



Department for
Communities and
Local Government

Mr P Robin
Jones Lang LaSalle
22 Hanover Square
London W1S 1JA

Our Ref: APP/Z2260/A/11/2163595

13 June 2013

Dear Mr Robin,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)
APPEAL BY METROPOLITAN PROPERTY REALIZATIONS LTD
ARLINGTON HOUSE AND 1-51 ARLINGTON SQUARE, ALL SAINTS AVENUE,
MARGATE, KENT CT9 1XS
APPLICATION REF:F/TH/10/1061**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Alan Novitzky BArch (Hons) MA (RCA) PhD RIBA, who held a public local inquiry which opened on 6 November 2012 into your client's appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of Thanet District Council (the Council) to give notice within the prescribed period of a decision on an application for:

- (i) full planning permission for the development of a superstore with associated parking and services, including access road adjacent to railway, refurbishment of Arlington House, including repair and staining of cladding, provision of new windows, new entrance, construction of units for D1/A1-A5 uses on All Saints Avenue, roof canopy including screening of aerials and installation of cleaning cradle, external lighting, hard and soft landscaping, and associated parking and servicing; and
- (ii) outline planning permission on Marine Terrace for development of A1-A5 units at ground floor, with approximately 60-bed hotel above, with associated parking (21 spaces) and servicing. (Appearance, layout and scale reserved; access and landscaping detailed)

on land at Arlington House and 1-51 Arlington Square, All Saints Avenue, Margate, Kent, CT9 1XS, in accordance with planning application ref: F/TH/10/1061 dated 14 December 2010.

2. The appeal was recovered for the Secretary of State's determination on 12 November 2012 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a main town centre use in a

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development of over 9,000 square metres gross floor space in an out-of-centre location that is not in accordance with an up to date development plan.

Inspector's Recommendation and Summary of the Decision

3. The Inspector, whose report is enclosed with this letter, recommended that the appeal be allowed and planning permission be granted subject to conditions. For the reasons given in this letter, the Secretary of State agrees with the Inspector's recommendation. All paragraph numbers, unless otherwise stated, refer to the Inspector's report (IR).

Procedural Matters

Screening Direction and application to adjourn the inquiry

4. The Secretary of State notes that an application to adjourn the inquiry was submitted on behalf of Louise Oldfield pending the resolution of her application for judicial review which seeks to quash the Screening Direction (SD) which he issued on 18 July 2012, under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (EIA). The SD concluded that EIA was not required (IR3). The Secretary of State is aware that permission has been granted to Louise Oldfield to pursue her judicial review of the SD. The Secretary of State addresses the matter of EIA at paragraph 24 of this letter.

Listed buildings, conservation areas and other designations

5. In determining this appeal, the Secretary of State has had special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest they possess, as required under the provisions of sections 16 and 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The site lies adjacent to the former Dreamland amusement park, which contains grade II* and grade II listed buildings, and there are other grade II listed buildings within the vicinity of the appeal site (IR13-15). As the proposal borders the Margate Seafront Conservation Area and the Margate Conservation Area lies to the east (IR15), the Secretary of State has also paid special attention to the desirability of preserving or enhancing the character or appearance of these areas, as required by section 72 of the same Act.

6. The Secretary of State has also taken into account the other designations close to the appeal site. The beach is within a RAMSAR site, Special Protection Area, Special Area of Conservation, and Site of Special Scientific Interest (IR16).

Other matters

7. This is an appeal against non-determination of a planning application, but the Secretary of State notes that the Council subsequently voted in favour of the scheme after the appeal had been lodged (IR68).

Matters arising after the close of the inquiry

Post-inquiry correspondence

8. Following the close of the Inquiry, the Secretary of State received representations from Simon Pengelly (dated 03.12.12; 18.12.12. and 13.01.13); James Porter (dated 23.12.12); James Moss (dated 28.02.13 and 06.04.13); and Sir Roger Gale MP (dated 15.04.13; 23.04.13 and 10.05.13). The Secretary of State has

taken account of these representations in his consideration of the appeal before him, but is satisfied that they do not raise matters which would require him to refer back to parties prior to reaching his decision. Copies of the representations may be obtained on written request to the address at the foot of the first page of this letter.

9. In checking the plans in his possession against the references in the Inspector's proposed conditions, the Secretary of State noted some anomalies and wrote to the appellants on 26 April 2013 to clarify these. The reply, dated 2 May 2013 confirmed that there were typographical errors in relation to two plans and discrepancies in the dates on others, and that the response had been agreed with the Council. These details are explained in paragraph 25 below. As these are matters of clarification and not new evidence, the Secretary of State is satisfied that the correction of these anomalies in his decision letter will not prejudice any parties to the appeal.

Revocation of the Regional Strategy

10. The Regional Strategy for the South East (Revocation) Order 2013 came into force on 25 March 2013 and has partially revoked the South East Plan - Regional Spatial Strategy for the South East of England (RS) (2009). The Secretary of State considers that RS Policy NRM6 which remains extant is not relevant to his decisions on these appeals. Given the reasons for the basis of the decision as set out in the remainder of this letter, the extant Local Plan policies and the policies in the National Planning Policy Framework, the Secretary of State does not consider that the partial revocation of the RS raises any matters that would require him to refer back to parties for further representations prior to reaching his decision.

Policy Considerations

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. At the time of the inquiry the development plan comprised the RS and the saved policies of the Thanet Local Plan (LP) (2006). The Secretary of State agrees with the Inspector, that in accordance with the Framework due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework (IR18). Development plan policies relevant to the appeal are identified in the Statement of Common Ground, the Appellant's Planning Statement and Supplementary Comments (IR19). However, for the avoidance of doubt, the Secretary of State has paid no regard to RS policies in his determination of this appeal. Any references in this letter to the development plan, refer only to the LP.

12. Work has commenced on a replacement to the Thanet Local Plan, with the publication in December 2009 of the Draft Core Strategy Preferred Options Document. Given the time that has elapsed since then and the relatively early stage of plan preparation, the Secretary of State agrees that limited weight should be attached to this document (IR17). The Council commenced a Local Plan Issues and Options consultation on 4 June 2013, but as this is still an early stage of plan preparation, the Secretary of State attaches limited weight to the consultation document.

13. Other material considerations that the Secretary has had regard to in determining this appeal include the Arlington Planning Brief (2008); the Dreamland Planning Brief (2008) (IR20); the National Planning Policy Framework (the Framework); Circular 11/95 The Use of Conditions in Planning Permissions; the

Community Infrastructure Levy (CIL) Regulations (2010) as amended; Technical Guidance to the National Planning Policy Framework (2012); and High Streets at the Heart of Our Communities: the Government's Response to the Mary Portas Review (2012).

Main Issues

14. The Secretary of State agrees with the Inspector that the main issues are those set out in the Inspector's conclusions at IR190-311. Before turning to these he has considered the relationship of the proposals to the development plan.

The development plan

15. The appeal site is slightly beyond the edge of the town centre designated in the LP (IR194), but Policy TC1 allows for a sequential approach to new retail development. The Secretary of State gives this and other relevant saved LP policies identified in the Statement of Common Ground due weight in accordance with paragraph 215 of the Framework (IR18-19). The Arlington Planning Brief (2008), adopted by the Council for development control purposes, although not part of the development plan, sets out the vision for the development of the site, that provides for a positive landmark development to help regenerate the seafront and town centre (IR20).

The vitality and viability of the town centre and other retail considerations

16. The Secretary of State agrees with the Inspector's reasoning and conclusions on the matter of vitality and viability of the town centre and other retail considerations as set out in IR191-223. He agrees that the percentage of convenience expenditure retention is strikingly low (IR193) and that the proposals offer an opportunity to claw back convenience expenditure to Margate. With regard to comparison goods expenditure he agrees that diversion from existing stores is unlikely to be significant (IR209). Like the Inspector he finds that the proposals satisfy the sequential test (IR223).

17. In respect of the impact of the proposed development, which would include the loss of existing retail floorspace, the Secretary of State agrees with the Inspector that there would be little or no impact on existing, committed or planned investment in centres (IR205). He has taken into account the economically depressed state of Margate (IR204) and he agrees with the Inspector that the job creation benefits of the proposed development are particularly important (IR211). He has also taken particular note of the concerns raised by local residents, businesses, and Mary Portas, as the town is a Portas Pilot. The site is out of centre but he agrees with the Inspector that the proposed development could prove to be a positive benefit to the High Street and could encourage footfall along the seafront and into the High Street (IR219).

18. Like the Inspector he finds that the proposal would be unlikely to have significant adverse impact on investment, or the vitality and viability of Margate town centre (IR223). He considers that the retail element of the proposal meets the tests set out in the Framework (IR222) and that overall it is acceptable with regard to the vitality and viability of the town centre and other retail considerations (IR223). The proposals satisfy the criteria in LP Policy TC1 for new retail development outside the core commercial centre of Margate (IR223).

The character and appearance of the area

19. The Secretary of State agrees with the Inspector's reasoning and conclusions on the impact of the development on the character and appearance of the area as set out in IR224-262. He agrees that the tower block is the most architecturally successful component of the Arlington complex (IR227) and that the proposed works to the tower block would result in a significant improvement (IR231). He further agrees that the proposals for the site are not of poor design and that they satisfy LP policies (IR238).

20. The Secretary of State has given careful consideration to the impact of the proposed development on the setting of listed buildings. He agrees with the Inspector's assessment that the setting of the listed buildings within the Dreamland site would be preserved (IR241-255). In this respect, the Secretary of State notes that the Council's Arlington Planning Brief requirement to enable the access road within the appeal site to be extended into the Dreamland site, which would affect a listed structure within the Dreamland site, is no longer considered necessary by the Council (IR272-273). The Secretary of State agrees that the proposed development would, by bringing activity to the site frontage and enlivening the seafront, enhance the character and appearance of the Margate Seafront Conservation Area (IR 258-260). The Secretary of State agrees that as no harm would arise to the heritage assets in the vicinity of the site, there is no need to make an assessment of the public benefits of the proposal, in accordance with the Framework policy (IR261). He finds the proposals acceptable with regard to their effect on the character and appearance of the area (IR262).

Traffic conditions

21. The Secretary of State agrees with the Inspector's reasoning and conclusions on traffic conditions as set out in IR263-275. He notes that the Highways Authority does not object to the proposals (IR263) and that it did not require improvements to the Clock Tower roundabout, which had been proposed by the appellants (IR266). In respect of parking for the superstore and the residents of Arlington House, he agrees with the Inspector that the provisions made are within policy maxima, even though there would be a reduction in the number of spaces currently available to Arlington House residents (IR 268-271). He notes that the Council no longer considers it necessary to extend the access road through the Dreamland site, as indicated in the Arlington Planning Brief (IR272-273). The Secretary of State agrees with the Inspector's conclusions on traffic related matters at IR274 and finds no transport grounds to refuse the proposals. He agrees that the proposals satisfy saved LP transport policies TR3, TR12, TR15 and TR16 (IR275).

Living conditions including noise and other aspects of pollution

22. The Secretary of State agrees with the Inspector's reasoning and conclusions on living conditions as set out in IR276-289. The Secretary of State finds that the proposals meet the core planning principles and policies in the Framework in respect of noise (IR282), flood risk (IR285) and the amenity of existing and future occupants of the land and buildings (IR289), as well as LP Policy EP5 on air quality (IR289). Overall he agrees that the proposals are acceptable with regard to their effect on living conditions (IR289).

Other material considerations

23. The Secretary of State has carefully considered all the other matters noted by the Inspector at IR290-297 and agrees with his reasoning and conclusions on these matters. He considers that conditions can be attached, as a precautionary measure to minimise the impact on nesting birds, and address environmental considerations including energy efficiency (IR290-292). The Secretary of State notes that Natural England has no objection to the proposed development and considers that either alone or in combination with other projects, it would be unlikely to have a significant effect on the designated sites referred to in paragraph 6 of this letter (IR186). The Secretary of State notes the concerns expressed by some objectors that the size of the retail element of the scheme expanded considerably after the early consultation stage; changes were continually being made to the proposals; and that certain drawings failed to properly represent the true impact of the superstore on the locality. Whilst he appreciates the frustration this may cause to interested parties, he agrees with the Inspector that statutory consultation was carried out on the scheme before the Inspector; that subsequent changes are not so substantial to alter the nature of the scheme; and that the approved scheme drawings that the development is conditioned to follow are correct (IR293-297). He has reached his conclusion on the latter point, after clarification of the anomalies in the drawings referred to in paragraphs 9 and 25 of this letter.

Conclusion on EIA matters

24. The Secretary of State notes that the Inspector has relied on the SD of 18 July 2012 and has not seen any reason to question that Direction and refer the matter to the Secretary of State for reconsideration (IR298-300). The appeal proposals are not part of a wider project that takes in the Dreamland site and furthermore there is no need for a cumulative assessment with the Dreamland scheme, given its status and the uncertainty that surrounds the Thanet District Council Compulsory Purchase Order which is the subject of a legal challenge. Taking into account the written submissions and evidence presented to the inquiry, including that concerning the matters to which Louise Oldfield drew attention, the Secretary of State does not consider that these lead him to question his SD, made on 18 July 2012, and he is content that an environmental impact assessment is not required before the determination of this appeal.

Conditions and obligations

25. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions and the planning obligation, as set out in IR301-309. The Secretary of State has considered the proposed conditions, the Inspector's assessment of these at IR301-306 and national policy as set out in Circular 11/95. He agrees with the Inspector's assessment that the conditions, as recommended with slight amendment, are necessary and he considers that they comply with the provisions of Circular 11/95. Following clarification of his queries on the plan references he has made the following amendments to the Inspector's proposed conditions:

Condition 6 – correction of the plan reference 002003-A-X-00-20004A to **002004-A-X-00-20004A**

Condition 6 – correction of reference and deletion of dates to: **two drawings entitled 'proposed replacement windows'**

Condition 36 – correction of date of plan 1209-005-P07 from 12 May 2011 to **11 May 2011**.

26. The Secretary of State is satisfied that the provisions of the planning obligation satisfy the tests of Regulation 122 of the CIL Regulations 2010 as amended, and that it is necessary to make the development acceptable in planning terms (IR307-309).

Overall Conclusions

27. The Secretary of State considers that the proposal accords with the relevant saved policies of the LP and that the retail element, the most substantial part of the proposal satisfies the criteria in LP Policy TC1. He finds no indication in the Inspector's conclusions that the proposal conflicts with policies in the LP, and on that basis he finds that the proposals satisfy development plan policy overall, disregarding the references to conformity with RS policies at IR310. In reaching this conclusion the Secretary of State has given due weight to the relevant saved LP policies identified by the parties (IR19), in accordance with paragraph 215 of the Framework. The Secretary of State agrees that the proposals also meet the requirements of the Framework and would perform the economic, social and environmental roles of sustainable development towards which it aims. He agrees that the proposals are acceptable (IR311).

Formal Decision

28. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation at IR312. He hereby allows your client's appeal and grants:

- (i) full planning permission for the development of a superstore with associated parking and services, including access road adjacent to railway, refurbishment of Arlington House, including repair and staining of cladding, provision of new windows, new entrance, construction of units for D1/A1-A5 uses on All Saints Avenue, roof canopy including screening of aerials and installation of cleaning cradle, external lighting, hard and soft landscaping, and associated parking and servicing; and
- (ii) outline planning permission on Marine Terrace for development of A1-A5 units at ground floor, with approximately 60-bed hotel above, with associated parking (21 spaces) and servicing. (Appearance, layout and scale reserved; access and landscaping detailed)

on land at Arlington House and 1-51 Arlington Square, All Saints Avenue, Margate, Kent, CT9 1XS, in accordance with planning application ref: F/TH/10/1061 dated 14 December 2010. and subject to the conditions listed at Annex A of this letter.

29. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the local planning authority fail to give notice of their decision within the prescribed period.

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

Right to Challenge the Decision

31. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

32. A copy of this letter has been sent to Thanet District Council and the Rule 6 (6) parties Louise Oldfield, representing Friends of Arlington Margate and John Moss, representing Arlington House Residents Association. A notification letter/email has been sent to all other parties who asked to be informed of the decision.

Yours sincerely

Pamela Roberts
Authorised by the Secretary of State to sign in that behalf

Annex A Conditions

1. Approval of the details of the layout, scale and appearance of any buildings to be erected on land identified as the 'outline application area' on drawing 080417-A-P-Si-D101 A (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development of that part of the site, apart from demolition, is commenced.
2. Plans and particulars of the reserved matters referred to in Condition 1 above, shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 4 years from the date of this permission.
4. The development hereby permitted on land identified as the 'outline application area' on drawing 080417-A-P-Si-D101 A shall be begun before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.
5. The development hereby permitted, identified as the 'full application area' on drawing 080417-A-P-Si-D101 A shall be begun before the expiration of three years from the date of this permission.
6. The proposed development shall be carried out in accordance with the following approved drawings:

080417-A-P-Si-D101A, 080417-A-P-Si-00-D102A, 080417-A-P-Si-D103A, 080417-A-P-Si-D104J, 080417-A-P-Si-D128A 080417-A-P-Si-D105C, 080417-A-P-Si-D106B, 080417-A-X-Si-D107C, 080417-A-P-Si-D108C, 080417-A-P-Si-D109A, 080417-A-P-Si-D110A, 080417-A-P-Si-D111D, 080417-A-P-Si-D112C, 080417-A-P-Si-D113, 080417-A-P-Si-D114, 080417-A-P-Si-D115, 080417-A-P-Si-D116, 080417-A-P-Si-D117 , 080417-A-P-01-D118A, 080417-A-P-Si-D120B, 080417-A-P-Si-D121A, 080417-A-P-Si-D122B, 080417-A-P-Si-D124A, 080417-A-P-Si-D125, 080417-A-P-Si-D126A, 080417-A-E-Nth-D127A , 1209-005-P07, 1209-006-P08 , 080417-A-X-00-20001A, 002003-A-X-00-20003, 002004-A-X-00-20004A , two drawings entitled 'proposed replacement windows', drawing entitled 'view from north east', 080417-A-P-Si-D127 , 156171-OS-002 Rev G, 156171-OS-007 Sheet 1, 156171-OS-007 Sheet 2, 156171-OS-007 Rev A Sheet 3, 156171-OS-007 Rev A Sheet 4, , 156171-OS-010 Sheet 1, 156171-OS-010 Sheet 2, 156171-OS-010 Sheet 3, 156171-OS-010 Sheet 4 .
7. No development, apart from demolition, shall take place until details at a scale of 1:200 of the eastern elevation of the retail superstore and associated boundary details have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with such details that are approved.
8. Prior to the first use of any premises as restaurant, cafe, or hot food take-away (Use Class A3 and A5), full design and installation details of a ventilation system to food cooking and preparation rooms, including detailed specifications

shall be submitted to and approved in writing by the Local Planning Authority and then installed in accordance with the approved details. Any flues to the systems shall discharge at the highest point on the host building and be fitted with a style of rainguard, which will not obstruct and cause downward deflection of exhaust fumes. The approved system shall be maintained in a manner that prevents the spread of food odours.

9. Prior to the commencement of the development hereby approved the applicant, or their agents or successors in title, shall secure the implementation of a programme of archaeological work, in accordance with a written scheme of investigation, which shall include geotechnical test-pitting and monitoring details, which has first been submitted to and approved in writing by the Local Planning Authority
10. No development shall commence until a site characterisation and remediation scheme has been submitted to and approved in writing by the Local Planning Authority and the remediation scheme has been implemented in accordance with the approved details. The site characterisation, remediation scheme and implementation of the approved remediation scheme shall be carried out in accordance with the following criteria:

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority, and shall include:

- A survey of the extent, scale and nature of contamination
- An assessment of the potential risks to:
 - Human health
 - Property
 - Adjoining land
 - Ground waters and surface waters
 - Ecological system
- An appraisal of remedial options and a recommendation of the preferred options

The site characterisation report shall be conducted in accordance with British Standards and current DEFRA and Environment Agency best practice.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed

remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme shall ensure that the site cannot be considered as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of the development other than that required to carry out remediation. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

11. In the event that contamination is found that was not previously identified at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken at that time in accordance with a site characterisation report that shall be submitted to and approved in writing by the Local Planning Authority and where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of the approved development and following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved in writing by the Local Planning Authority.
12. Any fuels, oils and any other potentially contaminating materials shall be stored so as to prevent accidental/unauthorised discharge to ground. The areas for storage shall not drain to any surface water system.
13. No development, apart from demolition, shall take place until details of the means of foul and surface water disposal, including details of the implementation, management and maintenance of any proposed Sustainable urban Drainage Systems, have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with such details as are agreed and thereafter maintained.
14. All surface water drainage from parking areas shall be passed through an interceptor designed and constructed to have a capacity and details compatible with the site being drained.
15. Prior to the commencement of development, apart from demolition, details of measures to ensure that there is no construction over or within 3 metres of the public water supply mains and public sewers shall be submitted to and approved in writing by the Local Planning Authority and thereafter adhered to.
16. Prior to the commencement of development, apart from demolition, on land identified as the 'outline application area' on drawing 080417-A-P-Si-D101 A, full details, including drawings and exact specifications of flood mitigation measures and flood evacuation plans shall be submitted to and agreed in writing by the Local Planning Authority. Such details as are agreed shall be fully implemented in accordance with the agreed details prior to the first use of the

commercial units and hotel fronting Marine Terrace and shall thereafter be maintained as specified.

17. Prior to the first use of the retail superstore hereby permitted, the area identified for vehicle loading/unloading and turning facilities shown on the approved plans shall be provided and thereafter maintained.

18. Prior to the first use of the retail superstore or shop, office, cafe, restaurant or hot food takeaway in Arlington House hereby permitted, details of measures to:

- ensure that only emergency vehicles can access the car park from Marine Terrace

- ensure that the proposed one way system for vehicular entry and exit points at the All Saints Avenue is observed

- close existing redundant accesses and associated vehicle crossings in the highway

shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

19. No construction work which gives rise to impact noise likely to cause disturbance to Turnstones and other roosting birds on the beach to the north shall be carried out during the 90 minutes before and 30 minutes after each high tide during the wintering bird season, from the 01 October until the 31 March, unless otherwise agreed beforehand, in writing, by the Local Planning Authority.

20. No development, including demolition, shall take place on or within close proximity (10 metres) of the roof of Arlington House until an Ecological Mitigation Method Statement, to include measures proposed to minimise the impact of construction works on nesting birds, has been submitted to and approved in writing by the Local Planning Authority, and any agreed measures have been implemented.

21. The ground floor of Arlington House shall be used as a shop, office, cafe, restaurant or hot food takeaway and for no other purpose.

22. At no time shall posters or graphic displays to the windows in any elevation of the ground floor of Arlington House, the retail superstore or ground floor units fronting Marine Terrace hereby permitted, obscure more than 20% of the ground floor windows in any elevation, unless otherwise agreed in writing beforehand by the Local Planning Authority.

23. Prior to the first use of the retail superstore or shop, office, cafe, restaurant or hot food takeaway in Arlington House hereby permitted:

- pedestrian visibility splays of 2 metres x 2 metres behind the footway on both sides of the All Saints Avenue and Marine Terrace vehicular accesses with no obstructions over 0.6 metres above footway level; and

- visibility splays at the mini roundabout junction shown on drawing number 156171-OS-007 Rev A Sheet 4 received 11 May 2011, with no obstructions over 0.26 metres above carriageway level within the splays; and

- visibility splays to the east of the service yard access of 2.4 metres x 43 metres with no obstructions over 1.05 metres above carriageway level within the splay shall be provided and thereafter maintained.

24. Prior to the first use of the retail superstore hereby granted a programme for the implementation of the Travel Plan received 15 December 2010 shall be submitted to and approved in writing by the Local Planning Authority. The agreed programme shall thereafter be implemented in full.

25. Prior to the first use of the retail superstore hereby permitted, 'public access' along the access road between All Saints Avenue to the boundary of the Dreamland site shall be provided and thereafter maintained.

26. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for, but not be restricted to, the following:

- the parking of vehicles of site operatives and visitors;
- loading and unloading of plant and materials;
- storage of plant and materials used in constructing the development;
- the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.

27. Prior to the first use of the development hereby permitted, the area shown on the deposited plan for the parking and manoeuvring of vehicles shall be operational prior to any part of the development hereby approved being brought into use. The said areas shall thereafter be maintained for each of the purposes specified on drawing number 080417-A-P-Si-D104J which allocates parking spaces for each of the uses of the site.

28. Prior to the commencement of demolition of the buildings on land identified as the 'outline application area' on drawing number 080417-A-P-Si-D101 A, a 2.0 metre high screen shall be erected along the entire length of the northern perimeter of the site in accordance with details that shall first be submitted to and approved in writing by the Local Planning Authority.

Once the car parking for residents identified on drawing number 080417-A-P-Si-D104 J is available for use by residents, the screen shall be removed from the northern perimeter and the site landscaped in accordance with drawing number 1209-006 P08, which shall include a 2.0 metre high screen between the landscaping and the car park to the south in accordance with details that shall first be submitted to and approved in writing by the Local Planning Authority.

The temporary landscaping shall be maintained until such time as construction of the commercial units and hotel proposed on this part of the application site commences.

29. Prior to the first use of the development hereby approved, details of secure cycle parking facilities, including a minimum of 20 cycle parking spaces for the retail superstore hereby approved, and minimum of 18 cycle parking spaces for the commercial units and hotel fronting Marine Terrace shall be submitted to

and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with approved details and shall thereafter be retained.

30. The gross internal floor space of the retail superstore hereby permitted shall not exceed 7,567 square metres. The net retail sales area (defined by the National Retail Planning Forum, and reproduced in Appendix A of the PPS4 Practice Guide 2009) to be used for the sale of convenience goods at the food retail store shall not exceed 2,508 square metres and the comparison goods net sales area at the store shall not exceed 1,544 square metres.
31. Prior to the commencement of the development hereby approved, apart from demolition, samples of the materials to be used in the construction of the external surfaces of the retail superstore, cleaning cradle and roof canopy to Arlington House, rainwater harvesting tank, sprinkler tank and pump room, hereby approved shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved samples.
32. Prior to the commencement of development, apart from demolition, manufacturer's details at a scale of 1:100 and 1:20 of the curtain walling system to the retail superstore and Arlington House hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
33. Prior to the commencement of development of the retail superstore hereby permitted details of measures to achieve Secured by Design and measures to achieve the Safer Park Mark accreditation where reasonable and practicable and counter-terrorism measures, including barriers and down stand beam, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
34. The food retail store hereby permitted shall achieve a BREEAM retail rating of 'Very Good' or higher and a verification report validating the rating shall be provided for the written approval of the Local Planning Authority prior to the first use of the retail store by paying customers. The development shall be carried out in accordance with the approved details.
35. Prior to the first occupation of the food retail store a scheme which details the energy efficiency measures that reduce carbon dioxide and other greenhouse gas emissions shall be submitted to and approved in writing by the Local Planning Authority. The scheme should aim to incorporate on-site renewable energy equipment to meet 10% of expected energy needs of the development from renewable sources and shall be implemented as approved.
36. Prior to the commencement of development, apart from demolition, hereby approved, and in accordance with details set out in approved drawing number 1209-005 P07 dated 11 May 2011, details of both hard and soft landscape works, to include:
 - the treatment proposed for all hard surfaced areas beyond the limits of the highway, which shall include the use of a bound surface for the first 5 metres of the access from the edge of the highway, including details of block pavements,

bonded gravel concrete flag pavers, concrete edging, concrete road kerb edging, drop kerbs;

- tree grilles, bike racks, benches and litter bins;
- walls, fences and other means of enclosure proposed;

shall be submitted to, and approved in writing by, the Local Planning Authority.

37. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development, or in accordance with a programme of works to be agreed in writing with the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives any written consent to any variation.
38. A landscape management plan (including long term design objectives), management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its approved use. The landscape management plan shall be carried out as approved.
39. Prior to commencement of the development hereby approved, apart from demolition, full details of the external lighting, including their fittings, illumination levels and spread of light shall be submitted to, and approved in writing by, the Local Planning Authority. The lighting installation shall then be carried out in accordance with the approved details.
40. Prior to the first use of the store, details of the proposed acoustic screen as shown on drawing number 080417-A-P-Si-D127 dated 23 March 2011, which shall be erected to the south east perimeter of the service and delivery area prior to the first use of the store and thereafter maintained, shall be submitted to and approved in writing by the local planning authority.
41. No more than one delivery per hour shall take place to the retail superstore hereby permitted between 23:00 and 07:00 on any day of the week.
42. No external moving of loading trolleys, use of the compactor, or use of audible vehicle reversing warning sound shall occur between the hours of 20:00 and 07:00 on any day of the week.
43. The rating level of noise emitted by all fixed plant on the site, including the Combined Heat and Power unit shall not exceed 3dBA above the pre existing LA90 noise levels at any time, which are:
- 07:00-23:00hrs*
- Arlington House Rating limit of 43dB
 - Railways Cottages Rating limit of 41dB
- 23:00-07:00hrs*
- Arlington House Rating limit of 41dB

- Railways Cottages Rating limit of 36dB

The noise levels shall be determined at the nearest noise sensitive properties to the site. The measurement and assessment shall be made according to BS4142:1997.

44. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (or any Order revoking and re-enacting that Order, no further plant or machinery shall be erected on the site under or in accordance with Part 8 of Schedule 2 to that Order without first obtaining planning permission from the Local Planning Authority.
45. No development shall take place, including any works of demolition, until a method statement has been submitted to and approved in writing by the local planning authority to ensure protection of the Listed wall on the Dreamland site adjacent to the south-east corner of the application site during the course of demolition and construction. Demolition and development shall be carried out in accordance with the approved method statement.



The Planning
Inspectorate

Report to the Secretary of State for Communities and Local Government

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Date: 21 December 2012

Town and Country Planning Act 1990

Thanet District Council

Appeal by Metropolitan Property Realizations Ltd

Inquiry held from 6 November to 9 November 2012 - Site Visit held on 10 November 2012

Arlington House and 1-51 Arlington Square, All Saints Avenue, Margate, Kent CT9 1XS

File Ref: APP/Z2260/A/11/2163595

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File Ref: APP/Z2260/A/11/2163595

Arlington House and 1-51 Arlington Square, All Saints avenue, Margate, Kent CT9 1XS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Metropolitan Property Realizations Ltd against Thanet District Council.
- The application Ref F/TH/10/1061 is dated 14 December 2010.
- The development proposed is:
 1. Full planning permission for development of a superstore with associated parking and services, including access road adjacent to railway, refurbishment of Arlington House, including repair and staining of cladding, provision of new windows, new entrance, construction of units for D1/A1-A5 uses on All Saints Avenue, roof canopy including screening of aerials and installation of cleaning cradle, external lighting, hard and soft landscaping, and associated parking and servicing.
 2. Outline planning permission on Marine Terrace for development of A1-A5 units at ground floor, with approximately 60-bed hotel above, with associated parking (21 spaces) and servicing. (Appearance, Layout and Scale reserved; Access and Landscaping detailed).

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural Matters

1. The appeal was recovered for decision by the Secretary of State through a direction made on 12 November 2012.¹ The reason for the direction is that the appeal involves proposals which involve a main town centre use in a development of over 9,000 square metres gross floor space on a site in an out-of-centre location that is not in accordance with an up to date development plan document.
2. Proofs of evidence are included as Inquiry Documents. These are as originally submitted and do not take account of how the evidence may have been affected by questioning or by other aspects of the Inquiry. Opening and closing submissions are also included and have been amended in red to more accurately reflect their delivered content. Typographical errors to Inquiry Documents, where detected, have also been corrected in red.

Application to Adjourn

3. An application to adjourn the Inquiry was made on behalf of Louise Oldfield, Rule 6(6) Party, pending the resolution of her application for judicial review which seeks to quash the Environmental Impact Assessment (EIA) screening direction (SD) of 18 July 2012 for the proposed development. The SD concluded that EIA is not required. It was issued by the Secretary of State in response to a pre-action protocol letter dated 27 February 2012 from Louise Oldfield which maintained that the previous screening direction, dated 12 January 2012, was unlawful.
4. The July screening direction is attached, as an Inquiry document.² Also attached are Louise Oldfield's summary submissions in her adjournment application,³ a

¹ ID11

² ID1

pre-application protocol letter dated 3 August 2012⁴ setting out her grounds of challenge to the screening direction, and the Statement of Facts and Grounds dated 8 October 2012⁵ accompanying her judicial review claim form.

5. Louise Oldfield's application to adjourn was resisted by the Appellant in this appeal and their submissions dated 1 November 2012⁶ are attached. Also attached are the Appellant's, Summary of Grounds for Contesting the Claim dated 31 October 2012,⁷ and their Proposed Defendant's Summary Grounds of Resistance Permission Stage dated 30 October 2012.⁸
6. The matters which the Objector considers render the SD defective are conveniently set out her pre-application protocol letter dated 3 August 2012. These comprise:
 - Failure to consider cumulative impacts
 - Pollution and discharges
 - Vibration, noise and light pollution
 - Employment
 - Protected areas around the location
 - Protected and sensitive species
 - Areas of landscape and scenic value affected by the project
 - Impact on visual amenity
 - Routes affected by the project
 - Routes susceptible to congestion and affected by the project
 - Features of historic or cultural importance which could be affected
 - Existing land uses affected by the project
 - Impact on areas around the location
 - Future land uses which could affect the project

An opportunity to present evidence on all these matters was available at the Inquiry and I have had full regard to them.

7. The Court must decide whether the claim is arguable. In the meantime I must rely on the SD which, not having been subject to judicial review, is legally valid. However, under Regulation 9(2) of The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, which apply in this case, I am obliged to refer the question to the Secretary of State if it appears to me that the proposals may comprise an EIA application. I have had regard to this duty during the Inquiry and return to it in my Conclusions.⁹
8. In relation to the Objector's point that she has been disadvantaged by her inability to identify and locate all documents relevant to the appeal, I am satisfied from information presented at the Inquiry that the Appellant's documents were made available in the normal manner and in a timely way. It is unclear whether there were difficulties with other documents. However, during the Inquiry, her

³ ID2

⁴ ID3

⁵ ID4

⁶ ID5

⁷ ID6

⁸ ID7

⁹ P. 56

team appeared to have access to documents pertinent to her case, no further request was made to adjourn the Inquiry and no time was sought to consider new material.

9. Finally, the Applicant argues that failure to adjourn the Inquiry would be unfair and inequitable to the Applicant and others since they do not have the resources or manpower to appear at a further Inquiry should the SD be quashed. However, the opening of the Inquiry was first arranged for 13 March 2012 but was postponed in response to the challenge to the earlier SD. Whilst I understand the personal circumstances of Ms Oldfield and others, further delay to the proposals would be costly to others, including the Appellant. Moreover, should the appeal succeed, adjournment could also represent a cost to the economic regeneration of Margate, a matter of much general concern to the Government at present. Consequently, I made a ruling at the Inquiry that I found no persuasive reason to adjourn the Inquiry at this stage.

Statements of Common Ground

10. A Statement of Common Ground (SoCG) dated December 2011 was agreed between the Appellant and the Council. An Addendum to Statement of Common Ground (ASoCG) dated 2 November 2012 was also agreed.¹⁰
11. The ASoCG contains illustrative material regarding the eastern elevation of the proposed store (Documents 1 and 2), concrete panel staining (Document 3), the appearance of the food store prior to implementation of the Marine Terrace building (Document 4). It also contains the Summary of Advice of Stephen Jourdan QC regarding the developer's entitlement to replace the windows of the Arlington House flats under the flat leases if the lessees object to such replacement.

The Site and Surroundings

12. The appeal site, some 1.8 hectares, is located on the western approaches to Margate at the junction of Marine Terrace, on the seafront to the north, and All Saints Avenue to the west. It was last developed comprehensively in the early 1960s and contains Arlington House, a 19 storey tower building housing 142 flats, whose main entrance is off All Saints Avenue; Arlington Square, part of the podium to the tower, comprising single storey commercial units fronting Marine Terrace and All Saints Road, with an arcade leading to an open square running off Marine Terrace; and a two storey decked car park with 575 parking spaces adjacent to Arlington House. The commercial units are all now vacant, and the car park is closed to the public, but 85 spaces remain for the use of Arlington House residents.
13. A railway line runs along the southern boundary of the site on a raised embankment and over All Saints Avenue on a viaduct. Opposite the site, on All Saints Avenue, is a newly constructed terrace of 21 houses and flats. A little further west are a fairly recent hotel and the Grade II listed Margate Railway Station designed by Maxwell Fry and dating from 1926.
14. To the east lies the Dreamland site, covering some 6.7 hectares, a celebrated amusement park closely associated with Margate as a seaside resort from its

¹⁰ ID8

opening in the 1920s. Now closed, there are plans to restore and reopen it.¹¹ It contains the following listed buildings:

- The Scenic Railway, listed at Grade II*. Dating from 1920 it is the oldest roller coaster in the United Kingdom and has suffered fire damage on several occasions.
 - The Dreamland Cinema dating from the mid 1930s, also listed at Grade II*. It is an impressive art deco building with German expressionist influences fronting Marine Terrace with an impressive tower. It became an important model for Odeon cinemas.
 - The Remains of Menagerie Enclosures and Cages, listed at Grade II. A walled construction, it runs along the southern boundary of the Dreamland site against the railway embankment, returning on the western boundary against the appeal site. It was built as part of the pleasure grounds which preceded the Dreamland amusement park in 1874 when they were taken over by 'Lord' George Sanger, a noted travelling circus manager.¹²
15. Also on Marine Terrace adjacent to the Dreamland Cinema is the Cinque Ports public house (now the Punch and Judy) dating from the 1830s and listed at Grade II. Amongst other listed buildings are Buenos Ayres a mid 19th century terrace of houses listed at Grade II, north of the Railway Station; and the Grade II listed Nayland Rock Promenade Shelter of about 1900 where T S Eliot is said to have composed *The Waste Land*.¹³ The Margate Seafront Conservation Area¹⁴ borders the appeal site on three sides and the Margate Conservation Area¹⁵ lies to the east.
16. The north east corner of the site is within a flood risk area. In addition, the beach is within a Ramsar site, Special Protection Area (SPA), Special Area of Conservation (SAC), and Site of Special Scientific Interest (SSSI).

Planning Policy

17. The development plan comprises The South East Plan - Regional Spatial Strategy for the South East of England, adopted May 2009 (RSS) and saved policies from the Thanet Local Plan adopted June 2006 (LP). Following the introduction of the Localism Act, the Council is beginning preparation of a new local plan. Limited weight should therefore be placed on the Draft Core Strategy Preferred Options Document, on which the Council consulted in December 2009.
18. Since the LP was not adopted in accordance with the Planning and Compulsory Purchase Act 2004, paragraph 215 of the National Planning Policy Framework (NPPF) is engaged. This states that due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework.

¹¹ The Thanet District Council (Land at Dreamland, Margate) Compulsory Purchase Order 2011 was confirmed by the Secretary of State in a decision dated 16 August 2012, reference: LDN023/Z2260/006/0006/Part01. However, the decision is now the subject of a High Court Challenge.

¹² RTA Section 7 for listing descriptions

¹³ C1 for listing descriptions

¹⁴ A7

¹⁵ A8

19. Relevant policies are set out in Section 5 of the SoCG, modified by Section 2 of the ASoCG. They also appear in Section 6.3 and 6.4 of the Appellant's Planning Statement¹⁶ and in the Supplementary Comments of Philip Robin,¹⁷ the Appellant's planning witness.
20. The Arlington Planning Brief (April 2008)¹⁸ was adopted by the Council for development control purposes on 9 October 2008. A similar document, the Dreamland Planning Brief¹⁹ was prepared and adopted by the Council for development control purposes on 21 February 2008.

Planning History

21. Following the construction of a sea wall and causeway in 1809, a railway terminus was built on the appeal site in 1846, which remained in use until 1926. A series of planning applications in the early 1960s led to the construction of the present buildings.²⁰ Since then, there have been various applications relating to telecommunications apparatus located on the roof of Arlington House.

The Proposals

22. A full description of the proposed development is set out in the Planning Statement.²¹ In brief, the existing decked car park and Arlington Square commercial units would be demolished. Full planning permission is sought for the refurbishment of Arlington House and the construction of a superstore over ground level parking with a service road off All Saints Avenue. Outline planning permission is sought for a 60 bed hotel over single storey commercial units on the Marine Terrace frontage, turning the corner onto All Saints Avenue.
23. The main works to Arlington House would be:
 - The cleaning and staining of the concrete cladding panels to restore their original appearance.
 - New double glazed UPVC windows.
 - A louvred roof canopy to screen existing telecommunications aerials.
 - A tracked maintenance cradle on the roof.
 - 64 residents' parking spaces relocated to ground level.
 - A new ground level entrance and reception area alongside a glazed enclosure with a mezzanine level intended for commercial use at ground level and a D1 use, possibly a doctors' surgery, at mezzanine level.
24. The superstore would be of 7,677 square metres gross external area, 7,567 square metres gross internal floor space, with a net sales area of 4,052 square metre, comprising 2,508 square metres for convenience goods and 1,544 square metres for comparison goods. A café would be included, as well as an opticians, health and beauty and clothing sales.

¹⁶ A15

¹⁷ PR3

¹⁸ A34

¹⁹ A35

²⁰ A15, Section 3

²¹ A15, Section 5

25. The sales floor would be at first floor level, incorporating a mezzanine, above ground floor parking with 344 parking spaces. Access from All Saints Avenue, and from the parking level, would be via a glazed atrium with a travelator. A service road to the south, running against the railway embankment, would give access to the ground level parking and to a service yard at sales floor level.
26. The outline element of the proposals seeks detailed approval for access and landscaping, with appearance, layout and scale as reserved matters. The illustrative drawings show the building on the Marine Terrace frontage rising from two storeys adjacent to the Dreamland Cinema to four storeys. 21 ground level parking spaces for the hotel would be provided at the rear and 9 for the commercial units and D1 use.
27. Refurbishment of Arlington House would take place alongside the construction of the superstore and would be complete before the store opened. Interim landscaping and screening at Marine Terrace would be put in place until construction of the outline element occurred.

The Case for the Appellant

The material points are:

28. The appeal proposals should be granted permission. They meet all the key and relevant aspects of the National Planning Policy Framework (NPPF). There is no evidence upon which to found a conclusion sensibly or rationally otherwise.
29. Regarding the proposed superstore, the Retail Assessment (RA)²² shows that whilst Thanet as a whole retains almost all of its convenience goods expenditure, the catchment area of Margate, broadly corresponding to a 10 minute drive time, retains only some 20%. The majority of the lost expenditure goes to major superstores around, but not within, Westwood Cross, a purpose built shopping centre now given town status. Westwood Cross is located on the edge of Margate's catchment.
30. The sequential test is found at paragraph 24 of the NPPF. The Council agrees with the Appellant that there is no sequentially better located suitable and available site to accommodate the proposed superstore. This is true even though the sequential assessment did not apply a minimum site size threshold in examining other sites. The proposed store is regarded by the operator as of appropriate scale, being the minimum size necessary to accommodate a full range of goods, to compete with the superstores outside Westwood Cross, despite being smaller than they are.
31. Louise Oldfield, Rule 6(6) Party, referred in cross examination to various sites, by no means all of which were sequentially better located than the appeal site. However, as she clarified, none would be able to accommodate anything like the scale of the proposed store. Even applying flexibility of format and scale, none would be suitable for the proposed development, were they available.²³ The

²² A19 and A20

²³ The Supreme Court has ruled that as a matter of law the concept of 'suitability' relates to suitability for the developer's proposals. The question is not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site. See

- sequential test in the NPPF is met and there is no basis upon which it could be concluded otherwise. Moreover, it must be remembered that, albeit in strict definitional terms the appeal site is out-of-centre, it is also an established retail site of some 2,600 square metres gross floor area. It is also one where retail development is encouraged by the Arlington Planning Brief which sees the demolition of the existing car park and retail areas, to be replaced with high density mixed use retail and commercial led development, as an opportunity to grasp.²⁴
32. The retail impact test is set out in paragraphs 26 and 27 of the NPPF. The Portas Review and pilot projects do not add to or change Government policy in any way. As the Government's Response to the Portas Review²⁵ makes clear, retail planning policies are as set out in the NPPF. It is the Appellant's case, with which the Council agrees, that the store would not cause a significant adverse impact on Margate town centre or any other centres.
33. Louise Oldfield and several other objectors asserted that independent retailers would be harmed but there is no evidence to substantiate these assertions, let alone to demonstrate that there would be a significant adverse impact. The store would, in the main, compete with like facilities especially the several superstores outside Westwood Cross, and in doing so would provide a good sized store easily accessible to Margate residents, far nearer to their homes and to Margate town centre, than Westwood Cross.
34. Shoppers would be able to park in the store's car park for 3 hours free, which would provide an opportunity to walk to other facilities nearby benefitting especially those shops which sell comparison goods. For those many local residents who have in effect abandoned Margate for shopping trips and have become habituated to driving to the superstores outside Westwood Cross, once they shop at the new superstore in Margate there is a real prospect that they would look more kindly on their home town for other shopping trips. Far from the superstore being harmful, it would be beneficial as it would make worthwhile inroads into the current unsustainable situation in which only £1 out of every £5 that Margate residents spend on convenience goods is spent in Margate.
35. As for comparison goods expenditure, the impact of the proposed superstore and unit shops would amount to less than one-third of the predicted growth in comparison goods expenditure over 5 years. Therefore, unlike the analysis of convenience goods expenditure, it was not considered necessary to analyse comparison goods impact in any detail.
36. There is no suggestion of retail planning policy objections to the various unit shops and other facilities proposed along Marine Terrace and All Saints Avenue as part of the wider mixed use proposals. This is hardly surprising given that there are a considerable number of unit shops on the site already which would be demolished to make way for the redevelopment. Rather than being harmful, it is obvious that the proposed unit shops and other facilities are a beneficial and welcome part of the overall scheme.
-

Tesco Stores v Dundee City Council [2012] UKSC 13 at paragraph 29 in the speech of Lord Reed and paragraphs 36-38 in that of Lord Hope.

²⁴ Page 22, second bullet point.

²⁵ LO4

37. Similarly no land use policy objections have been raised against the proposed hotel. On the contrary, Mr Nabb argued that the proposed overall scheme should not be permitted unless and until there is a contract in place to build the entire scheme including the proposed Marine Terrace block of which the proposed hotel forms a large part. The hotel, therefore, appears to be an uncontroversial part of the scheme in principle. There can be no sensible basis upon which to object to having a new hotel here on the seafront. As the 15th June 2011 planning officer's report said, this is an excellent site for a hotel.²⁶ Moreover, the proposed development would bring a significant number of jobs, well over 300, to Margate.²⁷
38. Since there is no sound basis upon which to object to the principle of the proposed mix of uses, including a superstore, it must be seen whether any other valid planning objection to the scheme exists. Many of the points made by objectors, even if soundly based, are not material planning considerations. Thus the points that have been raised about private law (leasehold) issues and complaints about Council procedures are beside the point.
39. Mr Moss and other objectors have raised issues concerning traffic impact. The Appellant's evidence, with which the Council agrees and to which there is no objection from the Highway Authority, demonstrates that there would not be an unacceptable impact. The NPPF states in paragraph 32 that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe. The objectors' concerns, most of which are based on misunderstandings about the content of the Appellant's Transport Assessment (TA), do not begin to demonstrate that the proposals would cause a severe, or even a significant, impact.
40. The point concerning traffic arising from the greater than anticipated success of the Turner Contemporary Gallery is groundless. The objectors have produced no evidence on the traffic impacts or time profiles of visitors to the Gallery where, in any event, other than for the disabled, no parking is allowed. Nor have they provided evidence on the extent to which these visits are single-purpose (only to the gallery). Moreover, the Appellant's TA allowed for significant growth in background traffic (2.5% across the 4 years 2008 – 2012) which has not materialised, thereby giving significant scope to cater for any previously unanticipated increases in traffic generated by the Gallery.
41. The Appellant proposes works to improve the Station Green roundabout which would mitigate the impact of the proposed development and improve the safety of the junction in a worthwhile manner. It would operate better than it currently does.
42. The Appellant originally proposed highways works to improve the traffic carrying capacity of the Clock Tower roundabout. However, the Highway Authority expressed concern that this would conflict with the aspiration to prioritise the public realm over vehicles by introducing a traffic signal controlled junction. This junction would, in itself, give considerably less capacity to vehicles than the existing roundabout. Ultimately, as explained in Mr Hamshaw's evidence,²⁸ the

²⁶ ST2, Appendix TDCST1

²⁷ A15, paras 7.20.5 to 7.20.6

²⁸ PH1, pp.19-21

Highway Authority did not object to the appeal scheme because, as they explained, the impact of the proposed development on the existing junction arrangement would be 'no worse' than the impact associated with the implementation of the public realm scheme without any development. They decided not to require the Appellant to fund improvements to the existing junction either.

43. The Inspector asked Mr Hamshaw to elaborate on the impact of the proposed development on the existing junction. It is clear from his explanation, firstly that the impact of the appeal scheme could not be described as anything approaching 'severe' (he described it to Mr Spurrier as 'small'). Secondly, that the Highway Authority's statement that the impact of the proposed development upon the existing junction would be 'no worse' than that of the public realm scheme is a huge understatement. In fact, the impact of the proposed development would be a great deal less than that of the public realm scheme.
44. It is important to bear in mind that all Mr Hamshaw's assessments consider the worst case impacts, the Friday PM peak hour, when background traffic and the proposed superstore traffic would be at their highest combined levels. In addition, the junction assessments show the peak within the peak hour, that is to say the worst case within the worst case hour, where the model adds 12.5% to the traffic flows. Finally, it should be remembered that shopping trips to a superstore are, to an extent, discretionary as to time. If traffic conditions turn out to be sticky, a sensible shopper would simply decide not to go shopping then. Were a shopper already in traffic, on the way home from work for instance, this would, in any event, not comprise an additional trip.
45. Mr Moss sought to argue that the proposed superstore would have too much parking and the existing residents would be left with too few spaces. As Mr Hamshaw's evidence demonstrates, Mr Moss has misapplied the relevant standards and guidance concerning parking for retail and residential uses. The numbers for the proposed superstore parking sit comfortably within, and are compliant with, the applicable standards and guidance, which are expressed as maxima.
46. In transportation terms, the site represents a sustainable location for the proposed development, being located in close proximity to the rail station and numerous bus services. It would also be easy for people to walk or cycle between it, their homes, and the town centre. The superstore would be much better located in terms of sustainability than the big stores outside Westwood Cross to which Margate residents are currently driving in considerable numbers. Moreover, there is no planning basis to resist the proposed development on the grounds that there would be a loss of the opportunity to reinstate visitor parking on the site. It would be wasteful to hold this brownfield urban site over, in the hope that it could be reused as a long-stay car park rather than a vibrant mixed use development.
47. Regarding design issues, the test in the NPPF, at paragraph 64 is that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. A considerable barrage of criticisms was levelled at the design of the appeal proposals by several of the objectors. The written and oral evidence of Mr Taylor and Professor Tavernor demonstrates that, far from being

- of poor design, the scheme is well designed and would considerably improve the character and quality of the area and the way it functions. This can clearly be seen by comparing the site as it is and the site as it would be. The scheme most certainly cannot be characterised as of poor design.
48. There is no value in the suggestion made by Mr Causer that his alternative ideas for the future of the site are better than the appeal proposals. A scheme which is acceptable in its own right cannot be refused permission because someone else has an alternative idea which he thinks is better.
49. Nor is it a sensible objection to the proposals to argue, as Mr Nabb did, that the entire scheme should be the subject of a detailed application. As things currently stand, unlike the superstore, an operator has not been signed up for the hotel element of the scheme. Nonetheless, a detailed application could have been made, but this hardly seems sensible in the circumstances. The parameters that have been set by the outline application for this part of the scheme accord with the aspirations in the Arlington Planning Brief and it is clear that a high quality scheme can be detailed at the reserved matters stage within these parameters.
50. In similar vein, the suggestion by Mr Nabb that, in the absence of a contract to build the entire scheme, permission should be refused, is not realistic. There is no planning policy basis for such a suggestion and the idea would simply ensure that nothing happened. This tired site needs a regenerative kick-start, which would be achieved by building the superstore and carrying out the works to restore and improve Arlington House. This would lift the profile of the site and catalyse its continuing regeneration.
51. Turning to heritage issues, designated heritage assets are dealt with at paragraphs 132 to 134 of the NPPF, and non-designated heritage assets at paragraph 135. The definition of 'significance' for heritage policy is found in the glossary at Annex 2, page 56, and refers to the value of a heritage asset to this and future generations because of its heritage interest.
52. In terms of adverse impact upon the significance of a designated heritage asset, such as the setting of a listed building, there is a policy presumption against allowing 'substantial' harm to the heritage value or interest of the asset in question, whereas if the harm is 'less than substantial' it is to be weighed against whatever public benefits there might be. If the asset is not designated then any harm to its value or interest is to be weighed in the balance of considerations. Clearly, if there is no harm to a heritage asset, this part of the NPPF falls away.
53. Therefore, the NPPF requires one to understand whether the proposed development would have any impact upon the heritage value or interest of the heritage asset in question. Those of the objectors who raised points about the alleged impact of the appeal proposals on, for instance, the setting of the Grade II* listed Scenic Railway made a very common mistake. This was to imagine that being able to see the proposed development (the eastern elevation of the proposed superstore) from within the setting of the listed building (in this example, the Scenic Railway) and not liking what one saw necessarily equated to a substantial harmful impact on the setting of the listed building.
54. But that is not the way the policies work. Even if it were concluded that views from the Scenic Railway would be degraded in some way, because one would be able to see the new store, it does not mean that the heritage value or interest of

- the Scenic Railway would be harmed, substantially or otherwise. The underlying point is that one needs to assess whether views from the Scenic Railway of and towards the appeal site form any part of, or contribute in any way towards, the heritage value or interest of the Scenic Railway.
55. The answer to this question, having regard to the reasons for listing the Scenic Railway, is plainly that they do not. What comprises the heritage value or interest of the Scenic Railway has nothing at all to do with views of and towards the existing car park decks, nor would views of and towards the superstore have any bearing whatsoever on such aspects either. This same process of analysis needs to be repeated in respect of each heritage asset that it is said would be harmed by the proposed development. The latest refinements of the plans for the eastern elevation of the proposed store, appended to the Addendum Statement of Common Ground (ASoCG), demonstrate that an interesting and fitting treatment could be applied to this elevation in any event.
56. The written and oral evidence of Professor Tavernor is relied on in relation to the appeal scheme's impact in heritage terms. The appeal site does not contribute to the heritage value or interest of the setting of any listed building or conservation area, and the appeal scheme would not have any bearing upon such matters either. This is because the heritage value or interest of the various listed buildings and the two conservation areas have nothing at all to do with the appeal site. Therefore, what is on it now and what would be on it in the future, should the appeal be allowed, would not harm, and certainly would not cause substantial harm to, any of the designated heritage assets.
57. If there were to be any impact at all in heritage terms, it would be an enhancement over the existing situation. This is especially true of the proposed works to Arlington House itself which would restore, as best one can, the whiteness and sparkle of the building. Together with the new windows (especially if in due course the Appellant is able to replace all the windows in the building) and the screen to the installations on the roof, they would improve this prominent landmark building. Similarly, the proposed hotel, unit shops and other facilities on Marine Terrace would, in urban design terms, be a far more comfortable and fitting neighbour to the Dreamland Cinema, which is listed Grade II*, than the existing buildings.
58. The proposals could well bring enhancements but, in order to obtain permission, the Appellant does not have to demonstrate this to be the case. The issue, instead, is whether there would be harm and if so, whether such harm would be substantial. For the reasons authoritatively explained by Professor Tavernor, the appeal scheme would not cause harm, whether substantial or less than substantial to the settings of any of the listed buildings or either of the conservation areas. English Heritage (EH) does not object to the proposals.
59. Regarding the works to Arlington House and Square, the extent of demolition proposed is entirely in accord with, and positively encouraged by, the Arlington Planning Brief.²⁹ The reasons given by EH for the recently made decision not to list Arlington House and Square explain clearly why the buildings do not carry national interest in heritage terms. The reasons conclude by ascribing some local interest to the tower block. However, there is no recommendation that it be

²⁹ Page 22, second bullet point

- locally listed, nor should it be regarded as a non-designated heritage asset for the purposes of the NPPF.
60. Nevertheless, if Arlington House were regarded as a non-designated heritage asset, it simply means that, as indicated in paragraph 135 of the NPPF, any harm caused to whatever comprises its non-designated heritage value or interest should be weighed in the balance together with all other material considerations. In any event, it is the Appellant's case that the proposed works to the tower block would be beneficial rather than harmful.
61. The objectors contend that the appeal site has been left to decay through the neglect of the Appellant. This is not a fair characterisation but even if it were, it would be beside the point. The reason why Arlington House is in its present state cannot affect whether the proposed works to it are acceptable or not. If it is thought that the idea of cleaning and staining to try to restore something of the former whiteness and sparkle to the tower block is a good one, it cannot suddenly become a bad and unacceptable idea, even if the state of the building is to some extent or other down to the Appellant.
62. The proposal to install new windows in the tower and to carry out other works to it would be beneficial. The s106 planning obligation takes pains to seek to ensure that a patchwork effect would not result. The Appellant maintains that, the building is not a heritage asset. Therefore, the question which arises is that posed by paragraph 64 of the NPPF to which the Appellant responds that far from being of poor design, the various proposed works would improve the appearance of the tower. If the Inspector concludes that the building should be regarded as a non-designated heritage asset, then under paragraph 135 of the NPPF, it is the Appellant's case that rather than causing harm to the tower, the works would be beneficial. It must not be forgotten that the Arlington Planning Brief describes the site as an 'eyesore'.³⁰
63. Moving to Miscellaneous matters, the NPPF deals with noise at paragraph 123. It seeks to avoid 'significant adverse impacts' and to mitigate by conditions impacts which are less than significant. Mr Bentley's evidence demonstrates that the proposed retail and other development would not cause a significant adverse impact in terms of noise, and conditions are proposed to mitigate less than significant impacts. Residential parking is not a new use on the site, and the impacts of it would not be significant.
64. Mr Bentley made clear that the proposed new windows in the tower block are not required to mitigate what would otherwise be significant impacts from the proposed development. He explained that the new windows (even when open, let alone when partly or fully closed) would be beneficial to those living in the tower in reducing noise particularly from a reactivated amusement park on the neighbouring Dreamland site. However, he stressed over and over that they are not required to mitigation the effects of the appeal scheme itself. There is no evidence upon which the Inspector could conclude otherwise.
65. Nor is there any sound objection based on sewage discharge, as is clear from Southern Water's letters.³¹ Mr Stookes, for Louise Oldfield, spoke concerning

³⁰ Page 22

³¹ Dated 24 February, 6 April, 10 May and 23 May 2012

ecological points. However, there is no evidential basis upon which it can be concluded that there is any breach of relevant legal or planning policy constraints. This is clear from the absence of objection to the proposals from Natural England or from any other bodies on ecological issues. Paragraph 6.37 of the SoCG confirms that the appeal scheme complies with the Habitat Regulations.

66. In overall conclusion, there is no soundly based objection to the appeal proposals. There is certainly no evidence upon which it could be concluded that the scheme is in breach of any relevant planning policy, as most recently set out in the NPPF and as found in the development plan. There is a great deal to be said in favour of these proposals which would bring much needed regeneration to this rather sad part of Margate and they should be welcomed. The presumption in favour of sustainable development as defined in paragraph 14 of the NPPF is that proposals that accord with the development plan, as the appeal scheme does, should be approved without delay.

The Case for the Local Planning Authority

The material points are:

67. The Council's position regarding this appeal remains unaltered by the evidence and arguments advanced at this inquiry. It is set out in paragraphs 1.4–1.11 of the Statement of Common Ground (SoCG).³²
68. The relevant decisions in relation to the application were taken by democratically elected members. People from the community, many born and bred in Thanet, who volunteer to serve their community and do so by standing for election by the residents of Thanet. Once elected they carry out their responsibilities to serve the best interests of all the residents of Thanet for the overall benefit of the whole area. In this case they fully debated all the issues in public, aided by advice from experienced and appropriately qualified professional officers. Not all Members agreed with the proposals - that is the essence of democracy - but when put to the vote, following the lodging of an appeal for non-determination, they voted in favour of the scheme.
69. This is in contrast to the attitude of the real objectors to this proposal, the Rule 6(6) parties. No doubt they are well intentioned and sincere in their beliefs but the fact remains that only a dozen or so objectors to the proposals have appeared at the Inquiry. The Rule 6(6) parties comprise a handful of self-appointed members of organisations such as Friends of Arlington Margate (FOAM). They do not enjoy any public mandate whatsoever. Indeed, numerically, they fall far short of the minimum of 21 members that section 61F of the 1990 Act (as amended by Schedule 9 of the Localism Act 2011) requires to constitute a neighbourhood forum.
70. Allied to this is the plain, observable fact that none of those appearing in opposition to this appeal scheme have produced any technical evidence to substantiate the many and varied assertions that they have made. This cannot be allowed to pass without comment for the important reason that one of the leading Rule 6(6) parties has launched a judicial review challenge to the Secretary of State's Screening Direction. It should be recorded in the decision, irrespective of the outcome, that no independent technical supporting evidence

³² ID8

(with the possible exception of the evidence of Mr Causer, an architect) has been produced to this inquiry by any of the Rule 6(6) parties to support their assertions on issues such as:

- Increased traffic fumes and increased levels of air pollution
- Sewerage incapacity issues
- Vibration
- Noise
- Light pollution
- Loss of employment
- The impact of the proposals on listed buildings and other heritage assets
- Overshadowing
- Nesting peregrine falcons
- The effect on areas of landscape and scenic value
- Impact on visual amenity
- Traffic
- Car parking

The absence of this evidence is surprising given these matters were raised by the solicitors acting for the Claimant in the judicial review pre-action protocol letter.

71. Finally, the Council maintains it has acted (as it did with the Dreamland CPO) in an exemplary proactive and positive manner as advocated by paragraph 14 of the NPPF and determined this application consistent with the advice set out in paragraphs 186-206. The Council has looked for solutions not problems, in contrast to the approach of the Rule 6(6) parties, who have no identifiable credible, viable and deliverable alternative proposals to suggest. In short, they have asserted problems but offer no solutions.

The Case for Rule 6(6) Party Louise Oldfield, representing Friends of Arlington Margate (FOAM)

The material points are:

Failure to comply with the EIA Directive

72. The Council and the Secretary of State failed to comply with their obligations relating to Environmental Impact Assessment (EIA). In particular there has been:

- (i) Unlawful project-splitting and/or a failure to consider cumulative effects.
- (ii) Failure to correctly assess the 'likely significant environmental effects' of the project.
- (iii) Failure to determine EIA screening consistent with the proportionality principle. Louise Oldfield submits that the developer is required to submit an environmental statement in support of the application in compliance with Article 5.3 and Annex 4 of the EIA Directive.

73. The Secretary of State and the Council are required to ensure that no project likely to have significant environmental effects should be exempt from EIA, unless the specific project excluded from EIA could, on the basis of a comprehensive screening, be regarded as not being likely to have such effects.³³ Further, on the evidence before the Inquiry, it was clear that the proposals are likely to have significant environmental effects. These are summarised below.

a) Likely significant environmental effects

74. The proposals would increase vehicle traffic in the locality. The proposed mitigation works at the Clock Tower junction are said to be an improvement in terms of traffic congestion compared to proposed Public Realm works. However, Mr Hamshaw for the Appellant conceded that the proposed mitigation works did not take account of the proposed Public Realm works nor any traffic increase anticipated from the Dreamland site. However, it was suggested that when the road system reached capacity, queuing was unlikely to be as stated in absolute terms because such congestion would begin to change driving habits such as finding alternative routes and driving times. It was also accepted that capacity on the road network would increase and extend the peak traffic periods. It was accepted that traffic congestion might also deter visitors wishing to attend Margate for recreation and tourist activities.

75. The superstore would divert income away from local stores.³⁴ This is consistent with the concerns raised by Mary Portas in her letter of 31 October 2012³⁵ to the Secretary of State.

b) Cumulative effects and project splitting

76. The Secretary of State, in his pre-action reply of 3 September 2012, discounted the traffic impact of the reactivated Dreamland site because it was not part of the proposal. This is contrary to Annex III of the Directive which requires that when considering whether EIA is required the 'characteristics of projects must be considered having regard, in particular, to .. (b) the cumulation with other projects'.

77. Mr Bentley, the noise expert for the Appellant noted in his report³⁶ that the operation of the hotel and details relating to it are beyond the scope of his noise assessment. He also noted that the noise impacts from the hotel upon local residents would have to be taken into account but had not been to date. Further, Mr Bentley stated that it was not necessary at this stage to consider noise from Dreamland. He noted that double glazing would be likely to reduce the noise from Dreamland but was not necessary to mitigate the noise effects of the proposals on Arlington House.

78. As indicated above, Mr Hamshaw, the Appellant's traffic consultant did not have regard to the cumulative effects of the Public Realm works or the Dreamland development. Mr Hamshaw stated that the peak hour traffic would be no worse, but he recognised that traffic overall would increase and that periods of traffic intensity would arise for longer periods.

³³ WWF, paragraph 45: see §44 Case C-87/02 Commission v Italy [2004].

³⁴ A20, para 2.2

³⁵ L1

³⁶ CB3, SRP1, p.4 para 1.3

79. It is the Council's view, in its adopted planning briefs for Dreamland (Feb 2008) and Arlington (Oct 2008), that the sites should be considered together.
80. In cross-examination Mr Taylor, the Appellant's architect stated that trickle vents would not be part of the proposals and so residents would have to open their windows for fresh air, resulting in significant environmental harm through noise disturbance.
81. Mr Bentley, stated in his proof³⁷ and confirmed in cross-examination that, after mitigation, there would be no significant adverse impact from noise generated by the superstore. The environmental information provided by the Appellant includes, incorrectly, the very mitigation measures that the Appellant relies upon to assert that the proposals will not have significant environmental effects. The European Commission has made it clear to the UK Government that it is not lawful to take mitigation measures into account in assessing whether an EIA is required under Article 5(3)(b) of the EIA Directive. It is also evident from the case of *R (Lebus) v Cambs CC* [2003] that it is precisely these effects and mitigation that should be assessed as part of an EIA.

Conclusion on EIA

82. Regulation 3(4) of the EIA Regulations 2011 states that an inspector shall not grant planning permission pursuant to an application to which the EIA Regulations apply unless they have first taken into account the environmental information presented by way of an EIA into consideration, and that they shall state in their decision that they have done so. In the circumstances, permission should be refused.

Proposal contrary to national planning policy

83. The proposal is contrary to the National Planning Policy Framework (NPPF) and in particular the presumption in favour of sustainable development, and many of the core planning principles. Louise Oldfield submits, and witnesses for the Appellant agreed, that an acceptable definition of sustainable development is that set out on Page 2 of the NPPF. It is '...meeting the needs of the present without compromising the ability of future generations to meet their own needs'. The NPPF also refers to the UK Sustainable Development Strategy and the five guiding principles of sustainable development which are: living within the planet's environmental limits; ensuring a strong, healthy and just society; achieving a sustainable economy; promoting good governance; and using sound science responsibly.
84. Louise Oldfield submits that the proposals are inconsistent with the general principles of sustainable development. It fails to promote a sustainable economy and it fails to work within the planet's environmental limits.³⁸ Louise Oldfield also submits that the proposal would remove finances from the locality and transfer profit to the shareholders and owners of Tesco, inevitably beyond the Thanet area.

³⁷ CB1, p.4 para 2.4

³⁸ See e.g. the unchallenged evidence of Sam Causer that the demolition of existing buildings will result in the loss of embodied energy and the failure to, for example, propose a green roof for greater visual and biodiversity features.

85. The proposals are also contrary to many of the core planning principles in the NPPF including that planning should :
- be genuinely plan-led (in this instance through the joint application of the Dreamland and Arlington Planning Briefs), empowering local people to shape their environments;
 - proactively drive and support sustainable economic development;
 - always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings;
 - contribute to conserving and enhancing the natural environment and reducing pollution; and
 - conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

Failure to have regard to regional and local policy

86. Regional and local policy has been consistently disregarded. As indicated above, the Appellant's traffic analysis did not take into account the KCC/Jacobs Public Realm Report which sought to enhance and increase pedestrian access along Margate seafront.³⁹ It also fails to have regard to the Council's 10 year Cultural Vision⁴⁰ (discussed in the Louise Oldfield's evidence). Further, the Appellant has consistently failed to consider the Arlington and the Dreamland planning briefs in a co-ordinated way (contrary to the statements in each brief at pages 1 and 2 respectively) and TDC Vision 2030.
87. Similarly the noise report failed to consider the impact of Dreamland or even the hotel proposal on the same site.
88. Professor Tavernor acknowledged that his conservation assessment did not take into account the impact of the superstore on Arlington House, something he regarded as not worthy of national designation. He acknowledged however, the views of English Heritage that Arlington House had '...local significance...', '...is certainly of local merit...', '...the development has some good qualities and the tower is striking feature on the seafront ..', and '... there are some points of interest that endow the complex with claims of local interest..' ⁴¹. This is consistent with the evidence of Sam Causer and Liam Nabb for Louise Oldfield, Dan Chilcott, and Nick Dermott the Council's Heritage Development Advisor.⁴²

The proposal is contrary to town centre regeneration and the Portas review

89. The Portas Review made recommendations on how to tackle the decline in town centres and help ensure that local high streets can be lively, dynamic and exciting social places that give a sense of belonging and trust to a community.⁴³ The report notes that 'big supermarkets don't just sell food anymore, but all

³⁹ LO2, Appendix 31

⁴⁰ LO2, Appendix 1

⁴¹ A3, pp.4-5

⁴² LN2, Appendix LJN5

⁴³ LO4, Appendix LO1, pp.2-3

manner of things that people used to buy on the high street.'⁴⁴ The relevance of the Portas Review and its recommendations as material considerations weighing against the development of a supermarket on this out-of-town centre site went unchallenged.

90. Similarly the Government Response to the Portas Review (March 2012),⁴⁵ which welcomed and fully supported the overwhelming majority of the Portas recommendations, and the successful Margate Town Team Portas Pilot, are both material considerations that weigh in favour of the planning application being refused. It is clear that significant efforts by local people, including Louise Oldfield, are helping create genuine change in Margate.
91. Evidence of this includes Mary Portas' recent letter to the Secretary of State,⁴⁶ and the outstanding success of the Turner Contemporary Art Gallery which opened in April 2011. By July 2012, an early report suggested that the Gallery had benefited the Kent economy to the tune of £13.8m.⁴⁷
92. Louise Oldfield submits that the proposals will adversely impact on further regeneration by sterilising an important valuable long-term day car parking resource in the town. This is of particular concern when the car parking proposed would be only for the benefit of Tesco customers and only for up to 3 hours. Non-Tesco shoppers who wish to visit Margate for less than 3 hours will not be entitled to use the car park. The proposal fails to have regard to the tourist and regeneration needs of Margate including trips to the seaside, and day visitors to Margate.

The documentation in support of the proposal is inaccurate, incomplete and misleading

93. Louise Oldfield submits that the paper chase for documents in relation to the appeal and some inaccurate, incomplete or misleading documents in support of the application have left considerable uncertainty as to the extent and scope of the proposal.
94. In particular, certain drawings have failed to properly represent the correct impact of the superstore on the locality. There remains uncertainty as to the extent, scope and nature of the adverse effects of the proposals. For instance, the window replacement drawings in the appendices to the proof⁴⁸ of Mark Taylor show consecutive window drawings with 5 windows per flat, 4 windows per flat, and 2 windows per flat and with much thinner mullions than would otherwise be possible. There were numerous errors in the noise proofs and an absence of material in the transport reports.
95. The scale of many drawings is uncertain, many being provided as perspectives and 'for illustration only' with no real or accurate form of scale conveyed. Louise Oldfield submits that the form and content of the application cannot be predicted with certainty nor the adverse effects and style of the proposals determined.

⁴⁴ LO4, Appendix LO1, p.11

⁴⁵ LO4, Appendix LO2

⁴⁶ L1

⁴⁷ LO4, Appendix LO5

⁴⁸ MT3, Appendices 4 and 5

The proposal fails to properly consider the Dreamland site

96. Louise Oldfield and others, including the Dreamland Trust, maintain that the superstore would have a significant adverse effect on the Dreamland site and the Grade II and II* listed buildings. The letters from the Dreamland Trust⁴⁹ repeatedly highlight this. The Appellant's consultant disagrees and regards the Dreamland site as being essentially 'inward looking'. Louise Oldfield submits that this is nonsense. The proposed superstore would inevitably have a direct and considerable impact on the Dreamland site, including the listed heritage assets. There would be shadowing, and the effect of a dominating feature.

Arlington House and Square as a local heritage asset

97. The proposals fail to acknowledge that the Arlington complex is an important local heritage asset with the potential for local listing. Appreciation and recognition of their heritage qualities is growing. Louise Oldfield recognises that English Heritage declined to recommend listing, but also notes EH's comment that there is a '...high threshold for listing post-war housing nationally.'⁵⁰
98. Sam Causer, for Louise Oldfield, highlighted the importance of the Arlington site, referring to it as a heroic 1960s design.⁵¹ This view was endorsed by Dan Chilcott, Nick Dermott and English Heritage. Professor Tavernor suggested that the 1960s structure should be brought in to the modern age by partial demolition. Yet this misses the point. It is akin to a developer suggesting in the 1950s that Art Nouveau structures of the turn of the 19th century should be demolished and replaced with something more functional. This would entail heritage being lost for future generations.
99. It was interesting to note that Professor Tavernor was unaware of now-common reference to the 1960s era as vintage. The demolition of a significant aspect of the Arlington site would have an irreversibly adverse impact on any future prospect of listing either on a local or national basis. Louise Oldfield submits that this would be wholly contrary to the growing appreciation of modernist buildings, particularly when there is no need to proceed with demolition. The Council's current Conservation Officer supports the Council's Heritage Development Advisor's advice.⁵²

Failure to assess drainage, ecology and other pollution or other environmental impacts

100. The proposals fail to address specific environmental concerns such as drainage and sewage discharge, the ecological impact of the proposals, and increased traffic and noise. The Appellant also fails to have regard to the needs of visitors to Margate, including its cultural sites such as the Turner Gallery, the seaside, and Margate Museum, by sterilising valuable car parking that could add to local provisions.

101. Many critical pollution matters would be dealt with by conditions when they should have the benefit of community and residents' involvement. This is

⁴⁹ 12 October 2011, 17 October 2011, 23 March 2012, 12 October 2012

⁵⁰ A3, p.5

⁵¹ SC1

⁵² LN2, Appendix LJN5

particularly the case in relation to drainage, where reliance is placed on a vague strategy and risk assessment. It is not clear whether Southern Water was re-consulted following the summer outfall events leading to significant discharges of raw sewage on local beaches, and following sewage flooding in All Saints Avenue.

Thanet District Council incapable of enforcement

102. Louise Oldfield submits that permission should not be granted in circumstances whereby any breach of condition is unlikely to be resolved by enforcement measures. The landlord has failed to repair and maintain the Arlington site despite the Council's role as freeholder. In these circumstances, permission should be refused unless robust and effective enforcement of conditions by the Council can be assured. This could be achieved through the EIA regime.

Planning conditions unacceptable

103. A large number of the proposed conditions are unacceptable and would be unlawful should planning permission be granted. Many of these permit demolition of certain areas of the site before plans and proposals are submitted for approval. Others hold over to conditions key aspects of the development. These include the development and approval of a drainage strategy, lighting and landscape.

Conclusions to Louise Oldfield's Case

104. In view of the written and oral evidence presented by the parties, the application for planning permission should be refused. Louise Oldfield maintains that the proposals for an out-of-centre superstore at an important Margate gateway are unacceptable. They would conflict with the revitalisation and regeneration of the locality now underway and are incompatible with the character of the exciting town emerging, generated alongside a genuine feeling that Margate's time has come.

105. The Appellant has referred to paragraphs of the NPPF with which the proposals comply. However, the Appellant cannot confirm that the proposals fit the presumption of sustainable development, of meeting the needs of the present generations without compromising the ability of future generations to meet their own needs. The superstore proposals seek to meet the 'wants' of a large corporate commercial company and its associates, not the 'needs' of the community.

106. A superstore of the proposed size would stall the regeneration of Margate and divert attention from its current positive vision. It would result in a bland out-of-centre shopping area of the type which can be seen 'out of towns' throughout the country. Further it would sweep away forever the opportunity of ensuring the preservation of the iconic Arlington site. The local community support the regeneration of the Arlington site. What they do not want is a superstore or the demolition of even part of the site, with the risk of it being left as an eyesore for years to come.

The Case for Rule 6(6) Party John Moss, representing Arlington House Residents Association

The material points are:

107. The November 2009 consultation was for a 50,000 square foot store, hotel, and other elements. The application on the table almost 2 years later was for an 82,000 square foot store, no further consultation having taken place. It was put before the planning committee 18 months ago. Then the proposals went to appeal a year ago as a result of the Council's inability to make a decision.
108. After all this time the finish to Arlington House and the design of its replacement windows is still not decided. Even the s106 agreement provides for alternative windows which may or may not change the design yet again. During the period of delay, the situation in Margate has changed radically. The whole dynamic of Margate has changed with the arrival of the Turner Gallery, the progress of the Dreamland project, and even the High Street coming out of the doldrums. There is no need to introduce a Tesco store as a catalyst.
109. An application which will cause traffic gridlock and undermine all other aspects of the clearly emerging regeneration of the town as a whole should not be approved. The traffic generated by Dreamland has not been taken into account and the road through the Arlington site which would have diverted some of the traffic from the seafront will not now be built.
110. The additional traffic, noise, and pollution generated by a superstore of the currently proposed size in a residential area is inappropriate. A further 21 dwellings have recently been built on the western side of All Saints Avenue, and the effects on the access to the All Saints Industrial Estate have not been taken into account. This is especially important since 45% of the store's traffic would approach from the south. Moreover, it is unclear whether the existing drainage system has the capacity to accept output from the proposal. Photographs of recent sewage flooding submitted to the Inquiry suggest otherwise. In addition, the site may well be contaminated. The car park once contained a petrol station, probably with underground tanks.
111. The proposed parking provision for Arlington House is totally inadequate, ignoring the rights and needs of residents at the expense of provision for store customers. The Council, as freeholder, should not allow the scheme to proceed without the rights of the tenants being protected. The calculation of parking spaces has been incorrectly carried out since it should be based on sales floor areas rather than gross floor areas. Moreover, the stores already built, under construction, and those proposed, serve local requirements without the need for a superstore on the site. The size of the proposed superstore would be disproportionate to the appropriate balance of residential and commercial uses on the site.
112. The Arlington Planning Brief requires that proposals should ensure a long term viable future for the whole site, and should include the complete refurbishment of Arlington House. Clearly replacing windows and staining cladding panels does not amount to complete refurbishment. Moreover, because of legal complications, it would not be possible to replace all of the windows. Further, there is no guarantee in place to ensure the longevity and sustainability of the external refurbishment of Arlington House. Residents may be faced in future with service charges to meet repairs, and it is a matter of concern that, despite

- the s106 agreement, the costs of providing a cleaning cradle are to be charged to residents.
113. The Brief also requires that comprehensive proposals and contracts are in place for the redevelopment of the whole site. The current proposals provide for the redevelopment of only part of the site and merely an outline scheme for the main frontage on Marine Terrace. The idea of leaving this area landscaped and open is in direct conflict with the requirements of the Brief to provide a secure and safe environment and clearly distinguish between public and private areas. These shortcomings would lead to a fundamental failure of the proposals to meet the primary objectives of the Brief.
114. The democratic processes have been subject to abuse by the failure to make documentation associated with the proposals publicly available, and by the handling of the withdrawal of the requirement for a link road to the Dreamland site. Also, the way that conditions and the s106 agreement have been dealt with points to shortcomings in the democratic process.
115. It is not just the residents of Arlington House who say that the proposals should be dismissed. The Leader of the Council publicly agrees because of the risk of gridlock to the seafront. Mary Portas agrees because of damage to the High Street. Tracy Emin agrees because of the harm to Margate. The Dreamland Trust agrees because of the harm it would bring to its own site. Local architects and business people agree, as does Gavin Kapuscinski.
116. Councillors from both the District and County Councils now agree that the proposals should be dismissed - none have appeared at the Inquiry to support the proposals. Only one person has spoken in favour of the proposals at this Inquiry. The people have expressed their view and should not be ignored.
117. A 24 hour superstore of the size proposed is not appropriate for a residential area on Margate seafront. The superstore proposals are not an acceptable solution for the Arlington site. The Council has allowed itself to be held to ransom by the Appellant. The appeal should be dismissed.

Interested Persons

Kate Topley (In Support)

118. Kate Topley is very much in support of the proposed development. The residential development on All Saints Avenue has not caused problems. If the superstore were to go ahead it would give a boost to the neighbourhood and provide much needed access to such a facility without having to go to Westwood Cross. This would help many, including older people, provide beneficial competition, and attract people to Margate. The Turner Gallery has proved an attraction but no-one wants to spend a whole day there.
119. Arlington House was good in its time but is now an eyesore and a discouragement to visitors. Refurbishment would benefit everyone. The windows proposed are expensive and would perform well. A more attractive Arlington House, together with a refurbished Dreamland and a new superstore would play a major role in attracting people to Margate.

Councillor Iris Johnston (Overview)

120. Councillor Johnston moved to Margate in 1982 and was elected to the Council in 1995. She has taken an interest in Arlington House and tried to help residents. Arlington House has not been properly maintained, for instance the windows have not been painted every three years. There are also reports of businesses being priced out of the arcade and of rubbish being set on fire. However, Mr Gammon of Freshwater has always responded to queries positively.
121. Councillor Johnston has no bone to pick with Tesco, and a store was always expected on the site. Moreover, the PPS Group, who carried out the consultation programme, made proper contact. At the Committee meeting she queried traffic and parking, and night time activity, and requested a site visit but was ignored. It is important to get traffic management right. Kent Highway Services made extensive comments which should be heeded. Residents' contributions to the Arlington House renovations have now been resolved.
122. Although the residents wanted full determination by the Council, when the application went to Planning Committee on 15 June 2011 on the Chairman's casting vote the members resolved that proposal be referred to the Secretary of State,⁵³ with a recommendation that permission be granted. A carefully designed smaller Tesco, with s106 contributions, would be much more appropriate.

Councillor John Watkins (In Opposition)

123. Councillor Watkins had requested that the proposed development be subject to a public inquiry. Traffic throughout the night would cause problems of noise and disturbance. Residents are used to the railway, parking, and shops trading, but plans to build a 24 hour store would be unreasonable. Instead something like a Tesco Metro store was expected. The present proposal is more suited to an out-of-town location. It should be smaller, fitting in with the urban grain, and following the vision and aims set out in page 4 of the planning brief.

Councillor Michael Jarvis (In Opposition)

124. Councillor Jarvis made clear that he was not speaking on behalf of either Kent County Council (KCC) or the Highway Authority, but expressing personal views.
125. KCC had plans to develop the seafront involving reducing the carriageway, widening pedestrian footways, and encouraging cafes and other facilities. The superstore proposals go against this vision of opening up spaces to complement the revived Dreamland, including those in front of Margate Station. The superstore would be visible leaving the Station.
126. A superstore would bring attendant social problems connected with easy access to alcohol. There is no objection to supermarkets complementing independent retailers, and expanding consumer choice, but local shops and retailers need help. Mary Portas has seen ways in which the High Street can be regenerated, and her advice should be followed.
127. The superstore would be oversized in relation to the development currently in place. There would be parking problems with people fighting for limited free parking spaces and attendant congestion. At present no enforcement action is

⁵³ In accordance with the requirements of the Town and Country Planning (Consultation) (England) Direction 2009.

taken against those parking on the footway alongside Arlington House. There is ample parking available at Westwood Cross for those who wish to shop at superstores

128. The superstore would not fit in with the Margate streetscene, with its beaches and the Turner Gallery. The residents of Arlington House are opposed to the proposals. They would be adversely affected, as would the occupants of the All Saints Avenue dwellings and the nearby hotel. It would be just too big.

Gavin Kapuscinski⁵⁴ (*In Opposition*)

129. Gavin Kapuscinski is a young adult resident in Margate. The superstore would block out light to the pleasure gardens and picnic area of Dreamland. It would obscure views of the sea from the rides and would create the wrong atmosphere for the enjoyment of Dreamland. It would also ruin local business, including the small seaside shops selling souvenirs, beach balls and other merchandise. Who wants to go to Tesco to buy the things you normally buy on a trip to the beach? There is no need for another supermarket anywhere in Thanet with a Tesco just up the road and a giant one in Westwood Cross.
130. Coming home from school each day and going down to the seafront, you see the iconic Arlington House and the car park. They go hand in hand and if one goes the other will have no meaning. Arlington House was one of the first park and shop places and this idea should not be lost. With the renovation of Dreamland, the existing shopping centre could easily be reopened, with a variety of shops linked with the High Street, stocking products very different from Tesco's usual range. It could also provide space for music events and twice weekly markets, all generating various kinds of employment.
131. Overall, there seems no reason for a superstore when we already have the bare bones of all Tesco would offer, but with the added potential for local businesses to draw more money into the local area. The superstore would be an eyesore and would remove an iconic structure. The area offers so much for the future – all we need is a little bit of imagination.

Harry Kirschner⁵⁵ (*In Opposition*)

132. Harry Kirschner has lived at Arlington House for almost five years. He is not against the development in principle, but is opposed to the current size of the store. Consultation was based on a smaller store which would be more appropriate, and there are already two Tesco stores in the area.
133. Within the past three months the 21 new dwellings on All Saints Avenue have been occupied and flooding during periods of heavy rainfall has become worse. It is apparent to those who live in the immediate neighbourhood that the surface water drains are not able to cope. On 5th August many of the new ground floor units were flooded. Doubtless this will happen again. Southern Water have acknowledged in a recent press article that there are problems with drainage in the area.
134. On Tuesday 23rd October, a dull foggy day, but certainly not a rainy day, the most recent sewage flood took place. Coming from the railway bridge side, Mr

⁵⁴ IP2

⁵⁵ IP4, IP5, IP6

Kirschner found he could not drive through the sewage effluent flooding the road and had to turn around and take a circular route along the seafront to gain access to Arlington House. There were between four and six huge yellow pumping vehicles on All Saints Avenue which continued to suck up raw sewage for several hours.

135. Flooding containing sewage could clearly be seen for several hours running under the Arlington parking decks and into the Dreamland site, which is at a lower level than its surroundings. If the Superstore had been in place, the customers and their cars would have been ankle deep in effluent. Mr Kirschner was forced to park his car a couple of streets away. Ward Councillor Mrs Iris Johnston reports that even in the Old Town, she could smell the stench in the afternoon and wondered where it came from.
136. The present proposals are for a 60 bed hotel and ground floor shops, as well as an 82,000 square foot supermarket, four times larger than the Cliftonville Tesco, and well over twice the size of the Morrisons store in town. It is no use the developer pointing to existing shops on the site since these shops have been closed for years. The recent floods have shown that even 21 additional dwellings overload the infrastructure. Moreover, no-one seems to have adequately considered the effects of the future Dreamland development which include a restaurant and an expected 300,000 visitors each year.
137. Following the 23rd October floods Southern Water has confirmed that sewage was released into the sea to prevent widespread flooding of homes. The local paper reported that a spokesman for Southern Water said, 'We sincerely apologise for the disruption and distress caused by this *unexpected* incident. Our team are on site dealing with the situation and liaising directly with the families affected and a comprehensive clean-up operation is being completed by our contractor. Households affected will be forced to claim through their insurance policies.'
138. However, October 23rd was not an unexpected incident. Southern Water does not appear to have made representations at the time of the planning application for the 21 dwellings in 2008 but, since then, they have highlighted a potential lack of drainage and sewerage in the area of the proposed superstore. Their letter dated 9 March 2010, during preliminary inquiries related to the superstore, states that the proposed development would increase flows to the public sewerage system and existing properties and land may be subject to a greater risk of flooding as a result. Additional sewers or improvements to existing sewers would be required to provide capacity to service the development.
139. With a little more vision we could do much better. There is a Tesco Extra five blocks away and an application pending in Westgate for another Tesco. How many do we need?

Simon Pengelly⁵⁶ (In Opposition)

140. Mr Pengelly is a resident of Arlington House and shops at Tesco's from time to time. He maintains that the application is defective because of confusion over drawing numbers and titles, and other inconsistencies between documents. For

⁵⁶ IP7

- the application to be presented in such a way suggests carelessness, incompetence or perhaps duplicity.
141. He also maintains that processing of the application by the Council was defective. Only the first set of plans was made available for public comment. Subsequent changes were not. The 21 days for comment should have been available, and the drawings publicised, each time the scheme changed. It was not clear that the Council's website might not carry all the information and that the Gateway was the point of contact for full information.
142. However, when Mr Pengelly inquired at the Gateway, he was given very confused and incomplete information. He asked for all the papers relevant to the Arlington planning appeal but was presented with only a slim folder containing a file entitled Transport Assessment Vol 2 Appendices.
143. Mr Pengelly considers the proposed development of poor design, too big, and out of keeping with its surroundings. With a box-like appearance, it would blight the view from Dreamland and the seafront, and fail to respect the historic significance of its surroundings. It would also have a significantly overbearing effect on the flats within the Arlington tower, and the facilities within Dreamland, including the Scenic Railway.
144. Moreover, the 64 parking spaces provided for the residents of the 142 flat tower are totally inadequate and appear to be based on an assessment of present usage made with a significant number of the flats empty. Extortionate charges would be made for each space, all contrary to leasehold commitments to the residents.
145. The proposals fail to meet the Arlington Planning Brief in so many ways. The superficial works intended for the tower go no way towards meeting the requirement for the 'complete refurbishment of Arlington House'. Nor are there any proposals for the use of alternative energy sources required by the Brief. Noise should be measured or predicted at different heights, a point which is crucial to the living conditions of residents of Arlington House. In addition, the economic benefit of the proposals is in doubt when the loss of business rates from the existing Arlington traders and the effect on town centre traders is calculated.
146. There are significant highway safety issues, including traffic figures which may not have allowed for the effect on traffic flow of vehicles waiting on All Saints Road for the gates to open before entering the car parking area of the dwellings. In the works proposed for the Station Green roundabout there appears to be an absence of lane control and a pedestrian crossing running through the middle of the roundabout. The fact that the Highway Authority believe that the proposal for a pedestrian crossing was dropped is symptomatic of the way that the content of the application appears to be capable of change at will, making a mockery of the process.
147. The costs of the works to Arlington House may have been negotiated, but there appears to be no firm commitment to abide by these costs. Why should residents be expected to pay anything, when the works are only proposed to gain planning permission for the superstore? Although the apportioning of these costs, and the charging of residents for car parking spaces, and the absence of thermal insulation works to Arlington House are said not to be planning matters, they are related to provisions in the Planning Brief and this makes them matters

to be taken into account. The way that the link road has been lost is an example of the way only lip service has been paid to the requirements of the Brief.

148. Money spent in Margate instead of Westwood Cross only benefits Margate if it is being spent with small traders. If spent with a national chain, the profits simply move out of the area.

Tim Spurrier (In Opposition)

149. Mr Spurrier is a resident of Thanet and local spokesman for Thanet Green Party. Its first meeting is about to take place and although the Party is not formally constituted it is recognised by Kent Green Party. He is concerned about the movement of money outside Thanet consequent on the proposals, the loss of existing jobs, and the quality of future jobs. Is Tesco the right kind of employer? There is a great deal of public opposition and political fence sitting. The wider environmental aspects need to be carefully considered, and the site has suffered from poor repair and maintenance practice over an extended period.
150. It is unclear what the Council and the Appellant have agreed. None of the papers have been freely available to the public. As a consequence, it is difficult to talk with certainty or depth of knowledge. The proposals should be considered as part of a staged process starting with the overall aims for Margate; regeneration considerations; and the methods to be used having regard to the appropriate image for Margate, involving nostalgia and creativity, the Old Town, the Turner Gallery, and Mary Portas' input.
151. It should be questioned whether expanding along the seafront is appropriate, and whether the proposals are an improvement on the present arrangement of the site. Moreover, it should be borne in mind that Arlington House has not been properly maintained and the superstore would comprise a shed of no architectural merit. Overall, the proposed development would appear to be harmful to Margate in its aims directed towards the reinforcement of a nostalgic, creative, vibrant settlement.

Dan Chilcott (In Opposition)

152. Mr Chilcott came to Margate a year ago. He trained as a designer and is a past president of the Students Union. The community of local independent traders say that a large superstore is not what Margate needs. Moreover, the existing decked car park has its merits. Examples of the creative use of car parks include the art and community uses made of the Peckham multi-storey car park.
153. The car park is an indoor/outdoor structure which bears on the settings of several listed buildings and is surrounded by the higher topography of the town to the east, and the listed railway station and Buenos Ayres terrace to the west. From the station one can see across the top of the car park to Dreamland, and to the sea. The main part of the store would be built on the footprint of the car park and would rise to a height where it would encroach on the experience gained from the Scenic Railway through its bulk and use of inexpensive mesh to its eastern elevation. It would obscure the sunset from the Scenic Railway.
154. Margate has similarities to Bath in its history as a resort and its architecture. It was the first town to have a Georgian Square next to the beach and had one of the first major art deco cinemas. Much thoughtless demolition has already taken

place, including four of Cliftonville's most prominent buildings. Further removal of the historic element must be resisted.

Chris Johnson (*In Opposition*)

155. Mr Johnson is shocked that the Arlington leaseholders have so neglected their responsibilities that there is now an absolute requirement for refurbishment. Shops have been boarded up for a long time with a complete lack of upkeep and security. The tower has been seriously neglected, internally as well as externally, but service charges have still been collected. The Council is as culpable as the leaseholder, not having held the leaseholder to account.

156. The proposals' impact on the trading of stores in the town would be severe. Alternatives should be considered which avoid money leaving Margate to go into the coffers of a big organisation. Many people have signed petitions⁵⁷ against the proposals, preferring smaller shops to superstores.

Samantha Grant (*In Opposition*)

157. Ms Grant complained about the lack of availability of information on the proposals and the inadequate notification of the Inquiry.

Written Representations

158. Written representations from some a considerable number of parties are on file. The Appellant's proofs tabulate, and attempt to respond to, many of the points made.⁵⁸ I have taken into account the points made in these written representations. In addition, written representations submitted by particular parties are summarised below. On line and hard copy petitions against the proposals⁵⁹ signed by some 1,580 people were also submitted.

Mary Portas⁶⁰

159. The government's response to the Portas Review involved running a trial of its 28 recommendations in pilot towns, which include Margate. A common concern raised by a number of the Portas Pilot towns was the pressure and competition posed by out-of-town and edge-of-town supermarkets. Having spent a good deal of time in Margate, it is clear that any such supermarket proposal would seriously undermine the town centre regeneration efforts.

160. A new supermarket can dominate a locality and draw footfall away from town centres. The effects of large edge-of-centre and out-of-town supermarkets are not being taken seriously enough by decision makers. The Government recognised a presumption in favour of town centre development in the NPPF, but the Portas Review recommended 'exceptional sign-off' for all new out-of-town developments. The recommendation was based on a real concern that local councils have neither funds nor the legal clout to stop undesirable out-of-town developments from progressing. In Margate, these fears are being realised.

⁵⁷ IP8

⁵⁸ MT1, pp 13-23; RTA, pp 22-23; CB1, pp 7-16; PR1, pp 22-38

⁵⁹ IP8

⁶⁰ L1

161. The stage is set for the long-term regeneration of Margate. My work in the town, the continued efforts of the Town Team, and the very active and dedicated local community have created a real buzz in Margate. The number of empty shops has gone down from 28 to 15 since we started our work. Also, investment in the new Turner Contemporary Art Gallery, receiving over three times the forecast number of visitors in the first year, has paved the way for Margate to return to its former glory as a tourist destination. The recent confirmation of the compulsory purchase of the Dreamland Amusement Park with its listed buildings was very welcome and will continue this process of reinvigorating visitor interest.
162. However, the proposed development of the Arlington House site, including a large edge-of-town warehouse style supermarket would reduce vital car parking space for the town centre and divert consumers away from local independent high street shops. The proposals also involve demolition of currently vacant commercial units facing the seafront that have been left empty and neglected by the owner. This part of the site would be sterilised because there are no further plans to develop it for a number of years.
163. This is a disturbing threat to the regeneration of Margate and is counter to all the work being undertaken in the town.

Dreamland Trust

164. The Dreamland Trust objects to the proposals because of their impact on the setting of its suite of heritage assets: the Grade II* listed Scenic Railway, the Grade II* Cinema, and the Grade II Menagerie Cages. The Trust is also concerned about the harm to the Menagerie Cages which might be caused by the construction works. Funded by the Heritage Lottery Fund, the Government's Sea Change programme and Thanet District Council, the Trust is working in partnership with the Council to restore the listed buildings and reopen the amusement park with a collection of historic rides, thus reinstating the setting of the listed buildings.
165. The proposed superstore is too big for the site. The metal-clad back wall of the superstore would dwarf Dreamland's heritage assets with an overbearing and inappropriate backdrop to the group of listed structures and the amusement park. Additionally, the proposed superstore would shade Dreamland's raised garden to the rear of the ballroom This is to be used as an outdoor café space and picnic area intending to encapsulate Dreamland's pleasure gardens.
166. The Trust also question Dr Chris Miele's report, Expert Opinion on the Proposed Redevelopment of Arlington House and the Effect on Heritage Assets, which is biased and factually inaccurate in its analysis of why the Conservation Area boundary may have been drawn to exclude Dreamland and the Arlington site. Moreover, he has not considered the potential for physical damage to the Menagerie Cages during demolition and construction anywhere in his report.
167. Dr Miele describes the setting of the Scenic Railway as 'lost' and incorrectly suggests that English Heritage (EH) did not give great weight to it because it is degraded and no longer functional. However, the amusement park is to be rebuilt, restoring the setting, as EH are aware. This theme runs through the whole report and materially affects Dr Miele's overall conclusions.
168. The land to the east of the Scenic railway was always part and parcel of the Dreamland site and views from it should be regarded as important. Although the

Scenic Railway's setting will be mediated by landscaping in the future, this will be insufficient to mitigate the overbearing appearance of the superstore.

169. Dr Miele does not discuss the aesthetics of riding the Scenic Railway from a passenger's perspective, only from that of an observer. However, the overpowering effect of the proposals would be very evident from the perspective of a passenger.
170. When considering the application, the Council commented that the decision to upgrade the Scenic Railway from Grade II to Grade II* listing was primarily made because of an increased recognition of the structure's rarity value and unusual design. However, the EH Advice Report of 29 June 2011 clearly states that it was also upgraded for its historic interest and group value. The Council notes that rarity value and unusual design would not be affected by the proposals. However, the Council neglects to acknowledge that the Scenic Railway's historic interest and group value would most certainly be affected by the proposals.
171. The Appellant's heritage witness describes the Dreamland masterplan as aiming to be inward looking. Whilst Dreamland has always been a place of escape from the outside world and is, to that extent, inward looking, its ability to succeed in this would be harmed by the overbearing, unsympathetic effect of the proposals on the amusement park. Moreover, the comparison of the dappled shading arising from trees in the park's landscaping, with the harsh shading from the superstore is completely inappropriate.

The Twentieth Century Society

172. The Society is very pleased that the Arlington House complex is being assessed for listing. However, for the same reasons, it is deeply concerned about the impact of the proposed scheme on the architectural qualities of Arlington House, the Conservation Area and the settings of a number of neighbouring listed buildings.
173. Arlington House was typical of its time in putting forward an integrated scheme with a large car park, a shopping centre and a residential tower block. It was also typical of the trend at that time of introducing tall buildings into the English seaside. The elegant design of the tower's elevations, whose wave form reflects its seaside setting, and the skilful treatment of the car park decking and its supporting columns make Arlington House a particularly good example and add significantly to its strong presence on Margate's seafront.
174. The proposals show very little appreciation of the architectural qualities of Arlington House. The replacement of the car park and shopping centre podium, and the introduction of a roof screen undermine the building's original design. The way in which buildings meet the ground and the treatment of their tops are crucial to their architectural qualities. The proposals interfere with these two key areas and would detract from the special architectural interest of Arlington House.
175. Given its prominent position on Margate's seafront and its close proximity to a number of very important listed structures and to the Conservation Area, it is imperative that the architectural integrity of Arlington House be maintained. Whatever the outcome of the assessment for listing, the Society believes that Arlington House is a building of strong character, worth cherishing and preserving.

Nick Dermott

176. Nick Dermott is Heritage Development Advisor to Thanet District Council, but makes representations here in a personal capacity rather than on behalf of the Council. He notes that it is reasonable to presume that the Arlington development was an integrated scheme aimed at the visitor market, with a beach related shopping centre, a car park aimed to mostly attract tourists and a residential block, initially with flats only for letting.
177. The car park has not been used by tourists for some time and beach-front open shopping arcades seldom work because of adverse environmental conditions, especially in north facing resorts. Neither of these structures can be said to have architectural merit. However, the tower block, a good example of its period, is a building of some considerable merit, arguably listable. Its elevations are extremely well considered and crisply detailed. When it was new, clean, and without mobile phone masts, its jazziness responded well to the seaside atmosphere and it was a very positive addition to the architectural character of the town. Internally, it is finished to a very high specification.
178. The west elevation of the proposed superstore would not harm the Conservation Area. The travelator behind the glazed façade would add life to the elevation and it is a good idea to match the cladding panels to those on Arlington House. The Tesco sign mounted on the roof is totally inappropriate and should be repositioned to the façade. The east elevation of the superstore would harm the setting of the Dreamland heritage assets.
179. The frontage replacement scheme of hotel and shops is in outline, but the proposals, although acceptable in plan form, are extremely crude and underdeveloped in section and elevation. The eastern end would be too close and too high in relation to the listed Cinema to avoid harming its special interest.
180. One of the strengths of Arlington House is the sharp and seamless horizontal differentiation between the solid and glazed areas on the east and west elevations, accentuated by the slimness of the window mullions. The proposed introduction of UPVC windows, with their cumbersome sections, is to be deeply regretted. However, the visual disruption of the sample windows on the lower floors of the eastern elevation is not as severe as might be thought. The cleaning of the cladding panels has been very successful. Any stain used should be as light as possible.
181. The current entrance arrangements are tortuous but the quality of the teak and terrazzo finishes is superb. The proposed double height entrance hall is to be welcomed, but its effect would depend critically on its detailing. The small plaza proposed in front of the building is also to be welcomed, especially if one can see through it and appreciate how the piloti meet the ground. A lack of clarity as to how the building meets the ground is an unsatisfactory feature of the present arrangement.
182. The proposed roof screen would be an improvement on the sight of the phone masts, and there is little likelihood of the masts being removed. The lighting proposals, apart from those to the roof screen which should remain unlit, are also to be welcomed.

English Heritage

183. The principal issue for English Heritage is the effect of the proposals on the setting of the Dreamland heritage assets. The Dreamland Cinema, listed at Grade II*, is an outstanding example of a super cinema built at the height of the era of picture house development in Britain. It relates closely to Margate's historical role as a leading seaside resort where mass entertainment and popular culture were dispensed in exceptional surroundings.
184. The Cinema was an extension of the Dreamland fun fair site, the remnants of which survive in the listed Scenic Railway and the Menagerie Cages. It is not clear what direct physical impact there might be on the Menagerie Cages. The Council should satisfy itself that the proposals would provide an appropriate enhancement to the setting of the heritage assets and allow for greater appreciation of their significances. The proposals should also not detract from, and as far as possible contribute to, the revival of the fun fair.
185. The tower of the Dreamland Cinema exerts a strong presence on the seafront. The application proposes an increase in height from one to four storeys to the buildings on the frontage of Arlington Square. There may be some potential for intrusion into views from the west but this is not likely to significantly harm the setting of the Cinema. Since the site is near to the Cinema, the enhancement of the access to and immediate setting of the Cinema should be sought.

Natural England

186. The application site lies close to habitats which form part of the Thanet Coast Site of Special Scientific Interest (SSSI). This SSSI is part of the Thanet Coast Special Area of Conservation (SAC), Thanet Coast and Sandwich Bay Special protection Area (SPA) and Thanet Coast and Sandwich Bay Wetland of International Importance under the Ramsar Convention (Ramsar site). Natural England has no objection to the proposed development. Either alone or in combination with other plans or projects, it would be unlikely to have a significant effect on the above sites.
187. The application presents many opportunities to incorporate features beneficial to wildlife, such as roosting opportunities for bats, bird nest boxes or the use of native species in landscape planting. It is recommended that measures to secure the biodiversity of the site are secured.

Conditions and Obligation

188. Conditions which might apply to a grant of planning permission were agreed between the Council and the Appellant, and then discussed in the Inquiry.⁶¹ At the Inspector's request, further information on noise aspects applying to two conditions, and information regarding nesting birds which might be subject to a condition, were circulated for comment after the Inquiry had closed.⁶²
189. A certified copy of a completed s106 Deed of Unilateral Undertaking was submitted.⁶³ Schedule 1 covenants the Leaseholder to the following:

⁶¹ ID9

⁶² ID10

⁶³ A12

- A Travel Plan Contribution towards the costs of monitoring the Plan.
- Highway Improvement Works to be completed before occupation of the store.
- Public Realm Improvement Works to be completed before occupation of the store.
- Implementation of the Car Parking Management Plan.
- Arlington House Works to be completed before occupation of the store.
- The consent of occupiers of the flats regarding window replacement works, and the course of action should consent not be obtained from all occupiers.

Schedule 2 contains the details of the Car Park Management Plan.

CONCLUSIONS – References to other paragraphs in the report are in brackets []

Main Considerations

190. In my view the main considerations are the effect of the proposals on:

- The vitality and viability of the town centre, amongst other retail considerations.
- The character and appearance of the area.
- Traffic conditions.
- Living conditions including noise and other aspects of pollution.
- Other material considerations.

The Vitality and Viability of the Town Centre [29-36, 89-92, 159-163]

Introduction

191. The approach taken in the Appellant's Retail Assessment (RA) is based partly on existing retail studies, including Kent County Council's Retail Needs Assessment Study (RNAS), 2007, for the whole of Kent.⁶⁴ The RNAS included a household survey to ascertain shopping habits across the whole of the county. This revealed that Thanet retains 93% of the convenience goods expenditure of its population and 68% of its comparison expenditure; and that Westwood Cross is commercially dominant in the district.

192. Westwood Cross is a purpose built shopping centre which opened in 2005 intended, in part, to increase Thanet's expenditure retention. It was designated a town centre in the 2006 Thanet Local Plan. Westwood Cross provides high order shopping for the district, comprising national multiple retailers. The large convenience stores, including Sainsbury and Tesco Extra, which at some 17,000 square metres gross floor area is well over twice the size of the proposed superstore, are situated outside the defined town centre boundary. Westwood Cross lies within 10 minutes drive time of Margate, Broadstairs and Ramsgate, the main Thanet centres of population and poses an obvious threat to expenditure retention in these centres.

193. The catchment area used in the RA, comprising three population zones, corresponds largely to a 10 minute drive time. The inner zone, broadly the urban area of Margate, makes up well over half of the population of the catchment area. Even though one might expect the populations of the outer two zones to be drawn to Westwood Cross, the roughly 20% catchment area convenience expenditure retention is strikingly low. The RA anticipates almost a doubling of retention should the proposals go ahead.

194. The appeal site is slightly beyond the edge of the centre designated in the Local Plan, which is confined to the High Street. The designated centre does not take in the Old Town to the north of the High Street, which has recently been the subject of regeneration efforts and now benefits from the high visitor numbers to the nearby Turner Gallery. Nor does it take in the seafront commercial area. The Goad plan for the town covers commercial units in both these locations, the

⁶⁴ This was updated in October 2009 to take account of more recent planning permissions and reflects the impact of the recession on retail growth forecasts.

RNAS health check of centres included the seafront up to the appeal site, and the Preferred Options Core Strategy document considers the potential to amend the town centre boundary to include the units along the seafront.

195. As well as providing the opportunity to claw back convenience expenditure from stores outside Margate, the location of the appeal site, at the western end of the seafront, would allow an anchor to be established at one end of a shopping route along the seafront and into the designated town centre. The anchor at the opposite end of this shopping route, beyond the presently designated town centre, could well be the Old Town and Turner Gallery, whose café restaurant is an attraction in itself.

The Sequential Test

196. Paragraph 24 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. It notes, when considering edge of centre and out of centre proposals, that preference should be given to accessible sites well connected to the town centre, and applicants and local authorities should demonstrate flexibility on issues such as format and scale.
197. The RA, updated by Mr Robin's proof,⁶⁵ contains a sequential assessment which the Council endorses. Whilst the courts have decided that the developer is not required to alter or reduce the size of proposals to fit available sites [31, footnote], smaller sites have been considered in the RA. The Local Plan acknowledges that the town centre is not a suitable location for modern major multiple retailers because of the large number of heritage assets, difficulties in servicing, and the predominance of small shop units in separate ownerships making acquisition difficult and financially unattractive.⁶⁶
198. I am satisfied there are no suitable, available, and viable sites within the town centre to accommodate the proposals, even with considerable flexibility on issues such as format and scale. In this regard, the proposed superstore, which is larger than the Morrisons store, the largest in Margate at present, is broadly the minimum size capable of accommodating a full range of goods [30]. This would allow it to compete for main shopping expeditions with the Westwood Cross stores. Moreover, its configuration, as a sales floor over limited car parking, with mezzanine and back of house upper levels, shows flexibility. The vacant Marks and Spencers or Woolworths stores, suggested by Louise Oldfield, as Rule 6(6) party, would not be suitable because of size and servicing difficulties.
199. Of those sites on the edge or out of centre, many are plainly not suitable, even given considerable flexibility. For instance, Hawley Square is in origin a Georgian square within the Margate Conservation Area and comprises a public open space (the Square) which is very unlikely to be built upon. Many have poorer connections than the appeal site to the town centre, as well as other disadvantages, others are much too small, and most are designated for other than retail use under the Local Plan. The two sites that could be seriously considered are the College Walk Shopping Centre and the Dreamland site.

⁶⁵ PR1

⁶⁶ Paragraphs 4.25 and 4.26

200. College Walk Shopping Centre contains Morrisons and Iceland, as well as smaller units. It has no vacant land of sufficient size and redevelopment of the multi-storey car park, required to serve the existing facilities, would result in planning problems of scale and impact on the living conditions of nearby residents. Moreover, although closer than the appeal site, it is not well connected to the High Street or other areas of high pedestrian activity.
201. There are plans to revive the Dreamland site as an amusement park. The compulsory purchase order has been confirmed but is now subject to challenge in the High Court [14]. The Local Plan requires any development to be leisure lead, with other uses occupying a lesser part of the site. Although it might be possible to use the eastern part of the site for retail, provided the Dreamland proposals proceed, it is not available at present. Despite being closer than the appeal site, its links to the town centre are difficult because of highway access off the busy Clock Tower junction and, beyond the junction, narrow, steep access with tight turns into the site.

Impact

202. Paragraph 26 of the NPPF states that, when assessing applications for retail development outside town centres which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment. This should consider the impact on existing, committed and planned public and private investment in catchment centres; and the impact on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area.
203. Although assessment of need is no longer a policy requirement, the RNAS indicated that, after making allowances for commitments, there would be capacity in Thanet by 2016 for 3,011 square metres gross convenience goods floor space, and 12,907 square metres comparison goods floor space. On this basis, the convenience floor space proposed would be slightly in excess of overall capacity ignoring the loss of existing retail floor space, and within capacity taking into account the loss of existing floor space. The proposal would be well within overall comparison goods floor space capacity. Allowing for changes since the publication of the RNAS, this broad overview is probably still reliable.
204. Margate is in an economically depressed state. Although retail vacancy rates have recently decreased a little,⁶⁷ they are still very high compared to national averages. Therefore, it seems reasonable to consider directing as much as possible of overall capacity to Margate. In any event, it would be reasonable to attempt to claw back expenditure from Westwood Cross, irrespective of overall capacity.
205. There would be little or no impact on existing, committed and planned investment in centres since there appears to be none of substance other than the continued development of Westwood Cross. Nor would there be any impact on allocated sites coming forward, since those at Westwood Cross are in train, and

⁶⁷ The involvement of Margate as a Portas pilot town has undoubtedly helped. The occupation of vacant units in the Old Town, recently the focus of regeneration efforts, has taken place, perhaps assisted by the success in attracting visitors of the nearby, newly opened Turner Contemporary Art Gallery.

the appeal site itself is allocated for retail use in emerging policy. The assumptions in the RA appear reasonable. The design year of 2014 for the superstore, and 2016 for the remaining commercial development on Marine Terrace and All Saints Avenue, would not now be achieved, but it is unlikely that changing conditions would significantly alter the RA's predictions.

206. With regard to convenience goods, I agree with the RA that the majority of the trade of the proposed superstore would be diverted from the larger food stores at Westwood Cross. These offer a full range of goods appropriate to a main shopping expedition, as would the proposed superstore, and they would therefore be direct competitors. The RA predicts 17% diversion from the Westwood Cross Tesco and 13% from the Westwood Cross Sainsbury.
207. There would be diversion from the Morrisons store in College Walk, Margate, but this would probably be less than from the Westwood Cross stores since it offers a more limited range of goods and would, therefore, not be a direct competitor. The RA puts diversion from Morrisons (1,797 square metres convenience sales area) at 10%; diversion from Iceland, College Walk (465 square metres) at 6%; and from other stores in Margate and Cliftonville (857 square metres) at 5 to 6%, apart from the smaller Cliftonville Tesco (678 square metres) which it puts at 14%. The recently opened Tesco Express at Westbrook, some 7 or 8 kilometres west of the appeal site, with some 290 square metres sales area, is unlikely to affect the trading of town centre stores or suffer significant diversion itself.
208. Whilst it might be argued that the RA indicates a higher diversion than might be expected from Tesco's own stores, it is probably true that retailer brand loyalty would play a part in moving figures in the directions predicted. Overall, I have no reason to seriously question these figures and, even allowing a substantial margin of error, they are unlikely to lead to closure of any of the existing shops.
209. Comparison goods provision in Margate is limited and has reduced in recent years with the opening of the Westwood Cross stores. Significant growth in comparison goods expenditure is expected over a five year period, amounting to over three times the combined comparison goods turnover of the superstore and the proposals' associated retail floor space. Diversion from existing comparison stores, therefore, is not likely to be significant.
210. Accepting the diversion figures at face value, impact on the vitality and viability of the town centre is unlikely to be great. However, significant claw back of expenditure and footfall from Westwood Cross would provide the opportunity for further expenditure within Margate associated with linked trips. The location of the proposed superstore in an anchor position at one pole of a route along the seafront, into the town centre, and on to the Old Town, would favour such trips. This would be particularly so with the application of many of the recommendations in the Portas Report, concerning the establishment of a distinct retail character set for the town centre and its effective business management.
211. There should be no loss in consumer choice, since the existing stores would be likely to remain trading. Profits from the superstore would flow out of Margate, but with convenience shopping mainly taking place at the national multiples in

Westwood Cross, they do already. The Planning Statement (PS)⁶⁸ indicates that significant employment opportunities would be generated, an estimated 220 full time jobs and 40 part time jobs in the store; and some 54 associated with the hotel and other elements of the development, based on employment density calculations. This is particularly important having regard to Margate's levels of unemployment. Opportunities to bring people into work and give them the means for advancement towards other employment would, therefore, be created.

212. Free parking for up to 3 hours at the proposed superstore would give scope for walked linked trips to take place. Moreover, public transport connections are good for linked trips into the town centre with bus services every few minutes along the seafront and bus stops some 200 metres from the store entrance. Access to the proposed superstore by public transport, both bus and rail, would be good, with around three rail services to London every hour and three to Ramsgate. It would also be good for cyclists, using existing traffic free⁶⁹ and on-road cycle routes. A Travel Plan, aimed at encouraging alternative forms of staff transport to the private car has been drawn up⁷⁰ and its implementation would be covered by condition.
213. The point was made that the proposals would involve the loss of a general parking facility, of value to tourists. However, the parking decks have been closed to public use for some time and are unlikely to reopen [46]. It was also argued that the proposed car parking would be restricted to the store's customers, and that the 3 hour parking limit would be too short a time to shop in the superstore and make linked trips [92]. However, it is necessary to strike a balance between the limits on the site's capacity for parking space, the commercial needs of the store operator and the Arlington House residents, and the wider uses which could be accommodated. I saw no particular shortage of parking in Margate, including multi-storey facilities very close to the town centre. This town centre facility accords with the Portas Review's recommendations on the provision of parking for the high street.
214. It was suggested that the existing retail facilities at the appeal site had been deliberately left to deteriorate and should be renovated and reopened. However, I must assess the planning merits of the proposals before me, rather than compare the proposed development with a possible alternative. Moreover, there is no evidence to suggest that refusing planning permission for the proposals would lead to restoration of the properties. In any event, the proposed commercial facilities on Marine Terrace and All Saints Avenue would have a good chance of prospering with the footfall generated by the store. Arguably, this would be better than the chance of the existing facilities prospering without the store's footfall.

Current Regeneration Initiatives

215. Margate's current regeneration initiatives include involvement as one of the Portas pilot projects aimed at revitalising high streets. Significant progress has already been made in Margate and vacancy rates, based on units identified by Goad, have fallen from 24% in August 2010 to 21% in February 2012 compared

⁶⁸ A15, p.31 para 7.20.5

⁶⁹ Cycle Route 15

⁷⁰ A23

- with the national average recently identified of 13.4%.⁷¹ Moreover, Mary Portas reports that the number of empty shops has gone down from 28 to 15 since the pilot began.⁷²
216. I understand the concern regarding the effect of the proposals on the town centre regeneration efforts, particularly the way a new supermarket can dominate a locality, drawing footfall away from town centres, the effects of loss of parking on town centre activity, and the demolition of currently vacant commercial units facing the seafront.
217. In this case, it is important to remember that an enormous amount of convenience expenditure is flowing out of Margate to be spent mostly in the large superstores around Westwood Cross. Providing a competitor store in Margate, with the ability to stock the full range of goods for which residents currently leave Margate, would do much to claw back this expenditure to the benefit of the town. The key is to take advantage of linked trips and the site is well positioned to generate possibilities in this area.
218. Although the appeal site is technically out-of-centre, the seafront commercial area up to the appeal site is covered by both the Goad plan for the town centre and the RNAS health check. Moreover, including the seafront units in the town centre was considered in the Preferred Options Core Strategy document. Were this to occur, the site would be at least edge-of-centre and possibly in-centre.
219. Moreover, the site would act as an anchor attracting trade at the western end of the route along the seafront and into the High Street, with footfall drawn by the corresponding anchor of the Old Town and Turner Gallery at the far end of the route. This could prove to be a positive benefit for the High Street, especially as a very frequent bus service is available along the seafront and into the town centre.
220. Public parking in the decked car park has not been available for some time and there is no indication that this could be re-established. However, free parking would be available for a limited period at the superstore car park, allowing linked trips to the town centre. Also, the Mill Lane multi-storey car park is very well placed to serve the town centre and adequate space was available all the time I used it during the Inquiry. Moreover, the College Walk multi-storey car park, less well connected to the town centre, is available.
221. It is true that the commercial units facing the seafront would be demolished, and that proposals for their replacement with ground floor commercial units facing the seafront and a hotel above are only in outline. However, as with the existing decked car park, there is no indication that they could be reopened, and the likelihood of establishing commercial activity on this part of the seafront is probably better with the store in place than without it. It would be in the developer's commercial interests to see the outline element built and operating as soon as possible after the opening of the store.
222. The Portas Review recommends 'exceptional sign off' for all new out-of-town developments. This is in line with current Government policy which requires

⁷¹ PR1, Appendix 4 p.1

⁷² L1

strict justification for such proposals in terms of sequential and impact testing, as well as accessibility, flexibility and sustainability, to avoid harmful impact on the vitality and viability of town centres. These tests have been met and, in my view, exceptional circumstances warrant the grant of planning permission in this case.

Conclusion

223. I find that the proposals satisfy the sequential test set out in the NPPF and would be unlikely to have significant adverse impact on investment, or on the vitality and viability of Margate town centre. Moreover, they satisfy the criteria of LP Policy TC1 for new retail development outside the core commercial centre of Margate with regard to sequential location, appropriate scale, impact on the vitality and viability of existing centres, and accessibility of location. Overall, the proposals are acceptable with regard to the vitality and viability of the town centre and other retail considerations.

The Character and Appearance of the Area [164-171]

Design [47-50, 97-99, 143, 172-175, 177-182]

224. English Heritage (EH) have recommended against the listing of the Arlington Square complex.⁷³ In their report, they praise certain aspects of the complex and note that various claims have been made for Arlington's formal innovation as a 'park and shop' development. However, they state that it should be seen as a permutation of the type of mixed-use development which was widely explored in this period. Moreover, they note that the fact that it was so little covered in the contemporary architectural press suggests that it was not seen as exceptional at the time and was unlikely to have influenced other developments.

225. I agree that the Arlington complex's interest does not depend on the expression of an innovative idea. Nor does it depend on the integrity of the overall composition of tower, shopping centre and car park, despite the clever layout of the shops and the elegantly designed downward tapering columns of the car park on which EH remark. It does not earn its living as a good example of a 1960s tower and podium development.

226. Rather, the car park, originally proposed as a simple surface car park and therefore not intended as a balanced part of an overall composition, appears today as a bleak desert of concrete. It does nothing to enliven All Saints Avenue, and the vehicle entrance ramps collide with the entrance hall to Arlington House in a visually and functionally uncomfortable way. Its relationship to the Dreamland site is unsatisfactory in the way it confronts the listed Menagerie Enclosure and in the view it offered of a sea of cars on the upper deck when in use. Further, as EH point out, the flat roofs above shops are entirely unutilised, and the public open space limited just to the internal piazza.

227. EH state that the tower block is the most architecturally successful component of the scheme. However, they comment that overall it does not have the architectural creativity in its design, planning, or setting to mark it out as of national architectural significance.

⁷³ A3

228. Again, I agree that the tower, with the wave form profile to its long elevations and its internal balconies, is the most successful component. EH notes that the overwhelming dominance of the Arlington tower is a negative factor in this location but adds that the original bright white exterior finish of the tower makes a significant difference to the way in which the aesthetics of the building are judged.
229. The tower was intended to float, visually, above the horizontal development at its base, as can be seen from the setback and change of material at the lowest residential level. Early publicity material depicting it from a distance conveys this impression. However, long distance views are now mostly obscured and any separation of the tower from its base is now occluded in closer views. Moreover, the termination of the tower at roof level was not resolved in any formal architectural way in the original design. Its progression simply stops, with a visually uncomfortable plant room perched on the roof. Bristling with telecoms masts, the termination of the tower is now less than satisfactory.
230. I note the comments of the Twentieth Century Society [172-175], Louise Oldfield's witnesses [97-99] and others. However, I agree with EH that the complex does not merit listing, falling short in many areas. The analogy with the demolition of Art Nouveau buildings is not helpful, since the interest and consequent heritage value of all buildings, even those built at the turn of the 19th century, must be weighed. Sufficient time has passed for us to be able to judge the heritage value of 1960s buildings. Many have been assessed positively but, in my view, the Arlington complex is not exceptional and cannot be regarded as a heritage asset.
231. The proposals would significantly improve the tower in planning terms, restoring its bright external appearance in a way which, although requiring periodic maintenance, would help slow down erosion of the concrete panels. Having seen sample replacement windows in situ, I am satisfied that the final design would preserve the distinctive horizontal layering whilst bringing substantial practical benefits. The works to the roof would screen the untidy array of masts and terminate the building in an architecturally acceptable way. Also, the proposed double height glazed entrance space would provide a visually distinct and satisfactory base to the tower at street level, expressing the tower's structure, providing public forecourt space, and enlivening All Saints Avenue.
232. The entrance atrium to the superstore would also enliven All Saints Avenue and reinforce the frontage line of the street. The remainder of the building, although of some bulk, would give a neutral appearance forming a relatively unassertive background and highlighting the activity associated with the atrium and the street. Nor, as a form, would it be alien to the area, being related in broad visual terms to the horizontal bulk of the railway embankment and the barn like buildings on the northern part of the Dreamland site. Historically, it could also be associated with the bulky railway buildings once on both the Dreamland and the appeal sites.
233. The possibility exists of shadows being cast by the store building onto the Dreamland site with the sun low in the west [96]. However, this would be in the late afternoon or evening with light already beginning to fade. Moreover, the Dreamland site is low lying relative to the surrounding ground, which climbs towards the railway station, and there are substantial buildings to the west

- including a three storey hotel and the four storey Buenos Ayres terrace. Because of obstructions, it is not clear how much direct sunlight would fall on the store building and cause shadowing.
234. Turning to the hotel and associated commercial units, the outline element of the proposals, access and landscaping are matters submitted for detailed approval. Appearance, layout and scale are reserved for later determination. The outline element, in its illustrative aspects, follows sound urban design principles, providing continuity of street frontage, rising in height from a scale subservient to the Dreamland Cinema, to turn the corner from Marine Terrace into All Saints Avenue at a height balanced by that of the superstore beyond the tower. The ground floor commercial units would bring interest and activity to the street and encourage superstore shoppers onto Marine Terrace.
235. Regarding the matters submitted for detailed approval, access is acceptable as is landscaping, both in terms of the final scheme and the interim proposals which would be in place prior to construction of the outline element. Also appropriate is the screening proposed to the northern boundary of the site, which would be moved to within a perimeter landscaped zone after provision of parking for Arlington House residents. This would be required by condition and would prevent exposure to view of the outline element of the site before development.
236. I am satisfied that the hybrid form of the application is appropriate. No operator has yet been identified for the hotel and an operator is unlikely to be attracted until detailed proposals for the store are implemented and economic regeneration associated with the locality is in prospect. If the Council had requested detailed proposals it would almost certainly have been necessary to alter them once the operator was secured [49]. Moreover, to insist that the hotel and commercial units were built out alongside the store and tower improvements might have discouraged a developer altogether [50].
237. Various alternatives to, or modifications of, the proposals were suggested by objectors, including using the present decked car park for art events and installations, and the use of a green roof to the store. However, I must consider the planning merits of the proposals before me.
238. Paragraph 64 of the NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. The proposals are not of poor design and they improve the character and quality of the area and the way it functions. They also satisfy the requirements of LP Policy D1 (Design Principles), D2 (Landscaping), T1 (Tourist Facilities) and RSS Policy TSR5 (Tourist Accommodation).

Heritage [51-60, 96, 183-185]

239. A summary of the listed buildings and conservation areas associated with the development proposals is set out above [13-15]. The appeal site borders but does not lie inside a conservation area. Moreover, no listed buildings would be

physically changed by the development,⁷⁴ although their settings might be affected.

240. The setting of a listed building is defined in Annex 2 of the NPPF as the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral. In turn, significance is defined as the value of a heritage asset because of its heritage interest.

Scenic Railway (Grade II*)

241. The reasons for designation of the Scenic Railway, which may be taken as indicative of its interest, are:

- Rarity – the oldest surviving roller coaster in Britain and the second oldest in Europe.
- Design – scenic railways are amongst the earlier types of roller coaster design and it is an internationally important surviving example of this technology.
- Townscape value – an important and evocative aspect of the seaside heritage of Margate, one of the earliest English seaside resorts, and of Dreamland, its principal amusement park.
- Group value – with other listed buildings at Dreamland.

242. There are unlikely to be any effects on the rarity, design, and group value of the asset arising from changes in its setting involving the proposals. Having regard to townscape value, setting covers the surroundings, both outside and within the Dreamland site, from which the asset could be experienced, visually or in any other way.

243. The existing setting outside the Dreamland site offers few opportunities to experience the heritage asset visually. It is unlikely that the asset could be easily seen from the railway station given the low level of the Dreamland site and the intervening development [153]. The major change would be caused by views lost from the decked car park. Glimpses from flats on some of the lower floors of Arlington House might also be affected by the presence of the superstore. The backdrop to the asset would also change seen from the north and the east, and from the railway to the south. Any losses that these changes might imply must be balanced against the significant gains arising from the absence of exposed car parking on the upper deck and the absence of extensive areas of concrete.

244. For these reasons, to the extent that the changes are relevant to visual townscape considerations, I find no overall harm. In the wider sense of townscape value, the proposals would not affect the viability of restoring the asset's place in the seaside cultural townscape of Margate, involving its presence as an attraction to visitors, a magnet for flows of people, and the accompanying

⁷⁴ The Remains of the Menagerie Enclosures would be protected from disturbance by a condition requiring submission and approval (and enactment) of a method statement before any development, including works of demolition take place.

sense of anticipation and excitement with fairground music, voices, shouts and screams.

245. From within the Dreamland site, a positive contribution of the setting to the asset – the rides, stalls, associated features, and general ambience of the amusement park – was lost when it was closed and the fixtures removed. The proposals would not make this loss worse or harm the prospects of this positive contribution being re-established.
246. In the narrower sense of townscape value, views from within the restored Dreamland site would mostly be directed inwards towards fixtures, landscape elements and people. The decked car park, which makes a negative contribution to the setting, would be replaced, in the suggested arrangement accompanying the ASoCG,⁷⁵ by a higher but largely neutral backdrop, with some background reference to the wave profile of the tower as well as to the rollercoaster ride. Although higher than the decked car park, it would not be overbearing. As already noted, it would not be alien to surroundings which include the railway embankment and the large buildings to the north of the Dreamland site [232].
247. With regard to the contribution to townscape value of views from the asset, it should be remembered that the title Scenic Railway probably refers to the use of painted diorama scenes to enliven the ride.⁷⁶ Although there is no evidence to suggest that diorama scenes were ever used here, neither is there any to suggest that that the title was intended to refer to scenic aspects of the railway's surroundings.
248. Scenic Railway riders would probably mostly be concerned with the thrill and kinetic experience of the event, rather than the appreciation of surrounding views. However, to the extent that they might be appreciated, views would generally be directed northwards along the major axis of the structure, towards the sea, or southwards towards the railway embankment. Views east and west would mostly require the head to be turned, or be confined to peripheral vision.
249. Overall, I find that the proposals would have a neutral effect on the setting of the Scenic Railway, which would therefore be preserved.

Dreamland Cinema (Grade II*)

250. The Dreamland Cinema was designated for the following reasons:
- Architectural – An early example of the influence of German cinema design, sporting both Expressionist and Art Deco influences. The tower was influential on the design of Odeon cinemas.
 - Decorative – Internal embellishment.
 - Seaside context – A very important part of Margate, one of Britain's oldest and most important seaside resorts. The most important 20th century addition to the town, it brought a very successful Art Deco note to the Georgian and Victorian seafront.

⁷⁵ ID8

⁷⁶ LD2, Appendix 10: English Heritage Freedom of Information Response, Scenic Railway at Dreamland, Margate – Background Research First Draft, Appendix 3 – Description of Scenic Railway

- Group value – With other listed buildings at Dreamland, a very significant entertainment complex rivalled only by Blackpool Pleasure Beach.
251. The architectural interest of the Cinema, and the interest of its seaside context, might be affected by changes to its setting brought about by the proposals. The run down nature of the single storey Arlington Square commercial units west of the Cinema represent, at present, a negative contribution to the significance of the asset.
252. Their replacement with the hotel and commercial units proposed, subject to the use of satisfactory design details and appropriate materials, would be a positive contribution to the asset's setting, bringing continuity of frontage and activity appropriate to the seaside context. Also, the build up of scale, indicated in the illustrative drawings, from subservience to the cinema to a scale more appropriate to Marine Terrace would represent a positive contribution. Moreover, the interim arrangements which would be in place between demolition of Arlington Square and the construction of the hotel and commercial units would be an acceptable temporary arrangement within the asset's setting.
253. No other aspects of the proposals would have a material impact on the Cinema's setting. Overall, the setting of the Dreamland Cinema would be preserved by the proposals.

Remains of Menagerie Enclosures (Grade II)

254. The reasons for designation were:
- Rarity – Structures related to pleasure grounds are very rare and early animal cages exceptionally so.
 - Seaside context – Margate is a very significant seaside resort and, after the seaside, Dreamland was its principal attraction. This survival from the complex's early years is an important reminder of the resort's history and the evolution of mass leisure.
 - Group value – with the other listed buildings on the Dreamland site.
255. The interest stemming from the asset's seaside context and its group value is approached through visual appreciation. The decked car park makes a negative contribution to the setting within which the asset is seen. Under the proposals, the situation would change very little in the immediate vicinity of the asset, the car park being replaced by customer car parking at ground level with the store's service yard above. The store's sales enclosure would be further north and, as with its effect on the setting of the Scenic Railway, its effect on the setting of the Menagerie Enclosures would be neutral. Their setting would therefore be preserved.

Other Listed Buildings [15]

256. The Cinque Ports Public House, now under a different name, is listed at Grade II for Group Value with the rest of Marine Terrace. It is situated immediately to the east of the Dreamland Cinema and separated from it by a narrow road. In the same way that the outline element of the proposals on Marine Terrace would make a positive contribution to the setting of the Dreamland Cinema, so they would to the setting of this asset, in particular by reinforcing and bringing activity to the frontage.

257. The remaining listed buildings in the area are some distance from the appeal site. There is little direct visual connection between the assets and the appeal site. By enlivening the seafront and helping regenerate the area the proposals would make either a neutral or a positive contribution to their settings and thereby preserve them.

Conservation Areas

258. The appeal site lies some distance from the Margate Conservation Area, whose border is located to the east of Marine Terrace. The proposals would not affect the character or appearance of this Conservation Area. However, the Margate Seafront Conservation Area borders the site along All Saints Avenue to the west, Marine Terrace to the north, and partly to the east so as to include the Dreamland Cinema but not the rest of the Dreamland site.

259. The character of the Seafront Conservation Area revolves around the seaside context of Margate, as one of Britain's oldest and most important seaside resorts. The seaside context is embedded in the reasons for listing the buildings examined above. As explained, the proposals would bring continuity of frontage, appropriate scale, and activity to the Marine Terrace frontage [252]. It would also reinforce and bring activity to the frontage of All Saints Avenue [232]. There would be no significant change to the eastern side where a short access road divides the site from the flank of the Dreamland Cinema.

260. Overall, in my view, the proposals would enhance the character and appearance of the Seafront Conservation Area.

Conclusions

261. The proposals accord with RSS Policy BE6 (Historic Environment). No harm would arise to the heritage assets identified. Therefore, in accordance with advice in the NPPF, there is no need to make an assessment against the public benefits of the proposals.

262. Overall, the proposals are acceptable with regard to their effect on the character and appearance of the area.

Traffic Conditions [39-46, 74, 78, 109-111, 144, 146]

Traffic Volumes

263. The Highway Authority do not object to the proposals, nor do the Council on transport or any other grounds. The Transport Assessment⁷⁷ took into account the effects of the whole of the scheme proposals, including the outline element comprising the hotel, the commercial units, and the new dwellings on All Saints Avenue. Its conclusions did not take into account the traffic effects of the potential redevelopment of the Dreamland site, although a sensitivity test involving 200 dwellings on the Dreamland site using the access road extended into the Dreamland site, requested by the Highway Authority, was incorporated in the modelling.⁷⁸ Nor did it take into account the effects of any future public realm works to the seafront. This is because neither of these items is part of, or a consequence of, the current proposals.

⁷⁷ A21 and A22

⁷⁸ A21, para 8.2.3

264. The peak traffic period was found to be between 17:00 and 18:00 hours on Fridays. The overall analysis has been based on these worst scenario conditions together with an adverse margin for error of 12.5% [44]. The trip generation modelling has been treated robustly.⁷⁹ The resulting junction capacity analyses for a design year of 2015 show that all junctions within the study area work well within capacity, both with and without the appeal site development traffic (and also taking into account the Dreamland sensitivity test traffic) with the exception of the Clock Tower roundabout. This junction would operate over capacity on certain arms with or without the development of the appeal site and with or without the addition of the Dreamland traffic.
265. In addition, the proposed signal controlled junction of the site access road with All Saints Avenue would operate satisfactorily in relation to the All Saints Industrial Estate access road to the south. Moreover, the time lag involved in the operation of the automatic barrier to the parking area serving the new dwellings on All Saints Avenue has been taken into account in the modelling.⁸⁰
266. Nevertheless, bearing in mind the increase in traffic on All Saints Avenue, off which access to the development would be provided, improvements have been proposed and agreed to the layout of the Station Green roundabout, which links All Saints Avenue with Marine Terrace, the seafront road. Improvements were also proposed to the Clock Tower roundabout, where the development might increase flows on certain arms by some 10% or 15% at peak times. However, the Highway Authority decided not to require improvements to this junction [42].
267. Additional traffic, beyond that analysed in the Transport Assessment, may arise from the high volume of visitors to the Turner Gallery. However, no evidence was presented regarding the impact the additional visitor numbers might make on traffic conditions. It is probable that any increase would be absorbed into the figure used in the modelling for growth in background traffic which failed to materialise [40].

Superstore Parking

268. Turning to parking issues, the provision of 334 spaces made for the superstore appears to be comfortably within policy maxima based on a correct approach to floor area calculations [49].⁸¹ The Appellant prepared a parking accumulation study for the proposed store, which was accepted by the Highway Authority and showed the parking space provision was exceeded between 10:00 and 16:00 on a Friday, and at 11:00 on a Saturday.
269. However, the study did not take account of the effects of linked trips involving parking elsewhere, travel plan measures, improved access for pedestrians and cyclists, and customer discretion to avoid the busiest periods. They should,

⁷⁹ No account has been taken of existing and proposed provision of non-car infrastructure, nor changing store trading patterns towards home delivery, compared to historic TRICS data. Moreover, pass-by trips, where the vehicle is already on the road network for other reasons, have been discounted to a lesser extent than TRICS Research Report 95/2 findings indicate; a high figure has been taken for the assumed growth in base traffic; no allowance has been made for the reduction in traffic through linked trips; nor for reductions arising from the Travel Plan.

⁸⁰ Mr Hamshaw in XX

⁸¹ PH1, pp 15-17 paras 5.2.1-5.2.7

therefore, be regarded as a worst case approach. Parking restrictions are in force in surrounding streets and would be retained and extended, limiting overspill parking. On balance, therefore, over provision would be avoided without the risk of a significant consequential effect on highway safety.

Residents Parking

270. The reduction in parking spaces, below the number presently available to residents of Arlington House, was viewed with concern. A total of 64 spaces would be allocated, through parking permits, solely for residents of the 142 flats.⁸² This is based on a parking accumulation study of existing usage, which gives maxima for accumulated parking from late evening to early morning equating to a ratio of 0.47 spaces per occupied flat. With all flats occupied, the ratio would indicate 67 parking spaces, 3 above the number proposed. However, the nine spaces allocated to the D1 and A1-A5 units would probably be available for use by residents overnight.
271. The allocation is well within policy maxima. In this central location, well connected by public transport, demand could be expected to be lower than other locations. Walking distances from parking spaces to the rear entrance of Arlington House appear reasonable. Adequate provision has been made for disabled parking and associated access, for all elements of the scheme, as it has for cyclists subject to a condition agreed with the Council requiring the submission and approval of the details of secure cycle parking facilities. It was pointed out that conflict with the landlord's legal obligations could result, but this is not a planning matter.

Other Matters

272. The Arlington Planning Brief notes as an 'opportunity to grasp', the provision of an alternative traffic route to the south of the site adjacent to the railway line.⁸³ It also states that any planning proposal must demonstrate that the road proposal can be provided within the Arlington site and be capable of being extended through the Dreamland site.⁸⁴ Scope for this to occur would be available under the proposals by extending the access road through into the Dreamland site.
273. However, this is unlikely since it would penetrate the wall comprising the Grade II listed Remains of Menagerie Enclosures and Cages. Moreover, the Addendum to the Statement of Common Ground (AsoCG)⁸⁵ notes that the Council no longer consider necessary the proposal to extend the road across the Dreamland site, thereby superseding the requirement set out in the Arlington House Planning Brief. Pedestrian permeability, also an aim of the Brief, would be possible from the car park at ground floor level, further north where the wall ends, subject to the agreement of the Dreamland developers.

Conclusion

274. The proposals satisfy the requirements of paragraph 32 of the NPPF with regard to opportunities for sustainable transport modes; safe and suitable access

⁸² PH1, pp 11-15 paras 5.1.1- 5.1.16

⁸³ A34, p 21

⁸⁴ A34, p 25

⁸⁵ ID8

to the site for all people; and improvements to the transport network that effectively limit the significant impacts of the development. The residual cumulative impacts of the development are not severe. Therefore there are no transport grounds to refuse the proposals.

275. The proposals also satisfy the saved transport policies of the Local Plan. In particular, Policy T3 (Provision of Transport Infrastructure) since necessary modifications to the infrastructure, including improvements to the Station Green roundabout, are included in a s106 unilateral undertaking; Policy TR12 concerning provision for cycling; Policy TR15, which expects the submission of travel plans in support of developments generating significant travel demand; and Policy TR16 which requires satisfactory provision for the parking of vehicles. Overall, the proposals are acceptable with regard to traffic conditions.

Living Conditions

Noise [63-64, 77, 87, 110, 145]

276. The noise reports undertaken by the Appellant's consultant⁸⁶ take into account the following components of noise, assessed against existing background noise levels:

- car park and access road
- service yard
- mechanical services plant
- road traffic
- construction noise

They also include a discussion of the noise generating implications of the possible future development of the Dreamland site. They do not include any components of noise which might come from the hotel and associated development on Marine Terrace. These are likely to be insignificant if properly controlled to meet normal standards. Nor do they analyse the effect of the present proposals on the hotel.

277. Noise measurements were taken at various locations at the Arlington Tower and at Railway Cottages. The results have been interpolated for the All Saints Avenue dwellings, which were constructed after the surveys were carried out, and which are acoustically well insulated.

278. The analysis finds, with regard to car parking, that the predicted noise levels at the nearest critical receptor would be significantly below guideline and existing noise levels. Regarding door slamming, nearest separation distances would be similar to those which exist at present. Parking at the store at night, involving fewer vehicles than during the day, would almost certainly take place near the entrance to the store and away from the residential tower, reducing the risk of disturbance. If necessary, the parking area nearest the tower could be cordoned off at night. In any event, any disturbance would be well within World Health Organisation (WHO) parameters.

279. Noise levels arising from service yard activity at all receptors would be below guideline values for both day and night. Acoustic screening would be installed

⁸⁶ CB3, Appendix SRP1 and SRP2

around the service yard to protect Railway Cottages and noise transmitted over the top of the screening would be too far away from receptors to be of consequence. Conditions would prohibit the use at night of goods trolleys externally, the compactor, and audible reversing warning sounders, and no more than one delivery per hour would be allowed to take place during the night.

280. Mechanical services and combined heat and power plant and equipment would be conditioned to limit noise output to a maximum of 3dBA above pre existing noise levels measured at the nearest noise sensitive properties to the site.⁸⁷ The road noise arising from increased traffic accompanying the proposals is predicted to be either imperceptible or just perceptible. Construction noise would be controlled under the Construction Method Statement which must be approved before any development, including demolition, takes place.
281. Overall, with the mitigation described, the Appellant's expert advice indicates that the noise environment would be acceptable, and I see no reason to disagree. Exposure to noise for Arlington Tower residents would be very similar to that experienced at present, even with the existing windows in place. The proposed new windows would significantly improve noise conditions, even when open for ventilation. The windows proposed would probably help to mitigate noise from the Dreamland development, including music and excited voices of those enjoying the Scenic Railway and other rides.
282. The proposals meet the NPPF requirement, at paragraph 123, that decisions should aim to avoid noise from giving rise to significant adverse impacts on health and quality of life.

Other Effects on Living Conditions [100-101]

283. Photographs and an account of a recent incident of sewage flooding in All Saints Avenue were presented to the Inquiry, together with an early consultation response from Southern Water⁸⁸ [65, 132-139]. Subsequent responses from Southern Water⁸⁹ indicate that they are satisfied with the proposed drainage strategy. The proposals would be conditioned to ensure that the details of the means of foul and surface water disposal are submitted to and agreed in writing by the Local Planning Authority.
284. A flood risk assessment⁹⁰ accompanied the application. Only the north eastern corner of the site, which lies within Tidal Flood Zone 3, is subject to flood risk. It appears to relate to the possibility of wave overtopping and wind blown spray or debris during extreme storms.⁹¹ The risk would be resolved by placing commercial uses on that part of the site and avoiding more vulnerable residential and related uses.
285. Flood risk from the development relates to disposal of surface water and has been discussed above [283]. The Flood Risk Assessment states that the provision of attenuation storage should be considered as part of the detailed

⁸⁷ Any increase in noise below 3dB is normally regarded as imperceptible.

⁸⁸ IP5 and IP6

⁸⁹ A5

⁹⁰ A29

⁹¹ ID8, SoCG, p.15 para 6.43

design. The proposals meet the NPPF requirements regarding flood risk in paragraph 100 and elsewhere.

286. The Air Quality Assessment⁹² accompanying the application shows the overall air quality impacts of the development to be minor. Existing air quality is acceptable within the study area at present and the study demonstrates that this would remain the case with the development in place. The proposals would be conditioned, through the Construction Method Statement, to mitigate the effects of dust created during the demolition and construction process.
287. A desk study report assessing the risks of ground contamination also accompanied the application.⁹³ It concluded that recent and historical use of the site could pose a risk of contamination to soil and groundwater and that this risk overall was low or moderate. Conditions would be attached to a grant of planning permission requiring physical investigation and risk assessment of the site, and subsequent remediation before development proceeded.
288. Concern was expressed about the effects of the store on the living conditions of Arlington House residents with respect to outlook. During the site visit I was able to gain access to several flats on different levels of the tower, and to judge likely effects. In planning law and policy there is generally no right to a view. Whilst the outlook from the lower floor flats on the eastern side would change, views of the superstore would all be oblique and its presence would not become overbearing. The effect on outlook would, therefore, be acceptable.

Conclusions

289. The proposals meet the core planning principles of the NPPF set out in paragraph 17 regarding the amenity of existing and future occupants of land and buildings, together with RSS Policies NRM1 (Sustainable Water Resources and Groundwater Quality), NRM2 (Water Quality), RSS Policy NRM9 (Air Quality), and LP Policy EP5 (Air Quality). Overall, the proposals are acceptable with regard to their effect on living conditions.

Other Material Considerations

290. In pre-Inquiry correspondence, and at the Inquiry, it was suggested that peregrine falcons were nesting on the roof of the tower. However, no evidence of nesting birds was found when the ecology survey⁹⁴ was undertaken in January 2010. Natural England were consulted recently and confirmed that they have no knowledge of peregrines breeding, or occasionally resident, at Arlington House and a search of the Kent Ornithological Society database for the period 2008 to 2012 showed no records of peregrines for Margate.⁹⁵
291. Protection under Schedule 1 of the Wildlife and Countryside Act 1981 means that if peregrines were discovered, criminal proceedings could result unless appropriate arrangements were made. Nevertheless, should planning permission be granted, it would be prudent to attach a condition requiring approval of an

⁹² A32

⁹³ A31

⁹⁴ A26

⁹⁵ ID10, email dated 30.11.12 from Philip Robin

Ecological Mitigation Method Statement which would include measures to minimise impact on nesting birds.

292. Concern was expressed by objectors that insufficient attention had been paid to environmental considerations, including measures to reduce the carbon footprint of the scheme. However, conditions have been framed which would achieve a BREEAM⁹⁶ rating of 'Very Good' or higher, and details of energy efficiency measures would require the Council's approval before first occupation of the store.⁹⁷ These measures would aim to incorporate on-site renewable energy equipment to meet 10% of the expected energy needs of the development from renewable sources. The proposals, therefore, satisfy RS Policy NRM11 (Development Design for Renewable Energy).
293. Complaint was made that the size of the proposed store had expanded considerably since the early consultation stage [107]. The gross internal floor area of the proposed store of 7,567 square metres and the net retail sales area of 4,052 square metres, figures which would be conditioned, are within 1% of those set out in the planning application of 14 December 2010. The Statement of Community Involvement refers to a 50,000 square foot (4,645 square metres) store.⁹⁸ However, it is not clear whether this is meant to be a gross or a net figure.
294. In any event, statutory consultation on the current scheme took place during the application and the appeal processes. I must have regard to the proposals before me and have fully considered the implications of the size of the store and its convenience and comparison goods sales areas.
295. Complaints were also made that changes were continually being made to the proposals. The main changes from the original submission are set out in the introduction to the Planning Drawings brochure.⁹⁹ Some refinement or response to changing circumstances is usual and the changes identified are not substantial. Neither these, nor others to which attention was drawn, such as the final details of the windows to Arlington House depending on the residents' pattern of uptake, would alter the nature of the scheme or prejudice the interests of any party.
296. Furthermore, the approval of details required by suggested conditions, is not unusual and would not undermine key aspects of the development proposals [103]. For instance, submission and approval of drainage details is required, but not drainage strategy with which Southern Water are satisfied [283]. Similarly, landscape details are required, but these should accord with the scheme shown on the drawing already conditioned as one of those which the development must follow.¹⁰⁰ The suggested conditions meet the tests of Circular 11/95 and there is no reason to suppose that the Council are incapable of enforcing them [102].
297. Finally, it was claimed that certain drawings failed to properly represent the true impact of the superstore on the locality [93-95]. Whilst there are some errors in the computer generated imagery which show impressions of the replacement windows to Arlington House, the approved scheme drawings the development is conditioned to follow, appear correct. All forms of imagery,

⁹⁶ Building Research Establishment Environmental Assessment Method

⁹⁷ Annex A, Conditions 34 and 35

⁹⁸ A18, pp. 1 and 2

⁹⁹ MT4

¹⁰⁰ Annex A, Condition 36 and Condition 6

including perspectives and representations scaled against a picture plane, can mislead and should be treated simply as a starting point. They must be assessed in the context of professional judgment and experience.

Conclusion on EIA Matters

298. Whilst hearing the evidence I have had regard to whether the proposals represent development requiring EIA. The proposals do not fall into the category of Schedule 1 development as described in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999. However, they do fall into the category of Schedule 2 development under the description of urban development projects (10(b)) of greater than 0.5 hectares area of development, and lie near a sensitive area comprising the Thanet Coast and Sandwich Bay Ramsar, SPA, SAC and SSSI.
299. I have considered the criteria set out in Schedule 3 of the EIA Regulations for screening Schedule 2 development in the context of the evidence presented at the Inquiry, including that concerning the matters to which Louise Oldfield, drew attention [6]. The development is located on a previously developed site in a built up area of Margate and comprises a similar type of residential and commercial development to that which already exists on the site, with the addition of a hotel and with some increase in scale and intensity of use. The evidence suggests that it would not harm the sensitive area nearby.
300. There would be temporary impacts during demolition and construction, and permanent impacts during operation, which would be mitigated through conditions attached to a grant of planning permission and s106 obligations. In my view, the residual impacts are unlikely to have significant effects on the environment and, therefore EIA is not required. I agree with the screening direction (SD) made in July 2012.¹⁰¹

Conditions and Obligations

Conditions

301. Conditions which might apply to a grant of planning permission for the proposals are annexed to this report [188]. They are based on the conditions agreed between the Appellant and the Council, modified after discussion at the Inquiry. The conditions are necessary, in my view, for the following reasons. Conditions 1 to 4 to deal with approval of reserved matters in the outline element of the application. The approval period of 4 years is appropriate having regard to the likely time scale for obtaining the involvement of an operator for the hotel. Condition 5 provides the normal period of 3 years for the validity of the full permission.
302. Condition 6 identifies the approved plans which must be followed, unless set out otherwise in the conditions or decision. This is for the avoidance of doubt and in the interests of proper planning. Condition 7 requires approval of the design of the store's eastern elevation and is necessary to protect visual amenity in accordance with the parameters discussed at the Inquiry. Condition 8, dealing with ventilation from food cooking establishments, is necessary to protect the living conditions of local residents. Condition 9 to protect archaeological remains. Conditions 10 and 11 to identify and effectively mitigate existing site

¹⁰¹ ID1

- contamination. Condition 12 to prevent new contamination from the development or from the demolition and construction process.
303. Conditions 13 to 15 are necessary in the interests of effective drainage and water supply. Condition 16 to mitigate flood risk. Condition 17 and 18 in the interests of avoiding traffic congestion. Conditions 19 and 20 to protect wild birds. Condition 21 and 22 in the interests of maintaining street activity. Condition 23 in the interests of highway safety. Condition 24 to encourage sustainable means of travel. Condition 25 to allow for the possibility, in future, of establishing permeable access to the adjacent site.
304. Condition 26, regarding the Construction Method Statement, is necessary in the interests of health and safety and to protect the living conditions of local residents. Condition 27 for the convenience of residents and customers and to help avoid traffic congestion. Condition 28, interim landscape arrangements, is necessary for the same reason and to protect visual amenity. Condition 29, secure cycle parking facilities, is necessary in the interests of sustainability.
305. Condition 30, which defines permissible floor areas, is necessary to protect the vitality and viability of the town centre. Condition 31 and 32, approval of materials and construction details, is necessary in the interests of visual amenity. Condition 33 in the interests of security. Conditions 34 and 35 for environmental reasons. Conditions 36 to 38 deal with landscaping and are necessary for functional and visual reasons, as is Condition 39 which deals with external lighting.
306. Conditions 40 to 44 concern the noise environment and are necessary to protect the living conditions of local residents. Condition 45 is necessary to protect the listed wall on the Dreamland site from disturbance during the demolition and construction process.

S106 Unilateral Undertaking

307. The Appellant's Unilateral Undertaking¹⁰² [189] is necessary to make the application acceptable in planning terms. The contribution towards the costs of monitoring the Travel Plan is justified since the Plan is required in the interests of sustainability and the Council's costs of monitoring it extend beyond their normal duties. The Highway Improvement Works, which apply to the Station Green roundabout and All Saints Avenue, are necessary to mitigate the effects of the changes in traffic flow arising from the proposed development. The Public Realm Improvement Works, to the Marine Terrace and All Saints Avenue footways bordering the appeal site, are necessary as a consequence of the changes and disruption arising from the proposed development.
308. The Car Management Plan is necessary to make store customers aware of the possibilities and consequences of use of the car park, and to promote linked trips to Margate town centre. Its implementation following occupation of the store is necessary to ensure that it achieves its aims. The Arlington House Works to the cladding, roof canopy, maintenance cradle, entrance area and so on, are part of the application proposals. It would be necessary to complete these Works prior to the occupation of the store to avoid continued disturbance to both the occupants of Arlington House and the store customers. With regard to the

¹⁰² A12

Window Replacement Works, also part of the application proposals, the obligation to replace as many windows as possible, taking measures to avoid a patchwork appearance, is necessary to achieve an acceptable appearance.

309. The obligation as a whole is directly related to the development since its requirements stand in direct mitigation of its consequences. Having examined the content of the obligation's requirements I find that they are fairly and reasonably related in scale and kind to the development. The only financial contribution is that towards the Council's costs of monitoring the Travel Plan. They meet the tests of CIL Regulation 122 (the Community Infrastructure Levy Regulations 2010).

Overall Conclusions

310. The proposals satisfy the requirements of development plan policy overall, subject to mitigation by the annexed conditions and the s106 Unilateral Undertaking. In particular, they meet the requirements of RSS Policies BE1 (Management for an Urban Renaissance), CC1 (Sustainable Development), C4 (Sustainable Design and Construction), and CC6 (Sustainable Communities and Character of Environment).
311. They also meet the requirements of the National Planning Policy Framework, and would perform the economic, social and environmental roles of sustainable development towards which it aims. In my opinion the proposals would be acceptable.

RECOMMENDATION

312. I recommend that the appeal be allowed and planning permission granted subject to the conditions set out in Annex A.

Alan Novitzky

Inspector

APPEARANCES

FOR THE APPELLANT

Mr Christopher Katkowski QC	Instructed by Osborne Clarke, Solicitors
He called:	
Mark Taylor BA, Dip Arch, Dip Proj Man, RIBA	3D Reid – <i>Architecture</i>
Professor Robert Tavernor BA, Dip Arch (Dist), PhD, RIBA	The Tavernor Consultancy – <i>Heritage</i>
Philip Hamshaw MSc, BA, MCIT, MILT, MCIHT	SKM Colin Buchanan – <i>Transportation</i>
Clive Bentley BSc(Hons), BSc(Hons), Dip Acc, MIA, MCIEH, MIES	The Sharps Redmore Partnership – <i>Noise</i>
Philip Robin BA Mphil MRTPI	Jones Lang Lasalle – <i>Planning and Retail</i>

FOR THE LOCAL PLANNING AUTHORITY

Mr Mark Edwards of Counsel	Instructed by the Council's Legal Services
He called:	
Louise Dandy AA PG Dip Bdg Con, HND Matls Con, HND Hist Design	Conservation Appraisal Officer
Simon Thomas BA(Hons T&CP), BTP, MRTPI	Planning Manager

FOR THE FIRST RULE 6(6) PARTY – LOUISE OLDFIELD REPRESENTING FOAM

Mr Peter Stookes of Counsel	Instructed by Louise Oldfield
He called:	
Warren Phillips	Local Businessperson
Louise Oldfield	Local Businessperson
Liam Nabb BA(Hons)	Local Businessperson and Designer
Sam Causer MA(Cantab), DipArch, RIBA	Local Architect

FOR THE SECOND RULE 6(6) PARTY – JOHN MOSS REPRESENTING THE
ARLINGTON HOUSE RESIDENTS ASSOCIATION

Mr John Moss

He called:

John Moss	Resident of Arlington House
Councillor Michael Jarvis	Kent County Councillor, Margate and Cliftonville Ward

INTERESTED PERSONS:

Kate Topley	Local Resident in support
Councillor Iris Johnston	District Councillor, Margate Ward, in opposition
Councillor John Watkins	District Councillor, in opposition
Councillor Michael Jarvis	Kent County Councillor, Margate and Cliftonville, in opposition
Gavin Kapuscinski	Local Resident in opposition
Harry Kirschner	Local Resident in opposition
Simon Pengelly	Local Resident in opposition
Tim Spurrier	Local Resident in opposition
Dan Chilcott	Local Resident in opposition
Chris Johnson	Local Resident in opposition
Samantha Grant	Local Resident in opposition

DOCUMENTS SUBMITTED BY THE APPELLANT

During the Inquiry

A1	Brief Opening Submissions
A2	Bundle of correspondence re: compensations claims of UK Mobility Services
A3	EH notice, dated 26 March 2012, of the Minister's decision re: possible listing of Arlington House
A4	Draft of Deed of Unilateral Undertaking
A5	Bundle of correspondence from Southern Water re: drainage strategy
A6	Dreamland Trust, Design brochure, July 2011
A7	Plan of Margate Seafront Conservation Area
A8	Plan of Margate Conservation Area
A9	Proposed Conditions considered at the Inquiry
A10	Reduced copy Dwg 080417-A-P-Si-D120 B
A11	Further Draft of Deed of Unilateral Undertaking
A12	Certified copy of Completed Deed of Unilateral Undertaking
A13	Closing Submissions

With the Application

- A15 Planning Statement, December 2010
- A16 Design and Access Statement, December 2010
- A17 Design and Access Statement: Landscape Statement, undated
- A18 Statement of Community Involvement, December 2010
- A19 Retail assessment, December 2010
- A20 Retail assessment – Supplementary Information, March 2011
- A21 Transport Assessment – Vol 1, December 2010
- A22 Transport Assessment – Vol 2: Appendices, December 2010
- A23 Travel Plan, December 2010
- A24 Heritage Statement, 12 January 2011
- A25 Archaeological Desk-Based Assessment, January 2010
- A26 Ecology and Phase 1 Habitat Survey, February 2010
- A27 Noise assessment, 11 February 2010
- A28 Noise Assessment, 6 August 2010
- A29 Flood Risk assessment, April 2010
- A30 Preliminary Drainage Strategy, 27 April 2011
- A31 Contamination Phase 1 Desk Study Report, February 2010
- A32 Air Quality Assessment, April 2011
- A33 Proposed Lighting Design, December 2010
- A34 Arlington Planning Brief, April 2008
- A35 Dreamland Planning Brief, February 2008

Proofs

- MT1 Mark Taylor's Proof of Evidence
- MT2 Summary Proof
- MT3 Appendices
- MT4 Planning Drawings

- RTA Professor Tavernor's Proof of Evidence
- RTB Supplementary Proof
- RT1 Appendix
- RT2 Appendix
- RT3 Appendix

- PH1 Philip Hamshaw's Proof of Evidence
- PH2 Summary Proof
- PH3 Technical Notes

- CB1 Clive Bentley's Proof of Evidence
- CB2 Summary Proof
- CB3 Appendices

- PR1 Philip Robin's Proof of Evidence and Appendices
- PR2 Summary
- PR3 Supplementary Comments

DOCUMENTS SUBMITTED BY THE COUNCIL

During the Inquiry

- C1 Layout, addresses and list entries of Listed Buildings in the vicinity of the appeal site
- C2 Closing Submissions

Proofs

- LD1 Louise Dandy's Proof of Evidence
- LD2 Appendices
- ST1 Simon Thomas's Proof of Evidence
- ST2 Appendices TDCST1 - TDCST4

DOCUMENTS SUBMITTED BY LOUISE OLDFIELD, RULE 6(6) PARTY

During the Inquiry

- L1 Letter dated 31 October 2012, Mary Portas to the Rt Hon Eric Pickles MP
- L2 2 no computer generated images of the site and proposals
- L3 Email trail on lease enforcement
- L4 Further email trail on lease enforcement
- L5 Letter dated 16 August 2012 , Robin Haves to Liam Nabb
- L6 FOAM constitution and minutes of committee meeting
- L7 Closing Submissions

Proofs

- WP1 Warren Phillips' Proof of Evidence
- LO1 Louise Oldfield's Proof of Evidence
- LO2 Appendices to Main Proof
- LO3 Supplementary Proof
- LO4 Appendices to Supplementary Proof
- LN1 Liam Nabb's Proof of Evidence
- LN2 Appendices
- SC1 Sam Causer's Proof of Evidence
- SC2 Appendices

DOCUMENTS SUBMITTED BY JOHN MOSS, RULE 6(6) PARTY

During the Inquiry

- J1 AHRA Statement of Case dated 29 December 2011
- J2 Aerial view of site and surrounds
- J3 Closing Submissions

Proofs

- JM1 John Moss's Proof of Evidence
- JM2 Appendices to Main Proof
- JM3 John Moss's Supplementary Proof of Evidence
- JM4 Appendices to Supplementary Proof

DOCUMENTS SUBMITTED BY INTERESTED PERSONS

- IP1 Letter from Rebecca Woodland
- IP2 Gavin Kapuscinski's request to speak
- IP3 Gavin Kapuscinski's speaking notes
- IP4 Harry Kirschner's speaking notes
- IP5 Letter dated 9 March 2010 from Southern Water put in by Mr Kirschner
- IP6 3 no photographs of flooding in All Saints Avenue put in by Mr Kirschner
- IP7 Simon Pengelly's speaking notes
- IP8 Petitions put in by Mr Chilcott

INSPECTOR'S DOCUMENTS

- ID1 Screening Direction 18 July 2012
- ID2 Application to Adjourn Appeal, Submissions on Behalf of Louise Oldfield
- ID3 Pre-Application protocol letter dated 3 August 2012
- ID4 Statement of Facts and Grounds dated 8 October 2012, accompanying judicial review claim form
- ID5 Appellant's Submission in reply to Application to Adjourn
- ID6 Summary of Grounds for Contesting the Claim, dated 31 October 2012
- ID7 Proposed Defendant's Summary Grounds of Resistance Permission Stage, dated 30 October 2012
- ID8 Signed Statement of Common Ground and Addendum to Statement of Common Ground
- ID9 Electronic copy of conditions (Doc A9 with manuscript amendments incorporated) and Appellant's covering email discussing Conditions 41, 42, and the need for a condition on nesting birds
- ID10 Post Inquiry email correspondence on Conditions 41 and 42 and nesting birds.
- ID11 Appeal recovery letter dated 12 November 2012

Annex A: Schedule of Suggested Conditions

1. Approval of the details of the layout, scale and appearance of any buildings to be erected on land identified as the 'outline application area' on drawing 080417-A-P-Si-D101 A (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development of that part of the site, apart from demolition, is commenced.
2. Plans and particulars of the reserved matters referred to in Condition 1 above, shall be submitted in writing to the Local Planning Authority and shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the Local Planning Authority before the expiration of 4 years from the date of this permission.
4. The development hereby permitted on land identified as the 'outline application area' on drawing 080417-A-P-Si-D101 A shall be begun before the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.
5. The development hereby permitted, identified as the 'full application area' on drawing 080417-A-P-Si-D101 A shall be begun before the expiration of three years from the date of this permission.
6. The proposed development shall be carried out in accordance with the following approved drawings:
080417-A-P-Si-D101A, 080417-A-P-Si-00-D102A, 080417-A-P-Si-D103A, 080417-A-P-Si-D104J, 080417-A-P-Si-D128A 080417-A-P-Si-D105C, 080417-A-P-Si-D106B, 080417-A-X-Si-D107C, 080417-A-P-Si-D108C, 080417-A-P-Si-D109A, 080417-A-P-Si-D110A, 080417-A-P-Si-D111D, 080417-A-P-Si-D112C, 080417-A-P-Si-D113, 080417-A-P-Si-D114, 080417-A-P-Si-D115, 080417-A-P-Si-D116, 080417-A-P-Si-D117 , 080417-A-P-01-D118A, 080417-A-P-Si-D120B, 080417-A-P-Si-D121A, 080417-A-P-Si-D122B, 080417-A-P-Si-D124A, 080417-A-P-Si-D125, 080417-A-P-Si-D126A, 080417-A-E-Nth-D127A , 1209-005-P07, 1209-006-P08 , 080417-A-X-00-20001A, 002003-A-X-00-20003, 002003-A-X-00-20004A , drawing entitled 'proposed replacement windows', dated 31 May 2011, drawing entitled 'view from north east', 080417-A-P-Si-D127 , 156171-OS-002 Rev G, 156171-OS-007 Sheet 1, 156171-OS-007 Sheet 2, 156171-OS-007 Rev A Sheet 3, 156171-OS-007 Rev A Sheet 4, , 156171-OS-010 Sheet 1, 156171-OS-010 Sheet 2, 156171-OS-010 Sheet 3, 156171-OS-010 Sheet 4 .
7. No development, apart from demolition, shall take place until details at a scale of 1:200 of the eastern elevation of the retail superstore and associated boundary details have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with such details that are approved.
8. Prior to the first use of any premises as restaurant, cafe, or hot food take-away (Use Class A3 and A5), full design and installation details of a ventilation system to food cooking and preparation rooms, including detailed

specifications shall be submitted to and approved in writing by the Local Planning Authority and then installed in accordance with the approved details. Any flues to the systems shall discharge at the highest point on the host building and be fitted with a style of rainguard, which will not obstruct and cause downward deflection of exhaust fumes. The approved system shall be maintained in a manner that prevents the spread of food odours.

9. Prior to the commencement of the development hereby approved the applicant, or their agents or successors in title, shall secure the implementation of a programme of archaeological work, in accordance with a written scheme of investigation, which shall include geotechnical test-pitting and monitoring details, which has first been submitted to and approved in writing by the Local Planning Authority
10. No development shall commence until a site characterisation and remediation scheme has been submitted to and approved in writing by the Local Planning Authority and the remediation scheme has been implemented in accordance with the approved details. The site characterisation, remediation scheme and implementation of the approved remediation scheme shall be carried out in accordance with the following criteria:

(a) Site Characterisation

An investigation and risk assessment, in addition to any assessment provided with the planning application, shall be completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment shall be undertaken by competent persons and a written report of the findings shall be submitted to and approved in writing by the Local Planning Authority, and shall include:

- A survey of the extent, scale and nature of contamination
- An assessment of the potential risks to:
 - Human health
 - Property
 - Adjoining land
 - Ground waters and surface waters
 - Ecological system
- An appraisal of remedial options and a recommendation of the preferred options

The site characterisation report shall be conducted in accordance with British Standards and current DEFRA and Environment Agency best practice.

(b) Submission of Remediation Scheme

A detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment must be prepared, and shall be submitted to and approved in writing by the Local Planning

Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures. The scheme shall ensure that the site cannot be considered as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) Implementation of Approved Remediation Scheme

The approved remediation scheme shall be carried out in accordance with its terms prior to the commencement of the development other than that required to carry out remediation. The Local Planning Authority shall be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Local Planning Authority.

11. In the event that contamination is found that was not previously identified at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment shall be undertaken at that time in accordance with a site characterisation report that shall be submitted to and approved in writing by the Local Planning Authority and where remediation is necessary a remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. Prior to the occupation of the approved development and following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved in writing by the Local Planning Authority.
12. Any fuels, oils and any other potentially contaminating materials shall be stored so as to prevent accidental/unauthorised discharge to ground. The areas for storage shall not drain to any surface water system.
13. No development, apart from demolition, shall take place until details of the means of foul and surface water disposal, including details of the implementation, management and maintenance of any proposed Sustainable urban Drainage Systems, have been submitted to and agreed in writing by the Local Planning Authority. The development shall be carried out in accordance with such details as are agreed and thereafter maintained.
14. All surface water drainage from parking areas shall be passed through an interceptor designed and constructed to have a capacity and details compatible with the site being drained.
15. Prior to the commencement of development, apart from demolition, details of measures to ensure that there is no construction over or within 3 metres of the public water supply mains and public sewers shall be submitted to and approved in writing by the Local Planning Authority and thereafter adhered to.
16. Prior to the commencement of development, apart from demolition, on land identified as the 'outline application area' on drawing 080417-A-P-Si-D101 A, full details, including drawings and exact specifications of flood mitigation

measures and flood evacuation plans shall be submitted to and agreed in writing by the Local Planning Authority. Such details as are agreed shall be fully implemented in accordance with the agreed details prior to the first use of the commercial units and hotel fronting Marine Terrace and shall thereafter be maintained as specified.

17. Prior to the first use of the retail superstore hereby permitted, the area identified for vehicle loading/unloading and turning facilities shown on the approved plans shall be provided and thereafter maintained.
18. Prior to the first use of the retail superstore or shop, office, cafe, restaurant or hot food takeaway in Arlington House hereby permitted, details of measures to:
 - ensure that only emergency vehicles can access the car park from Marine Terrace
 - ensure that the proposed one way system for vehicular entry and exit points at the All Saints Avenue is observed
 - close existing redundant accesses and associated vehicle crossings in the highwayshall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
19. No construction work which gives rise to impact noise likely to cause disturbance to Turnstones and other roosting birds on the beach to the north shall be carried out during the 90 minutes before and 30 minutes after each high tide during the wintering bird season, from the 01 October until the 31 March, unless otherwise agreed beforehand, in writing, by the Local Planning Authority.
20. No development, including demolition, shall take place on or within close proximity (10 metres) of the roof of Arlington House until an Ecological Mitigation Method Statement, to include measures proposed to minimise the impact of construction works on nesting birds, has been submitted to and approved in writing by the Local Planning Authority, and any agreed measures have been implemented.
21. The ground floor of Arlington House shall be used as a shop, office, cafe, restaurant or hot food takeaway and for no other purpose.
22. At no time shall posters or graphic displays to the windows in any elevation of the ground floor of Arlington House, the retail superstore or ground floor units fronting Marine Terrace hereby permitted, obscure more than 20% of the ground floor windows in any elevation, unless otherwise agreed in writing beforehand by the Local Planning Authority.
23. Prior to the first use of the retail superstore or shop, office, cafe, restaurant or hot food takeaway in Arlington House hereby permitted:
 - pedestrian visibility splays of 2 metres x 2 metres behind the footway on both sides of the All Saints Avenue and Marine Terrace vehicular accesses with no obstructions over 0.6 metres above footway level; and

- visibility splays at the mini roundabout junction shown on drawing number 156171-OS-007 Rev A Sheet 4 received 11 May 2011, with no obstructions over 0.26 metres above carriageway level within the splays; and
- visibility splays to the east of the service yard access of 2.4 metres x 43 metres with no obstructions over 1.05 metres above carriageway level within the splay shall be provided and thereafter maintained.

24. Prior to the first use of the retail superstore hereby granted a programme for the implementation of the Travel Plan received 15 December 2010 shall be submitted to and approved in writing by the Local Planning Authority. The agreed programme shall thereafter be implemented in full.
25. Prior to the first use of the retail superstore hereby permitted, 'public access' along the access road between All Saints Avenue to the boundary of the Dreamland site shall be provided and thereafter maintained.
26. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for, but not be restricted to, the following:
- the parking of vehicles of site operatives and visitors;
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
27. Prior to the first use of the development hereby permitted, the area shown on the deposited plan for the parking and manoeuvring of vehicles shall be operational prior to any part of the development hereby approved being brought into use. The said areas shall thereafter be maintained for each of the purposes specified on drawing number 080417-A-P-Si-D104J which allocates parking spaces for each of the uses of the site.
28. Prior to the commencement of demolition of the buildings on land identified as the 'outline application area' on drawing number 080417-A-P-Si-D101 A, a 2.0 metre high screen shall be erected along the entire length of the northern perimeter of the site in accordance with details that shall first be submitted to and approved in writing by the Local Planning Authority.
- Once the car parking for residents identified on drawing number 080417-A-P-Si-D104 J is available for use by residents, the screen shall be removed from the northern perimeter and the site landscaped in accordance with drawing number 1209-006 P08, which shall include a 2.0 metre high screen between the landscaping and the car park to the south in accordance with details that shall first be submitted to and approved in writing by the Local Planning Authority.
- The temporary landscaping shall be maintained until such time as construction of the commercial units and hotel proposed on this part of the application site commences.

29. Prior to the first use of the development hereby approved, details of secure cycle parking facilities, including a minimum of 20 cycle parking spaces for the retail superstore hereby approved, and minimum of 18 cycle parking spaces for the commercial units and hotel fronting Marine Terrace shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with approved details and shall thereafter be retained.
30. The gross internal floor space of the retail superstore hereby permitted shall not exceed 7,567 square metres. The net retail sales area (defined by the National Retail Planning Forum, and reproduced in Appendix A of the PPS4 Practice Guide 2009) to be used for the sale of convenience goods at the food retail store shall not exceed 2,508 square metres and the comparison goods net sales area at the store shall not exceed 1,544 square metres.
31. Prior to the commencement of the development hereby approved, apart from demolition, samples of the materials to be used in the construction of the external surfaces of the retail superstore, cleaning cradle and roof canopy to Arlington House, rainwater harvesting tank, sprinkler tank and pump room, hereby approved shall be submitted to, and approved in writing by, the Local Planning Authority. Development shall be carried out in accordance with the approved samples.
32. Prior to the commencement of development, apart from demolition, manufacturer's details at a scale of 1:100 and 1:20 of the curtain walling system to the retail superstore and Arlington House hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
33. Prior to the commencement of development of the retail superstore hereby permitted details of measures to achieve Secured by Design and measures to achieve the Safer Park Mark accreditation where reasonable and practicable and counter-terrorism measures, including barriers and down stand beam, shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
34. The food retail store hereby permitted shall achieve a BREEAM retail rating of 'Very Good' or higher and a verification report validating the rating shall be provided for the written approval of the Local Planning Authority prior to the first use of the retail store by paying customers. The development shall be carried out in accordance with the approved details.
35. Prior to the first occupation of the food retail store a scheme which details the energy efficiency measures that reduce carbon dioxide and other greenhouse gas emissions shall be submitted to and approved in writing by the Local Planning Authority. The scheme should aim to incorporate on-site renewable energy equipment to meet 10% of expected energy needs of the development from renewable sources and shall be implemented as approved.
36. Prior to the commencement of development, apart from demolition, hereby approved, and in accordance with details set out in approved drawing number 1209-005 P07 dated 12 May 2011, details of both hard and soft landscape works, to include:

- the treatment proposed for all hard surfaced areas beyond the limits of the highway, which shall include the use of a bound surface for the first 5 metres of the access from the edge of the highway, including details of block pavements, bonded gravel concrete flag pavers, concrete edging, concrete road kerb edging, drop kerbs;

- tree grilles, bike racks, benches and litter bins;

- walls, fences and other means of enclosure proposed;

shall be submitted to, and approved in writing by, the Local Planning Authority.

37. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development, or in accordance with a programme of works to be agreed in writing with the Local Planning Authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives any written consent to any variation.

38. A landscape management plan (including long term design objectives), management responsibilities and maintenance schedules for all landscape areas, shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its approved use. The landscape management plan shall be carried out as approved.

39. Prior to commencement of the development hereby approved, apart from demolition, full details of the external lighting, including their fittings, illumination levels and spread of light shall be submitted to, and approved in writing by, the Local Planning Authority. The lighting installation shall then be carried out in accordance with the approved details.

40. Prior to the first use of the store, details of the proposed acoustic screen as shown on drawing number 080417-A-P-Si-D127 dated 23 March 2011, which shall be erected to the south east perimeter of the service and delivery area prior to the first use of the store and thereafter maintained, shall be submitted to and approved in writing by the local planning authority.

41. No more than one delivery per hour shall take place to the retail superstore hereby permitted between 23:00 and 07:00 on any day of the week.

42. No external moving of loading trolleys, use of the compactor, or use of audible vehicle reversing warning sound shall occur between the hours of 20:00 and 07:00 on any day of the week.

43. The rating level of noise emitted by all fixed plant on the site, including the Combined Heat and Power unit shall not exceed 3dBA above the pre existing LA90 noise levels at any time, which are:

07:00-23:00hrs

- Arlington House Rating limit of 43dB

- Railways Cottages Rating limit of 41dB

23:00-07:00hrs

- Arlington House Rating limit of 41dB

- Railways Cottages Rating limit of 36dB

The noise levels shall be determined at the nearest noise sensitive properties to the site. The measurement and assessment shall be made according to BS4142:1997.

44. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2010 (or any Order revoking and re-enacting that Order, no further plant or machinery shall be erected on the site under or in accordance with Part 8 of Schedule 2 to that Order without first obtaining planning permission from the Local Planning Authority.

45. No development shall take place, including any works of demolition, until a method statement has been submitted to and approved in writing by the local planning authority to ensure protection of the Listed wall on the Dreamland site adjacent to the south-east corner of the application site during the course of demolition and construction. Demolition and development shall be carried out in accordance with the approved method statement.



Department for Communities and Local Government

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 3: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.