

PAPER A - APPENDIX 3**Fermanagh and Omagh District Council****Planning Committee Meeting 16 June 2021****Application No 3****Planning Reference: LA10/2019/1392/F**

Proposal: Mixed use retail and leisure development comprising 5 retail units with 2 garden centres, 1 indoor adventure play unit, hotel, cinema, bowling alley, coffee pod, drive-thru restaurant, self-service pay at the pump station, car parking spaces and accesses from Cornagrade Road and Irvinestown Road, landscaping, retaining walls and associated site works

Applicant: Elm Grange Limited

Location: Lands of former Unipork Site (now vacant) located East of Cornagrade Road and West of Irvinestown Road to the South of the Cherrymount Link Road/Irvinestown Road/Cornagrade Road roundabout and North of nos 4-34 Kilmacormick Road and nos 124-152 Hillview Road, Enniskillen

Recommendation: The recommendation is to **refuse** planning permission for the reasons listed within the report and subject to four reasons.

1.0 Purpose of report

The purpose of this report is to present for determination an application for planning permission to be decided by the Planning Committee. The application falls within the meaning of a "major" application as defined in Regulation 2(1) of the Planning (Development Management) Regulations (Northern Ireland) 2015.

The application was presented to the Planning Committee in December 2020, where it was deferred in order to allow additional information to be submitted and assessed, and further discussions to take place between planning officers, the applicant and the agent.

Since the deferral, a meeting between the case officer, the applicant and the applicant's representatives, including the agent and the solicitor acting on behalf of the applicant, took place on the 15 January 2021 along with a second meeting on the 25 May 2021. All parties, including those who made representations, have now had sufficient time to review and submit further information and a number of detailed submissions have been submitted. This is all included and considered within the report.

The application is now presented for a decision.

1.1 Statutory Target

Statutory target: 30 weeks

Target date for decision or withdrawal: 02 July 2020

1.2 Summary

The proposal is considered to be contrary to the SPPS, and specifically paras 6.280, 6.289, 6.290 and the recommendation is to refuse planning permission for the reasons set out at the end of this report.

The proposal will have a significant adverse impact on the trade and turnover of the town centre and, as a result, its vitality and viability. Approval of the scheme will also have an adverse impact on committed and planned private sector investment in the form of the Station Green developments and associated car parking works and generally investor confidence in the town centre.

The applicant has not demonstrated flexibility in its approach to the sequential assessment, particularly in trying to accommodate the proposed development onto the sequentially preferable composite site. A composite site has been identified as a sequentially preferable site within the catchment that would be suitable and available for this broad type of development.

2.0 Application details

Site Details

The application site is located at the junction of the Cornagrade Road and Irvinestown Road, to the immediate south of the Cherrymount roundabout and to the north of two well-established residential developments, known as Kilmacormick and Hillview.

The site is a triangular shape and is approx. 6.6ha in area with substantial frontage to both the Cornagrade Road and Irvinestown Road. The main body of the site has been previously cleared and levelled and is generally elevated above both roads to a varying degree.

The surrounding area is characterised by a mixture of uses, including residential developments to the south and northwest and further east. There are car sales to the northeast, retail and various other commercial uses to the northeast and southwest.

Proposed development

The proposal is a full application for a mixed-use retail and leisure development comprising 5 retail units, 2 garden centres, 1 indoor adventure play unit, hotel, cinema, bowling alley, coffee pod, drive-thru restaurant and self-service pay at the pump station.

The ancillary works include accesses from Cornagrade and Irvinestown Roads, a right-hand turning lane on both roads, a bus stop on Cornagrade Road and

approximately 750 car parking spaces. There are also minor mitigation works proposed at the Corngrade roundabout. The proposal will also include landscaping within and around the boundary of the site, retaining walls and associated site works.

Description of Development

The description of development is "...mixed use retail and leisure development comprising 5 retail units". The description of development does not refer to a "bulky goods" retail development, although the application and the accompanying documents explain that the retail units within all of the development are to be restricted to "bulky goods" (Carson McDowell Letter, 15 December 2020). The applicant has stated that it would accept a condition to be imposed in order to ensure that only "bulky goods" could be sold. It is acknowledged that the proper way to control the type of goods to be sold is through a condition, not through the description of the development.

For present purposes, officers understand the term "bulky goods" as including DIY goods, including electrical and furniture. The agent has provided a list of potential occupiers, including Harry Corry, Smyths Toys, Dreams and Dunelm. The Range is proposed as an anchor store. The Range sells a wide range of products, and officers understand that it ordinarily sells more than just "bulky goods". It also sells "non-bulky goods" and "convenience goods", such as clothing, pet products, cleaning and beauty products. It is considered that The Range has a similar retail offering to B&M Bargains, although it is acknowledged that The Range sells a greater range of "bulky goods" than B&M Bargains and that in its correspondence in support of this application The Range has acknowledged the "bulky goods" nature of this application (see, The Range November 2020 Letter). The Next Store in the Erneside also sells beds, furniture and other "bulky goods" on a large area of its shop floor. There is a risk that a "bulky goods" condition would not prevent stores like these from relocating to the site.

Nevertheless, officers acknowledge that a suitably worded condition which complied with the tests set out in paragraph 5.65 of the SPPS could be imposed on any grant of permission so as to limit the type of goods sold. That condition could limit the goods sold to "bulky goods", although it is considered that the phrase "bulky goods" would need to be defined further.

It is noted that the applicant has suggested a draft condition to this effect on a without prejudice basis (see 2.7 of the Third Response to Representations (March 2021)).

2.1 Drawings:

- Drawing 01, site location plan, received 06 December 2019;
- Drawing 02, Site layout and landscaping plan, received 06 December 2019;
Drawing 02 rev 1, received 06 May 2020;
Drawing 02 rev 2, received 10 Dec 2020;
Drawing 02 rev 3, received 14 April 2021;
- Drawing 03, retail units 1-4 floor plans, received 06 December 2019;
- Drawing 04, retail units 1-4 elevations, received 06 December 2019;
- Drawing 05, retail units 5-6 floor plans and 3d visual, received 06 December 2019;

- Drawing 06, retail units 5-6 elevations and 3d visual, received 06 December 2019;
- Drawing 07, coffee pod floor plan, elevations and 3d visual, received 06 December 2019;
- Drawing 08, bowling alley and cinema floor plan and 3d visual, received 06 December 2019;
- Drawing 09, bowling alley and cinema elevations, received 06 December 2019;
- Drawing 10, hotel ground floor plan and 3d visual, received 06 December 2019;
- Drawing 11, hotel first and second floor plans and 3d visual, received 06 December 2019;
- Drawing 12, hotel proposed elevations, received 06 December 2019;
- Drawing 13, self-service petrol station 12 bay plan and elevations, received 06 December 2019;
- Drawing 14, drive through restaurant floor plan and elevations, received 06 December 2019;
- Drawing 15, proposed site sections, received 06 December 2019;
- Drawing 16, existing site survey, received 06 December 2019;
- Drawing 17, petrol station plan and elevations, received 06 December 2019;
- Drawing 18, Retaining wall detail, received 10 December 2020;
Drawing 18 rev 1, received 14 May 2021;
- Drawing 19, Irvinestown Road access detail, received 10 December 2020;
- Drawing 20, Cornagrade Road access road detail, received 10 December 2020
Drawing 20 rev 1, received 14 May 2021;
- Drawing 21, Roundabout detail, received 29 March 2021;
- Drawing 22, Cornagrade bus layby detail, received 14 May 2021;
- Drawing DA1, drainage drawing received, received 06 May 2020;
- Drawing DA2, drainage drawing received, received 06 May 2020.

2.2 Supporting documentation

Application received 06 December 2019, including application form and drawings:

- Pre-Application Community Consultation Report received 06 December 2019;
- Design and Access Statement received 06 December 2019;
- Supporting planning statements received 06 December 2019, 11 September 2020 and 19 March 2021;
- Responses to objections received 06 May 2020, 12 June 2020 and 19 March 2021;
- Retail Statement received 06 December 2019;
- Flood Risk and Drainage Assessment received 06 December 2019;
- Supporting Drainage details and plans received 06 May 2020;
- Ground investigation report received 06 December 2019, and addendums received 25 June 2020 and 10 September 2020;
- Environmental site assessment and generic quantitative risk assessment received 06 December 2019;
- Transport Assessment form and traffic impact statement received 13 December 2019, and addendums received 04 May 2020 and 10 September 2020;

- Supporting letter relating to roads and access issues, received 14 April 2021;
- Ecology Report received 18 December 2019 and addendum 06 May 2020;
- Noise Impact Assessment received 13 December 2020 and clarifications received 10 September 2020;
- Landscape and visual impact assessment received 16 December 2019;
- Odour impact assessment received 13 December 2019;
- Air quality impact assessment received 13 December 2019;
- Environmental clarifications (noise, odour, air quality) received 29 April 2020;
- Archaeological impact assessment received 13 December 2019;
- Submission on sequential approach and disaggregation, Mr Elvin QC, received 09 December 2020;
- Supporting letter and associated submissions received 15 December 2020;
- Supporting email from the applicant's consultant received 19 April 2021.

3.0 Consultations and issues raised

A number of consultees have provided their expert opinion.

- **Environmental Health Department, DAERA Regulation Unit and Groundwater Team, DAERA Natural Environment Division, Shared Environmental Service, DFI Rivers, Department for Communities – Historic Environment Division – Historic Monuments** are all content, subject to conditions
- **DFI Roads** has raised a number of issues in relation to the location of the bus stop and also cross and longitudinal sections which are still outstanding. To date they are largely content in principle with the development. They also consider that there is a shortfall of parking of approximately 210 spaces. The issues are considered further within the report.
- **DAERA Water Management Unit and Inland Fisheries** considers that the proposal has the potential to adversely affect the surface water environment as the sewage loading associated with the proposal has the potential to cause an environmental impact if transferred to Enniskillen wastewater treatment works (WWTW).

Comment: If connection is not feasible then discharge consent for an alternative means of disposal will be required. This can be dealt with by a pre commencement condition requiring details of the method of sewage disposal prior to commencement. A draft condition has been provided by DAERA.

- **NI Water** has advised that due to the Riverview Enniskillen wastewater pumping station being at capacity in the Enniskillen drainage area and sewer flows spilling into the environment, no further connections should be made to this network or a condition should be incorporated which requires an alternative drainage/treatment solution for the site. An upgrade scheme or schemes will be delivered once solutions are identified.

Comment: There is a network capacity issue and NI Water's recommendation

that an alternative drainage and treatment solution for the proposal is dealt with by condition is acceptable. This can be dealt with by a pre commencement condition requiring details of the method of sewage and drainage disposal to be submitted and agreed prior to commencement.

The receiving Enniskillen wastewater treatment facility (WwTW) has sufficient capacity to serve this proposal.

There is no public storm sewer available to serve the proposal and discharge to a nearby watercourse may be required.

The site is within the consultation zone of the Enniskillen wastewater treatment works (WwTW) and an odour encroachment assessment application needs to be submitted to NI Water.

Comment: This matter is considered further within the report.

Trade effluent discharge consent may be required.

4.0 Pre-application Community Consultation

- Proposal of Application Notice was received by the Council on 11 February 2019
- The application is accompanied by a Pre-Application Community Consultation (PACC) report received 06 December 2019.
The PACC report confirms that community consultation has taken place in line with the statutory minimum requirements. The report contains details of the steps that have been taken to comply with the requirements for consultation. Newspaper advertisements were placed in two local papers, Impartial Reporter and Fermanagh Herald on 13 and 14 March 2019, and a public event was held in Enniskillen Library on 26 March 2019. At least 12 people attended the event with 10 people supporting the proposal and 2 opposing it.

4.1 Representations

A total of 437 representations have been received from interested third parties; 164 objections and 261 letters of support; all of which are available to view on the planning portal.

4.2 Support

In summary the main issues raised by those who wrote in support of the application were:

- Creation of jobs and much needed investment to the town for young people.
- Regenerate a run-down area and stop anti-social behaviour on the site for residents.
- Create a variety for the town, which will attract tourists, attract people to Enniskillen and stop people from travelling to Belfast, Omagh, Craigavon or Derry.

- This will save fuel and keep shopping local.
- Shops in the town should not be affected by The Range and the closest bowling alley is Irvinestown.
- A number of letters of support were submitted from The Range which is the proposed anchor tenant for the scheme. This letter outlines that The Range has identified Enniskillen as a suitable location to open a store as it has a sub-regional catchment in the west of the province.
- The letter sets out the core requirements at this location to include a single trading floor of circa 35,000sqft, an external garden centre and proximate surface level car parking. It is advised that the store will create approx 80 jobs on both a full and part time basis and an investment of approx £2.5m.
- Opening and trading is targeted for Spring 2022 and The Range is committed to trading within the parameters of a bulky goods nature.
The Range has confirmed that it is only committed to opening a store at Lakelands Retail Park based on its sub-regional catchment in the west.
- The Range has also confirmed that after an extensive search of available opportunities within Enniskillen by its property team it is committed to opening a large unit at Lakelands Retail Park. The Range has also commented that it is aware of other sites which have been suggested as alternatives, however it has assessed these and concluded that none of them are suitable to accommodate the scale, type and format proposed at Lakelands even applying flexibility in the final design and quantum of floorspace.
- A letter of support has also been received from Brunswick Moviebowl. This outlines that it is an NI owned family entertainment and cinema operator which is committed to opening within the retail park. It is stated that Enniskillen has been identified as its next location for expansion and it believes the creation of a family entertainment centre will be of benefit to both the existing catchment and those visiting Fermanagh on holidays.
- It proposes creating a state of the art 6 screen cinema and bowling alley, which will serve the sub regional catchment in the west of the province. The opening will create approx 80 jobs on both a full and part-time basis and involve a minimum investment of approx £7m to include fit out.
- An email letter of support from the applicant's consultant was submitted requesting that due cognisance is given to a number of issues before presentation to the committee in the hope that any future judicial review will be avoided.

The issues raised within this email are as follows;

·The application is for a mixed use retail and leisure development which has been assembled and designed to bring significant economic benefits to Enniskillen and to encourage retail and leisure spend within the town, rather than in other towns such as Derry, Belfast and Craigavon;

· the application has been prepared by an experienced and professional team, including specialist retail planning expertise;

· the applicant has ensured that it has properly addressed all relevant planning considerations, with particular attention paid to ensuring compliance with relevant retail policies;

- in doing that, the applicant has addressed all matters raised by the planning service with the only outstanding issue being that of the potential scope to disaggregate the proposed development such that it can be accommodated on alternative sites elsewhere in the town centre;

- assessing the impact on the vitality and viability of the town centre has throughout been an important consideration for the applicant, in terms of which it should be noted that:

- importantly, the application site is located within the Enniskillen Business Improvement District, the themes of which are to boost business, entice customers, enhance experience with the ultimate aim of increasing footfall and improving trade in the town – clearly the proposed development will make a considerable contribution to achieving this aim;

- the applicant is willing to accept appropriate conditions, including those restricting the size and nature of the retail units to ensure that it provides an offering complementary to that of existing businesses in the town centre in terms of the bulky goods warehouse and garden centres uses;

- despite having a legal opinion (which has drawn on case law from other jurisdictions) which is clear that there is no specific requirement in The Strategic Planning Policy Statement for Northern Ireland for a developer to disaggregate a proposed development, the applicant has looked at the potential for doing this but concluded it would not be viable due to the proposed mix of uses, the nature of those (requiring large, flat floor areas and surface level car parking) and the functional relationships between them;

- crucial in this regard are the requirements of the scheme's anchor unit, The Range, with The Range having provided a statement that it would not consider any alternative location;

- in addition to which, even if the proposed development could be disaggregated, the alternative sites proposed by the planning service do not provide the required floorspace to deliver all elements of the scheme with no scope to accommodate the cinema, bowling alley, indoor adventure play unit, petrol filling station and drive thru, all of which would bring significant economic and social benefits to the town;

- the alternative sites also raise other policy issues (such as accessibility, flooding, the existence of listed buildings) which makes them potentially undeliverable even for the retail units and the hotel;

- it is understood that the Council has also received legal advice with regards to disaggregation and, whilst recognising that it may not wish to share the full details of that, it would be helpful to the applicant to understand why the Council is taking the position it is doing based on that advice, and important that, if the Council intends to maintain its position on the matter, clear reasons be given in the determination of the application for doing so;

· overall, given the location of the proposed development within the Business Improvement District, the nature of the mix of uses proposed, and the economic and social benefits it will bring to not just the Business Improvement District area but to the town as a whole it is important that a flexible approach is taken to the assessment of the application.

- The applicant has submitted a Third Response to Representations received 19 March 2021. This represents its updated position and the main points within this include;
 - clarification that the applicant has applied for a mixed use development comprising a retail element which is to be restricted to the sale of bulky goods via a condition,
 - proposed conditions in relation to the restriction of goods sold (bulky items), the restriction on the retail floorspace and a non-poaching condition which restricts existing retailers in the town centre from re-locating to the development,
 - proposed legal agreement under s. 76 of the Planning Act (Northern Ireland) 2011, to potentially include a signage board for the town centre or enhanced access to the site,
 - discussion of the planning history,
 - discussion of disaggregation,
 - explanation of the format and functional relationship between the uses on the site,
 - detail on end users and flexibility,
 - consideration of the composite site and interpreting suitable and available and viable,
 - discussion on need for the proposal,
 - review of retail impact,
 - detailed response to Williams Gallagher representation,
 - various supporting appendices.

4.3 Objections

In summary the issues raised by objectors are summarised as relating to the following issues;

- The proposal was subject to a PAN under LA10/2019/0193/PAN with the advertisement making no reference to the indoor play facility and thus failed in the fundamental objective of alerting the reader to their potential interest in the proposal.
- Contrary to the SPPS town centre first policy.
- Impact on the vitality and viability of the town centre.
- Previous planning approvals on site are not comparable to the current scheme and relevant planning policy has since changed with the SPPS.
- A number of alternative vacant sites within the town centre could be used, including the South West College site, extension to the shopping centre, Ulsterbus site and car parks, the old Railway hotel, the police station site, TP Toppings site, Devenish College and Station Green all within walking distance of town centre.
- Proposals are for open retail and not bulky goods.

- The proposal in floorspace terms is 25% bigger than Erneside and 20% of the size of the whole town centre (including Erneside).
- Leisure and hotel element of the proposal is a smokescreen and units will be replaced with further retail. Proposed retail units will be potentially sub divided or reclassified later.
- Will displace jobs from the town centre businesses rather than create new jobs and will increase vacant retail units in the town centre and Erneside shopping centre.
- Approval of the scheme will send a stark message to local business owners that the Council places greater weight on speculative development brought forward to accommodate remote business owners than it does indigenous business owners.
- Impact on Johnny Rockos, an existing entertainment and leisure business within the town centre of Irvinestown, and this will impact on other businesses within Irvinestown.
- Impact on public realm scheme, which would be a waste of money.
- Impact on Enniskillen town centre and businesses. Proposal won't attract new retailers, will just result in the displacement of big name retailers from the town centre and will draw significant trade and footfall away. This is at a time when the many small independent retailers and family run businesses are struggling with Covid -19, soaring costs, Brexit, taxes and competition from online retailers.
- This will result in further vacancies, reduced footfall, jobs being lost and rates lost.
- Applicant has been trying to entice existing businesses to the site. Loss of B and M and Sports Direct will severely impact the town centre.
- Impact on Ashwoods garden centre.
- Difficult to attract tenants and many tenants within the Erneside shopping centre are on no rent deals and the town centre is full of charity shops and vacant premises which is a sign of stress. Eastern part of the town centre will soon have a number of key vacant sites, TP Topping, Chinese Restaurant, Clinton Centre, and College.
- Out of town centres have damaged Lisburn, Ballymena, Antrim, Bangor, Strabane and other European cities. The proposal is for the financial gain of the developer only.
- Tourism needs a thriving town centre.
- No need for the uses proposed which already exist (cinema, hotel, garden centres) some of which are struggling to maintain business. Plans to invest in the existing cinema in Enniskillen with restaurant and leisure facilities.
- A bowling alley and Castle Island play area was not viable and closed down and there is an oversupply of shops at present.
- Conflict with the Nexus report of the new Local Development Plan which outlines there is limited capacity for new floorspace for comparison goods, caution for out of town proposals and this advised to focus on improving existing leisure stock.
- Proposal premature and should only be considered closer to 2030.
- Not a suitable location for a hotel and height of hotel not in accordance with others in the area. Big box development not in character with town.

- The site should be developed for social and or affordable housing and mixed housing. Site is too far from the town centre to walk.
- Increase in traffic congestion on the busy Cornagrade Road and Cherrymount roundabout.
- Impact on the residential area surrounding the site.
- Impact on 94 Irvinestown Road, from undermining of adjoining land, noise and loss of light.
- The emerging LDP is now at an advanced stage and is a key material consideration in respect of the proposed development. The plan includes strengthened retail policies in relation to town centres and does not seek to allocate the application site for a particular use (only a modest capacity identified). The focus for retail growth and other town centre uses shall be within Enniskillen and Omagh.
- The Station Green site is a viable option for The Range and the store format was reconfigured in conjunction with The Range during discussions in 2018/2019 in a landlord/development specification. The Station Green site is viable and available for retailers seeking to locate in Enniskillen and this is supported by LDEs in place.
- The applicant's approach is informed by select passages from the Tesco Vs Dundee judgement which allows the applicant to conclude that there is no requirement to disaggregate. This approach is wholly inappropriate and unsatisfactory and is based on a simplistic and misguided approach to the sequential test.
- There is a difference to the disaggregation of a single operation which the Tesco case involved, and the breaking up of individual units within a larger proposal.
- Several appeal decisions in England have considered and interpreted the Tesco judgement, including an appeal for an out of centre proposal in Hull. This is a comparable scheme to the current proposal and considered disaggregation.
- The use of the word "sites" within para 6.280 would imply that policy makers fully expected disaggregation to be a consideration.
- In terms of specific sites considered there is more than one vacant unit at Erneside all of which are available immediately for retailers and food and beverage outlets that would otherwise choose the retail park.
- The Range has applied to remove or alter bulky goods conditions after approval on other developments.
- The Nexus report only shows support for some of the retail floor space at 2025 and this covers all types of comparison floor space. The Nexus report has also incorrectly calculated the floor space for the Station Green commitments. When this is amended and properly considered, there will be an oversupply of floor space in 2025 of between 3331 and 5235sqm and a residual expenditure of -£18.3 million. This demonstrates that there is no capacity for the proposal.
- Should the Council approve the application prior to the adoption of the draft plan strategy, the effect of that approval would be to render the Nexus report null and void thus demonstrating that the draft plan strategy is not based on a robust evidence base and is therefore unsound.

- The approach to assessment of mutual impact with the Station Green commitment is not appropriate.
- The Nexus report concludes that it is unnecessary to plan for any new major leisure or community facilities nor is there a qualitative or quantitative need for a new cinema. Nor is there a mention of a need for a new indoor play centre.
- Demand for new retail floorspace in Enniskillen is highly subdued and with the Nexus report concluding limited capacity the proposal is more likely to redistribute existing retailing provision as opposed to introducing new retailers.
- Retailers likely to relocate are B and M, Card Factory, The Works, Sports Direct, Marks and Spencer's, Next, JD and Boots all of which have a track record of opening out of centre stores.
- A review of the quantitative need for the proposal demonstrates no surplus expenditure being available to support new comparison goods retail floorspace.
- Demand for new retail in Enniskillen is subdued, with a number of retailers occupying units temporarily and paying a peppercorn or no rent. There are a few stores at a significant risk of closure in the near future Dorothy Perkins and Top Shop, both of which will be under review as part of Arcadias nationwide programme of store closures. Dorothy Perkins is showing signs of significant deterioration/lack of investment. There are several prominent vacancies on East Bridge Street and Townhall Street. The town centre is home to a higher than average number of independent retailers and as evidenced by the latest Goad survey the town centre is more reliant on comparison goods shopping.
- The Station Green site is a viable site which sits within existing retail provision beside Lidl, Dunnes and the Railway Junction retail park with LDEs in place. The use of a 35min drive time catchment area is excessive; 20min is the typical assumption. As an example, Omagh is 37mins away and operates as a separate catchment. The use of a 6-year study period in the assessment is also excessive when a normal assumption is 3-4 years and this creates a longer time frame to generate the extra expenditure for the proposal. The catchment includes a population who live much closer to Monaghan and are more likely to shop at Monaghan retail park, which is only 11mins away, rather than travel to Enniskillen. The catchment also includes a population closer to Omagh who are more likely to shop at the Showgrounds retail park where there is a much larger range of shops and attractions. This creates an unrealistic catchment and expenditure within the catchment and thus presenting a wholly unrealistic case for the proposals. Over a third of the diversions in the retail impact statement are taken from clawback of leakage, where it is more likely to be trade diversion from the town centre. The assumptions in terms of leakage and clawback are unrealistic when considered against the Nexus report. Leakage is not significant enough to generate such a high level of clawback and only part of this would be available to bulky goods. There is a lack of consideration of linked trips within the town centre and how this might impact on the health of the town centre.
- The retail impact assessment demonstrates that the proposal will have a detrimental effect on the potential delivery of the Station Green developments as retailers are more likely to go to the out of town centre site given easy access, car parking, lower rent and rates. This will be a loss of private sector

investment and potentially a loss of the environmental improvement works associated with the upgrade of the Holyhill car park. Slight amendments to the retail statement to reflect changes in assumptions in terms of estimated turnover and trade diversion shows a retail impact of between 10 and 17%. The proposals include leisure, food and beverage uses and the draw of these additional uses cannot be underestimated. This will be a one stop shop for shopping and entertainment.

- The retailing turnover of the proposal is very conservative which is likely to be exceeded by up to 70% and the turnover of commitments (Station Green) is underestimated. The comparison trade draw from Enniskillen would be substantially higher than concluded and will have a solus impact of between -11 to -16%. There will be a clear trade impact on Station Green a committed town centre private sector investment of between -10.68 to -15.93%.
- There is no evidence to substantiate the claims in relation to supporting sustainable economic growth, and a review of the UK's Employment Density guide shows the proposal will create approx 50% less jobs than the applicant calculates. Construction contracts are more likely to be given to national contractors with local jobs created limited.
- Japanese knotweed on the site.
- RMI on behalf of Enniskillen Business Partnership has submitted an "Eastside of Enniskillen Town Centre Capacity/Viability study". The outlines how a range of uses such as those proposed within the current application can be accommodated on a sequentially preferred site.
- A letter from TLT solicitors has been received which considers the various legal arguments presented on the key issues to date.
- An anonymous letter has been received questioning the commercial linkage between the current applicants and the owners of the current owner of the TP Toppings site.
- An anonymous letter has been received raising concerns about the approach of the applicants on social media.
- Further objections have been received from Williams Gallagher on behalf of the owners of Erneside shopping centre. These present an updated health review of Enniskillen Town Centre, including further consideration of the key issues in relation to retail capacity, retail impact, sequential assessment and disaggregation.
- Confirmation from Mr Mc Griskin, Director of Station Green that there is approval with Fermanagh and Omagh District Council for the use of the car park at Holyhill Crescent.
- On behalf of the Enniskillen Business Partnership Mr Styles has advised that his contacts in the estate agency world in Belfast have told him that several key retailer partners in Enniskillen Town Centre have been approached over the past 12-18 months.

4.4 Consideration of representations

Issues raised in relation to the nature of the proposal, relevance of planning history, sequential assessment, impact on town centre and other businesses and nearby 3rd parties, are considered separately within the report.

The removal or alteration of a bulky goods condition on other developments by The Range is not material in the determination of this application. If a planning condition is added it needs to meet the relevant legal tests. Any subsequent appeal or Section 54 application would have to be considered on its own merits. Any future approach by the applicant in relation to conditions is not a matter to consider or weigh up in this determination.

The description of the PAN and the PAN process undertaken by the applicant meets the relevant legislative tests of the Planning Act. Section 27 (Pre Application Community Consultation) of the Planning Act 2011 requires that the proposed development must be described in general terms only. The objective of community consultation is to allow communities to have an active role in developing proposals. A meaningful pre application community consultation process will not involve the developer presenting a completed project concept, otherwise there would be no value in this statutory provision.

In a recent judicial review relating to Section 27, McCloskey J (as he then was) stated that “it is the very essence of the new statutory regime that alterations, ranging from the minimal to the more significant, may legitimately be made to a planning project in the wake of a Section 27 PAN consultation exercise” ([2019] NIQB 12, at paragraph 14).

Issues raised in relation to the applicant’s social media approach to the development are not material planning matters to this application.

5.0 Planning History

5.1 On site

There are a number of relevant planning applications relating to this site:

- L/2006/2379/F – Proposed residential development comprising of 23 detached dwellings, 52 semi-detached dwellings, 63 townhouses and 51 apartments, approved 25 October 2010.
- L/2003/0798/O – Retail park to include food superstore, non-food retail warehousing, garden centre, builders’ yard, petrol filling station, customer car parking, service hardstanding & crib retention walling, approved 11 May 2006.
- L/2007/1025/RM – Retail park to include food store, non-food retail warehousing, garden centre, customer car parking, service hardstanding and crib retention walling, approved on the 01 October 2008.
- L/2010/0924/F – Article 28 application for the redistribution of the floorspace approved between the food and non-food elements -reduction in non-food floorspace by 2000sqm and increase in food floorspace by 2000sqm, approved 29 March 2012.
- LA10/2018/0124/F - The Department for Infrastructure considered that a number of a pre-commencement conditions had not been met and no substantial evidence had been provided that operations had begun. DFI were of the opinion that the permission had lapsed and made the application invalid and returned it to the applicant.

Weight to be afforded to L/2003/0798/O

Planning permission was granted under planning reference L/2003/0798/O on 11 May 2006 for a retail park to include food superstore, non-food retail warehousing, garden centre, builders' yard, petrol filling station. The reserved matters were approved on 01 October 2008 (L/2007/1025/RM).

There is a dispute between the applicant and the objectors about the weight to be afforded to L/2003/798/0, and the accompanying reserved matters application L/2007/1025/RM. The applicant considers that these permissions are "important as they confirm the site is suitable for large mixed use retail development" (see Retail Impact Statement at paragraph 2.17). The applicant argues that these permissions were "commenced" and "there remains an extant fall-back position in this case" (see Retail Impact Statement at paragraph 2.17). Some of the objectors have argued that these permissions were not commenced in time and have now expired with the result that they should be given no weight (see e.g. TLT Letter on behalf of Station Green Enniskillen Ltd (6 April 2021)).

Officers acknowledge that the planning history is capable of being a material consideration. There is a dispute here about the planning position which focuses on whether or not L/2003/0798/O was commenced in time or whether it has expired. The most appropriate forum for that dispute to have been resolved would have been an application for a CLEUD under s. 169 of the Planning Act (Northern Ireland) 2011 as that is the process by which the lawfulness of an existing use is to be established. However, given that the extent of the lawful use rights is relevant to this application, officers must go on to consider the competing arguments. The comments made here are without prejudice to any s. 169 application that may later be made.

In short, officers consider that L/2003/0798/O has expired. Officers have carefully considered (a) the arguments that have been advanced by the applicant, including those in the Third Response to Representations; (b) the arguments that have been advanced by the objectors; and, (c) the case files. Officers consider that, for the reasons set out by the Department for Infrastructure in its 24 October 2018 letter returning LA10/2018/0124/F as not validly made, planning permission has lapsed. Officers note that the arguments now being raised by the parties in the context of this application were considered in detail by the Department in the context of LA10/2018/0124/F, and the Department reached a reasoned conclusion which was not challenged. Officers see no reason to disagree with the conclusions reached by the Department.

Notably, the applicant makes two main arguments in its Third Response to Representations:

- (i) the decision on L/2010/0924/F, and in particular the first condition of that permission, must be read as an indication that the Department considered development to have been validly commenced at that time. That argument was rejected by the Department in the context of LA10/2018/0124/F. Officers agree with the conclusions of the Department on this point;

- (ii) the conditions imposed on L/2007/1025/RM were not valid pre-commencement conditions. That argument was rejected by the Department in the context of LA10/2018/0124/F. Officers agree with the conclusions of the Department on this point.

For the avoidance of any doubt, officers do not consider that *Blackwood* [2018] NIQB 87 alters any of the conclusions reached by the Department in its response to LA/2018/0124/F. The paragraph relied on by the applicant, i.e. paragraph 26, did not create any new law.

For all of these reasons, officers consider that L/2003/0798/O expired on 11 May 2011 as development was not commenced in time. Accordingly, this is not a valid "fall-back" (Retail Impact Statement at paragraph 2.17).

In terms of the weight to be given to the decision on L/2003/0798/O more generally, officers consider that extremely limited weight can be afforded to this decision for the following two reasons: first, there has been a change in retail planning policy since that decision, with the introduction of the SPPS which cancelled the policy provisions in PPS 5 which the previous decision was based on; and second, since then the evidence base for the relevant retail impact assessments has been updated.

Additionally, the previous decision was made by the Department. Since 2015, the vast majority of planning functions have been transferred to Councils. The Council is not bound by decisions previously made by the Department.

5.2 Off site

There are a number of relevant planning applications associated with this proposal and referred to in submissions;

- L/2012/0452/F – Proposed mixed use development of retail, office and residential uses comprising lower ground, upper ground and first floor retail, second floor offices and third floor residential apartments and including stopping up of existing road on South East boundary and reclassification of existing road to car park, approved 05 November 2013.
- LA10/2019/0643/LDE – To determine that works carried out (Foundations) as part of planning approval L/2012/0452/F (retail, office and residential development) are lawful (including LA10/2018/0519/F variation of condition 2), certified as lawful on the 06 September 2019.
- L/2012/0341/F – Proposed Retail Development consisting of 3 no. two storey units (non-food) with Unit 1 increased by 280m² and service access road in the undercroft of Unit 3. The proposal also includes site boundary fencing, retaining walls, car parking and stopping up of existing road on South East boundary and reclassification of existing road to car park, approved 05 November 2013.
- LA10/2019/0641/LDE – To determine that works carried out (Pile Foundations) as part of planning approval L/2012/0341/F (3 No Retails Units) are lawful (including LA10/2018/0520/F Variation of condition 02) and (LA10/2018/0825 Variation of condition 09), certified as lawful on the 06 September 2019

- LA10/2021/0674/F - Full application for the demolition of existing garage and erection of a freestanding McDonald's Restaurant with drive-thru, car parking, landscaping and associated works including 2No customer order displays on the southern portion of the former TP Toppings site. This application has just been received on the 03 June 2021 and is at a very early stage of the process.

6.0 Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended)

The potential impact of this proposal on designated sites has been assessed in accordance with Regulation 43(1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on a European site in Northern Ireland (either alone or in combination with other plans or projects).

6.1 Planning (Environmental Impact Assessment) Regulations (NI) 2017

The application has been screened against the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and a negative determination issued that the application does not need to be accompanied by an environmental statement, ref - LA10/2019/0807/DETEIA.

7.0 Planning policies against which the application is to be assessed and any other material considerations relevant to the application

7.1 Fermanagh Area Plan (FAP) 2007

The Fermanagh Area Plan (FAP) 2007 is the local development plan in accordance with Schedule 1 to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015. This application must be determined in accordance with the development plan unless material considerations indicate otherwise (s. 6(4) Planning Act (Northern Ireland) 2011).

The application site is located towards the outer edge of the development limits of Enniskillen (but within the development limits), though it has not been zoned for any particular use (commonly referred to as 'whiteland').

Policy Indcom 3 Town Centre states that the viability and vitality of the town centres of Enniskillen, Irvinestown and Lisnaskea will be protected. This is also echoed within policy S3 of FAP. It also states that appropriate development proposals on unzoned lands will be treated on their merits and may be acceptable should site constraints be overcome. There are no specific policy criteria in these policies to assist in the assessment of the proposal. Whilst the retailing policies of the FAP are material, it is felt that the proposal is more appropriately assessed under the updated regional retailing policies of the SPPS, and assessment is made on that basis.

The planning policies relating to tourism within the FAP T2 and T3 are also material and are considered below in conjunction with PPS 16 given that PPS 16 provides a more updated policy context.

7.2 Fermanagh and Omagh - Local Development Plan 2030 Draft Plan Strategy

The draft plan strategy (DPS) maintains Enniskillen as a town centre and includes a number of policies relating to retailing and main town centre uses (Draft Policy TCR01 – Town Centres), loss of industry and business uses (Draft Policy IB02 – Loss of Business and Industry Uses) and petrol filling stations (Draft Policy TCR05 – Petrol Filling Stations).

The DPS is now with the PAC awaiting Independent Examination. There are a number of objections to the relevant policies within it and as such at this stage these policies are given limited weight.

7.3 Strategic Planning Policy Statement for Northern Ireland (SPPS): Planning for Sustainable Development.

The subject policy in the SPPS that is of particular relevance to this application is “Town Centres and Retailing”. The relevant text is set out between paragraphs 6.267 and 6.292. The contents of these paragraphs are material in the determination of this application.

The SPPS states that it is important that planning supports the role of town centres and contributes to their success (paragraph 6.269). It seeks to encourage development at an appropriate scale in order to enhance the attractiveness of town centres, helping to reduce travel demand (paragraph 6.269).

The aim of the SPPS is to support and sustain vibrant town centres across Northern Ireland through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions, consistent with the RDS (paragraph 6.270).

The SPPS has a “town centres first” approach for the location of future retailing and other main town centre uses (defined as including cultural and community facilities, retail, leisure, entertainment and business) (paragraph 6.271):

The regional strategic objectives for town centres and retailing are to (paragraph 6.271):

- secure a town centres first approach for the location of future retailing and other main town centre uses;
- adopt a sequential approach to the identification of retail and main town centre uses in Local Development Plans (LDPs) and when decision-taking;
- ensure LDPs and decisions are informed by robust and up to date evidence in relation to need and capacity;
- protect and enhance diversity in the range of town centre uses appropriate to their role and function, such as leisure, cultural and community facilities housing and business;
- promote high quality design to ensure that town centres provide sustainable, attractive, accessible and safe environments; and
- maintain and improve accessibility to and within the town centre.

7.3.1 Town centres first approach

The SPPS requires that a sequential test should be applied 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 LDP (paragraph 6.280). Planning authorities will require applications for main town centre uses to be considered in the following order of preference (and consider all of the proposal's catchment) (paragraph 6.281):

- primary retail core;
- town centres;
- edge of centre; and
- out of centre locations, only where sites are accessible by a choice of good public transport modes.

This site is in an out of centre location. The sequential test requires the applicant to undertake a full assessment of sequentially preferable sites. Where it is established that an alternative sequentially preferable site or sites exist within a proposal's whole catchment, an application which proposes development on a less sequentially preferred site should be refused (paragraph 6.280).

Paragraph 6.289 of the SPPS calls for applicants to adopt a flexible approach when undertaking the sequential assessment:

Flexibility may be adopted in seeking to accommodate developments onto sites with a constrained development foot print. For example, through use of creative and innovative design schemes, including multi-level schemes, or smaller more efficient trading floors/servicing arrangements. Applicants will be expected to identify and fully demonstrate why alternative sites are not suitable, available and viable.

The agent has undertaken an assessment of sequentially preferable sites. Third parties have also submitted information on these sites and there are conflicting debates between the parties on the approach to be taken for the sequential assessment, particularly in respect of the requirement for disaggregation of the scheme. Disaggregation essentially means separating the scheme down into parts onto a range of other sites.

Station Green, Toppings and South West College: Sequentially Preferable Composite Site

Before considering the debate on "disaggregation", officers consider that it is appropriate to start by considering if there is any sequentially preferable site or composite site on which the proposal could be located without the need for disaggregation.

Within the supporting documentation, a number of sites have been examined and considered: many of these, such as the PSNI site or the Devenish College, are clearly not available as alternatives; and many others have already been redeveloped for alternatives uses, and so are not available. Others that have been suggested are unsuitable.

The Council has identified a sequentially preferable composite site which consists of a number of parcels of land (Station Green, Toppings and South West College) (the "**Composite Site**"). The applicant disagrees that the site can be treated as a single site because neither the FAP nor the Enniskillen Masterplan identified these sites as a single site, and they are in different policy areas of the FAP. Additionally, the agent notes that the parcels of land are separate and are separated by the main Dublin road (see Third Response to Representations, paragraphs 2.47–2.97). The agent considers that the Composite Site is not "suitable" in any event (paragraphs 2.68–2.84).

Officers consider that the two Station Green sites, including the intervening car park, the former TP Toppings site and the South West College can be considered as one larger site. To restrict the sequential assessment of sites to single parcels of land or because they are within different policy areas in the development plan document would be contrary to the SPPS requirement to adopt flexibility.

The Station Green sites and the car park adjoin the rear part of the TP Toppings site and the College is adjacent. The distance from the TP Toppings to the College is approx. 70m, this is in comparison to the distance from the entrance to anchor unit 5 to the hotel which is nearly twice that at 135m.

Whilst the Dublin road runs between the TP Toppings and the College site, they are clearly visually linked from both frontages and the College has an area at the front where the public congregate which exacerbates this linkage. There are good pedestrian linkages between the two, with a number of pedestrian crossing points. Within the current scheme any pedestrian travelling from anchor unit 5 to the hotel would also have to cross a road and a number of parking areas.

In considering these issues, it is also important to note that the sites are all within the town centre where the policy directs future retailing and main town centre uses and the FAP adopts a similar approach. It is clear that the principle of these types of use on these sites would be policy compliant.

It is reasonable to consider this as one larger site and this would be typical of any brownfield regeneration or redevelopment scheme within a town centre. This is not considered to be disaggregation as it would be one large site. Whilst the applicant does not agree, they have however considered whether the composite site is suitable, available or viable for the current scheme.

In general terms the agent has raised issue with the size of the composite site (3.7h) in comparison to the Unipork site (6h). It is important to note that the Unipork site only consists of approx. 1.5h of buildings within the overall 6h, with the other 4.5h consists of parking, servicing and landscaping areas.

The SPPS requires flexibility in schemes brought forward onto sites with a constrained development footprint, with the use of creative and innovative design schemes, multi-level schemes or smaller more efficient trading floors/servicing arrangements. Reduced car parking will also be acceptable given the surrounding car parking and the location of the site within the town centre. Indeed, the agent has sought a reduction in car parking at the current Unipork site. Whilst the area of this composite site is

somewhat smaller than the application site, this is not a reason to discount it, as it is clearly of a sufficient scale to accommodate the type of development that the applicant has presented.

In considering and reviewing the rear Station Green site the agent has concluded that its servicing is unacceptable and at best it would offer two retail warehouse units or one large unit with a garden centre. The front element of the Station Green site (Mc Cullagh fuel store) has been discounted given its restrictive nature and no scope for servicing. The agent also considers that the existing approved design on this site is clearly for small footplate comparison shopping over multiple floors. The agent feels with being flexible these sites at best could accommodate a 3005sqm retail unit with a 300sqm coffee pod and 250 car parking spaces.

In relation to the TP Toppings site the agent has raised issues with the potential access arrangements including access onto the protected route (Dublin Road) and that a portion of the site is within the floodplain. The agent considers that the TP Toppings site is only realistic for one occupier as the site is screened by the Fire Station and also requires the provision of linkages as part of the composite site. With flexibility applied the agent feels that this site could only accommodate a 1500sqm unit with 500sqm garden centre and 100 car parking spaces

The agent has also raised concern with the South West College site which consists of two listed buildings (to the rear of the main college building) and is within close proximity to residential properties. In applying flexibility, the agent has identified that this site could accommodate the hotel.

As part of the applicant's assessment of the composite site it has been concluded that the cinema, bowling alley, drive through, indoor play area and petrol filling station cannot be provided, even with flexibility.

In terms of the composite site's constraints, the agent's concerns are not accepted. Access will be an important consideration in any proposal, it is noted that there are a number of existing accesses to the composite site including two existing entrances onto the protected Dublin Road from the TP Toppings site. Both accesses onto the Unipork site (Cornagarde and Irvinestown) are also onto protected routes so the agent is aware that the policy allows for exemptions where access cannot reasonably be taken from an adjacent minor road. Whilst there will be access and permeability issues to be overcome, this is normal with any application of this size and it is certainly not an obstacle to the redevelopment of the composite site.

A portion of the TP Toppings site is identified on the DFI flood plain maps for Enniskillen, however this is not a definitive indication of where the floodplain is. The exact extent of the floodplain can only be determined through a formal analysis and modelling by any prospective developer. It is noted that other land in the proximity of the site which is lower in level, is not identified within the floodplain nor has there been any historical flooding on the site. In any case redevelopment of the site for the current scheme will fall within a number of exceptions within the policy and so even if it is concluded that a portion of the site is within the floodplain, this will not be a determining factor in any redevelopment.

In addition to officer's comments above, there has been a full application submitted (03 June 2021), for Full application for the demolition of existing garage and erection of a freestanding McDonald's Restaurant with drive-thru, car parking, landscaping and associated works including 2No customer order displays on the southern portion of the former TP Toppings site. This application (LA10/2021/0674/F) has just been received 03 June 2021 and is at a very early stage of the process. The application proposes a direct access off the Dublin Road and is accompanied with a Flood Risk Assessment which demonstrates that the site is not within the floodplain and no flood compensation measures are proposed. DFI Rivers have not commented on the accuracy of this submission at this stage and officers have not reached a concluded view on it either. However, the submission of this application gives some further support to the view of officers that the TP Topping site is suitable for the broad type of development proposed by the applicant and could be developed for these types of uses.

The SPSS also promotes changes of use of listed buildings where this will secure their ongoing viability and upkeep. Given the size, scale and design of the adjoining main SW College building a suitable redevelopment scheme would be permitted and is likely to lead to positive benefits for the historic assets. The current Unipork site is located in proximity to residential properties and with appropriate mitigation this will not be a determining factor in any redevelopment scheme on the composite site.

The overall Station Green developments which have been previously approved provide for multiple units with over 8000m² of approved retail floorspace. In considering these sites with flexibility the agent can accommodate one 3005 m² unit, a reduction of over 5000 m². This is less than 50% of the retail floorspace which has been approved and commenced on site. At the front Station Green site which has approval for a 5 storey unit the agent with flexibility can accommodate a 300 m² coffee pod. The suggested layout of the development on the composite site by the agent clearly demonstrates inflexibility in approach to the sequential assessment.

The agent accepts that a mezzanine floor could be provided and therefore accepts that upper floor trading is acceptable for the potential occupiers of this development. The Council agrees that there is no requirement for units to be single storey only and The Range can operate over several floors.

This is significant in terms of considering a possible layout for the sequentially preferable site. Whilst the agent acknowledges this, he does not proceed to model or reflect this within his assessment to any great detail. Upper floor trading would allow for a significantly greater provision of retail than the 8000 m² currently approved on the Station Green sites. There are examples within and outside the District of many of the potential types of occupiers trading over a number of floors.

It is important to note that some of the potential types of occupiers do not sell items directly from the shop floor. Items are for display only and when purchased are then delivered. Given that the final occupiers of the scheme are unknown, many of the requirements are merely assumptions.

The agent also advises that there is a requirement for all retailers to have their own ground floor entrance. This is a surprising requirement as many of the potential types

of occupiers are located within shopping centres with no independent access and thus these occupiers have adopted flexibility on other occasions to ensure they are accommodated within certain developments. In addition, it is noted that most of the units do not have an occupier, so again this is an inflexible approach to the sequential assessment when final occupiers are not even known.

There has been little flexibility considered in terms of numbers of units, size of units, layout of units, overall floorspace, use of creative and innovative design schemes, multi-level schemes, or smaller more efficient trading floors/servicing arrangements despite some of these explicitly requiring consideration as part of flexibility in the SPPS. The development of Primark and Supervalu in Omagh is an example of flexibility being applied in new development.

The agent has shown flexibility in terms of a reduced car parking figure for the application site but does not consider any flexibility in the town centre location or the potential for on street parking and or adjacent car parking to make up any shortage.

RMI on behalf of the Enniskillen Business Partnership has also carried out a capacity and viability study of the composite site. In comparison to the agent's approach they have set out how the composite site may be developed. In reviewing this concept, it is obvious that the scheme proposed is not that which has been presented by the agent, both in terms of end uses and layout/sizes etc.

Overall, however, it is considered that the agent has not approached the sequential assessment with flexibility and the composite site is clearly suitable for the proposed development.

In relation to availability, the agent accepts that the Station Green parcels of land are available, but continues to contend that the car park, TP Toppings and the South West College parcels of land are not available. Evidence has been provided by Station Green and TLT solicitors which advises that that the Policy and Resources Committee of the Council resolved in 2017 to progress a Station Green Regeneration scheme and there is an agreement in principle that the redeveloped Station Green retail park scheme will incorporate the Holly Hill public car park. This was discussed at the April 2017 meeting, in any case officers are content that the car park is considered to be available.

A letter has been provided by applicant's representatives, from the owner of the TP Toppings site, which outlines that this site is not available, or for sale and will be coming forward for development in due course by the owner. The agent suggests that it would be unreasonable in these circumstances for the Council to consider this site available. However, in *Aldergate* [2016] EWHC 1670 (Admin), Mr Justice Ouseley stated that "available" meant "available for the type of retail use for which permission is sought", not "available to a particular retailer" (see, paragraph 42). Although the letter from the owner of the TP Toppings site may show that the site is not available to this "particular retailer", officers consider that the TP Toppings site is, nevertheless, "available for the type of retail use for which permission is sought" such that it is "available" for the purposes of the SPPS.

Whilst there has been a full application submitted on the 03 June 2021, for a freestanding McDonalds Restaurant with drive thru, the owner of the site remains Riverside Property Management Company and Mc Donalds Restaurants has served notice on them as the freehold owner. This does not change the Council's position in relation to the availability of the TP Toppings site.

The agent also considers the South West College site to be unavailable given that there may well be a lengthy process involved in disposing of the site. The new College will be open to students from September and therefore as a result the current SW College will be available and is clearly available for the proposed development. In his supporting information the agent advises that the final completion of the remaining elements of the scheme (apart from The Range) will be 2024.

The agent has advanced no argument in terms of the composite site not being viable. The Council consider the composite site to be viable for the type of development proposed.

The overall composite site is available for the broad type of development which is proposed in the application and could accommodate all the range of elements if flexibility is applied. Officers consider this to be a sequentially preferable site and in accordance with SPPS paragraph 6.280, permission should be refused on the basis that a sequentially preferable site is available.

Disaggregation

There are conflicting views on the lawfulness of considering disaggregation in sequential assessments under the SPPS. Conflicting legal opinions have been submitted by the parties, with David Elvin QC, on behalf of the applicant, concluding that the SPPS did not require disaggregation, and Paul Tucker QC and Freddie Humphreys, on behalf of one of the objectors, concluding that whether disaggregation should be considered in relation to an application is ultimately a matter of planning judgement for the authority. The applicant has referred to a large number of authorities. The arguments have been canvassed in detail in the representations submitted by the parties. Officers have carefully considered all of the relevant material.

Officers do not intend to go through each and every one of the authorities cited in the opinions, but would note:

- (i) it is important to read those judgments and decisions in their factual contexts. The relevant issues, and the conclusions in the case law need to be carefully considered in the context of the current application. All of the cases cited are from England and Wales, with varying plan policies in play and with lots of different factual scenarios from the one that is currently before the Council. Caution needs to be exercised in trying to read across statements of principle from one case to another, particularly in a field that is as fact-sensitive as this (see, e.g. *Warners Retail* [2016] EWCA Civ 606, at paragraph 45);

- (ii) officers consider that the case law, in particular *Tesco Stores* [2012] UKSC 13, does not, as a matter of principle, prohibit a local authority from considering “disaggregation”. Nor do they consider that there is anything in the text of the SPPS which prohibits a local authority from doing so. It is worth noting that Mr Tucker QC and Mr Humphreys consider that the use of the plural “sites” in paragraph 6.280 of the SPPS may be said to support the view that the SPPS endorses the consideration of disaggregation;
- (iii) officers consider that, under the SPPS, a decision-maker must first identify what the “broad type” of development being proposed is (see, e.g. *Aldergate* [2016] EWHC 1670 (Admin) at paragraph 35; *Midcounties* [2017] EWHC 2056 (Admin) at paragraph 88), and then must go on to consider what can reasonably be expected of the developer in terms of flexibility under the sequential assessment (see, e.g. *Warners* [2016] EWCA Civ 606 at paragraphs 30 and 33; *Lionbrook* [2014] EWHC 646 (Admin), at paragraphs 164–165);
- (iv) officers consider that the question of what can reasonably be expected of a developer in terms of flexibility under the sequential assessment is a matter of planning judgement, the exercise of which will depend on the facts of the case. The flexibility that can reasonably be required is limited by the broad type of development proposed: a developer cannot reasonably be expected to search for sites that are not suitable for the broad type of development proposed but is expected to be flexible within those bounds. In some cases, disaggregation will not be an appropriate response in light of the broad type of development proposed (see e.g. *Scotch Corner, Rushden Lakes, Tesco Stores*), whereas in other cases disaggregation will be an appropriate response in light of the broad type of development proposed (see e.g. *Tollgate, Hull*).

Beyond these observations, officers do not consider that it is necessary or helpful to engage in a detailed analysis of the authorities and the decisions that have been referred to.

Officers consider that disaggregation is relevant in the context of this particular application.

In the current case a substantial number of the units have no end user, to an extent the scheme has been disaggregated within the site, with a clear layout of retail to the south and leisure and businesses to the centre and north. The two named occupiers Moviebowl and The Range both have premises in Derry. Moviebowl is located in Pennyburn Industrial Estate with The Range located in a retail park further down the Buncrana Road, both of which operate unhindered and successfully some distance apart. There is no evidence that the proposed format, layout and range of uses are all required at the same site.

The present application is a largely speculative proposal without identified occupiers for many of the retail units. This is considered to allow for a greater flexibility in looking at alternative sites. Indeed, The Range can operate over several floors and there is no requirement for a single ground floor unit. The absence of information on other potential tenants also allows for increased flexibility with no evidence that these units require large ground floor retail space and indeed it is accepted that the occupiers could trade from upper floors.

The agent has advanced an argument that there is a format and functional need between the uses proposed. The agent advises that the development is designed to be attractive with a variety of uses to ensure that shoppers do not leave the district, but again the majority of units have no end occupier. In any case it would be reasonable to assume that this draw would still occur even if the scheme was disaggregated.

In addition, it is contended that there is a functional relationship between the uses, with the petrol station catering for car borne shoppers, the food outlets designed to feed the shoppers and the cinema, bowling alley and hotel catering for their leisure needs and stays. However, all of the uses can operate independently and indeed the synergies would still be realised even if the scheme was disaggregated with the town centre.

Whilst the requirement for adjacent parking is accepted there are many town centre car parking sites within Enniskillen and so there will be ample provision should the proposal be disaggregated over many sites.

In para. 2.86 of the agent's supporting submission (3rd response) it is advised that the anchor tenant will be in place for 2022 and the entire site finished by 2024. This raises two key issues: it is evidence that there is no co-dependency between the uses and as such supports the view that disaggregation should be applied to the scheme; in addition, given the location of Unit 5, it leaves a lingering doubt as to whether the entire scheme will be finished particularly given the lack of current occupiers. It seems that the entire extent of the scheme may have been pitched at a level as to overcome the sequential assessment and prevent location with the town centre.

As part of flexibility the agent has not considered how the proposal could be disaggregated onto a range of other town centre sites, even in terms of the different elements retail, leisure, business (as opposed to every single building). As such the proposal is contrary to paragraph 6.289 of the SPPS.

Retail Impact Assessment & Need

As required by para 6.283 of the SPPS a full assessment of retail impact as well as need has been carried out by the applicant. This has been updated to take account of Experian Retail briefing note 18 however the overall assumptions and findings of the retail impact remain largely unchanged. Further commentary on need is also provided by the agent in their most recent supporting information.

Williams Gallagher on behalf of Erneside owners, has also presented updated information in relation to retail impact and need.

Need

The SPPS requires in the absence of a current and up to date LDP, applications like this to prepare an assessment of need which is proportionate to support their application (paragraph 6.282). This may incorporate a quantitative and qualitative assessment of need taking account of the sustainability and objectively assessed needs of the local town and take account of committed development proposals and allocated site (paragraph 6.282).

In relation to need, the agent has referred to the Tom Phillips and Associates Enniskillen Retail and Commercial Leisure report (2010) and the Nexus published Fermanagh and Omagh Retail and Commercial Leisure needs assessment and their updated addendum. The Nexus report including their addendum is the most up to date report and on that basis is considered most relevant.

The assessment considers that comparison growth expenditure will be £43.74m to 2025 and the proposal can be supported by growth. However, the updated Nexus assessment, advises that forecast growth rates have slowed significantly, particularly in comparison goods and this will remain below average.

The updated Nexus assessment also revises their capacity assessment for Enniskillen. This outlines that in 2025 surplus expenditure will be -£6.8m and with the addition of commitments there will be a -£36.9m of residual expenditure. The floorspace capacity of comparison goods in Enniskillen at 2025 is estimated to be between -5,400m² and -8,500m².

If the current scheme was approved this would add a further 9282 m² of capacity, resulting in an over capacity of floorspace of between 14,682 and 17,782 m². This represents a significant over supply. If you also reflect the turnover of the proposal into the residual expenditure this represents an approx. total deficit of £64.8m which is also significant. Nexus conclude that there are now significant district wide negative capacities for comparison goods.

The Nexus report also considers the need for other uses such as cinemas and ten pin bowling alleys within the district. In relation to cinema screen need, the report does not consider that 2 additional screens have been permitted at the existing IMC Cinema in Omagh (LA10/2016/0153/F) and 7 screens at the new Omniplex cinema in Omagh (K/2015/0060/F). The approval of a further 5 screens in this application would result in a surplus capacity of 18 screens.

In relation to ten pin bowling, it is again noted that a further approval of 4 bowling lanes under LA10/2017/1256/F is not included within the Nexus report. To approve a further 8 lanes would result in a surplus capacity of 9 lanes. There is no need identified for further bowling lane provision in Enniskillen and this view is supported by the subdivision and change of use of the vacant bowling alley in Enniskillen (LA10/2016/0467/F).

In terms of qualitative need, whilst the anchor tenant is not currently present in the district, that does not reflect a need for a modern built retail warehouse park in Enniskillen in an out of centre location. The existing retail warehouse provision in Enniskillen at Railway Junction retail park shows no signs of disrepair. In addition, the units at Derrychara are also considered fit for purpose for bulky goods retailing as Screwfix now occupies one of the units. There is no evidence that the current provision in Enniskillen is not of the required size, scale, design or format. This is also supported by the fact that Nexus has concluded that there is very little leakage of spending from the district in terms of comparison goods and even less in terms of bulky goods.

Within the retail assessment undertaken by the applicant, the Council has concerns relating to a number of assumptions modelled including defining a catchment, study period, turnover, trade draw and clawback of leakage. The catchment is excessive and a mixed use retail park with only a few committed occupiers cannot be compared to the catchment of Enniskillen. The use of a 6-year study period also seems to conflict with The Range who anticipate trading from their unit in 2022.

In terms of leakage and clawback, the Nexus report states that the comparison goods spending within the district by industry standards is exceptionally high with limited leakage of around 10% with bulky goods leakage in terms of electrical and DIY even less. It is not therefore accepted that over a third of the trade diversions for the proposal will come from clawback of this leakage.

The assumption that only 42% diversion of trade from the town centre is considered to be underestimated, whilst 49% will come from other areas within and outside the catchment. The town centre has a high composition of comparison goods retailers and no out of town retail parks. Given the nature, scale and attraction of this competing development, diversion is likely to be greater. In addition, as there will be a substantial oversupply of floorspace it is more likely that trade will be diverted from existing stores.

The objectors initially judged the impact on the town centre of between 10% and 17%, however, 17% would seem to be overestimated as a result of the assumptions used for the proposal's turnover. In Williams Gallagher's revised assessment they estimate the Solus impact to be 12.19% on Enniskillen, with also Solus impacts on Irvinestown (13.78%) and Lisnaskea of (13.12%). Officers however would feel that the impacts on Irvinestown and Lisnaskea are overstated as a result of the % trade draw used.

Given the composition of the town centre and nature and location of the proposal it is Enniskillen that will see the greatest impact. Overall, the impact on Enniskillen is key and is likely to fall somewhere in between the two figures at round 14/15%.

It is important to note that a retail impact assessment, surveys and assumptions are not an exact science. The assessment is only a tool to assist in the decision-making process. In the Scotch Corner case quoted in support of the proposal it is clearly outlined that there is no percentage impact that would form a threshold or tipping point where the impact would be considered adverse. The specific facts of the application, including the health of the town centre, are also very important factors to be weighted in considering the impact on the town centre.

Health of Enniskillen Town Centre

It is contended by the applicant that Enniskillen is currently healthy with strong rental values in comparison to other towns in NI. The evidence however demonstrates that it is fragile and extremely vulnerable to this development. The development is substantial in scale in terms of retailing floorspace, which the applicant has advised to be 12% of the size of Enniskillen Town Centre.

Williams Gallagher has submitted updated information in relation to the health of Enniskillen Town Centre, this survey was conducted in January 2021 during the pandemic and therefore this evidence has to be firmly considered in that context. What is important is to review the trends.

The town centre has a higher than average vacancy level of 14.2% compared to the UK average which is 11.3% and vacancy levels have increased since 2003 and continue to do so. Rental levels in primary and secondary Zone A areas have decreased from 2009, showing an overall decrease of 26%. In addition, the objectors and property owners within the town centre advise that there is subdued demand for new floorspace and that there are a number of retailers occupying units temporarily and paying a peppercorn or no rent. There have been a significant number of retailers ceasing trading in the town centre and this leaves units in prime locations vacant, eg. Easons, and the collapse of the Arcadia group also threatens the future trading of TopShop and Dorothy Perkins.

As outlined above there is a substantial oversupply of comparison floorspace of between 14,682 and 17,782 m² and a residual expenditure deficit of £64.8m which is also significant. Nexus conclude that there are now significant district wide negative capacities for comparison goods. Where there are high levels of vacancy, in conjunction with a substantial oversupply of floorspace (if approved) and negative residual expenditure the proposal will not be accommodated through increased growth in spending, it will be accommodated by taking a greater trade draw from the town centre and so a greater impact on the town centre.

Enniskillen town centre, in comparison goods terms, has a high percentage of floorspace (64.6%) compared to the UK average (35.9%). This is a result of larger stores at Railway Junction retail park and the retail warehousing at Derrychara, which would normally occupy out of centre locations in other towns. The proposal will in essence compete directly with these locations and as a result of the negative residual expenditure, draw trade from these areas and as such will threaten this composition.

As outlined the Nexus report advises that many of these occupiers would normally elsewhere in the UK be located in out of centre locations. It is highly likely that some of these retailers including Screwfix, Johnston's Decorating Centre, Upstairs Downstairs, PC World would all relocate to the development as they would all fall within the definition of bulky goods.

As outlined previously, the anchor tenant The Range also sells non bulky goods and convenience goods such as clothing, pet products, cleaning and beauty products all of which will compete directly with town centre stores, and are somewhat similar in retailing terms to B and M Bargains who could also relocate.

It is evident from the representations that The Range, the anchor tenant for the proposal, had also been in negotiation with Station Green and in 2018/2019 a landlord/development specification was agreed. It is evident that the current proposal will compete directly with Station Green and it is likely that approval of the proposal will have a significant adverse impact on the delivery of this committed and planned private sector investment in the town centre. It is clear from the representations that they will not both come forward and this view is supported by the oversupply of retail space within Enniskillen.

This scheme will have ease of parking and access with lower rent and rates. The evidence is that rents are falling, and vacancies are rising within the town centre. There will be a number of key vacant sites particularly to the east of the town centre, Station Green, TP Toppings and the SW College and approval of the proposal will have a significant adverse impact on investor confidence in the town centre.

Enniskillen has a high percentage of independent retailers (62%) and an average unit size is of 276 m² net. Small units and independent businesses are more vulnerable to out of centre trading and do not have the ability to withstand large retailers and would not be able to sustain trade loss.

The impact on the town centre overall is key and given the nature, scale and range of varying uses included within this scheme it is likely to compete with Enniskillen in terms of business and leisure uses and draw trade from these businesses.

When the new A4 bypass which has recently been given the go ahead by the Infrastructure Minister is constructed, this will also reduce significantly any potential for linked trips with the town centre given that the catchment within zones to the south of Enniskillen will be able to bypass the town centre. The catchment north and west of Enniskillen are also unlikely to pass the development in favour of the town centre which will also significantly impact on linked trips with the town centre.

The proposal is also likely to have a significant adverse impact on Johnny Rockos in Irvinestown, as the Nexus report indicates that the catchment in Enniskillen and south of Enniskillen are users of this business. Once approved, people within this catchment are unlikely to pass the development and travel to Irvinestown. Given the oversupply of cinema screens in the district the proposal is also likely to have a significant adverse impact on the IMC cinema in Enniskillen. However, the policy test does not relate to the impact on individual businesses like Johnny Rockos and the IMC, it is the impact on the overall town centre.

Conclusions on the Impact Test

Considering all these factors, the proposal will have an adverse impact on trade and turnover for both convenience and comparison good traders and the town centre overall and will also have a significant adverse impact on the vitality and viability of Enniskillen Town Centre and is contrary to policy. There is already an oversupply of retail floorspace within the town and the development will draw trade away from existing town centre businesses and be in direct competition with them. It will also likely encourage these businesses to vacate their existing premises and move out to this out of centre location leaving their existing units vacant and unlikely to be filled.

These impacts would also damage investor confidence in regenerating the town centre and vacant sites with the existing and committed investment in the town centre regeneration wasted, as well as a likely loss of committed and planned investment.

7.4 COVID – 19

There is no doubt that COVID-19 and the resulting government restrictions have had a significant impact on footfall, trade and turnover of Enniskillen Town Centre and affected retailer patterns and habits. It is widely accepted that town centres will take time to recover and will have to adapt.

The applicant states that the proposal is designed to be opened in 2024 and they are of the view that they will reach a settled trading pattern in 2025 and within that time the economy will have come to terms with the long term effects of Covid-19.

Covid-19 has affected the general health of the town centre both in terms of vacant units and footfall during periods of lockdown. It is unknown yet how long the pandemic will last and what will be the long terms impacts on Enniskillen town centre. The general health and composition of the town centre and longer trends in terms of vacancies and rents have been weighed up in the assessment above with the retail impact. Whilst it is too early to make any predictions about the long term impact on consumer spending as a result of Covid -19, the impacts on the town centre need carefully considered in conjunction with the resulting impacts of Covid -19.

7.5 Air Quality

Annex A of the SPSS outlines that air quality is a material consideration in the determination of planning applications.

An air quality impact assessment considers the air quality impacts from the construction phase and once the proposed development is fully operational. During the construction phase the issues are likely to be dust and emissions from construction plant and machinery. During the operational phase the issues in the main will be the change in the number and speed of vehicles using the road network.

In considering dust risk, in table 1.12 (page 30) it is stated that no buildings are to be constructed in the project - negligible. This would appear to be an error given the nature of the proposal.

The report concludes that the impacts during the construction phase are predicted to be of short duration and only relevant during the construction phase. The modelling indicates that before mitigation, the impact from dust will be low. Mitigation in the form of construction best practice and a dust management plan will result in effects being considered as not significant/negligible.

Following modelling of the operational phase, the effects of changes in traffic flow as a result of the proposed development, with respect to Nitrogen Oxides and particulate matter are predicted to be within the relevant health-based air quality objectives and a negligible impact on the existing receptors is predicted.

It is noted that full plant details are not yet determined, but that a technical report can be submitted when this information is known, initial proposals include a gas fired boiler heating and gas fired water heater.

The report concludes that overall, the air quality effects of the proposed development are considered to be not significant. The proposal complies with the SPPS in terms air quality and impact on third party amenity. EHD have raised no issues in this regard subject to conditions.

7.6 Odour

The proposal includes a drive-thru restaurant with approx. 92 seats, and a hotel with 120 plus covers in the bar and restaurant. An odour impact assessment has been submitted for consideration. This assessment notes that there are other restaurants and cafes in the surrounding area.

The risk assessment considers four different areas, which are given a risk rating, the total risk rating is then used to denote the level of odour abatement required to prevent odour nuisance impacts.

The four areas and their risk rating are as follows; dispersion (moderate), proximity to receptors (close), size of kitchen (large) and cooking type and grease loading (very high). As a result, the total impact risk is considered to be high. However, the report concludes that with odour mitigation in place any significant impacts from odour will be reduced to negligible.

The assessment outlines potential odour mitigation measures in Section 5 of the report. These include; mitigation through the building fabric, detailed design of odour extraction (odour mitigation and management, high level odour control) and odour control waste storage areas.

The report concludes that odour mitigation measures can be agreed with Council, prior to the occupation of any units. The proposal complies with the SPPS in terms of impacts on neighbours by way of odour. EHD have raised no issues subject to conditions.

7.7 Noise

Annex A of the SPPS outlines that noise is a material consideration in the determination of planning applications. In addition, the Noise Policy Statement for Northern Ireland is material.

A noise impact assessment was undertaken for the proposal. This included a baseline noise monitoring survey consisting of attended and unattended noise measuring. The consultant has outlined that due to security at the site, the background survey was limited, and no further background monitoring will be undertaken.

The impact assessment has focused primarily on two areas, noise from the construction and operational phases of the development. The closest receptor from a building boundary has been identified as 92 Irvinestown Road.

The construction phase will involve use of heavy plant such as dozers, excavators and other noisy items such as dump trucks and circular saws. Noise predictions were based on a worst case scenario and demonstrated that there was the potential for construction noise impacts at the nearest noise sensitive receptors. A construction barrier such as a wooden hoarding around the perimeter of the site is proposed as mitigation to ensure noise levels are reduced within the required thresholds.

Construction activity in the vicinity of residential properties would operate between the hours of 07:00 and 19:00 on Mondays to Fridays and 08:00 to 13:00 on Saturdays and best practice measures are outlined.

In relation to noise from the operational phase of the development the following key areas have been considered; plant and equipment, internal and external noise levels at nearest sensitive receptors, noise from outside service yards and noise from increased traffic.

In relation to plant and equipment the final details to be installed have yet to be finalised. On this basis the report concludes that noise limits for the proposed development in relation to plant and equipment can be set to ensure the nearest noise sensitive receptors are not adversely affected.

In relation to the delivery yard, the report assumes that deliveries to the retail and garden units will be via the shared service road and yards to the rear of the units and deliveries will only be during daytime hours. The closest noise sensitive receptor is 16 Bothar Chil MhicCormaic which is approx. 33m away. A double boarded timber fence has been proposed along the southern and western boundary to ensure attenuation of noise levels to acceptable levels.

The report also advises that noise levels from the self-service petrol station will not have an adverse impact on the nearest noise sensitive receptors.

In relation to the hotel development there are no proposals to have entertainment events or amplified music. The report assumes that the external walls of the hotel will be standard masonry construction. Therefore, to ensure that bedroom units within the hotel achieve the required noise level double glazing units providing a sound reduction of 31dB is recommended.

The report advises that the dominant internal noise source from the proposed cinema and bowling alley will be the cinema, though it is noted that there is no relevant guidance to assess the audibility of amplified sound tracks adjacent to residential properties. Recommendations from the assessment of noise emissions from bars and nightclubs is applied.

Overall, it is estimated that sound levels for different films can range from 80- 90dB. The closest receptor to the cinema will be the hotel accommodation. To ensure the

cinema does not have an adverse impact on the hotel accommodation or other nearest receptor the cinema building must have an Rw of at least 52dB.

In relation to the drive thru restaurant noise levels can measure up to 73dB. This consists of a driver approaching a drive thru restaurant, stopping, speaking to the intercom unit (with loud music in car), receiving the order and then driving off. The closest receptor has been identified as 92 Irvinestown Road and the report concludes that given distance attenuation, the predicted noise levels at the nearest noise sensitive receptors are within the acceptable thresholds.

The noise levels from the car park have also been considered within the report. The car park is assumed to have a smooth surface finish resulting in lower operational noise and there will be no significantly noisy activities associated with the car park other than the operating noise of vehicles.

Cars and car doors banging/closing are the noise generating activities considered which have a noise level of 70-75dB and using a distance attenuation calculation the level at each noise sensitive receptor can be calculated. These are worst case scenarios and do not include the fact that intervening buildings will act as noise barriers. It is concluded that noise levels will not have an adverse impact on the nearest noise sensitive receptors.

Noise from additional traffic movements on roads as a result of the proposal has also been considered within the report and found to be within acceptable limits. Revised cumulative noise restrictions has been presented in the noise clarifications document received 10 September 2020. This assumes all operational noise activities are simultaneously occurring. The author states that this is again considered to be an overestimation of the noise impact. Subject to an acoustic barrier, cumulative noise levels will be within acceptable levels and the proposal will not therefore have an adverse impact on any 3rd parties by way of noise. EHD are content and have raised no issues in this regard subject to conditions.

Impacts upon nearby 3rd parties

There are a number of properties near to the site and No 94 Irvinestown Road has raised concerns in relation to amenity (noise, loss of light etc) and undermining of adjoining land from the development.

The current proposal adjoins No 94 to the south and sits on elevated ground to the rear of that site. The closest building to this property is the bowling alley/cinema, with the hotel further west and the drive thru further east.

The cinema and bowling alley coexist in the same building, linked with a lobby and reception area. The building is ground floor only and has a flat roof the height of which ranges from 5.15m high (bowling alley) to 7.15m high (cinema), with a central totem sign which extends to 15.9m high. There is a separation distance from No 94 to the closest part of the development (rear of cinema) of 21m and a separation of 2m from the proposal to the common boundary. The building appears to have been specifically designed for this element of the site and considering the proximity of the neighbours, with the cinema's orientation reducing the scale and mass adjoining No

94 and the incorporation of a flat roof assisting in reducing impact. Given all these factors there will be no loss of light to No 94 or impact on their amenity.

Given existing and ground levels and the separation distance to the adjoining properties at Hillview and Kilmacormick, there will be no adverse impact by way of overshadowing or loss of light.

In relation to noise, the proposal has been accompanied with an acoustic report and followed up with further supporting information which considers the individual impact of each separate use and the cumulative impact of all uses together.

This demonstrates that during the construction and operational phases of the development noise limits will be within acceptable limits at No 94 and all other residential properties adjoining the site, subject to mitigation in the form an acoustic boundary which can be controlled by condition.

In terms of undermining of land, this will be a matter to considered by Building Control. Construction techniques will have to comply with the required standard. Any damage to 3rd party property during is a matter between the landowners.

Overall the proposal will have no adverse impact on No 94 or any other 3rd parties, subject to mitigation, which can be provided by way of a condition.

7.8 Contamination

The site was home to a former bacon processing factory which has now been demolished and there are a number of stockpiles of materials across the site. A number of potential on site and off site contamination sources have been identified. An environmental site assessment and generic quantitative risk assessment (GQRA) report has been presented with the application. This is informed by various site investigations and environmental monitoring including site data from 12 boreholes, 15 trial pits, ground gas monitoring and excavation of stockpiles on site. Minor groundwater exceedances of the relevant screening values for copper, zinc, nickel, selenium, ammonium and sulphate with a single positive identification of asbestos.

The reports conclude that despite these exceedances the development does not pose unacceptable risk to environmental or human health receptors. The proposal will not have an adverse impact on the environment or human health as a result of contamination and is considered to be acceptable. Neither EHD nor DAERA have raised any issues with this subject to conditions.

7.9 PPS 2 Natural Heritage

The proposal was accompanied with an ecological report. This report concluded that the site was not located within nor adjacent to any area designated under national (ASSI, NNR) or international (SAC, SPA, Ramsar) statute or convention for the protection of species or habitats.

It also concluded that watercourses were sufficiently distant to protect water quality and ecological integrity and no evidence of otter, badger or smooth newt were identified. Trees in the vicinity were considered to be immature and no evidence of bats was observed.

No priority habitats were identified on the site and a further assessment confirmed that the site did not conform to open mosaic habitat on previously developed land.

Objectors have raised concerns that there is Japanese knotweed on site. The site has been surveyed by an ecologist who has not identified Japanese knotweed, although they did identify common knapweed on site.

Both expert consultees in this regard SES and DAERA have raised no objections to the proposal.

7.10 Planning Policy Statement 3: Access, Movement and Parking

7.10.1 Access

The proposal has direct access onto two protected routes, the Cornagrade Road and Irvinestown Road. Both site accesses will have right hand turn lanes and visibility splays can be provided to conform to DCAN 15 requirements.

Access cannot reasonably be taken from an adjacent minor road for this proposal and so the proposal complies with AMP 3.

7.10.2 Traffic impact on network

A transport assessment form and transport statement were submitted with the proposal and were followed with a further supporting letter and a transport assessment. All survey work was undertaken pre-Covid and the report has assumed business as usual will return, with a 100% return to previous working and shopping habits, and year on year traffic increases thereafter.

The transport form estimates that there will be approx. 6258 trips to the site 93% of which will be by private car.

The transport assessment is interlinked with assumptions from the retail impact assessment. The transport assessment indicates the majority of trips will be via vehicle, other trips estimations are as follows; 5% of trips walking, 0.4% trips cyclists, 1.5% trips public transport.

The transport assessment indicates that a 10% threshold has been used to determine which junctions required further detailed assessment of traffic impact. The following major junctions over the 10% threshold were assessed; Irvinestown Road access; Cornagrade Road access, Cornagrade Road roundabout and Library Corner roundabout.

The Irvinestown Road access and Cornagrade Road access junction were modelled using PICADY software. The modelling results indicate that the junction will operate

within capacity during the PM and Saturday peak periods for the proposed 2022 year of opening and the forecast year of 2037. Cornagrade Road roundabout was modelled using ARCADY software. The modelling results indicate that the junction will operate within capacity during the Saturday peak period for the proposed 2022 year of opening and the forecast year of 2032.

The modelling results also indicate that the Cherrymount Link arm of the junction will have an RFC of 0.93 in the forecast year of 2032 during the PM peak period. This is over the recommended maximum RFC of 0.85. To mitigate against this an increase to the flare length on the Cherrymount Link arm of the roundabout is proposed.

Library Corner Roundabout was also modelled using ARCADY software. The modelling results indicate that the junction will operate within capacity during the PM and Saturday peak periods for the proposed 2022 year of opening and the forecast year of 2032.

There are pedestrian links to the proposal and a bus stop is to be provided along the Cornagrade Road. The scheme creates a more accessible environment for everyone including cyclists and complies with AMP 1 and 8.

DFI Roads are largely content with the proposal and further information and drawings have been submitted to address issues raised to date. There are still a number of issues outstanding in relation to the location of the bus stop and also cross and longitudinal sections. These outstanding issues and all the proposed mitigation to the road network to date (whilst outside the red line) can be dealt with by condition if needed. The proposed accesses will not prejudice road safety or significantly inconvenience the flow of traffic and therefore the proposal complies with AMP 2.

7.10.3 Parking

In relation to parking the submissions outline that a total of 759 spaces is provided within the development. This consist of 680 standard spaces, 71 disabled spaces, 8 electric car charging spaces and 24 bicycle spaces.

The report also considers the parking requirement for each element of this development using the guidance document Parking Standards to be 969. AMP 7 identifies five circumstances in which a reduced parking provision can be accepted.

The statement considers two circumstances; justification through the transport assessment and shared parking. In terms of the transport assessment it is stated that excessive parking could encourage excessive car use and increase car trips by 25%. It concludes that it is important excessive parking is not provided.

In terms of shared parking the assessment outlines that there will be a significant overlap between users and shared trips between the various uses (hotel and retail), parking requirements will be at different times and peak periods are different.

The assessment concludes that the shortfall is a modest 7.5%, and advises that the parking provision is adequate to accommodate the variety of uses.

The DFI Roads consider there is a shortfall of parking of approximately 210 spaces.

The site is not within an area of parking restraint, and there has been concerns raised by DFI Roads that the shortfall in parking will prejudice road safety or significantly inconvenience the flow of traffic. There is no roadside parking and it is unlikely the site's location will result in roadside parking.

The proposal is considered to meet two of the exceptions within policy AMP 7. A transport assessment has been submitted which has made provision for cycle parking and a bus stop along the Cornagrade Road and this forms part of a package of measures which promote alternative transport modes. The shortfall in parking is also considered to facilitate a better quality scheme, visually, which will not be dominated by mass parking.

The proposal is considered to meet the requirements of AMP 7.

7.11 Planning Policy Statement 4 Planning and Economic Development

The site is a former industrial site and although now vacant and not used for industrial purposes a development proposal which would result in the loss of land last used for industrial purposes to other uses will only be permitted where it meets one of the 7 criteria in PPS 4 Policy PED 7.

The applicant's supporting statement outlines that the proposed site has previous permissions for retail and such it has been accepted that they no longer contribute to the industrial needs of Enniskillen. The agent also feels that criterion (b) is applicable given the proposal is a major mixed use retail and leisure scheme that will provide employment in all aspects of the site from retail to catering and service jobs. The agent also feels that criterion (d) and (e) is applicable.

Overall it is considered that the proposal meets a number of exceptions listed and there is no conflict with PPS 4.

7.12 Planning Policy Statement 6 Planning Archaeology and the Built Heritage

An archaeological impact assessment was carried out and this included a full desktop survey and site inspection for the area of the proposed development. The desk top survey shows that the site contained no known archaeological monuments. A 1km search from the site identified 17 archaeological sites.

The desk top survey would suggest that the site is located within a wider pre-historic landscape and it would be reasonable to expect previously unknown archaeological sub surface deposits to be located here.

BH2 of PPS 6 is therefore relevant and outlines that development proposals which would adversely affect archaeological sites or monuments which are of local importance or their settings will only be permitted where the importance of the proposed development or other material considerations outweigh the value of the remains in question.

The impact assessment concludes that the site was home to a former large-scale industrial factory. The construction of this appears to have resulted in significant ground reduction to create a level site, which has almost certainly removed any archaeological potential from the site.

The proposal is compliant with PPS 6 and HED have raised no issues in this regard.

7.13 Revised Planning Policy Statement 15 Planning and Flood Risk

The NI Flood Maps indicate minor strategic fluvial flooding and minor pluvial flooding within the site. The fluvial floodplain arises from the adjacent watercourse to the east, which marginally encroaches onto the site in an area not proposed for development. PPS 15, FLD 1, 2 and 3 are all relevant.

A Flood Risk Assessment was carried out for the site and this indicated that all proposed development is located outside the floodplain, with flooding estimated just beyond the site boundary to the east of the site at the access road. At this point it is estimated that the road would flood, though the footpath, being elevated above the road, remains dry. There is a freeboard of around 10m for the development. No development is proposed within 5m of the existing watercourse allowing an access strip for future maintenance of this watercourse.

In terms of drainage, the report proposes two new storm sewers to serve the development. One network will drain approx. 1.96ha (19.6l/s) to the west and the other will drain 4.86ha (48.6l/s) to the southeast. The eastern network will utilise 3 flow control devices and approx. 1743m³ of attenuation in the form of oversized infrastructure and storage tank.

The report concludes that the site is adequately drained in accordance with relevant standards and DFI Rivers has granted discharge consent. The proposal complies with the relevant policies within PPS 15.

7.14 Planning Policy Statement 16 Tourism

The hotel element of the proposal is considered to be tourism related and therefore policies T2 and T3 of the FAP and TSM1 and 7 of PPS 16 are relevant.

Although there is a reference to 'businesses' as a main town centre use under footnote 58 of the SPPS, this would appear to be a reference to Class A2: Financial, professional and other service uses which are appropriate in shopping areas. Under the Tourism section of the SPPS, footnote 55 refers to sustainable tourism development as tourism accommodation and tourism amenities.

Therefore paragraph 6.280 of the SPPS is not relevant to this proposal for a tourism development and the relevant policies are set out within PPS 16 and the Fermanagh Area Plan. The proposal involves the provision of a 54-bedroom hotel and restaurant on this brownfield site with a mixture of uses in the surrounding area including residential. The policies within the FAP and PPS 16 promote tourism within settlements, Enniskillen itself has a number of tourist attractions and overall, this

development is considered to be of a nature appropriate to the settlement and compatible with surrounding land uses.

The hotel occupies the most prominent part of the site overlooking the Cherrymount roundabout. The building consists of two elements, the main building which is three storey and approx. 13.68m high and a side and rear annex which is single storey with a flat roof and approx. 5.35m high.

The side and rear annex in the main contains the bar and restaurant with a terrace and this overlooks Cherrymount roundabout. The building's external walls will be finished with brick walls to a chosen colour, standing seam zinc cladding and smooth render painted white. The windows will be finished with anthracite powder coated aluminium frames. The roof finish will be a standing seam zinc to the main building and a trocal two ply flat roof to the single storey building. Landscaping has also been proposed to soften views.

The hotel in terms of scale, size has been specifically designed for this site and is considered to respect the site context in terms of scale, size and design. The hotel has been demonstrated not to have an adverse impact on 3rd party amenity and HED have no objections in this regard. Access arrangements can be provided to standard and the building is accessible to those with disabilities, overall the proposal is in compliance with PPS 16 policies TSM 1 and 7 and policies T2 and T3 of the FAP.

7.15 Planning Policy Statement 11 Planning and Waste Management Facilities

A waste management facility (WWTW) is located to the immediate south east of the site. Given the nature of the proposal and the separation distance to the main units, it is accepted that the proposal will not prejudice or unduly restrict activities permitted to be carried out within this facility. There are a number of residential units which are located in closer proximity than the current proposal.

Nor will the proposal give rise to unacceptable adverse impacts in terms of people, transport or the environment. The proposal complies with policy WM5.

7.16 Design, layout and Finishes

The retail units, garden centres and indoor adventure play area are located to the western and southern portions of the site and form a U-shaped layout. The car parking and coffee pod is located to the central portion of the site with the drive through restaurant located to the south eastern portion of the site. The hotel, cinema and bowling alley are located to the northern and eastern portions of the site. The retail units along the Cornagrade Road have been designed to give a frontage to this road.

The 5 retail units and adventure play area (unit 6) are ground floor only and range from 10m to 10.7m in height. The external walls will be finished with a Kingspan wall panel, colour snowdrift white with vertical timber cladding at entrance areas and the

roof will be Kingspan panels to a chosen colour. The size of the units is set out below;

Unit 1 – 2076 m²
 Unit 2 – 2046 m²
 Unit 3 – 1000 m²
 Unit 4 – 1000 m²
 Unit 5 – 3294 m²
 Unit 6 – 1000 m²

There are two garden centres which are located to the side/rear of units 1 and 2 (garden centre 2) and units 4 and 5 (garden centre 1). Garden centre 1 is approx. 936 m² in area and will be enclosed with a galvanised steel mesh fence 4.8m high. Garden centre 2 is approx. 813 m² in area and will be finished with a double close boarded fence 5m high.

The cinema and bowling alley coexist in the same building, linked with a lobby and reception area. The building is ground floor only and has a flat roof the height of which ranges from 5.15m high to 7.15m high, with a central totem sign which extends to 15.9m high. The cinema will have 5 screens and have a floor area of approx. 895 m². The bowling alley has 8 lanes and is approx. 896 m².

The cinema element of the building will be finished with a vertical fibre cement profiled cladding dark grey/black to walls with inset panels painted where indicated. The external walls of the bowling alley will be finished with a fair faced brickwork with inset panels all to a chosen colour. The roof of the entire building will be a trocal two ply flat roof.

The drive through restaurant is another standalone single storey building. The building is approx. 4m high with an overall area of 468 m². The building will be finished with brick walls, to a chosen colour and vertical fibre cement cladding to the upper section. The windows will be finished with anthracite powder coated aluminium frames and the roof will be of a trocal two ply flat construction.

The self-service pay at the pump petrol station is a 6 island (12 bay) proposal with a canopy, 4 underground tanks. It will also include 8 charging points for electric or hybrid vehicles. Overall it is approx. 6m high, 15.6m wide and 23.4m long.

The coffee pod will be a standalone ground floor building with a flat roof and it will have an area of approx. 238 m². It will have a delivery yard and storage area to the rear. The building will be 4m high, 13.19m wide and 18.18m long and will be finished with brick walls, to a chosen colour and vertical fibre cement cladding to the upper section. The windows will be finished with anthracite powder coated aluminium frames and the roof will be of a trocal two ply flat construction.

The hotel occupies the most prominent part of the site overlooking the Cherrymount roundabout, it will be 3 storey and have 54 bedrooms. The building consists of two elements, the main building which is three storey and approx. 13.68m high and a side and rear annex which is single storey with a flat roof and approx. 5.35m high.

The side and rear annex in the main contains the bar and restaurant with a terrace and this overlooks Cherrymount roundabout. The building's external walls will be finished with brick walls to a chosen colour, standing seam zinc cladding and smooth render painted white. The windows will be finished with anthracite powder coated aluminium frames. The roof finish will be a standing seam zinc to the main building and a trocal two ply flat roof to the single storey building.

Overall the design, scale, layout and finishes are considered to be acceptable and reflective of a development of this nature. They fit well within the context of the site which is urban in nature. Appropriate frontages to the Cherrymount roundabout and Cornagrade Road have been provided which presents a more vibrant elevation to these key views.

7.17 Visual impact

A visual assessment has been completed for the proposed development. This concludes that the proposal will have no significant landscape effects on the landscape character areas due to the nature of the proposal and its consistency with the surrounding urban character.

Visually the proposal is acceptable within this urban location.

7.18 Supporting Sustainable Economic Growth

Under the core planning principles of the SPPS section 4.18 Supporting Sustainable Economic Growth the Council should promote long term economic growth in the interests of the people in the region. The SPPS advises that the planning authority should take a positive approach to appropriate economic development proposal and proactively support and enable growth generating activities. Large scale investment proposal with job creation potential should be given particular priority.

The supporting statement indicates that a proposal of this nature will have an overall investment in the scheme of £15.5 million. The proposal will create around 150 construction jobs. Overall, the proposal will create about 320 plus new jobs in Enniskillen, which will include of 250 new retail jobs, 20 new jobs in the cinema, 35 in the hotel and 15 within the bowling alley.

In terms of rates payable the proposal will have a rateable value of circa. £600,000 per annum and in terms of salaries, the proposal will generate about £3.5 million into the local economy. It is also estimated by the agent that the proposal will contribute £15,000 per annum towards the activities of the Business Improvement District.

The proposal will also allow for the redevelopment of the vacant industrial site.

Whilst the economic and regeneration benefits are disputed by objectors, it is obvious that the proposal will have substantial benefits, which are material in the determination. A sequentially preferable site has been identified and as such, the benefits of the scheme can be realised in a location that meets the requirements of the SPPS and as such it is not accepted that the benefits of the scheme will be lost if planning permission for the current proposal is refused. The benefits associated with

the scheme in any case would not be sufficient to outweigh the policy concerns and are not therefore given significant weight.

In relation to redevelopment of a brownfield site, the benefits associated with this would not outweigh the policy objections under the SPPS.

8.0 Conclusion

The proposal is contrary to the SPPS as it will have a significant adverse impact on the trade and turnover of the town centre and, as a result, its vitality and viability. Approval of the scheme will also have an adverse impact on committed and planned private sector investment in the form of the Station Green developments and associated car parking works and generally investor confidence in the town centre.

In addition, the applicant has not demonstrated flexibility in its approach to the sequential assessment particularly in trying to accommodate the development onto the composite site. A sequentially preferable site is available within the catchment that would be suitable and available for this broad type of development.

Whilst there are significant economic and regeneration benefits associated with the proposal, these do not outweigh the harm that would be caused to the town centre and the new regional retailing policies of the SPPS would be undermined should approval be granted. The benefits are not therefore given determining weight in this proposal. In any case they can be realised within the town centre on the sequentially preferable site.

The agent has also presented a number of conditions and the potential for a planning agreement to try and overcome the issues associated with the proposal. Restriction of the goods sold or the retailers who can locate within the scheme are not appropriate conditions in the circumstances and the proposal will still have a significant adverse impact on Enniskillen Town Centre even with these in place.

The agent has suggested a planning agreement but is unable to suggest the scope of one that would overcome the concerns. The current issues with the application cannot be resolved with a planning agreement and the potential of a signage board within the site or enhanced access arrangements have little substance to be given much weight in the determination and would certainly not overcome the issues raised.

In conclusion the proposal is considered to be contrary to the SPPS, which is a new policy approach for town centre and retailing and is given significant weight in the determination. The material considerations do not outweigh the harm caused or the harm caused to the policy should the application be approved in clear conflict.

There is a requirement that the application must be determined in accordance with the development plan unless material considerations indicate otherwise (s. 6(4) Planning Act (Northern Ireland) 2011). In relation to this statutory requirement, the proposal is considered to be in compliance with the tourism policies T2 and T3 of the FAP, in terms of the proposed hotel. The proposal would however be in conflict with the retailing policies of the FAP namely S3 Development in Towns and Indcom3

Town Centres which seek in general to protect the vitality and viability of the town centres including Enniskillen. Overall the proposal is in conflict with the FAP.

However, these retailing policies do not set out any specific criteria to assess a proposal against and it is considered that the SPPS provides a more updated retailing policy context for assessment. It is felt that the proposal is more appropriately assessed under the updated regional retailing policies of the SPPS, and assessment and recommendation is made on that basis. The proposal is considered to conflict with several policies in the SPPS and officers attach determining weight to these conflicts.

9.0 Recommendation

For the reasons given within this report it is recommended that the application for planning permission is **refused**, for the following reasons:

1. The proposal is contrary to the SPPS para. 6.280 as it has been established that an alternative sequentially preferable site exists within Enniskillen town centre, which would be suitable for this broad type of development.
2. The proposal is contrary to the SPPS para. 6.289 in that the applicant has not demonstrated sufficient flexibility in its approach to the sequential assessment.
3. The proposal is contrary to the SPPS paras. 6.289 and 6.290 in that the proposal will have a significant adverse impact on:
 - the trade and turnover of the town centre
 - the town centre's vitality and viability
 - planned private sector investment in the form of the Station Green developments and associated car parking works and generally investor confidence in the town centre.
4. The proposal is contrary to the SPPS paras. 6.289 and 6.290 in that it is judged to be harmful in balancing the overall impacts on:
 - the trade and turnover of the town centre
 - the town centre's vitality and viability
 - planned private sector investment in the form of the Station Green developments and associated car parking works and generally investor confidence in the town centre.