector:** Harpur Centre

**Comment Summary:**

Expresses concern with the significant scale of retail and leisure floorspace proposed in an out of centre location and the negative impact they consider this to have on Luton and other near-by centres, including Bedford.

They do not consider proposals have been robustly assessed nor justified in the proposed out-of-centre location. Also have concerns about any

potential planning controls and the effectiveness of these in protecting the designated centres.

**Date:** 27/07/18 (a further copy of this objection is listed on the council's website as 2/08/18)

**Objector:** Hermes Property Unit Trust (Turley)

**Comment Summary:**

- Notes that the site is not allocated for retail use in the Local Plan and therefore does not comply with NPPF (para 11).
- Raises a number of grounds for objection based on Retail assessment:
  - The impact assessment does not fully reflect the impact on St Albans. The proposed volume/mix of high-end retailers has since changed and therefore will have a greater impact on other centres. (I think that's what it is saying).
  - The proposal to seek 'aspirational' retailers is not workable – in planning terms there is no distinction between 'aspirational' or 'high-quality' retailing so planning controls are not enforceable.
  - The PUL contains 25 retailers already in the centre, of which 10 are located in Hermes Christopher Place development.
  - Generally claiming that there is no way to prevent the types of retailers that would typically occupy town centre space from moving or locating to the out of centre space. As such, St Albans is likely to be adversely affected.
- Advises that the proposal is contrary to Policy LLP21 of the recently adopted Local Plan and would result in a significant adverse impact on at least two designated town centres.
- With regard to para 11 (NPPF) and s38 (6) of the Planning Act, the scheme cannot be considered sustainable.

**Date:** 7/08/18

**Objector:** Aberdeen Standard Investments (NTR Planning Ltd)

**Comment Summary:**

- Notes that the proposal is contrary to an up to date Local Plan in terms of site allocations.
- There is no definition in planning terms of 'aspirational retail'. Unknown how 'High-end' and 'mass market' retail mix will be effectively controlled.
- Could result in the loss of two key anchors from Luton town centre (M&S and Debenhams).
- Biggleswade town centre will be adversely affected by the proposed retail development.

- Riverside Shopping Centre, Hemel Hempstead will be adversely affected by the proposed retail development.
- Interchange Retail Park, Bedford will be adversely affected by the proposed retail development
- Roaring Meg Retail Park, Stevenage will be adversely affected by the proposed retail development.

**Date:** 9/08/18

**Objector:** Signet, t/a H Samuel & Ernest Jones

**Comment Summary:**

- Objecting to both Newlands and Power Court as interlinked.
- If retail reduced to less than 50,000 sqft they would withdraw objection.
- Considers the effect on new retail will be detrimental to trading, vitality, viability of Luton town centre.
- Business has been forced to close stores where similar instances have occurred through loss of profitability, footfall etc.
- Concern that parking will be easy to access and effectively free (assumes validation for shoppers).

**Date:** 14/08/18

**Objector:** Capital & Regional (Barton Wilmore)

**Comment Summary:**

- The adopted LLP (Policy LLP5) allocates the Newlands site for a business park and a park and ride facility. It does not identify the site for town centre uses including retail.
- There is no support in the recently adopted and up to date LLP for further out-of centre retail development. It follows that there is no policy support whatsoever for the Newlands scheme – it is contrary to the development plan and should therefore be refused unless other material considerations indicate otherwise (S.38(6) Planning and Compulsory Purchase Act 2004).
- The WYG Luton Retail study 2015 Update is relevant to the consideration of the Newlands application as it is relied upon by the applicant to justify the scale of the retail and other town centre uses being promoted. However, we are clear that there are a number of deficiencies with the WYG 2015 Update, which undermines the robustness of the justification being promoted by the applicant for the Newlands scheme. These include:
  - out of date survey data;
  - unjustified increase in town centre market share;



- over estimation of retail capacity; and
  - inconsistent town centre health check.
- The Newlands application is accompanied by a Main Town Centre Uses Report (MTCU) dated August 2016, prepared by Indigo Planning.
- The MTCU does not provide a detailed analysis of the likely impact effects of the proposal, instead providing a broad brush analysis relying heavily on the findings of the WYG Update 2015. As demonstrated above, the WYG Update 2015 was based on a number of ambitious assumptions and information that is now out-of-date. It cannot be relied upon to determine a major retail application now, and a new detailed assessment bespoke to the application should be provided.
- The MTCU has a number of material flaws in terms of assumptions, data and methodology. These cover the following areas:
  - survey data;
  - expenditure data;
  - existing turnovers;
  - catchment area;
  - inflow and market shares;
  - trade draw from catchment area;
  - turnover estimates;
  - Solus trade diversion; and
  - Cumulative impacts.
- A comprehensive and robust assessment is required, and this is not currently provided by the MTCU report.
- The submitted MTCU report should be revised based on a new household survey that encompasses the whole study area, and up-to-date population, expenditure and growth assumptions. Until revised, the assessment will remain unsound and unreliable as a material consideration in the determination of the planning applications.

**Date:** 25/10/18

**Objector:** Mineworkers Pension Scheme (LaSalle Investment Management)

**Comment Summary:**

The objection is focused on promoting a town centre first approach to the sequential test and that the Newlands site is out of centre.

They do not believe the proposed 'no-poaching' agreements can be effectively implemented or enforced. There is a risk that trade from existing centres will be diverted into the new scheme to the detriment of Luton town centre and Welwyn centre.

Also comments that the proposals are in contrast to the site allocations of the adopted Local Plan.

**Date:** 26/10/18 (date on correspondence is 14/09/18)

**Objector:** Intu Properties Plc (Lichfields)

**Comment Summary:**

This correspondence confirms that Intu is reassured that the use of the PUL to restrict poaching occupiers from the town centre and from other town centres (mainly, Watford and Milton Keynes) will ensure that the retail impact on centres within the region can be sustained.

**Date:** 26/10/18 (date on correspondence is 26/10/16)

**Objector:** Intu Properties Plc (Lichfields)

**Comment Summary:**

- Objects on the grounds that
  - it is a departure from the Development Plan (re site allocations).
  - Will have significant adverse impact on planned investment in Luton town centre
  - Will undermine LBC's vision for the main town centre
- The sequential assessment submitted by the applicant provides insufficient information to demonstrate the out of centre Newlands Road application site is the preferred location for the main town centre use proposed.
- The Newlands Road site is an unsustainable location for main town centre uses. The development will attract a significant level of trade from other centres in the sub-region leading to unsustainable shopping patterns.

**Date:** 30/11/18

**Objector:** Schroders REIT (Lichfields)

**Comment Summary:**

Object to the Newlands Road scheme on the grounds that leisure (cinema) use is regarded as a town centre use. As such, the development needs to be subject to a sequential test to determine whether there are appropriate sites within the town centre together with an assessment of the impact on an existing offer.

SREIT sees the scale of development likely to have a negative impact on the Galaxy Centre and wider town centre.

**Date:** 17/12/18

**Objector:** Capital & Regional (Turley/CBRE/MP/Cushman & Wakefield)

### **Comment Summary:**

A technical report which considers the viability of the proposed retail and leisure elements of the development but excludes the office element (Phase 2) and exclude the hotel proposal.

The assessment prepared is to consider if Newlands is able to generate an acceptable return plus sufficient additional profit to deliver the stadium at Power Court. If it cannot, then the whole basis of the Newlands application is negated, and (as a development which contravenes planning policy) should be refused.

CBRE's view is that it is not possible to produce a viable and lettable scheme within the scope of the outline application. There is insufficient land to produce a commercially viable layout, based on the scale of the development. In short, the proposed form of scheme does not "fit" the site in a commercially viable way.

It is considered that there are significant flaws in the proposed design in terms of layout, configuration and the reliance on basement parking which render the scheme as conceived unlettable. For the purposes of the appraisal notwithstanding these flaws, it has been assumed that an optimal layout can be produced that can accommodate the retailers' requirements.

CBRE comment in detail in its Commercial Assessment on the principle, ineffectiveness and subjectivity of the Permitted User List (PUL). As the applicants are proposing to restrict the leasing of the retail floor area (37,000 sq m or 400,000 sq ft), such that 66% of the floorspace is let to retailers on the PUL it is necessary to make a judgement on how this would be achieved. CBRE claim the PUL is flawed, containing many mass market retailers, some aspirational retailers and a handful of high-end/luxury retailers.

As such, for the purposes of the appraisal, CBRE have used the Revised Permitted Users List appended to the Indigo Second Addendum Report.

CBRE's viability appraisal is based on the assumption that 268,000 sq ft (66% of 400,000 sq ft) is let to retailers on the PUL. The remaining 132,000 sq ft is let to retailers who are not on PUL but are mass market retailers but are considered essential in the Chase report to anchor the scheme and improve viability and lettability.

CBRE's viability assessment assumes the following allowances for tenant incentives:

- A department store with a tenant incentive package of £6.4 million
- An incentive package for MSU's equivalent to 3 years rent
- A general allowance for shop units equivalent to 24 months rent
- An allowance equivalent to 12 months rent for F&B units

- An allowance equivalent to 24 months rent for leisure units.

The CBRE appraisal shows a substantial loss of £130 million. CBRE claim there is no possibility of the scheme delivering a profit at all and certainly not to fund a stadium even on the most optimistic (and unrealistic) commercial assumptions that we have adopted for the purpose of this appraisal exercise.

CBRE concludes that the 2020 Developments' justification for the development of Newlands is that it will provide sufficient development profit to fund the development of the football stadium at Power Court which is estimated to cost in excess of £50 million.

The scheme as drawn is unlettable. Even if a suitably designed scheme could fit on the site (which they doubt) the viability assessment shows a significant loss of over £130 million.

CBRE have carried out sensitivity analyses which show that drastic and unattainable swings in cost and value would be required to break even. Even more optimistic assumptions would be required to generate a normal minimum developer's profit. They consider it inconceivable that the changes needed to produce a surplus sufficient to fund Power Court stadium could come about.

They consider that Newlands funding of a stadium at Power Court is illusory. CBRE's appraisal of Newlands shows a substantial loss.

The claimed public benefits from the development of either Newlands or Power Court cannot be given any material weight in the determination of either application as it is clear that neither is viable nor will proceed.

The submission also includes a 'Peer Review' prepared by Cushman & Wakefield. The findings of this review are that C&W concur with the views expressed in the CBRE/MP report that there are significant flaws in the proposed design in terms of layout, configuration and the reliance of basement parking which render the scheme as conceived as unlettable. C&W highlights that the sight lines to the department store are unsatisfactory and unacceptable.

- The site layout dictates a compromised retail layout with units likely to be short in depth and an under provision of MSUs.
- C&W do not believe the demand is there to fill this quantum of "aspirational" floorspace.
- As a rule of thumb, a semi enclosed mall as shown on the applicant's proposals will need to achieve ZA rates of £200 psf in order to cover the build cost.

Charging a town centre tariff on the car park would negatively impact the lettability of the scheme.

C&W suggest only 44% of proposed floor space would be let. Remaining floor space is unlettable

In terms of tenant incentives, C&W suggest:

- A Department Store anchor will require a £6m capital contribution.
- MSU operators will require a package equivalent to 36 months rent and will demand tenant only break clauses from year 3.
- Standard unit shop occupiers would be looking for 24 month packages minimum, together with installations of shopfronts and will demand tenant only break from year 5.
- “Aspirational” occupiers invariably have more expensive shop fits and may be looking for 36 month packages.
- Food and beverage operators will require 12-18 month packages.
- Leisure operators will require 12-18 month packages.
- A 30,000 sq ft cinema would require a £2.25 million package plus enhanced specification for the cinema.

C&W’s retail investment team has no confidence in the scheme proposal even on a hypothetical basis citing the following issues amongst others:

- a) Luton already has over 1,000,000 sq ft of out of town retail floorspace;
- b) The site is not large enough to provide at grade surface parking;
- c) The proximity of the more dominant centres of Milton Keynes, Brent Cross and Watford.

The C&W appraisal shows a substantial loss of £262,515,013. Indicating the scheme is not viable.

**Date:** 17/12/18

**Objector:** Capital & Regional (Turley)

**Comment Summary:**

Letter provided as overview to separate technical report also submitted by C&R/Turley. The letter confirms their view that Newlands is contrary to the development plan and NPPF and would have a significant adverse impact upon Luton town centre and should be refused planning permission.

Also stated that C&R support the Power Court application and would be pleased to work with the Council, 2020, Luton Town FC and other

stakeholders in preparation of a new town centre strategy, including a realisable funding plan for the proposed stadium

These matters have been addressed in this report.

**Date:** 26/11/18

**Objector:** Hermes Real Estate Investment Management Ltd

**Comment Summary:**

Hermes is joint owner of centre:mk within Central Milton Keynes Primary Shopping Area. The letter express concerns at the scale and significance of the Newlands Park development and records observations and objections to the scheme, requesting that the application be refused.

The proposals for a regionally scaled shopping centre in an out of town location at a motorway junction is a significant concern. The concerns relate to the retail and leisure elements of the proposal which it is considered would undermine the regional role of Milton Keynes and have a harmful impact on Luton town centre which Hermes consider appears to have sequentially preferable capacity.

Whilst aware of the suggested restrictions to ameliorate the adverse effects of Newlands Park, they do not consider the measures would be commercially or procedurally effective. The letter also raises serious doubts about the ability of Newlands Park to be delivered in the current retail market questioning retailer interest and ability to secure funding.

471. Other matters to which reference has been made in respect of third party representations are as follows:

- Retail impact – Addressed above individually, and in the report
- Create uncertainty that would significantly impact on the Town Centre – Addressed above individually, and in the report.
- Not viable – Addressed above individually, and in the report.
- No demand for the floorspace – This is a matter for the applicant, and is not a material consideration.
- Highways – There are no highway objections to the proposals.
- Linkage of the site to the site at Power Court (16/01400/OUTEIA) – This application falls to be considered on its merits, and there is no linkage to the Power Court site as a material consideration.
- Retail impact on Luton Town – Addressed above individually, and in the report.
- Retail impact on Milton Keynes – Addressed above individually, and in the report.
- Impact on Luton Hoo registered Park and Garden – Addressed in the report.
- Impact on potential archaeological remains – Addressed in the report.

- Design – The application is in outline with all matters, save for access reserved for subsequent approval.
- Noise, air and light pollution – Addressed in the report.
- Limited public transport – Addressed in the report.
- Negative impact on wildlife – Addressed in the report.
- Loss of agricultural land – The site is an allocated site in the Luton Local Plan 2011 – 2013.
- Loss of trees and hedgerows – This matter is addressed under the topic of ecology.
- Construction will be disruptive – This matter is addressed, and will be controlled by a condition requiring a construction management plan.
- Encroachment on Green Belt – The site is not in the Green Belt.
- Site provides a green lung – The site is an allocated site in the Luton Local Plan 2011 – 2013.
- Anti-social behaviour – There are no objections from the Police Architectural Liaison Officer.
- Site should be used to locate a football stadium – The site is no longer allocated as a site for a football stadium, and the site at Power Court has been the subject of a planning application, which has a resolution to grant planning permission.
- Underneath the flight path, danger and noise – The site is not within the public safety zone, LLA were consulted, and no comments were received. The issue of noise has been addressed in the comments made by the Council's environmental protection team.
- Against any development on the site – It is considered that the proposed development has been considered against the policies of the development plan in force, and regard has been had to material considerations in making a decision.

## **CONCLUSIONS**

472. The application raises numerous planning issues for consideration, and requires a difficult and complex evaluation of many impacts, both positive and negative. This assessment has taken into account relevant Development Plan policies, the NPPF, information in an Environmental Statement and other environmental information including that submitted in accordance with Regulation 22 of the EIA Regulations 2011.
473. The issues considered relate to the provision of office floorspace, and other commercial elements, including the provision of a hotel, leisure floorspace, comparison retail floorspace; convenience retail floorspace, food and drink floorspace, retail/leisure servicing, car parking and accommodation works. The application has attracted widespread public interest with large numbers of submissions both for and against it. Many statutory consultees and local amenity groups have also commented.
474. The primary objective of the application is the provision of an alternative type of comparison retail offer to that currently available in the town centre.

Officers consider that in line with the advice from their retail planning advisors that with the necessary retail restrictions in place, the retail/town centre elements of the proposed development will not have a significant adverse impact upon Luton town centre or any other town centres in the wider area. The uncertainty in the restrictions is recognised, but the balance of planning judgement is that there will likely not be significant adverse impacts.

475. The proposed development does give rise to a conflict with the development plan however, the benefits that the proposals will deliver are considered to outweigh that conflict. These benefits are:

- Providing new office floorspace in the form of a new planned business quarter comprising high quality, grade A office space that is currently not available in Luton.
- Quality and quantum of floorspace will attract blue chip companies that wish to utilise the site's location close to London and London Luton Airport.
- Claw back of retail expenditure leaking to other centres. Will help Luton compete with the new retail development at Houghton Regis, Milton Keynes and Watford and mitigate against existing leakage to neighbouring towns.
- Retailing together with restaurants, a hotel and leisure will provide a destination that cannot be found elsewhere in the sub region.
- Will deliver most of the comparison retail requirement identified in the Local Plan to 2025, albeit at an alternative site.
- Economic benefits include a significant number of new jobs suggested to be 9,870 (FTE) with additional training opportunities, an estimated additional £10.3m per annum to the Council from business rates and a potential additional gross value contribution to Luton's economy of £4,701.1 million between 2020 and 2040( £235m per annum).
- Safeguard of a park and ride facility at the southern gateway into Luton.
- Creation of a gateway into Luton, close to London Luton Airport, the M1 and Luton itself that will support the wider regeneration of the area.
- The demand for hotel rooms in Luton significantly exceeds supply as identified in the Hotel Study undertaken by WYG in 2015. The proposed hotel would cater for the mid to upper market, this demand is predicted to grow further given the continuing growth of the airport. A prestigious hotel in this location is also seen as an additional benefit.
- Employment plus creation of a further additional full time equivalent jobs in the area resulting from spending from new residents.



- Opportunities for enhancement of skills and knowledge of local people through training initiatives.
476. Third party representations have been received questioning the viability and delivery of Newlands Park. In response, the applicant points to the substantial investment they have already made and have provided a costs report which challenges some of the build cost assumptions that the objectors have made. Further, the s106 agreement for Newlands Park will contain an obligation that prior to occupation of any retail and leisure floorspace at Newlands Park, a significant element - of the stadium (namely the podium) must be completed. This secures the position that Newlands Park can and will only come forward if Power Court also comes forward.
477. In light of these contentions delivery cannot be assumed. This is the case for many developments. Members should have in mind inevitable uncertainties on delivery and viability. Any assessment of benefits must have regard to these uncertainties.
478. The proposed development will result in the intensification of the use of the site and this is reflected in the density and built form of the proposal. Planning conditions to secure a Masterplan and a Design Code to focus the final design and establish a suitable palette of materials are therefore necessary.
479. It is important that any future reserved matters applications ensure that the proposed public realm is both durable and attractive. Conditions as described requiring a Masterplan and Design Code to secure details of public realm works, to ensure a high quality development is delivered on this site.
480. It is apparent from the above narrative that the proposals would represent a new landmark scheme within the local area. In order to deliver the high quality scheme, the Masterplan and Design Code will ensure that the design of the development balances the desire to act a landmark development, whilst at the same time being respectful and compatible with the sensitive surrounding uses, including nearby heritage assets. On the basis of the foregoing the development is consistent with Policies LLP1, LLP25 and LLP38 of the adopted Local Plan.
481. The NPPF and Policy LLP 30 emphasise that the conservation of archaeological interest is a material consideration in the planning process. The Archaeology team have confirmed that they do not object to the principle of development at this site. The Archaeology team do however, consider that further analysis on the impact of the proposed development on the potential Palaeolithic resource is required. It is proposed that the submission of this information is secured through a planning condition.

482. Historic England have concluded that the development would result in “less than substantial harm” to the grade II\* historic landscape heritage asset at Luton Hoo. It is considered that the public benefits, to which reference has been made, outweigh the less than substantial harm to the heritage asset.
483. Careful consideration will still, however, need to be given to the proposed layout, scale, appearance and landscaping of the proposed development to minimise harm to these heritage assets. These are however, matters which will be dealt with through the submission of details which will ensure that there is sufficient scope in this application that the design and layout of the proposed development is appropriately addressed.
484. In so far as highway matters are concerned, Highways England have no objections, subject to conditions. The Council’s Highway Engineer has confirmed that the proposed access to the site is acceptable. The access and the on-site spine road will be adopted as public highway and as such will be subject to a combined Section 38/278 of the Highways Act Agreement to enable the construction and adoption of the same. Further off site highway improvement works may be required on Newlands Road to cater for the development. In this respect it is anticipated that the junctions of Newlands Road with Farley Hill Road and with the A1081, this will be confirmed once the final mix of development is confirmed, and will require for a Section 38/278 Agreement together with off-site highway improvement works, which given they are somewhat remote from the application site and therefore likely to be undertaken by the respective Highway Authorities, should be safeguarded by inclusion within any Section 106 of the Planning Act Agreement for the development.
485. Overall, it can be concluded that the proposed development can be satisfactorily accommodated on the transport network and is compatible with the receiving environment. Adoption of travel demand management measures and proposed mitigation will ensure that the impacts on the local and strategic highway network are further mitigated to the satisfaction of the developer and the responsible authorities.
486. Parking across the development has been determined with consideration to local parking standards and aspirations to ensure effective parking provision to encourage sustainable travel.
487. The total number of spaces is some way below the maximum provision that could be provided, if all land uses were considered individually. The provision therefore reflects shared use and is considered a sensible planned approach to parking.
488. Accordingly, the proposed mitigation will essentially be by way of a Section 278 Agreement under the Highways Act, with other measures achieved by the Travel Plan to promote sustainable modes of travel to and

from the site. On this basis it is considered that this element of the proposed development does not offend policy LLP32.

489. The NPPF requires sustainable development, and as part of this, development should aim to minimise adverse effects on the local environment, which includes neighbouring properties. It is assessed that the proposed development should not cause unacceptable harm to the amenity of the surrounding land and buildings, in relation to privacy, overshadowing, wind and microclimate. Given the layout of the development, and the characteristics of the site's location in relation to the siting and proximity of surrounding development the proposed buildings are on the whole not considered to be overbearing.
490. The proposed development, owing to its large scale and design, as well as the long period of construction, has the potential to be disruptive to the amenity of the surrounding areas. Whilst there is no built form in close proximity to the site it is important that the site is managed both responsibly and sensitively. This can be achieved via a construction management plan, and other management plans to ensure that the impact during construction works is minimised.
491. Other Environmental matter, have been the subject of consideration with these matters addressed in the ES as part of the Environmental Impact Assessment process.
492. The proposed development seeks to achieve sustainability that incorporates, and exceeds BREEAM Good ratings for all non-residential buildings. The various approaches to achieve these detail will be delivered by management plans. Detailed approaches to achieving targets under each of the broad themes will be explored in upcoming stages of design and masterplanning.
493. The proposal includes adequate measures to ensure the development is able to achieve current standards for energy efficiency and sustainable building design. Conditions will secure details of the various measures proposed and required.
494. Accessibility - The proposed development provides opportunities for improvements in inclusiveness for different groups in the community and in particular people with disabilities. Further details of the outline elements and the proposed measures will be secured by conditions.
495. Planning obligations are required to address the following matters;

Retail Restrictions, The measures proposed are as follows:

- Permitted user list
- No poaching clause
- Exclusion list

- Anchor Store

Power Court Delivery\_\_- Mitigation of retail impact and addressing sequential site matters requires a planning obligation which will prevent the retail and leisure floorspace at Newlands Park from being occupied until the Power Court development pursuant to app ref 16/01400/OUT/EIA has been completed up to and including “podium level.

Park and Ride Facility site to be safeguarded.

Car Parking Charges at Newlands Park - A scheme of parking charges and details of their operation is required.

496. Other Obligations, these will include; monetary contributions to cover monitoring fees (£15000.00 per annum). Phasing plans will also be required to help ensure that at least 25% of the office space is brought forward at the same time as the leisure and retail elements.
497. A section 106 agreement is also required to secure substantial development towards delivery of the stadium and its community benefits and other mitigation, including necessary community infrastructure.
498. As is clear from the above, there are two principal respects in which the development has adverse impacts. First, in breach of the local plan objectives for the town centre. Second, as set out in detail above, the development will cause less than substantial harm to heritage assets, a matter to which particular weight and importance must be given. It is for the Council to consider whether the public benefits of the proposal outweigh that harm. It is considered that the potential benefits resulting from the development are of a nature and scale as to outweigh the harms identified.
499. The weight to be given to these matters is ultimately a decision for Members. Taking all these matters into account, balancing the social, environmental and economic benefits of the development against the residual harm, approval is recommended.

## **APPENDICES**

### **APPENDIX 1 – LIST OF CONDITIONS**

### **APPENDIX 2 – SECTION 106 RETAIL RESTRICTIONS – LEGAL OPINION**

### **APPENDIX 3 – PERMITTED USER LIST (PUL)**

## **LIST OF BACKGROUND PAPERS**

### **LOCAL GOVERNMENT ACT 1972, SECTION 100D**

500. Luton Local Plan 2011-2031

501. National Planning Policy Framework

## **DETERMINATION OF PLANNING APPLICATIONS**

The Council is required in all cases where the Development Plan is relevant, to determine planning applications in accordance with policies in the Development Plan unless material considerations indicate otherwise.

### **Equality Implications**

#### **EQUALITY ACT 2010**

In reaching the recommendation set out in this report, proper consideration has to be given to the duty imposed on the Council under the Equality Act 2010 to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by that Act; to advance equality of opportunity and to foster good relations between persons who share relevant protected characteristics and persons who do not share it. The protected characteristics under the Act are a person's age, sex, gender assignment, sexual orientation, disability, marriage or civil partnership, pregnancy or maternity, race, religion or belief. In this case, no disproportionate effect on people with protected characteristics has been identified.

#### **HUMAN RIGHTS ACT 1998**

The determination of the application is considered to involve the following human rights:-

1. Article 8: Right to respect for private and family life; and
2. Article 1 of the First Protocol: Protection of Property

The report considers in detail the competing rights and interests involved in the application. Having had regard to those matters in the light of the Convention rights referred to above, it is considered that the recommendation is in accordance with the law, proportionate and balances the needs of the applicant with the protection of the rights and freedoms of others in the public interest.

#### **SECTION 17 CRIME AND DISORDER ACT 1998**

In reaching the recommendation set out, due regard has been given to the duty imposed upon the Council under Section 17 of the Crime and Disorder Act 1998 to do all it reasonably can to prevent crime and disorder in its area.

## APPENDIX 1

### SCHEDULE OF CONDITIONS – REVISED DRAFT - FINAL

LAND ADJACENT JUNCTION 10 TO 10A M1 NEWLANDS ROAD LUTON BEDFORDSHIRE – OUTLINE PLANNING PERMISSION, WITH ALL MATTERS RESERVED EXCEPT FOR ACCESS, FOR MIXED-USE DEVELOPMENT COMPRISING: OFFICE FLOORSPEACE (USE CLASS B1(a); RETAIL FLOORSPEACE (USE CLASS A1); FOOD AND BEVERAGE FLOORSPEACE (USE CLASS A3-A5); LEISURE FLOORSPEACE (USE CLASS D2); A HOTEL (USE CLASS C1); CAR AND CYCLE PARKING; AND ASSOCIATED ACCESS, HIGHWAYS, UTILITIES, PUBLIC REALM, LANDSCAPING AND ASSOCIATED ANCILLARY WORKS AND STRUCTURES.

APPLICANT: 2020 DEVELOPMENTS (LUTON) LTD (ON BEHALF OF LUTON TOWN FOOTBALL CLUB)

APPLICATION NO: 16/01401/OUTEIA

#### General

1. A Masterplan for each phase of the development as set out in the Design and Access statement shall be submitted to and approved in writing by the Local Planning Authority prior to the submission of the details reserved for subsequent approval. The plan shall identify all aspects of the phasing of the proposed development, and should set out the details of both the public realm and elements of the built form. The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Masterplan.

*Reason: In order to protect the environment of the surrounding area, and to ensure a satisfactory development.*

2. Details of a Design Code as indicated in the Design and Access statement shall be submitted to and approved in writing by the Local Planning Authority prior to the submission of the details reserved for subsequent approval. The code shall identify all details to maximise the quality and legibility of the spaces, to help reinforce local character and accessibility, the details should ensure that these areas would be high quality. In this regard the concourse areas and footpaths should be high quality, durable landscaping that has a good amount of detail and infrastructure. The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Design Code.

*Reason: In order to protect the environment of the surrounding area, and to ensure a satisfactory development.*

3 The development hereby permitted shall be begun either before the expiration of 3 years from the date of this permission, or before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved, whichever is the latter.

*Reason: To accord with the provisions of section 91 of the Town and Country Planning Act 1990.*

4. Applications for approval of all reserved matters for the first phase of the outline development hereby permitted shall be made to the Local Planning Authority before the expiration of three years from the date of permission. Therefore, applications for approval of all subsequent reserved matters relating to all additional phase shall be made to the Local Planning Authority before the expiration of two years from the date of approval of the reserved matters of the preceding phase.

*Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. The development shall be carried out in accordance with the approved details. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan.*

5. Details of the layout, scale and appearance of the building(s), the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the Local Planning Authority before any phase of the development is commenced.

*Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. The development shall be carried out in accordance with the approved details. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan.*

6. The proposed development shall be carried out in all respects in accordance with the proposals contained in the application and the parameter plans submitted therewith or as shall have been otherwise approved in writing by the Local Planning Authority before the buildings are occupied. Plans 400\_J10 (0) 100 B, 400\_J10(0) 001C, 400\_J10 (0) 002C, 400\_J10 (0) 003C, 400\_J10 (0) 100CA, 400\_J10 (0) 101B, 400\_J10 (0) 102B, 400\_J10(0) 103B, 400\_J10 (0) 104B, 400\_J10 (0) 105B, 400\_J10 (0) 106B, 400\_J10 (0) 107B, 400\_J10(0) 108B, 400\_J10 (0) 110C, 400\_J10 (0) 120B and 400\_J10 (0) 121B.

*Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. The development shall be carried out in accordance with the approved details. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan.*

## Development Composition

7. The development hereby approved shall be limited to the following:

- Up to 42,000sqm of office floorspace (Use Class B1a);
- Up to 13,000sqm of hotel (Use Class C1) (up to 350 beds);
- Up to 16,000sqm of leisure floorspace (Use Class D2);
- Up to 37,000sqm of comparison retail floorspace (Use Class A1);
- Up to 300sqm of convenience retail floorspace (Use Class A1);
- Up to 8,500sqm of food and drink floorspace (Use Classes A3-A5);
- Up to 8,500sqm of retail/leisure servicing and ancillary floorspace;
- Between 3,000 - 3,600 car parking spaces; and
- Associated access, highways, utilities, public realm, landscaping and associated ancillary works and structures.

*Reason: To ensure the development is carried out in accordance with the planning permission and to ensure that any development that is carried out is that which has been assessed. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan.*

8. In respect of any of the above Class D1 uses hereby approved, notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification; the use shall not be changed to a place of worship without further approval in writing from the Local Planning Authority.

*Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan.*

9. In respect of the above D2 uses hereby approved, notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification; the use shall not be changed to a music and concert hall, dance hall, skating rink, bingo hall without further approval in writing from the Local Planning Authority.

*Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan.*

10. Prior to the first commencement of any A3, A4 or A5 use, details of a kitchen extraction system shall be provided to the Local Planning Authority and approved in writing, and shall be implemented in accordance with the approved details and maintained permanently thereafter in accordance with the approved details.

*Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 of the Luton Local Plan*



## Archaeology

11. A) Each phase of the development shall not commence until the applicant has secured the implementation of a programme of archaeological evaluation in accordance with a written scheme which has been submitted to and approved in writing by the Local Planning Authority.

B) If heritage assets of archaeological interest are identified by the evaluation under Part A, then before development of each phase commences the applicant (or their heirs and successors in title) shall secure the implementation of a programme of archaeological investigation in accordance with a Written Scheme of Investigation which has been submitted by the applicant and approved by the Local Planning Authority in writing.

C) No development or demolition for each phase shall take place other than in accordance with the Written Scheme of Investigation approved under Part B.

D) Each phase of the development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part B, and the provision for analysis, publication and dissemination of the results and archive deposition has been secured.

*Reason: To ensure satisfactory regard is given to archaeological heritage. To accord with the objectives of Policies LLP1 and LLP30 of the Luton Local Plan.*

## Demolition/Construction

12. No demolition or construction works shall take place on the site except between the hours of 8.00am to 6.00pm on Monday to Friday and 9.00am to 1.00pm on Saturdays and none shall take place on Sundays, Bank Holidays and Public Holidays without the prior written agreement of the Local Planning Authority.

*Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan.*

13. A Construction Environmental Management Plan for each phase of the development as in the agreed phasing plan (unless otherwise agreed in writing), shall be submitted to and approved in writing by the Local Planning Authority prior to the implementation of each phase of the development. The plan shall identify all aspects of construction that could have an environmental impact and provide management controls to eliminate and/or minimise those identified impacts, with impacts to be addressed including but not being limited to piling, traffic, construction dust and noise and any disturbance to vegetation. The plan shall also include details of the arrangements for the temporary use and/or management (as appropriate) of those parts of the sites awaiting redevelopment. The construction of the proposed development shall then be carried out in accordance with the details set out within the approved Construction Environmental Management Plan.

*Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan.*

14. No development of each phase shall commence until a Construction Logistics Plan (CLP) for the relevant phase has been submitted to and approved in writing by the Local Planning Authority. Heavy vehicles are to be routed to avoid travelling through the residential areas near the site. The CLP should include for the relevant phase:

- a) Booking systems
- b) Consolidated or re-timed trips
- c) Secure, off-street loading and drop-off facilities

The CLP shall be carried out as approved.

*Reason: In order to ensure that deliveries to the site during construction are managed effectively so as to minimise impact upon the road network and to safeguard the amenities of residential properties in the locality and in the interest of road safety. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan.*

15. No impact piling shall take place until a piling method statement (detailing the type of piling to be undertaken and the methodology by which such piling will be carried out, including measures to prevent and minimise the potential for damage to subsurface water infrastructure, and the programme for the works) has been submitted to and approved in writing by the Local Planning Authority in consultation with Thames Water. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

*Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP36 of the Luton Local Plan.*

16. No above ground works of each agreed development phase shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby approved have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

*Reason: In order that the Local Planning Authority may be satisfied as to the details of the development relating to appearance in the interest of the visual amenity of the area and having regard to the site's sensitive location. To accord with the objectives of Policies LLP1, LLP25 and LLP30 of the Luton Local Plan.*

17. Construction work shall not begin until a scheme for protecting neighbouring amenity from noise from the works has been submitted to and approved in writing by the Local Planning Authority. All works which form part of the approved scheme shall be completed before any part of the development is commenced.

*Reason: To protect the amenities of neighbouring properties. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

## Contamination and remediation

18. No development approved by this planning permission shall take place until a remediation strategy that includes the following components to deal with the risks associated with contamination of the site has been submitted to and approved in writing, by the Local Planning Authority.

1. A preliminary risk assessment which has identified
  - a. all previous uses
  - b. potential contaminants associated with those uses
  - c. a conceptual model of the site indicating sources, pathways and receptors
  - d. potentially unacceptable risks arising from contamination at the site.
2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the express written consent of the Local Planning Authority. The scheme shall be implemented as approved.

*Reason: To protect ground water and ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

19. Prior to any part of the approved development being occupied, a verification report demonstrating the completion of works set out in the approved remediation strategy and the effectiveness of the remediation shall be submitted to, and approved in writing by the Local Planning Authority. The report shall include results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met.

*Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

20. The development hereby permitted shall not commence until a monitoring and maintenance plan in respect of contamination, including a timetable of monitoring and submission of reports to the Local Planning Authority, has been submitted to, and approved in writing by, the Local Planning Authority. Reports as specified in the

approved plan, including details of any necessary contingency action arising from the monitoring, shall be submitted to, and approved in writing by, the Local Planning Authority. The maintenance plan shall be carried out as approved including any contingency works required.

*Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

21. If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until a remediation strategy detailing how this contamination will be dealt with has been submitted to, and approved in writing by, the Local Planning Authority. The remediation strategy shall be implemented as approved.

*Reason: To ensure adequate safeguards are taken during construction of the development, having regard to existing ground conditions, and to prevent pollution of the water environment and risk to other receptors. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

22 Before the development hereby permitted commences:

- a) A contaminated land Phase 1 desk study report shall be submitted to, and approved in writing by the Local Planning Authority. Should the Phase 1 report recommend that a Phase 2 site investigation is required, then this shall be carried out and submitted to, and approved in writing by the Local Planning Authority. The site shall be investigated by a competent person to identify the extent and nature of contamination. The report should include a tiered risk assessment of the contamination based on the proposed end use of the site. Additional investigation may be required where it is deemed necessary.
- b) If required, a scheme for decontamination of the site shall be submitted to the Local Planning Authority, for written approval. The scheme shall account for any comments made by the Local Planning Authority before the development hereby permitted is first occupied.

During the course of the development:

- c) The Local Planning Authority shall be notified immediately if additional contamination is discovered during the course of the development. A competent person shall assess the additional contamination, and shall submit appropriate amendments to the scheme for decontamination in writing to the Local Planning Authority for approval before any work on that aspect of development continues.

Before the development is first brought into use:

- d) The agreed scheme for decontamination referred to in clauses b) and c) above, including amendments, shall be fully implemented and a written validation (closure) report submitted to the Local Planning Authority for approval.

*Reason: Contamination is known or suspected on the site due to a former land use. The Local Planning Authority therefore wishes to ensure that the development can be implemented and occupied with adequate regard for public and environmental safety. To accord with the objectives of Policies LLP1, LLP28 and LLP38 of the Luton Local Plan.*

### Drainage and Water Supply

23. No development shall take place until a detailed design and associated management and maintenance plan of surface water drainage for the site using sustainable drainage methods has been submitted to and approved in writing by the Local Planning Authority in consultation with the Environment Agency.

The design should generally be in accordance with the Flood Risk Assessment and Drainage Strategy dated August 2016, prepared by Peter Brett Associates LLP and subsequent Technical Notes 3244 4001/003 (dated 04/09/2017) and 3244 4001/004 (dated 13/10/2017) and contain the agreed principles and details of:

- Appropriate plans showing the detail of the proposed drainage system including levels, locations and details drawings;
- Flow control, conveyance and attenuation features;
- Exceedance route in the event of the drainage system becoming blocked or overwhelmed;
- Clear demonstration of roof, car park and road drainage with appropriate water quality treatment stages and pollution control devices;
- Clear demonstration of relationship between the drainage and landscape strategy and their integrated approach to at source attenuation and treatment, open and/or overground conveyance features, biodiversity and amenity.

*Reason: To prevent an increased risk of flooding and surface and ground water pollution and ensure the long term maintenance of sustainable drainage systems to accord with the objectives of Policy LLP36 of the Luton Local Plan and the National Planning Policy Framework (NPPF).*

24. Prior to the operation of the development commencing, the approved drainage system agreed under Condition 24, shall be implemented in accordance with the approved detailed design. Implementation of the approved drainage system shall be checked by a suitably qualified person and confirmation submitted in writing to the Local Planning Authority that the system operates as designed, together with a set of "as built" drawings.

*Reason: To prevent an increased risk of flooding and surface and ground water pollution and ensure the long term maintenance of sustainable drainage systems to accord with the objectives of policy LLP36 of the Luton Local Plan and the National Planning Policy Framework (NPPF).*

25. Piling or any other foundation designs using penetrative methods shall not be permitted other than with the express written consent of the Local Planning Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

*Reason: To prevent pollution of the water environment. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

26. A scheme for managing any borehole(s) installed for the investigation of soils, groundwater or geotechnical purposes shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide details of how redundant boreholes are to be decommissioned and how any boreholes that need to be retained, post-development, for monitoring purposes will be secured, protected and inspected. The scheme as approved shall be implemented prior to the occupation of any part of the approved development.

*Reason: To ensure that redundant boreholes are safe and secure, and do not cause groundwater pollution or loss of water supplies. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

27. Prior to commencement of development, impact studies of the existing water supply infrastructure shall be submitted to, and approved in writing by the Local Planning Authority (in consultation with Thames Water). The studies should determine the magnitude of any new additional capacity required in the system and a suitable connection point, and where new infrastructure is required this shall be implemented in accordance with approval given in writing, prior to occupation of each phase of the development.

*Reason: To ensure that the water supply infrastructure has sufficient capacity to cope with the/this additional demand. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

28. Development shall not commence until a drainage strategy detailing any on and/or off site drainage works, has been submitted to and approved by, the Local Planning Authority in consultation with the sewerage undertaker. No discharge of foul or surface water from the site shall be accepted into the public system until the drainage works referred to in the strategy have been completed.

*Reason: The development may lead to sewage flooding; to ensure that sufficient capacity is made available to cope with the new development; and in order to avoid adverse environmental impact upon the community. To accord with the objectives of Policies LLP1 and LLP38 of the Luton Local Plan.*

## Sustainability and Design

29. No above ground works of any phase shall take place until a detailed scheme of feasible on-site sustainability measures covering:

- (a) The sourcing of materials to be used in the construction of and fitting out of the buildings (involving reuse, recycling and other sustainable sourcing);
- (b) Certification that the buildings would achieve a BREEAM Good rating;
- (c) The use of passive ventilation and other passive measures;
- (d) Reducing carbon emissions from the total energy needs (heating, cooling and power) by 25% from the 2010 Part L Building Regulations Standards for the overall outline phases (including from the on-site generation of renewable energy);
- (e) Details of arrangements to allow future connection to a centralised energy centre either on the site or in the locality (district heating network);
- (f) Details of ecological enhancements including biodiversity and habitat planting, provision of bird boxes, bat roosts; and
- (g) Rainwater harvesting.

Has been submitted for each phase and approved in writing by the Local Planning Authority. The scheme as approved for each phase shall be implemented prior to occupation of that phase unless otherwise approved in writing by the Local Planning Authority and retained and maintained thereafter.

- (h) Within 3 months of first use of the buildings a BREEAM Post Construction Certificate for the relevant buildings, issued by the BRE or equivalent licensing organisation, must be submitted to the Local Planning Authority to demonstrate that a BREEAM Good rating has been achieved. All the measures integrated shall be retained for as long as the development is in existence.

*Reason: To prevent an unsatisfactory form of permanent development. To accord with the objectives of Policies LLP1, LLP25 and LLP37 of the Luton Local Plan.*

30. Prior to the commencement of any above ground works of each phase of the development, a scheme shall be submitted to and approved in writing by the Local Planning Authority, giving details of how the buildings, open spaces and car parking shall address 'Secured by Design' principles. Each phase of the development shall be carried out in full accordance with the approval details and maintained thereafter.

*Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan*

## Landscaping/Trees

31. (i) Full details of hard and soft landscaping works for each phase of the areas covered by the outline planning permission shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of above ground works on that phase on the site.

(ii) For (i) above, hard landscaping details shall include hard surfacing materials, proposed finished levels or contours, means of enclosure and boundary treatments, vehicle and pedestrian access and circulation area, minor artefacts and structures (including benches, lighting, CCTV, works of art and other similar aspects of the development), proposed and existing functional services above and below ground (including drainage, power, communications cables, pipelines etc. indicating lines, manholes, supports and other similar aspects of the development), walls, gates, fences and boundary treatments.

(iii) All hard landscape work shall be carried out in accordance with the approved details prior to any occupation of the relevant phase and retained and maintained thereafter.

(iv) Soft landscaping details shall be carried out in accordance with the approved details within 12 months of the occupation of the relevant phase and shall include proposed finished levels or contours, planting plan, written specifications (including cultivation and other operations associated with plant and grass establishment), plant schedules (noting species, plant sizes and proposed numbers/densities) and tree pits and species proposed to be planted therein and measures to ensure protection from services routes and tree species that assist in the mitigation of air pollution.

(vii) If within a period of five years from the date of planting any tree or specimen shrub or green roof area or green roofing planted in replacement for it is removed, uprooted or destroyed or dies (or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective), another tree or specimen shrub of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.

*Reason: To enable the Local Planning Authority to monitor the implementation of the approved landscaping scheme. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan.*

32. A landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for each phase of the areas covered by the outline permission for all hard and soft landscape areas shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of above ground works in that phase. The maintenance schedule shall be for a minimum period of ten years and include details of the arrangements for its implementation. The landscape management plan shall be carried out as approved.

*Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1 and LLP25 of the Luton Local Plan.*

33. The plans and particulars submitted in accordance with condition (33) above shall include:



- (a) A plan showing the location of, and allocating a reference number to, each existing tree on the site which has a stem with a diameter, measured over the bark at a point 1.5 metres above ground level, exceeding 75mm, showing which trees are to be retained and the crown spread of each retained tree;
- (b) Details of the species, diameter (measured in accordance with paragraph (a) above), and the approximate height, and an assessment of the general state of health and stability, of each retained tree and of each tree which is on land adjacent to the site and to which paragraphs (c) and (d) below apply;
- (c) Details of any proposed topping or lopping of any retained tree, or of any tree on land adjacent to the site;
- (d) Details of any proposed alterations in existing ground levels, and of the position of any proposed excavation; and
- (e) Details of the specification and position of fencing (and of any other measures to be taken) for the protection of any retained tree from damage before or during the course of development.

In this condition “retained tree” means an existing tree which is to be retained in accordance with the plan referred to in paragraph (a) above.

*Reason: In order that the Local Planning Authority may be satisfied as to the arrangements for protecting trees in the interests of visual amenity area and to accord with policies. To enable the Local Planning Authority to monitor the implementation of the approved landscaping scheme. To accord with the objectives of Policies LLP1 and LLP25 and of the Luton Local Plan.*

#### General Servicing Provisions

34. Prior to carrying out any above ground works of development on any phase an external lighting strategy and details of CCTV for that phase of the development shall be submitted to and approved in writing by the Local Planning Authority. Lighting and CCTV for each phase shall be completed in accordance with the approved strategy for each phase prior to occupation of that phase, and shall be maintained in accordance with the approved details permanently thereafter.

*Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan.*

35. Prior to commencement of any above ground works of each phase of development, a 'Signage Details Strategy' for any uses within that phase shall be submitted to and approved in writing by the Local Planning Authority for use in the determination of any subsequent applications for Advertisement Consent. The Strategy shall include details of a universal fascia size, means of projection, the use of materials and the form of illumination. The development shall proceed in accordance with the agreed details unless otherwise agreed in writing with the Local Planning Authority.

*Reason: In the interests of visual amenity by securing some uniformity in the signage of the development whilst not preventing a successful corporate branding. To accord with the objectives of Policies LLP25 and LLP26 of the Luton Local Plan.*

36. Prior to the commencement of any above ground works of each phase of the development, details of the arrangements for storage and collection of refuse and recycling for the approved uses, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be completed in accordance with the approved details prior to occupation of each phase, and shall be maintained permanently thereafter.

*Reason: To ensure adequate provision is made for storage and management of refuse and recycling, and to ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan.*

37. No occupation of any phase shall commence until details of cycle parking in accordance with the Local Plan cycle parking standards for that phase has been submitted to and approved in writing by the Local Planning Authority. The approved cycle parking shall be implemented prior to occupation of buildings within that phase and maintained in perpetuity afterwards.

*Reason: To maximise cycling as a mode of travel to the site. To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP32 of the Luton Local Plan.*

38. No occupation of any phase shall commence until details of parking in accordance with the Local Plan parking standards for that phase has been submitted to and approved in writing by the Local Planning Authority. Parking shall be provided in accordance with the approved details prior to the first use of the approved phase, with these facilities to be permanently maintained thereafter.

*Reason: To avoid the creation of traffic congestion on the highway in the interests of safety and convenience of pedestrians and other road users. To accord with the objectives of Policies LLP1, LLP2 and LLP31 of the Luton Local Plan.*

39. No part of the development hereby approved shall be brought into use until a Travel Plan has been submitted to and approved in writing by the Local Planning Authority (who shall consult with Highways England on behalf of the Secretary of State). The Travel Plan shall be in line with the prevailing policy and best practice and shall include as a minimum:

- The identification of targets for trip reduction and modal shift;
- The methods to be employed to meet these targets;
- The mechanisms for monitoring and review;
- The mechanisms for reporting;
- The penalties to be applied in the event that the targets are not met;
- The mechanisms for mitigation;

Implementation of the travel plan to an agreed timetable and its operation thereafter; and  
Mechanisms to secure variations to the Travel Plan following monitoring and review.

The Travel Plan shall be implemented as approved before occupation of the development.

*Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan.*

40. No occupation of any phase shall commence until details of arrangements for taxi pick up and drop off areas for that phase, including any coach parking necessary for the hotel, has been submitted to and approved in writing by the Local Planning Authority. The parking management scheme shall be implemented as approved before occupation of the approved phase.

*Reason: In the interests of highway and pedestrian safety. To accord with the objectives of Policies LLP1, LLP25 and LLP31 of the Luton Local Plan.*

41. The vehicular and pedestrian access identified on the Masterplan shall be laid out and made ready for use prior to the occupation of the relevant phase of the development hereby permitted.

*Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan.*

42. Prior to the first use of the development a Framework Car Park Management Plan shall be submitted to and approved by the Local Planning Authority in writing. The Management Plan shall provide details as to the use of the transport facilities available to provide car parking on site and other park and ride facilities. The approved Management Plan shall be implemented before first use of the development.

*Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan.*

#### Noise

43. Noise emitted from any fixed plant on site shall be at least 10dB lower than the existing background noise level as measured at the nearest noise sensitive location outside the site and the measurement should be made in accordance with BS4142:1997.

*Reason: To ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan.*

44. Full details, including location and noise levels of any visual display, Public Address System (PA), or amplified sound system for the development shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of the development. No PA system, other than for transmission and travel information or emergency use shall take place outside the development. The PA system shall be operated in accordance with the approved details.

*Reason: To minimise impacts on the surrounding environment, to ensure a satisfactory standard of development and to safeguard the amenities of the surrounding area. To accord with the objectives of Policies LLP1, LLP25 and LLP38 of the Luton Local Plan.*

### Highways

45. Prior to the first occupation of the development hereby permitted, the Framework Travel Plan prepared by PBA dated August 2016 is to be submitted to and approved in writing by the Local Planning Authority in conjunction with Highways England.

*Reason: To ensure the M1 motorway will continue to fulfil its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' the National Planning Policy Framework and Planning Practice Guidance.*

46. Demand Management will be undertaken to reduce development trip generation in line with prevailing industry best practice and these will be set out in the adopted and approved site wide Framework Travel Plan. These measures will include some or all of the following (in addition to other measures that come to light in due course):

- a) Incentivise a change in working practices and departure profiles through the following:
  - Flexible office working allowing staff to arrive early and leave before 1700 and after 1800
  - Flexible office working allowing staff to arrive before 0800 and after 0900
  - Apply measures that restrict exiting traffic between the hours of 1700 – 1800
- b) Further subsidy of proposed hopper bus service to further incentivise bus use;
- c) Further incentivise car sharing;
- d) Electronic car sharing monitoring using Tress technology;
- e) Shared use of parking spaces.

*Reason: To ensure the M1 motorway will continue to fulfil its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' the National Planning Policy Framework and Planning Practice Guidance.*

47. A Transport Steering Group (TSG) will be set up within three months of the first occupation of the development to include a forum for co-operative joint working.

The TSG will be responsible for reviewing progress against the Travel Plan targets, and developing future transport strategies. The TSG will comprise the Owner, Management Company, the Council and Highways England.

*Reason: To ensure the M1 motorway will continue to fulfil its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' the National Planning Policy Framework and Planning Practice Guidance.*

48. In line with prevailing industry best practice the TSG will review the Travel Plan, set up/develop an Annual Monitoring Report and make recommendations about future proposals and corrective actions as development phases are completed and occupied. These recommendations will be based on measures outlined within the final S106 agreement and will be submitted to the council and Highways England who, acting reasonably and in conjunction with each other, will either agree to the proposed approach or will make alternative recommendations.

*Reason: To ensure the M1 motorway will continue to fulfil its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' the National Planning Policy Framework and Planning Practice Guidance.*

49. Annual monitoring will be undertaken in line with prevailing industry best practice and summarised within an Annual Monitoring Report. The Annual Monitoring Report will be reviewed annually at the meeting of the TSG. In the event that targets are not being met, the TSG shall recommend to the Council that the Owner be required to undertake Demand Management Measures.

Annual Monitoring will include:

- a) Trip Generation Trigger - the number of vehicles per hour egressing the site during the PM Peak Hour will be monitored as the average of traffic hours during two weeks in a neutral month (TBC) using Automatic Traffic Counters located at each internal site access.
- b) Slip Lane Queue Length Trigger - a queue length survey undertaken on the northbound M1J10 off-slip for a period of two weeks in a neutral month (TBC). The average weekday PM peak maximum queue will be recorded.
- c) In addition, continuous monitoring of future year queue lengths on the M1 northbound off-slip following development will be undertaken, making use of existing or new queue detectors. If queuing is recorded to extend back beyond the back of the slip road nose (i.e. beyond the most upstream queue detector loops) then an additional trip generation trigger survey will be undertaken to ensure that the site specific trip generations in accordance with the specified cap.

Triggers will be set as follows:

- a) Interim Slip Lane Queue Length Trigger – 110PCUs total across two lanes;
- b) Maximum Slip Lane Queue Length Trigger – 220 PCUs total across two lanes;
- c) Interim Trip Generation Trigger – 830 outbound PM trips (estimated total outbound trip generation within TA with 5% Travel Plan reduction plus 17%

- additional reduction commensurate with junction modelling showing M1J10 operating within 100% capacity);
- d) Maximum Trip Generation Trigger – 1,000 outbound PM trips (estimated total outbound trip generation within TA with 5% Travel Plan reduction).

If regular monitoring shows the Interim of end of Slip Lane Queue Length Trigger is being exceeded in addition to the Interim Trip Generation Limit, the Owner will review traffic conditions in relation to this target and agree with the Local Planning Authority appropriate and viable Travel Demand Measures in line with that agreed Travel Demand Measures. This is to ensure the impacts discussed above are mitigated and ultimately will include the following options to ensure that PM Peak traffic generation is brought back to a level equal to or below 1,000 outbound trips in a single PM Peak Hour:

- a) Further travel demand measures;
- b) Intensify measures to directly affect working practices and departure profiles;
- c) Further subsidy to incentivise bus use;
- d) Pro-rata increase in retail/food outlet vouchers for office staff.

*Reason: To ensure the M1 motorway will continue to fulfil its purpose as part of the Strategic Road Network in accordance with the Highways Act 1980, Circular 02/2013 'The Strategic Road Network and the Delivery of Sustainable Development' the National Planning Policy Framework and Planning Practice Guidance.*

### Section 278

50. No development which affects the public highways shall commence until the Local Authority (as the Highway Authority) has approved in writing full details of works affecting the public highway including:

- (i) Construction of the proposed buildings inclusive of any basement levels, covering structural works and support for adjoining land;
- (ii) New pavement surfacing;
- (iii) Any proposed street tree planting; and
- (iv) Maintenance of pedestrian access on the footpaths past the site during construction.

The approved works shall be completed in accordance with the Local Planning Authority's written approval and shall be certified in writing as complete on behalf of the Local Planning Authority prior to occupation of any part of the development.

*Reason: To avoid the creation of traffic congestion on the highway in the interest of safety and convenience of pedestrians and other road users. To accord with the objective of Policies LLP31 and LLP32 of the Luton Local Plan.*

# APPENDIX 2

## SECTION 106 RETAIL RESTRICTIONS – LEGAL OPINION

1. In order to protect the retail offer of Luton Town Centre, various retail restrictions are proposed. This section deals with those terms in more detail, albeit in heads of terms format only, with a legal assessment thereof.
2. Various ways to limit the impacts of new retail developments have been devised over more recent years and are considered to be lawful and CIL compliant. However, there has to be a balance between protecting town centres and the impact upon the proposed development.
3. The restrictions proposed will enable a minimum of two thirds of Newlands Park to be occupied by retailers from a permitted user list (“PUL”). Whilst the remaining third can be occupied by any other retailer, unless: 1) that retailer occupied the Town Centre within the previous 12 months or; 2) that retailer occupies a Town Centre store which exceeds 900 sq. m (an exclusion list). In addition, 3) where the retailer occupies the Town Centre and provided it does not exceed the unit size of 900 sq. m specified in 2) above, it can occupy Newlands Park, provided it also commits to remaining in the Town Centre for at least 8 years. This is commonly known as a no poaching clause.
4. Newlands Park will also require an anchor store commitment. This will require at least one of the units at Newlands Park exceeding 4645 sq. m to be occupied by one of the named retailers on the PUL, provided they meet the definition of an “anchor store”. Which essentially means a department store which, with its broad appeal, will attract a significant cross-section of the shopping public to the centre. From the PUL the following stores meet this definition: Fenwick, Fortnum and Mason, House of Fraser, John Lewis and Selfridges
5. Finally, all restrictions will last for 8 years.
6. By way of illustration:
  - i. If the retailer is Abercrombie & Fitch for instance, then it can **occupy** Newlands Park as it is included on the PUL.
  - ii. If it is a store such as Tresspass for instance, currently located within Luton Town Centre within a store smaller than 900 sq. m, then it **cannot occupy** Newlands Park **unless** it commits to remaining in Luton Town Centre as well for 8 or more years.

- iii. A retailer who closes its Luton Town Centre store **cannot occupy** Newlands Park **within** 12 months of the closure.
  - iv. A retailer who does not occupy Luton Town Centre or has not done so within 12 months, **can occupy** Newlands Park.
  - v. A retailer who currently occupies Luton Town Centre within a store which is or exceeds 900 sq. m **cannot occupy** Newlands Park.
  - vi. Only a third of Newlands Park can be occupied by retailers in line with ii. and iv. above. The other two thirds can only be occupied by those on the PUL.
  - vii. A store such as one identified in paragraph 4. above from the PUL **will be required to occupy** Newlands Park within a unit exceeding 4695 sq. m
  - viii. All restrictions above will cease to operate after 8 years.
7. The restrictions are now addressed in further detail below:
- Preferred User List:
- 8. The Council is advised by the applicant that the Newlands Park development will provide a high-quality comparison goods retail offer. The PUL is set out in Appendix 3 and is made up of named companies such as Apple, Burberry, GAP and Moulton Brown.
  - 9. 66% of the development as an absolute minimum will consist of retailers who are currently on the PUL or, with the agreement of the Council (in consultation with retail experts) may be added to the list. In the event of a dispute then arbitration will be followed.
  - 10. The intention of the list (including any additions made to the list) is to attract named retailers that would not be attracted to town centre type locations and are referred to as high end or aspirational.
  - 11. Clearly the development could be occupied by more than 66% of PUL retailers. However, if the development for whatever reason is not occupied by at least 66% PUL retailers and say for example only 60% is so occupied, it is considered reasonable that the remaining 6% (making it up to 66% PUL minimum) will have to remain unoccupied and therefore, cannot be given over to the 34% non PUL retailers that may occupy as set out below.
  - 12. This restriction will last for 8 years.



Strengths of the PUL approach:

13. If the retailer is not a PUL named retailer then it cannot occupy Newlands Park as part of the PUL pre-condition. Unless of course the retailer is added to the PUL or because it can occupy as part of the non-PUL 34% element (See below). This is therefore easy to enforce.

Weaknesses of the PUL approach:

14. It is a matter of judgement as to whether a) a retailer should be on the PUL in the first instance, or b) if a retailer should be added thereto, or indeed possibly c) when and if a retailer should be removed, on the basis of being a “high end/aspirational retailer”. It is however clear that it is only reasonable to allow new retailers as they emerge the opportunity to at least become a “high end/aspirational retailer” and thus added to the PUL if considered appropriate.
15. The type of thresholds for assessment to determine which retailer goes on the list is likely to be based upon, amongst other matters: the nature and type of retailers already on the PUL, their business plan, customer base, current locations, type of goods sold and whether they have an intention or otherwise to locate to the town centre.
16. Consequently, it is considered that the criteria for the PUL or adding to it will be difficult to determine. Decisions as to whether a retailer should be on the list as it stands or added thereto/removed therefrom could be inconsistent and therefore, town centre type retailers in one expert’s opinion over another’s could be accepted and occupy.

Controls over the remaining 34% non-PUL element:

17. 34% of the development as an absolute maximum can be occupied by mass market retailers/town centre type retailers. However, there are pre-conditions attached.
18. In order to protect Luton Town Centre (defined on the Local Plan Proposals Map), such retailers cannot occupy Newlands Park as part of the 34% if they traded from Luton Town Centre within the last 12 months, so as to prevent a retailer from simply closing their store in Luton Town Centre for a limited period of time and moving to Newlands Park.
19. In addition, any Luton Town Centre retailers who occupy units smaller than 900 sq. m who may want to locate themselves at Newlands Park as part of the 34% must “commit” to remaining in the Town Centre before they are allowed to occupy Newlands Park. The evidence the Council would require

to see would usually be a lease/tenancy agreement which ties them to their current town centre location for 8 or more years.

20. Finally, any Luton Town Centre stores which is or exceeds 900 sq. m in size will not be able to occupy Newlands Park.

Strengths:

21. A Luton Town Centre retailer with a store smaller than 900 sq. m cannot occupy the 34% non-PUL element of Newlands Park unless it dual commits. This can therefore be enforced if such a store opens in Newlands Park without evidence of dual commitment.
22. A lease or other such agreement is sufficient/reasonable evidence to show commitment to the Town Centre.
23. A retailer cannot occupy Newlands Park if it left Luton Town Centre within 12 months. This can therefore be enforced if such a store opens in Newlands Park.
24. A certain number of retailers will not be able to occupy Newlands Park due to the size of the store (900 sq. m) occupied in Luton Town Centre. This can therefore be enforced if such a store opens in Newlands Park.

Weaknesses:

25. Leases will invariably include break clauses.
26. The Council cannot effectively force a Town Centre store to stay open if it shuts down after its move to Newlands Park.
27. The Council could require the Newlands Park store to be removed if in breach but there is doubt as to whether this would take place if it potentially meant no store in the area. However conversely, it is similarly doubtful that a retailer would take the risk and occupy Newlands Park in clear breach.
28. The committed Town Centre store could change/limit its retail offer compared with its Newlands Park store, thus impacting upon the Town Centre.

Anchor store:

29. A commitment to securing an anchor store is considered to be of critical importance as set out above, and has therefore been incorporated. However, one cannot force a particular store to commit to Newlands Park or indeed stay open should it choose to shut down.

#### Duration of the retail restrictions

30. To strike the correct balance between the viability of the new development, competition and protecting town centres, all restrictions set out above can only reasonably be required to last for no more than 8 years.

#### Strength:

31. The restrictions will last for 8 years.

#### Weakness:

32. The agreement is essentially temporary and harm could arise after the 8 year period with a number of and or large town centre type retailers moving to Newlands Park on an unrestricted basis.

#### 33. Summary:

##### DRAFT RETAIL RESTRICTIONS

1.1. Subject to Paragraph 1.1.1 below, at least 66% of the Use Class A1 floorspace permitted by the Planning Permission shall only be Occupied by Permitted Retailers.

1.1.1 A Retail Unit of at least 4645 sq. m shall be provided at Newlands Park and occupied by an Anchor Tenant.

1.2 Subject to the further conditions set out below, not more than 34% of the Use Class A1 floorspace permitted by the Planning Permission shall be Occupied by retailers who are not Permitted Retailers.

1.3 The 34% of the Use Class A1 floorspace permitted by the Planning Permission as set out in Paragraph 1.2 above shall not be Occupied by retailers who:

1.3.1. within a period of twelve months prior to such Occupation, occupied a retail unit in Luton Town Centre or;

1.3.2. who at the time of such Occupation, occupies a retail unit in Luton Town Centre, unless and save for the provisions of Paragraph 1.3.3, such a retailer provides evidence of their commitment to retaining their presence within Luton Town Centre for a minimum period of 8 years following the date of their proposed Occupation of any Retail Unit to the reasonable satisfaction of the Council; and

1.3.3 at the time of such Occupation, occupies a retail unit in Luton Town Centre which is or exceeds 900 square metres in size.

Newlands Park Permitted User List		
	Retailer Count	Retailer
	1	& Other Stories
	1	Abercrombie & Fitch
	1	Acuitis Optique
	1	Adidas
	1	Aeropostale
	1	Agent Provocateur
	1	Aldo
	1	All Saints
	1	American Apparel
	1	Animal
	1	Antler
	1	Apple
	1	Apricot
	1	Aquascutum
	1	Arket
	1	Armani
	1	Asprey
	1	Athleta
	1	Bally
	1	Banana Republic
	1	Bang & Olufsen
	1	Barbour
	1	Ben Sherman
	1	Bench
	1	Bershka
	1	Billabong
	1	Bo Concept
	1	Boden
	1	Bose
	1	Boux Avenue
	1	Bravissimo
	1	Brother To Brother
	1	Burberry
	1	Calvin Klein
	1	Cartier
	1	Castle Fine Art
	1	Cath Kidston
	1	Champneys
	1	Chappelle
	1	Charles Tyrwhitt
	1	Church's
	1	Clement Browne
	1	Coach
	1	Cos
	1	Crabtree & Evelyn
	1	David Clulow
	1	David Robinson
	1	Davids Bridal
	1	Dermatologica
	1	Diesel
	1	Disney
	1	DKNY
	1	Dolce & Gabbana
	1	Dr Martens
	1	Dune
	1	Dwell
	1	Dyson
	1	Ecco
	1	Ellis Brigham
	1	Fat Face
	1	Feather & Black
	1	Fendi
	1	Fenwick
	1	Flannels
	1	Foot Asylum
	1	Fortnum & Mason
	1	Fossil
	1	Foyles
	1	Fred Perry
	1	French Connection
	1	Gant

1	GAP
1	Geox
1	Gieves & Hawkes
1	Guess
1	H&M Home
1	Habitat
1	Hackett
1	Hamleys
1	Harvey Jones Kitchens
1	Harvey Nichols
1	Hawes & Curtis
1	Hawkins Bazaar
1	Heals
1	Hobbs
1	Hollister
1	Hotel Chocolat
1	Hotter
1	House
1	House of Fraser
1	Hugo Boss
1	Jack & Jones
1	Jack Wills
1	Jigsaw
1	Jimmy Choo
1	Jo Malone
1	John Lewis
1	Jones
1	Joules
1	Karen Millen
1	Keil's
1	Khaadi
1	Kiko Milano
1	Kipling
1	Kuoni Travel
1	Kurt Geiger
1	Lacoste
1	Lakeland
1	Laura Ashley
1	Le Creuset
1	Lego
1	Levis
1	Lindex
1	Lindt
1	Links
1	Lipsy
1	LK Bennett
1	Loaf
1	L'Occitane
1	Lombok
1	Louis Vuitton
1	Lulu Lemon
1	Luton Town FC
1	MAC
1	Made
1	Mamas & Papas
1	Mango
1	Mappin & Webb
1	Massimo Dutti
1	Max Mara
1	Michael Kors
1	Mint Velvet
1	Missguided
1	Molton Brown
1	Monki
1	Mulberry
1	Natuzzi
1	Neal's Yard
1	Nespresso
1	New Balance
1	Nike
1	NYX
1	Oasis
1	Old Navy
1	Oliver Bonas

1	O'Neill
1	Osh Kosh B'gosh
1	Oysho
1	Paperchase
1	Paul Smith
1	Polarn O Pyret
1	Pretty Green
1	Pro Cook
1	Pull & Bear
1	Puma
1	Radley
1	Raft
1	Raging Bull
1	Ralph Lauren
1	Reiss
1	Reserved
1	Rigby & Peller
1	Rip Curl
1	Roche Bobois
1	Rockar
1	Rolex
1	Runners Need
1	Russell & Bromley
1	Salvatore Ferragamo
1	Samsonite
1	Scotts
1	Seasalt
1	Selfridges
1	Skandium
1	Skechers
1	Sole Trader
1	Specialized
1	Steamer Trading Cookshop
1	Stone Island
1	Stradivarius
1	Sunglasses Hut
1	Superdry
1	Superga
1	Swarovski
1	Sweatshops
1	Sweaty Betty
1	TAG Heuer
1	Ted Baker
1	Tempur
1	Tesla
1	Tessuti
1	The Conran Shop
1	The North Face
1	Thomas Pink
1	Tiffany
1	Timberland
1	TM Lewin
1	Tommy Hilfiger
1	True Religion
1	Tumi
1	Two Seasons
1	Typo
1	Under Armour
1	Uniqlo
1	Urban Decay
1	Urban Outfitters
1	Vans
1	Victorias Secret
1	Watches of Switzerland
1	West Elm
1	White Company
1	White Stuff
1	Whittard
1	Wholefoods
1	Yankee Candle
1	Yves Saint Laurent
1	Zara
1	Zara Home

Total	218
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