

Appeal Decision Notice

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Decision by R W Maslin, a Reporter appointed by the Scottish Ministers

- Planning appeal reference: PPA-230-2113
- Site address: Fort Kinnaird Retail Park, Edinburgh EH15 3RB
- Appeal by Gibraltar General Partner Limited against the decision by the City of Edinburgh Council
- Application for planning permission 13/02381/FUL dated 18 June 2013, refused by notice dated 25 October 2013
- The development proposed: erection of retail unit incorporating 5,612 square metres gross internal floor area
- Dates of inquiry session: 6 to 10 and 21 October 2014
- Dates of site visits by Reporter: 4 October 2014 and 16 December 2014

Date of appeal decision: 19 March 2015

Decision

I dismiss the appeal and refuse planning permission.

Background

1. Retail development at what is now known as Fort Kinnaird has a history that dates back to 1986. By 1997, there were two retail sites - Kinnaird Park to the north of Newcraighall Road, and The Fort to the south of the road. In 1997, the two sites came into single ownership. By 2002, the two sites were linked by a third phase of retail development.
2. In 2004, an application (04/03706/OUT) sought planning permission for “reconfiguration and redevelopment of retail floorspace, provision of additional cafes and restaurants (class 3) ancillary to the development as a whole, provision of a public transport hub and new access and circulation arrangements for pedestrians, cyclists and cars, provision of a multi-storey car park, related landscaping (soft and hard)” at Fort Kinnaird. One aspect of the proposal was additional retail space.
3. Prior to approval of application 04/03706/OUT, a minute of agreement under section 75 of the Town and Country Planning (Scotland) Act 1997 (and other acts) was drawn up. In the agreement, “retail floorspace cap” is defined as 64,665 square metres. Clause 4.1 says that the retail floorspace cap shall apply to any new floorspace constructed pursuant



to the planning permission and all retail floorspace existing at the time of the agreement apart from any existing or future retail floorspace which is ancillary to any non-retail uses within the site. The retail floorspace cap “shall not be exceeded without the grant of further planning permissions(s)”.

4. Clause 7.1 says that new retail units shall conform to certain size limits. One of these limits is that no new unit shall be larger than 4,000 square metres.

5. The agreement was signed in April 2006. On 6 June 2006, application 04/03706/OUT was approved.

6. Condition 4 of the 04/03706/OUT permission reads:

The development shall be restricted to the floor area as identified in this application, namely 64,665 square metres, and any proposals to insert mezzanine floorspace into existing and new-build retail units, for any purpose whatsoever that would exceed that level, shall not be installed without the prior consent of the Council, as the Planning Authority.

Subsequent reserved matters applications were approved.

7. The Fort Kinnaird development included a cinema and bowling alley. There was a tea factory on part of the site. All of these were demolished in 2008.

8. In 2011, an application (11/00874/FUL) sought planning permission for an amendment to condition 4 of the 2006 permission. It was proposed that the floorspace limit be increased from 64,665 square metres to 71,502 square metres.

9. In December 2011, a section 75 agreement was concluded. Among other things, the agreement contains the following.

New retail units means any retail units that have been permitted by the Planning Permission [11/00874/FUL] but that have not been completed by the date of this agreement (clause 1.1).

Retail Floor Space Cap means that no more than seventy-one thousand, five hundred and two (71,502) square metres of retail floor space (measured as gross internal floor area) shall be permitted at the Agreement Subjects (clause 1.1).

The Agreement Subjects shall be subject to the Retail Floor Space Cap (clause 4.1).

No New Retail Unit shall have a ground floor space greater than four thousand (4000) square metres (clause 5.1.4).

Nothing in this Agreement shall prohibit or limit the right to develop any part of the Agreement Subjects in accordance with a planning permission (other than the Planning Permission [11/00874/FUL]) granted after the date of this Agreement (clause 13.4).

Other sections of the agreement deal with a public realm contribution, widening of The Wisp, a pedestrian crossing, a travel plan, public transport improvements, traffic regulation orders and employment initiatives. The agreement was to come into force following discharge of the 2006 agreement (clauses 1.1 and 3.1).

10. Application 11/00874/FUL was granted permission on 30 December 2011. Condition 4 reads as follows.

The development shall be restricted to the floor area as identified in this application, namely 71,502 square metres, and any proposals to insert mezzanine floorspace into existing and new-build retail units, for any purpose whatsoever that would exceed that level, shall not be installed without the prior consent of the Council, as the Planning Authority.

11. On 4 October 2012, with reference to section 75 of the Town and Country Planning (Scotland) Act 1997 (as amended), a unilateral obligation was drawn up in relation to Fort Kinnaird. Among other things, the obligation said that no new retail unit to be constructed on the site shall have a retail floor space greater than four thousand square metres. (The 4,000 square metres limit in clause 5.1.4 of the 2011 agreement related only to ground floor space.)

12. In 2012, applications were submitted for approval of a seven-screen multiplex cinema and restaurants and café units on land where the demolished cinema and bowling alley had stood. These applications have been approved, and construction work is almost complete. At the time of my second site visit, four of the six restaurant and café units were trading. The other two appeared close to completion. The cinema building appeared to be complete externally and a sign indicated that it was to open to the public in spring 2015. On a separate site, a further new eating establishment (Ed's Easy Diner) was trading. The site of the present appeal proposal is land immediately to the north of the new cinema, restaurants and café units.

The planning application under appeal

13. The planning application that is under appeal is dated 18 June 2013. The Council reference is 13/02381/FUL. The application seeks planning permission for erection of a retail unit incorporating 5,612 square metres (gross internal retail floorspace). In section 10 of the planning application form, the proposed 5,612 square metres of floorspace is referred to as "implementation of retail floorspace already approved". The application was refused on 25 October 2013.

The planning obligations applications

14. In two applications dated 23 August 2013, the Appellant, jointly with Gibraltar Nominees Limited, sought to modify the planning obligations so as to permit erection of one retail unit of 5,612 square metres. Apart from this one unit, the 4,000 square metres limit would remain in place. These two applications were refused. The applicants have appealed against these decisions. The appeals have been considered together with the present appeal. My decisions on these two other appeals are contained in separate decision notices issued simultaneously with this decision notice.

The inquiry session

15. I decided to hold an inquiry session regarding the three conjoined appeals. At the inquiry session, evidence was presented by the Appellant, the City of Edinburgh Council, Ocean Terminal Limited, and TIAA Henderson Real Estate. The latter two object to the Appellants' proposals. Ocean Terminal Limited has an interest in the Ocean Terminal Shopping Centre in Leith. TIAA Henderson Real Estate has an interest in the St James' Centre (described as the principal covered shopping mall in Edinburgh city centre) and the adjacent New St Andrew's House.

Representations

16. As well as evidence presented at the inquiry session, I have before me all the representations that were submitted to the Council during its consideration of the planning application and further representations that were submitted to the Directorate for Planning and Environmental Appeals.

Reasoning

17. I am required to determine this appeal in accordance with the development plan, unless material considerations indicate otherwise. Having regard to the provisions of the development plan the main issues in this appeal are whether the proposed development:

would have an adverse impact on the development plan strategy and objectives for enhancing the vitality and retail attractiveness of Edinburgh city centre;

is justified in terms of the sequential approach to site selection;

is consistent with the recently-issued national policy in support of city and town centres, as set out in Scottish Planning Policy (June 2014); and

would have benefits that would outweigh any conflict with the development plan.

The development plan

18. The development plan consists of SESplan and Edinburgh City Local Plan. SESplan is the strategic development plan for Edinburgh and south-east Scotland. It was approved on 27 June 2013. Edinburgh City Local Plan was adopted on 28 January 2010.

SESplan

19. Paragraphs 97 to 99 and policy 3 of SESplan deal with town centres and retailing.

20. Paragraph 97 and table 1 of SESplan identify a network of centres, in which Edinburgh City Centre is the sole regional town centre. Livingston, Kirkcaldy, Dunfermline and Glenrothes are the four strategic town centres. “Other town centres” and “commercial centres” are to be identified within local development plans. Growth of the retail sector is to be supported through directing development to appropriate centres.

21. Paragraph 98 of SESplan includes: “The continued vitality and viability of retailing in the City Centre is essential to support other economic activity and maintain its competitiveness for the benefit of the wider City Region. The City Centre should continue its role as the regional centre for the whole of the SESplan area offering a wide range of higher order retailing. The SDP [SESplan] supports the further promotion of this role.”

22. Paragraph 99 of SESplan says that the four strategic town centres, other town centres and commercial centres perform important roles. Local development plans “can assist in the protection and promotion of town centres by promoting a sequential approach to selecting locations for retail and commercial leisure development. Unless an exception is identified through an LDP [local development plan] and justified by rigorous analysis, priority should be given to town centre then edge of centre locations, then established commercial centres and finally out of centre locations.”

23. SESplan policy 3 - Town Centres and Retail - says that local development plans will do three things: identify town centres and commercial centres, clearly defining their roles; support and promote the network of centres; and promote a sequential approach to selection of locations for retail and commercial leisure proposals.

Edinburgh City Local Plan

24. In Edinburgh City Local Plan, chapter 8 is entitled “Shopping, Entertainment and Other Town Centre Uses”. Chapter 8 has four objectives. The first includes sustaining and enhancing the city centre as the regional focus for shopping, entertainment, commercial leisure and tourism-related activities. The second seeks to maintain the existing and proposed broad distribution of centres throughout the city and sustain their vitality and viability.

25. Chapter 8 includes the following.

A series of major new shopping malls and retail parks have been built in the last fifteen years or so The challenge for the planning system is how to respond to pressures for future development in these centres and balance their growth demands with the need to secure for the city centre a greater share of development that will enhance its quality and vitality (8.2).

Table 8.1 sets out the network of centres under four headings. First is the city centre. Second are the other town centres. Third are the commercial centres, including Newcraighall/The Jewel, which takes in Fort Kinnaird. Fourth are the local centres.

Different retail policies (Ret 1 to Ret 5) apply to retail proposals, depending on the location. All of these policies apply a sequential approach to the identification of preferred locations for retail development (8.8).

For larger developments of 2,500 square metres or above, and occasionally for smaller proposals, applicants will be required to demonstrate through a retail impact assessment that there will be no threat to the vitality and viability of the centres listed in table 8.1 (8.9).

In the city centre, the difficulty in meeting the full demand for floorspace from retailers and adapting the existing provision to modern needs is attributable to the constraints and challenges of developing in the historic environment of central Edinburgh (8.10).

Redevelopment of the St James Centre could provide opportunity to double the available retail floorspace (currently 41,800 square metres). There could be conversions in George Street and around St Andrew Square. There could be redevelopment of units along Princes Street (8.12).

The local plan aims to secure 52,500 square metres of additional net retail floorspace in or adjacent to the city centre retail core by 2012 (8.13).

26. Policy Ret 3 of Edinburgh City Local Plan applies to commercial centres. It reads as follows.

Proposals for additional retail floorspace involving the reconfiguration and/or the extension of a commercial centre (see Table 8.1 and the Proposals Map) will be granted provided it has been demonstrated that:

- a) all potential town centre and edge of town centre options (including the city centre retail core) have been thoroughly assessed and can be discounted as unsuitable or unavailable

b) the proposal will not have significant adverse individual or cumulative impacts on any other town, local or commercial centre and, in particular, will not impact adversely on the strategy and objectives for enhancing the vitality and retail attractiveness of the city centre retail core

c) the scale, format and type of development proposed is compatible with the role of the centre as defined in relevant planning consents and outlined in Table 8.2

d) the proposal will assist in making the centre more accessible by public transport modes (including potentially tram), walking and cycling, will contribute to less car travel, and will improve the appearance and environment of the centre.

e) The proposal will address a quantitative or qualitative deficiency within the local area, and will be restricted to a scale which makes good this deficiency.

27. Paragraph 8.19 includes:

The objective of the Plan for sustaining and enhancing the city centre and other town centres depends upon limiting the amount and character of further development that takes place in the commercial centres. This policy [Ret 3] is intended to provide that constraint, particularly in the short term and thereby promote investor confidence in the city centre..... A limited amount of further development in commercial centres is not ruled out, in particular if the city centre is demonstrably achieving its potential (i.e. on course to meet the target of an additional 52,500 square metres net floorspace by 2012.....

28. Table 8.2 sets out the future role of Newcraighall/The Jewel as follows.

No further growth beyond existing approvals, to guard against further expansion of sub-regional role. Space for bulky goods retailers in larger units needs to be retained. Future development should focus on reconfiguration rather than expansion, to improve environmental quality and internal circulation.

29. As noted, the development plan contains references to “commercial centres”. For the avoidance of doubt, I find that the content of Edinburgh City Local Plan and the second version of the proposed Edinburgh Local Development Plan make it clear that Fort Kinnaird is part of a “commercial centre”.

Scottish Planning Policy

30. Scottish Planning Policy (June 2014) includes the following.

NPF3 reflects the importance of town centres as a key element of the economic and social fabric of Scotland. It is important that planning supports the role of town centres (paragraph 58).

The town centre first principle promotes an approach to wider decision-making that considers the health and vibrancy of town centres (paragraph 59).

The planning system should apply a town centre first policy when planning for uses which attract significant numbers of people, including retail (paragraph 60).

Development plans should adopt a sequential town centre first approach when planning for uses that generate significant footfall, including retail This requires that locations should be considered in the following order of preference: town centres; edge of town centre; other commercial centres; and out-of-centre locations (paragraph 68).

The sequential approach should be applied in a flexible and realistic way (paragraph 69).

31. Scottish Planning Policy introduces a presumption in favour of development that contributes to sustainable development (page 9). Policies and decisions should be guided by thirteen principles (paragraph 29). These include:

- giving due weight to net economic benefit;
- making efficient use of existing capacities of land, building and infrastructure including supporting town centre and regeneration priorities; and
- supporting delivery of accessible housing, business, retailing and leisure development.

32. Paragraph 33 of Scottish Planning Policy says:

Where relevant policies in a development plan are out-of-date or the plan does not contain policies relevant to the proposal, then the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Decision-makers should also take into account any adverse impacts which would significantly and demonstrably outweigh the benefits when assessed against the wider policies in this SPP. The same principle should be applied where a development plan is more than five years old.

Weight to be attached to Edinburgh City Local Plan

33. Edinburgh City Local Plan was adopted on 28 January 2010 and is now more than five years old. As just noted, paragraph 33 of Scottish Planning Policy says that, where a development plan is more than five years old, the presumption in favour of development that contributes to sustainable development will be a significant material consideration. I address this later when I come to consider other material considerations.

34. I find that the provisions of Edinburgh City Local Plan set out in paragraphs 24 to 28 above accord with policies for town centres and retailing contained in SESplan and accord with paragraphs 58 to 73 of Scottish Planning Policy (June 2014). I note that the Council's proposed Edinburgh Local Development Plan (second version) contains town centres and retailing policies that are similar to those in the current local plan. From these considerations, I find that, although adopted over five years ago, the local plan's town centres and retailing policies continue to have considerable force.

Does policy Ret 3 apply to the present proposal?

35. In the local plan, policy Ret 3 refers to "Proposals for additional retail floorspace....." The meaning of "additional" has been examined by parties. The Appellant argues that policy Ret 3 does not apply to the proposed development. It contends that the policy is clearly aimed at additional floorspace over and above that which has already been permitted. The proposed development would not result in the overall floorspace cap of 71,502 square metres being exceeded.

36. I agree that the granting of planning permission, if subject to revised planning obligations, would not result in the total floorspace cap at Fort Kinnaird being exceeded. However, that is not, in my view, conclusive of whether the proposed development would fall within the scope of policy Ret 3. Policy Ret 3 is in a section headed "Commercial Centres". This section includes four paragraphs of text (8.18 to 8.21). "Table 8.2 provides a description of each centre, summarises existing commitments and describes the role that any new development should support" (paragraph 8.20).

37. Table 8.2 has an entry for Newcraighall/The Jewel. This is the centre which includes Fort Kinnaird. Under "future role", the text begins: "No further growth beyond existing approvals....."

38. The local plan was adopted in January 2010. At that time, "existing approvals" would no doubt have been construed as including reference to the permission for no more than 64,665 square metres of retail floorspace at Fort Kinnaird (application 04/03706/OUT, approved on 6 June 2006). Matters have moved on, and I find that "existing approvals" must now be interpreted in the light of planning permission 11/00874/FUL dated 30 December 2011 in which the floor area restriction is 71,502 square metres. However, that permission must be read with its associated planning obligations which, in addition to the overall cap of 71,502 square metres, also restrict the size of individual units as explained at paragraphs 9 and 11 above.

39. The proposal to construct a new retail unit of more than 4,000 square metres required not only applications to modify the associated planning obligations but also a further application for planning permission. That application is, in my view, one for additional floorspace, floorspace that is additional to what is permitted by the planning permission 11/00874/FUL and its associated planning obligations and which involves the reconfiguration of the commercial centre by the introduction of a larger retail unit than would otherwise be permitted.

40. I find that the application for planning permission is for “erection of retail unit incorporating 5,612 sq m (gross internal retail floorspace)”. I am aware that the footnote in section 10 of the planning application form says “implementation of floorspace already approved” and that this is the Appellant’s intention, but the fact remains that approval of the application would result in development additional to that for which the 2011 planning permission in principle was granted.

41. I appreciate that creation of additional floorspace can be prevented by amending the related planning obligations and that such a course of action is acceptable to the Appellant. Nevertheless, the proposal as presented in the planning application form, if approved without qualification, would permit additional development.

42. I also find that the proposed development exceeds the unit size limitation prescribed in the planning obligations. If approved, the proposed development would introduce to Fort Kinnaird a retail unit additional to the range of unit sizes prescribed in the planning obligations.

43. For the foregoing reasons, I find that the proposed development is for additional retail floorspace and that policy Ret 3 is applicable.

Policy Ret 3 criterion (a) - the sequential approach

44. Policy Ret 3 requires compliance with five criteria. The first is the sequential approach - whether all potential town centre and edge of centre options have been thoroughly assessed and can be discounted as unsuitable or unavailable.

45. The application for planning permission which is the subject of this appeal is for a retail unit of 5,612 square metres gross internal floor area. The prospective occupier is not mentioned in the application but the supporting documents make it clear that the Appellant has entered into contractual arrangements with Debenhams and that it is proposed that the unit will be a department store. The proposed store would give effect to Debenhams’ strategy to have three department stores within the Edinburgh area. Debenhams has a store in the city centre and one at Ocean Terminal and is looking for a suitable location for a third store. In its closing submission, the Appellant states that the application was in effect one for a Debenhams store and that the Council treated the application as though it were for a Debenhams store.

46. For understandable reasons the fact that Debenhams is the proposed occupier has, in my view, influenced the Appellant’s approach to the assessment of the suitability and

availability of city centre sites. The Appellant's position is that the application is for a particular operator with specific operational requirements and that the sequential test should be applied in a way which recognises that Debenhams is not interested in a city centre site for its third store. Although this may, as the Appellant argues, be the commercial reality, I do not think that this is how the sequential test should be applied.

47. If an individual operator's strategic locational requirement for an out-of-town store was a sufficient justification to treat city centre sites as unsuitable (even if they could physically accommodate the proposed development), this would undermine the town centre first policy that applies at both national and development plan level. The Appellant's assessment of suitability of city centre sites was based on the specific requirements of Debenhams rather than a broader assessment of retail floorspace of the required capacity.

48. It was in this context that the Council proposed that, in the event of planning permission being granted, the permission should be personal to Debenhams or subject to a condition requiring the unit to be occupied by Debenhams.

49. I note that application 13/02381/FUL is not specifically for a Debenhams store. If the application were approved unconditionally, the 5,612 square metres unit could be occupied by any retailer. This could render valueless justification based on the particular requirements and intentions of Debenhams. Unrestricted approval of the present application might result in some other retailer moving from the city centre to Fort Kinnaird or a retailer new to the area locating at Fort Kinnaird instead of the city centre.

50. The Council's committee report (page 11) says any consent should be made personal to Debenhams. As just noted, suggested conditions appended to the Council's appeal statement ask that any consent be subject either to a condition saying that the retail unit be occupied by Debenhams or to a condition saying that Debenhams shall be the first retailer to occupy the building.

51. The Appellant would accept a first occupancy condition. The Appellant says that there is no justification for the occupancy to be of any particular length because the grant of planning permission triggers obligations under a lease. A very short period to ensure that occupation was not token would not be resisted.

52. Circular 4/1998: *The Use of Conditions in Planning Permissions* says that conditions restricting occupancy to a particular occupier should only be used when special planning grounds can be demonstrated and where the alternative would normally be refusal of permission (paragraph 91). A permission personal to a company is generally inappropriate. Conditions of this type will scarcely ever be justified in the case of permission for the erection of a permanent building (paragraph 92).

53. I accept that it is the genuine intention of the Appellant and of Debenhams that the proposed development will be occupied by the latter for the foreseeable future, and that this is reflected in contractual arrangements that have been put in place. This does not remove the possibility that, after construction of the proposed development, the Appellant and

Debenhams decide to terminate their relationship, with some other retailer wishing to occupy the building.

54. If a permission were subject to a condition requiring Debenhams to be the occupier, a proposed change in occupier after initial occupation by Debenhams might nevertheless be difficult to resist. For example, it might be argued that, without a change in occupier, the building would be left empty, contrary to the principle of making efficient use of existing capacities of buildings (Scottish Planning Policy, paragraph 29).

55. I find that government policy in circular 4/1998 and the possible difficulty in seeking to enforce an occupancy condition cast great doubt on the appropriateness of imposing an occupancy condition on any permission for the proposed development. The most that might be done is imposition of a first occupancy condition, but I find it hard to view such a condition as being much more than a token gesture. I therefore conclude that any permission should not be subject to an occupancy condition.

56. I find it likely that the proposed development, if approved, would proceed as envisaged, but this cannot be ensured by imposition of a planning condition.

57. The fact that any permission for the proposed development should not be subject to a condition restricting occupancy to Debenhams reinforces my view that the sequential test has not been properly applied. I find that the sequential assessment recorded in appendix 3 of the Supporting Planning Statement of June 2013 is unsatisfactory. The assessment places undue emphasis on the specific needs of Debenhams.

58. I find that a sequential assessment should normally be related to the kind of development proposed, without regard to any particular occupier. With this in mind, the Appellant's appraisal of the site on the corner of St Andrew Square and South St David Street was not satisfactory. On the face of it, this site should have been identified as sequentially preferable to the site at Fort Kinnaird.

59. I understand that the St Andrew Square site is no longer available because a large part of the proposed retail space has now been pre-let to a major retailer. One of the objectors suggests that other city centre sites might now be candidates for assessment in any sequential assessment. I find that there is no satisfactory and up-to-date assessment of city centre or edge-of-centre sites. My conclusion is that it has not been demonstrated that the proposed development accords with the sequential approach.

Policy Ret 3 criterion (b)

60. Criterion (b) in policy Ret 3 is in two parts. The first part refers to "significant adverse individual or cumulative impacts on any other town, local or commercial centre". The second part refers to adverse impact on "the strategy and objectives for enhancing the vitality and retail attractiveness of the city centre retail core".

61. With regard to such impacts, the only matter that has to be considered in the present case is any extra impact that a retail unit of 5,612 square metres with a department-store

format would have when compared with the impact that would arise from units that conform to the unit size restrictions currently in force.

62. Submissions identify two kinds of impact - direct and indirect. In the present case, indirect impact raises issues of clustering and investor confidence. The Appellant's case is that the proposed development would not have a significant impact on any other centre. Opponents were of the view that the proposed development would have a significant effect on the performance of Fort Kinnaird which in turn would adversely affect other centres.

Direct impact

63. In what follows, I take direct impact to be the impact that arises in terms of trade being diverted from other centres taking into account only the expenditure that is predicted to be diverted by the floorspace itself and ignoring any other issues.

64. Parties broadly agree that sales turnover per square metre of floorspace in department stores is less than turnover per square metre in other types of comparison goods shops. If the proposed store were to proceed and be occupied by Debenhams, sales turnover is expected to be £2,300 per square metre per year. In round figures, this gives a total annual turnover of £9.7 million.

65. If the proposed store were not to proceed, if the same amount of floorspace were provided in units that conformed to the existing size limitations and if the floorspace had a turnover of £4,250 per square metre per annum, the total annual turnover would be £17.9 million.

66. Taking the above considerations in isolation, it may be said that the proposal would reduce annual turnover expected from a fully-developed Fort Kinnaird (71,502 square metres of floorspace). The reduction would be £8.2 million. This indicates that the proposed development would have no direct adverse impact on other centres.

Indirect impact

67. The effects of trade diversion may be more significant than one would expect from an analysis that is confined solely to the amount of proposed floorspace. This is because indirect effects may arise.

68. Indirect retail impacts, also referred to as secondary impacts, are described in Town Centre and Retailing Methodologies 2007. This research report was published by the Scottish Government in 2007. It was expected that it would be the basis for a planning advice note. This did not happen, and the views in the report do not necessarily reflect those of the Scottish Ministers. Notwithstanding this, I find that the section on secondary impacts (paragraphs 6.267 to 6.272 and recommendation RIA31) assists in the consideration of the appeal proposal.

69. According to paragraphs 6.267 and 6.268 of the report, indirect, or secondary, impacts include:

the cluster effects of grouping similar retailers; and

the creation of investor confidence in a locality.

70. In the report, recommendation RIA31: Secondary Retail Impacts says:

..... at the present time, reliable quantitative techniques are not available and so limited weight should be given to quantitative assessment of these impacts. Therefore potential secondary impacts (beneficial and adverse) should be limited to a general description of impacts rather than a quantification of impacts.

71. In the present case, I find it necessary to consider indirect effects arising from clustering and investor confidence.

Indirect effect due to clustering

72. I find that cluster effect in a retail centre arises as follows:

a new facility is added to those that are already available within the centre;

the overall attractiveness of the centre is perceived as being enhanced;

turnover of the whole centre increases by an amount greater than is forecast by applying retail impact assessment techniques to the new facility alone, including allowance for diversion of trade from the centre's existing facilities to the new facility.

73. The issue in the present appeal is the cluster effect, if any, that is likely to arise from the proposed development of a 5,612 square metres floor area unit in department-store format as opposed to what may be built in terms of the existing planning permission and associated obligations.

74. I note the view expressed in the 9 November 2012 issue of Property Week: "by putting a Debenhams in there [in an out-of-town centre], you're increasing the dwell time and increasing the attractiveness, and longer term it is the right thing to do for the park."

75. I also note that submissions refer to the presence at Fort Kinnaird of Next, Marks and Spencer and Boots and to the advent of TK Maxx and the possible advent of Primark. A 2014 marketing brochure for Fort Kinnaird includes the statement: "little competition in the region beyond the city centre".

76. Notwithstanding the cautionary advice in the methodologies report (paragraph 70 above), I was presented with illustrative quantification evidence.

77. As already seen (paragraph 64 above), it is envisaged that the proposed store might have an annual turnover of £9.7 million. If the proposed amount of floorspace were to be provided in smaller units within the permitted unit size limits and used by other operators, the annual turnover might be £17.9 million (paragraph 65 above). Thus the advent of Debenhams would reduce potential annual turnover by £8.2 million.

78. It was put to me that it could be expected that the advent of Debenhams would increase sales densities across the whole of the retail park and that a “modest” increase in sales densities would be £200 per square metre per annum. This would be an increase of about 5%. It would apply to the total amount of approved floorspace of 71,502 square metres less the Debenhams unit of 5,612 square metres and multiplied by 0.75 to give net floorspace. The result would be an additional turnover of £9.88 million.

79. The Appellant contends that the impact of Debenhams would thus be of the order of £1.6 million (£9.88 million less £8.2 million) and that the actual impact would be less when internal trade diversion is taken into account, for example competition with the Marks and Spencer store that is already present at Fort Kinnaird.

80. On the other hand, it was contended that an increase in turnover of 5% must be at the bottom of the range. An increase of 10% would boost annual turnover by £20 million, an increase of 15% would give £30 million and so on.

81. I find that it is not possible or helpful to seek to decide whether the increase might be 5%, 10%, 15% or some other percentage. There are two reasons for this. First, recommendation RIA31 in Town Centre and Retailing Methodologies 2007 cautions against quantification of secondary, or indirect, impacts. Second, the retailing scene can change quite markedly in a relatively short period, as demonstrated by the turnaround at Fort Kinnaird itself since 2011.

82. From the evidence, including that relating to shopping patterns and the progress of trading at Fort Kinnaird, I make the following findings.

The proposed development would be likely to cause an increase in turnover in the rest of Fort Kinnaird significantly greater than 5%.

The proposed development would divert trade from other retailers at Fort Kinnaird, but the overall effect for Fort Kinnaird as a whole would be an increase in turnover.

This increase would more than offset the reduction in turnover due to Debenhams having a turnover per square metre that is less than would be achieved by other retailers in smaller units.

83. My conclusion is that the proposed development would be likely to give rise to a significant cluster effect. This effect would be greater than the cluster effect, if any, that might arise from development that accorded with the existing unit-size limits.

Investor confidence at Fort Kinnaird

84. Regarding investor confidence, my starting point is the situation in 2011. The Supplementary Planning & Retail Statement of June 2011 (paragraph 2.9), prepared in connection with application 11/00874/FUL, said that the permission existing at that time no longer contained sufficient floorspace “to meet both the mezzanine requirements of existing and prospective tenants, and the floorspace necessary to develop the ‘gap’ site.” [Part of the gap site is the site for the appeal proposal. Most of the rest of the gap site is the adjoining land on which the cinema and food outlets are being constructed.] If retailers’ requirements cannot be met, existing retailers “will leave and go elsewhere” and potential incoming retailers “will choose other locations.” In these circumstances, “there would be an increasing number of empty units within Fort Kinnaird, with a resultant loss of market confidence” and “a downward spiral is likely to kick in.” Paragraph 3.1 of the same document refers to “a potential downward spiral in difficult economic circumstances.”

85. In the conclusions section of his report on application 11/00874/FUL, the Council’s planning officer says: “Without action to secure the commercial viability of the centre, local job opportunities will undoubtedly be lost.” This sentence is repeated as part of the reason for the decision to grant permission.

86. Page 15 of the report on application 13/02381/FUL harks back to the 2011 application: “The committee report in relation to the increase in the floorspace cap (11/0874/FUL) highlighted that any consent would be an exception to policy, driven by the need to prevent a ‘spiral of decline’ which seemed a real possibility at the time.”

87. Approval of application 11/00874/FUL appears to have had an immediate effect on Fort Kinnaird. The Overview Statement of May 2012 says: “As a consequence of the granting of planning permission the retail function of the park has been reinforced. Permitted mezzanine floorspace has already been allocated and implemented. An unexpected additional benefit has emerged. Commercial leisure interest in the park has revived from both cinema and restaurant operators.”

88. This latter interest is now coming to fruition, with a new cinema due to open in spring 2015 and new restaurants and cafes open and nearly ready to open, as observed during my site inspection on 16 December 2014.

89. I find that investor confidence is now at a high level.

90. The presence of Debenhams would add a prestigious name to the roll of tenants. The potential beneficial effect of this on investor confidence is indicated by the Fort Kinnaird marketing brochure of 2014. I find that investor confidence would be further enhanced if the proposed development were approved. This further enhancement would be greater than any enhancement that might arise from development that accorded with the existing unit-size limits.

The St James Quarter

91. Edinburgh City Local Plan at paragraph 8.12 identifies possible development opportunities in the city centre. One of these is redevelopment of the St James Centre and neighbouring properties.

92. In 2008, an application (08/03361/OUT) was made for outline planning permission for redevelopment and refurbishment including demolition and new buildings to provide a mixed use development at the St James Centre. One element was retail development with a maximum gross floor area of 65,000 square metres. The application was approved in June 2009.

93. In August 2009, the Council authorised negotiation of an agreement to promote and implement a compulsory purchase order to facilitate the St James Centre redevelopment. “Challenging economic conditions” arising from the global economic downturn meant that plans did not progress as envisaged and the agreement expired on 31 March 2012. Late in 2013, the developer approached the Council to re-affirm its intention to proceed with the redevelopment and to request that the Council use compulsory purchase powers to assist in the final land assembly to enable the redevelopment to proceed.

94. The Council report of May 2014 on the St James Quarter Compulsory Purchase Order says that TIAA Henderson Real Estate has given the Council’s Head of Finance access to commercially sensitive information to demonstrate that a funding plan for the redevelopment is in place. TIAA Henderson Real Estate believes that the necessary funding will be available to progress the redevelopment. This, according to the Council’s Acting Director of Services for Communities, “along with the financial commitment to date of over £200 million, demonstrates the developer’s commitment to complete the scheme within the guidelines of the Circular” (Circular 6/2011: Compulsory Purchase Orders).

95. In August 2014, TIAA Henderson Real Estate and the Council entered into an agreement whereby the former would fund the compulsory purchase order.

96. TIAA Henderson Real Estate expects to commence on site in mid 2015. This is dependent on a decision to enter into contracts of the order of £450 million for work on-site. It is likely that any such decision will be taken around the middle of 2015. If a decision to proceed is taken, the St James Quarter development would be open for retail trading in the spring of 2020, with a total project completion in 2021.

97. Regarding the St James Quarter redevelopment, I make the following findings.

Evidence demonstrates that a crucial step in achieving the St James Quarter redevelopment is taking the decision to proceed with contracts for the £450 million of on-site works.

The decision to proceed with the contracts has not yet been taken.

At the present time it cannot be said that the city centre is demonstrably achieving its potential and is on course to meet the target of an additional 52,500 square metres net floorspace (local plan, paragraph 8.19).

It is likely that a decision regarding contracts for on-site works will be taken around the middle of 2015. One of many factors influencing this decision is the extent to which it is felt that reliance may be placed on the provisions of the development plan with regard to retailing.

Evidence does not demonstrate that the outcome of the present appeal will necessarily be a determining factor in the decision as to whether to proceed with the site works for the St James Quarter redevelopment. On the other hand, if factors influencing the decision are found to be finely balanced, the outcome of the appeal could have a decisive effect.

The St James Quarter proposals include demolition of existing retail units (except the John Lewis unit) in the St James Centre. Loss of these units is likely to have an adverse effect on the retail performance of the city centre.

Until the new, increased amount of retail floorspace is completed and available for occupation, loss of the existing floorspace is likely to increase the extent to which the city centre is vulnerable to competition from other centres.

Consistent application of the retail provisions in the development plan is likely to be a significant factor in helping ensure that the eventual outcome of the St James Quarter redevelopment is an enhancement of the city centre as the regional focus for shopping and other services.

Policy Ret 3 criterion (b) - impact on the city centre retail core - conclusion

98. From considerations in relation to cluster effect, I find that Fort Kinnauld is already competing with the city centre and that the increase in turnover at Fort Kinnauld that would result from the proposed development would increase the competition with the city centre. By reinforcing the already strengthening fashion, clothing and beauty components of the retail offer at Fort Kinnauld, the format of the proposed development would increase the impact that Fort Kinnauld has on the city centre. By further enhancing investor confidence, the proposed development would be likely to increase impact on the city centre in the future. These effects would be of particular significance during any period of city-centre vulnerability arising from redevelopment of the St James Centre. Development that accorded with the existing unit-size limits would not increase the impact on the city centre, or would not increase it to the same extent.

99. The St James Quarter redevelopment would be a major step towards achievement of the local plan target of an additional 52,500 square metres of floorspace in the city centre. The redevelopment could be adversely affected by the Appellant's proposed development, either by influencing the decision whether to proceed with contracts for on-site work or by increasing competition with the city centre during a period of vulnerability.

100. I conclude that the proposed development would impact adversely on the strategy and objectives for enhancing the vitality and retail attractiveness of the city centre retail core. It would thus conflict with criterion (b) of policy Ret 3.

Policy Ret 3 criterion (b) - impacts on other centres

101. My attention has been drawn to Ocean Terminal as the one non-city-centre retail destination where unacceptable impact is foreseen. It is contended that the proposed development would damage the commercial operation of Ocean Terminal. It is claimed that the impact of 2.3% forecast in table 2B in appendix 4 of the draft Supporting Planning Statement does not reflect the true impact. The true impact on Ocean Terminal would be far greater. Recent loss of occupiers makes Ocean Terminal vulnerable to competition.

102. I note that the impact of 2.3% is a forecast of direct impact arising from construction and occupation of approved but not yet built floorspace at Fort Kinnaird. This is an impact that will occur irrespective of whether the current proposed development (application 13/02381/FUL) is approved or refused. I therefore attach no weight to it.

103. From my findings regarding indirect effects (paragraphs 83 and 90 above), I find that impact on Ocean Terminal is likely to be greater than direct impact alone. How much greater cannot be reliably quantified.

104. The Council's committee report at page 12 reviews the Appellant's forecast of trade diversion from Ocean Terminal and offers the opinion that Ocean Terminal is trading sufficiently robustly to recover from such impacts.

105. From the evidence submitted to me, I find that retailing at Ocean Terminal is not as robust as might have been expected. This arises from a variety of factors, including the slow rate of progress with new residential development at Leith and the decision to curtail the tram route.

106. SESplan and Edinburgh City Local Plan both recognise the importance of commercial centres.

107. I take into account the current retailing conditions at Ocean Terminal and the importance that is accorded by the development plan to all commercial centres, but I am not convinced that the overall additional impact on Ocean Terminal arising solely from the proposed development (application 13/02381/FUL) would be significant. I conclude that the impact of the proposed development on Ocean Terminal does not conflict with policy Ret 3 criterion (b).

Policy Ret 3 criterion (c) - compatibility with role of centre

108. Criterion (c) in policy Ret 3 requires compatibility with the role of the centre.

109. The proposed development would reinforce the fashion, clothing and beauty components of the retail offer at Fort Kinnaird (paragraph 98). The proposed development, with its concomitant indirect effect, would attract to Fort Kinnaird a volume of turnover greater than would arise from the existing approvals (paragraphs 82 and 83). These outcomes would be likely to further expand the sub-regional role of Fort Kinnaird. This would not accord with the future role envisaged for Newcraighall/The Jewel in table 8.2 of the local plan and would be contrary to policy Ret 3 criterion (c).

Policy Ret 3 criterion (d) - accessibility, appearance and environment

110. Criterion (d) in policy Ret 3 refers to matters of accessibility, appearance and environment. I find that the proposed development should be viewed in the context of permission 11/00874/FUL and the associated obligation agreement. Conditions imposed on the permission include requirements regarding matters such as sustainable drainage, landscaping, an improved pedestrian crossing and improved public transport facilities. The obligation agreement includes reference to public realm works. The Council finds no conflict with criterion (d). I see no reason to disagree with the Council's assessment.

Policy Ret 3 criterion (e) - addressing deficiency

111. Criterion (e) in policy Ret 3 refers to addressing a quantitative or qualitative deficiency in the local area. Regarding quantitative deficiency, the draft of the Modification Supporting Planning Statement submitted with planning application 13/02381/FUL emphasises that no additional floorspace is being proposed (paragraph 1.3). I accept that this is the Appellant's intention. I find that the proposed development is not addressing a quantitative deficiency.

112. At paragraph 4.51, the draft of the Modification Supporting Planning Statement says that the proposed development would significantly enhance the qualitative offer at Fort Kinnaird. I see nothing wrong in a centre operator desiring to maximise development potential by addressing deficiencies that render the centre less commercially successful than it might otherwise be, but deficiencies of this kind do not seem to me to be the kind of deficiencies envisaged in criterion (e).

113. Criterion (e) refers to deficiencies in the local area. I find that criterion (e) is directed primarily to deficiencies experienced by local shoppers. Evidence does not demonstrate that local shoppers are faced with a deficiency that would be addressed by the proposed development, particularly when one bears in mind that local shoppers can visit the city centre for department-store shopping.

Policy Ret 3 - conclusion

114. From the foregoing, I find that the proposed development does not accord with the following criteria in policy Ret 3: (a) the sequential test, (b) adverse impacts, (c) role of the centre and (e) address a deficiency. My conclusion is that the proposed development is contrary to policy Ret 3.

115. The Appellant, while maintaining that policy Ret 3 does not apply to the proposed development, also argues that, even if the policy were applicable, permission should still be given. My view is that policy Ret 3 is applicable to the present proposal (paragraph 43 above), but, even if policy Ret 3 were not applicable, the proposal would still be contrary to the development plan. The proposal would not accord with the sequential approach in paragraph 99 of SESplan and paragraphs 8.4 and 8.8 of the local plan. Nor would it accord with ensuring the continued vitality and viability of retailing in the city centre, which is seen as essential to support other economic activity and to maintain competitiveness for the benefit of the wider city region (SESplan, paragraph 98).

116. One of the objectors argues that, if policy Ret 3 does not apply, there are no retail policies in the development plan that are relevant to the proposal and that this simply cannot be correct. As indicated in the preceding paragraph, if it were the case that policy Ret 3 did not apply, this would not result in a policy void or black hole. I therefore attach no weight to the void or black hole argument in deciding that policy Ret 3 does apply.

Conclusions regarding the development plan

117. The development plan recognises that commercial centres are part of the network of centres. The plan says that commercial centres are to be supported, sustained and promoted.

118. Regarding the commercial centre at Newcraighall/The Jewel, the Council's decision to approve application 11/00874/FUL has been followed by a marked and ongoing improvement in trading activity at Fort Kinnaird. I find that this more than fulfils that part of the development plan that says that commercial centres are to be supported, sustained and promoted.

119. The proposed development would not accord with SESplan. It would conflict with promotion of the retailing role of Edinburgh city centre and it would be inconsistent with the sequential approach.

120. The proposed development is contrary to local plan policy Ret 3.

121. My conclusion is that the proposed development does not accord with the development plan.

Other material considerations - Scottish Planning Policy

122. Scottish Planning Policy is a statement of Scottish Ministers' priorities. In this appeal, it is a material consideration that carries significant weight.

123. Scottish Planning Policy confirms that priority is to be given to town centres. Guidance in paragraph 62 of Scottish Planning Policy indicates that, in this context, it is appropriate to treat Edinburgh city centre as a "town centre".

124. Extracts from the “Promoting Town Centres” section of Scottish Planning Policy are given in paragraph 30, above. The proposed development would not accord with the town centre first principle. The sequential approach has not been satisfactorily followed. I find that the proposed development does not accord with the “Promoting Town Centres” section of Scottish Planning Policy.

125. The Appellant refers to paragraph 33 of Scottish Planning Policy, with its presumption in favour of development.

126. In relation to paragraph 33, I note that Edinburgh City Local Plan is now more than five years old. This means that the presumption in favour of development that contributes to sustainable development will be a significant material consideration. Consideration must therefore be given to the extent to which the proposed development would contribute to sustainable development. Such consideration should, in my view, be prefaced by taking into account the three principles included in paragraph 29 (paragraph 31 above).

127. The first principle refers to net economic benefit. In the present case, I find that this relates to creation of employment. The draft Supporting Planning Statement that accompanied the planning application says: “Approximately 200 jobs will be delivered by the store. This will secure, at an early date, the additional jobs to be delivered by the retail floorspace already approved for Fort Kinnaird” (paragraph 1.7).

128. It was put to me that the 200 jobs would not be offset by a reduction in employment in shops affected by competition from the new store. I am not convinced that this would be so. In any case, the quotation in the preceding paragraph confirms that, if the proposed development were not to proceed, new jobs would be created in the smaller retail units envisaged in the current planning permission and planning obligations. In view of this, I find that the proposed development does not offer any significant net economic benefit.

129. The second principle refers to efficient use of land and infrastructure including supporting town centre and regeneration priorities. In terms of sustainability, I note that the design of the proposed building exceeds building standards requirements and sets best practice standards regarding energy performance.

130. I find that the proposed building would be fully acceptable in relation to minimisation of use of resources. In addition, it would make efficient use of its site and local infrastructure. At the same time, an alternative form of development that accorded with the 2011 permission and associated obligations could well be equally acceptable in all these regards. I therefore find that the proposed development does not offer any special advantage in terms of the second principle.

131. The third principle refers to supporting delivery of accessible retailing development. Accessibility requirements are included in planning permission 11/00874/FUL and the associated agreement. An alternative form of development that accorded with the 2011 permission and associated agreement could well be equally acceptable in relation to accessibility. I therefore find that the proposed development does not offer any special advantage in terms of the third principle.

132. I now give consideration to the extent to which the proposed development would contribute to sustainable development.

133. The committee report for application 11/00874/FUL says that in 2001 85% of Fort Kinnaird shoppers arrived by car. In 2007 the proportion was 75%. Over the same period “bus patronage went up from 9% to 18%”. “The transport measures now proposed [as part of application 11/00874/FUL] would promote sustainable modes of transport, and improve choice for people to walk, cycle or catch public transport, to discourage reliance on the car.”

134. It is generally recognised that cars constitute the least sustainable mode of travel. In comparing the proposed development to development of units not exceeding the 4,000 square metres limit, I find nothing to demonstrate that the proposed development would be more likely to decrease the number of car journeys to Fort Kinnaird. On the contrary, the proposed development would add to growth of turnover at Fort Kinnaird (paragraph 82 above). This would be likely to be accompanied by increased numbers of patrons. Most people would still travel to Fort Kinnaird by car. The proposed development would result in a greater amount of car travel to Fort Kinnaird than would be the case without the additional growth of turnover.

135. The proposed development would increase the impact of Fort Kinnaird on the city centre (paragraphs 98 and 99 above). At paragraph 10.1, Edinburgh City Local Plan says: “As a major transport hub, it [the city centre] is the most sustainable and accessible location for employment growth and the provision of services” From this, I find that a displacement of retailing from the city centre to Fort Kinnaird would be likely to result in an overall increase in car usage by shoppers.

136. From the foregoing, I find that the proposed development would not contribute to sustainable development. This finding means that the presumption in paragraph 33 of Scottish Planning Policy is not applicable in the present case.

137. Paragraph 33 of Scottish Planning Policy includes reference to assessment against the wider policies in Scottish Planning Policy. I find that the impact of the proposed development on Edinburgh city centre infringes the policies in the “Promoting Town Centres” section of Scottish Planning Policy. I find that this conflict carries much more weight than any benefits in terms of employment or increased trading activity at Fort Kinnaird.

138. My overall conclusion is that Scottish Planning Policy does not justify a departure from the provisions of the development plan. Rather, Scottish Planning Policy gives added weight to the case against the proposed development.

Benefits of the proposed development

139. The chief benefits associated with the proposed development are creation of 200 jobs, making use of an unoccupied brownfield site and making Fort Kinnaird a more attractive shopping destination.

140. As set out in paragraph 128 above, I find that the 200 jobs associated with the proposed development would not offer any significant net economic benefit.

141. Much of the gap site created by demolition of the original cinema and other buildings is now occupied by the new restaurant units and the new cinema. If the present proposal does not proceed, I see no reason why the appeal site might not be occupied by retail development that accords with existing planning permission.

142. The present level of investor confidence reflects the fact that Fort Kinnaird is at present an attractive shopping destination. The proposed Debenhams store would make Fort Kinnaird a yet more attractive shopping destination but in my view this is not essential to ensure continuation of the success achieved following approval of application 11/00874/FUL. Making Fort Kinnaird yet more attractive as a shopping destination would conflict with national and development plan policies.

143. My conclusion is that benefits arising from the proposed development do not outweigh the conflict with national and development plan policies.

Other material considerations - Straiton

144. It is reported that new floorspace at Straiton has been approved in a format that would allow a major department store to locate there (Planning Policy and Retail Statement, March 2011, paragraph 2.6). Before deciding to seek a location at Fort Kinnaird, Debenhams examined the possibility of locating at Straiton. If the present appeal is unsuccessful, Debenhams would reconsider and re-evaluate the option of opening a new store at Straiton.

145. I find that if the present appeal is successful, the city centre would be faced with the possibility of competition from two department stores - Debenhams at Fort Kinnaird and some other department store operator at Straiton. Having found that Debenhams at Fort Kinnaird would have an impact on the city centre, I find it likely that a similar effect would arise from a department store at Straiton, though not necessarily to the same degree because, among other things, any clustering effect might be on a lesser scale.

146. My conclusion is that the existence of planning permission that allows a department store to locate at Straiton tends to add weight to the case for refusal of application 13/02381/FUL.

Other matters - the Fort Kinnaird Development Brief

147. The Appellant refers to the Fort Kinnaird Development Brief.

148. In August 2004 the Council published a draft of the Fort Kinnaird Development Brief. In May 2005, the brief was approved by the Council. Among other things, the brief says: "the mix of unit sizes may include a single new unit of up to 5,500 square metres capable of

providing an additional anchor store.” The brief remains in force in that the Council has not withdrawn it.

149. A submission in support of application 04/03706/OUT suggested that, as part of the new development, there could be a major, single-user store of up to 5,574 square metres. Despite this submission, the section 75 agreement that was concluded in April 2006 made 4,000 square metres the maximum size of any new unit.

150. The local plan was adopted in January 2010. In it, the commercial centres section (paragraphs 8.18 to 8.21) contains no reference to the Fort Kinnaird Development Brief.

151. In all the circumstances, I find that the 5,500 square metres limit included in the Fort Kinnaird Development Brief has been superseded by subsequent events and carries no weight in relation to the present appeal.

Other matters - the floorspace limit

152. One of the objectors contends that the proposed development would breach the floorspace limit of 71,502 square metres embodied in permission 11/00874/FUL and the associated section 75 agreement. I have examined the details of this contention. Among other things, it appears to me that Fleming House and the recently-approved cinema should not be taken into account. I conclude that the 71,502 square metres limit would not be exceeded if the proposed development were approved.

Other matters - representations

153. During its consideration of application 13/02381/FUL, the Council received 219 representations. Of these, 207 supported the proposed development and 11 expressed opposition. Following submission of the appeal, the Directorate for Planning and Environmental Appeals received six representations - three in support of the proposed development and three against. Two of the latter were on behalf of Ocean Terminal Limited and Henderson Global Investors, both of whom took part in the public inquiry.

154. Grounds for support included creation of employment and improved range of shopping. Grounds for opposition included conflict with the development plan.

155. In my consideration of the appeal, I have taken into account matters raised in the representations.

Other matters - environmental impact assessment

156. Submissions include reference to the Environmental Impact Assessment Regulations. Contentions include the following:

It is not possible to say that environmental impact assessment is not required in connection with planning permission 11/00874/FUL.

No weight should be placed on any floorspace granted by planning permission 11/00874/FUL.

The appeal proposal itself requires screening for the purposes of environmental impact assessment.

The Appellant argues against these contentions.

157. In view of my conclusion that the proposed development is contrary to the development plan and my decision to refuse planning permission, it is not necessary for me to consider the dispute regarding environmental impact assessment.

Conclusion

158. For the reasons set out above, I find that the proposed development does not accord with the development plan and that there is no material consideration which would justify approval as an exception to the development plan. My conclusion is that the appeal should be dismissed.

R W Maslin
Reporter