

REPORT OF HEAD OF DEVELOPMENT MANAGEMENT

Unit 1A and 1B Castle Retail Park, Radford Boulevard

**1**     **SUMMARY**

Application No:       13/00242/PFUL3  
Application by:        UBS Global Asset Management (UK) Limited  
Proposal:              Amalgamation of Units 1A and 1B and change of use of Unit 1B, to create a new food retail store (Class A1), external alterations, installation of sprinkler tank and alterations to car park layout. Resubmission of planning application reference 12/03177/PFUL3.

The application is brought to Committee because it is a major application and involves the interpretation of legal issues. The application was previously scheduled for Planning Committee on 17 April 2013 but was withdrawn from the agenda to allow for further consideration as to whether the 'fall back' position promoted by the applicant and explained in detail in the report below, is sufficiently realistic.

To meet the Council's Performance Targets this application should be determined by 6 May 2013.

**2**     **RECOMMENDATIONS**

**REFUSE PLANNING PERMISSION** for the reason set out below:

1. The development proposed exceeds the floor space threshold for requiring a Retail Impact Assessment, Sequential Test Assessment and Transport Assessment, none of which are provided with the application. The Local Planning Authority is not satisfied that the 'fall back' position promoted by the applicant is sufficiently realistic to justify omitting these documents from the application. Accordingly the Local Planning Authority is unable to consider the retail impact of the proposal on town centre vitality and viability, contrary to paragraphs 24 and 26 of the NPPF, Policy S5 of the Nottingham Local Plan (2005) and the Nottingham City Council Interim Retail Planning Guidance (2010). Furthermore the absence of a Transport Assessment is contrary to paragraph 32 of the NPPF and does not permit proper consideration of the requirements of Policies ST1, S5, T1, T2 and BE2 of the Nottingham Local Plan (2005).

**3**     **BACKGROUND**

Site and Surroundings

- 3.1 The application site comprises Unit 1A and Unit 1B of Castle Retail Park and includes the car park and associated areas to the south of the vehicular access into the retail park. The retail park currently provides approximately 10,403 sq metres (112,000 sq ft) of floor space configured within six units. The retail units subject to

the application are located adjacent to the southern boundary, fronting north into the park with Unit 1A currently occupied by BM Home Stores and Unit 1B by Gala Bingo. The remaining four retail units, Topps Tiles (Unit 2), Maplin (Unit 3), Aldi (Unit 4), Dunelm (Unit 5), are situated on the west side of the retail park with their frontages facing east across the car park.

- 3.2 The retail park dates to the late 1980s with the units constructed in a mix of brick and grey cladding. Each unit has a large gable entrance and a canopy that runs continuously around the front of the buildings. Vehicular access to the retail park is achieved off Radford Boulevard. Pedestrian access to the retail park is from the corner of Radford Boulevard and Hartley Road, through a soft and hard landscaped area that includes a brick clock tower, or alternatively via a path adjacent to the main vehicular access. All the existing retail units are serviced from the west off Churchfield Lane. The retail park is on a lower level than Radford Boulevard and the car park slopes down gradually from north to south and east to west.
- 3.3 The surrounding area is generally characterised by residential development, though there are offices to the east and St Peter's Church to the west. The nearest shopping centres to the site (as defined in the Local Plan) are Hyson Green Town Centre, Alfreton Road and Hartley Road Local Centres.

#### Relevant Site History

- 3.4 Castle Retail Park was originally granted planning permission (ref: 376/10/87) in 1988. This application permitted the construction of five retail units, including the original Unit 1. The 1988 Permission included provision for Unit 1 to be used as a foodstore and condition 6 of the above permission restricted the goods to be sold across the park to:
- a)
    - i) building and DIY materials and tools;
    - ii) motor parts and spares; cycles;
    - iii) caravans, camping equipment and boats;
    - iv) furniture and carpets;
    - v) large electrical 'white' goods;
    - vi) in the case of unit 1 only, no more than 12,000 sq ft (gross) of food and convenience goods.
  - b)
    - i) goods which are ancillary or directly associated with the above items (i) – (v), to a limit of 15% of net sales area of each retail unit or 3,000 sq ft, whichever is the lower figure.
- 3.5 In July 1988, the Council granted planning permission for: '*Use of Unit 1 by one or two non-food operators*' (ref: 334/06/88). The Permission enabled the sub-division of the original unit into two new units: Units 1A and 1B. No conditions were attached to the Permission which controlled the retail use of the new units. Unit 1A remains in use as a retail operation (B&M Bargains) while Unit 1B is now occupied by Gala Bingo following the grant of planning permission for a change of use to Class D2 in 1996 (Ref 96/01658/PFUL3).
- 3.6 In November 2007, the Council issued a Certificate which confirmed that Unit 1A can lawfully be used for the retail sale of all goods within Class A1 (ref: 07/01982PCLO).
- 3.7 In June 2008, the Council issued a Certificate (ref: 08/01163/PCLO) which confirmed that the completion of a mezzanine floor measuring 2,135 sq. m within

Unit 1A was lawful. This floorspace can also be used for the retail sale of all goods within Class A1.

- 3.8 In March 2012, the Council granted planning permission for the change of use of Unit 1B from a bingo hall (Class D2), to a flexible use of a bingo hall (Class D2) or retail (Class A1) (ref: 12/00073/PFUL3). The permission allows the floorspace to be used for retail purposes although Condition 5 limits the range of goods that can be sold. The restrictions are identical to the condition imposed on the original permission for the retail park (reference 376/10/87) with the exception of permitting any food retail.
- 3.9 In November 2012, an application (ref:12/03177/PFUL3) was submitted for the amalgamation of Units 1A and 1B and change of use of Unit 1B, to create a new food retail store (Class A1), external alterations, installation of sprinkler tank and alterations to car park layout. This application was very similar to the current application but was withdrawn to allow some further consideration of design and highway/parking issues.
- 3.10 Although not involving the application site it is also relevant to note that in 2009 an application (08/2912/PVAR3) was refused to vary an existing condition on Unit 5 to permit the sale of convenience retail goods. This application was refused on grounds that retail need had not been demonstrated and that the proposal would adversely impact upon the vitality and viability of existing Town and Local Centres.
- 3.11 An application (13/00956/PCLO) was submitted in April 2013 for a certificate of lawfulness for the proposed use of two amalgamated units as a single food retail unit. This application is still under consideration by the Council.

#### **4 DETAILS OF THE PROPOSAL**

- 4.1 The application seeks to amalgamate Units 1A and 1B and change the use of Unit 1B, to create a new food retail store (Class A1). This would form a retail unit with a gross floor space of approximately 4,200m<sup>2</sup> and a net retail floor space of approximately 2,356m<sup>2</sup>. Whilst permission exists for unfettered A1 retail use within Unit 1A, the condition restricting goods on Unit 1B within the 2012 permission means that consent is required for this part of a newly formed single unit for food retail use. The internal layout proposes a café on the east side of the building, with the warehousing and servicing area to the west and all the retail space is contained at ground floor. Two mezzanines at separate ends of the building of 344m<sup>2</sup> and 161m<sup>2</sup> are proposed and will contain staff facilities and plant respectively.
- 4.2 The application also proposes some external alterations to the building including a new entrance lobby to replace the two existing entrances, a replacement canopy and the insertion of glazing into the east elevation. A sprinkler tank is proposed to the rear of the south elevation, adjacent to Hartley Road and alterations to the layout of the car park are also included within the application.
- 4.3 The application is supported by a covering letter which reviews relevant planning policy and submits that there is a 'fallback position' with regard to the combined occupation of Units 1A and 1B as a single food retail without planning permission. This view is supported by a Legal Opinion produced by Paul Tucker QC and the consequence of this reasoning is that no Retail Impact Assessment or Transport Assessment is submitted with this application. The merits of this position are

considered in the appraisal. The application also includes a Design and Access Statement and a Flood Risk Assessment.

- 4.4 As part of the development package the developer proposes to deliver local employment and training opportunities during both the construction and subsequent operation of the development, including a financial contribution towards pre-employment training and recruitment costs. Despite the lack of a Transport Assessment, in response to the Highway Authority's comments that there may be traffic impacts if the development is permitted, the developer is offering a financial contribution to monitor and, where appropriate, mitigate any adverse effects. These contributions will be secured through a Section 106 obligation.

## **5 CONSULTATIONS AND OBSERVATIONS OF OTHER OFFICERS**

### **Adjoining occupiers consulted:**

- 5.1 The application has been advertised by site notices (x3) and press advert. In addition the following neighbours have been directly consulted:

Flats 1-2 123, 125, Flats 1-3 127, Flats 1-4 129, 131-153 (odds only), 134-136 (evens only), Units 2, 3B, 4 and 5 Castle Retail Park and 159 Forster Avenue.

- 5.2 There have been five responses as a result of the neighbour notification or the site and press notices. A detailed objection from GL Hearn acting on behalf of Development Securities PLC & RG Foster Textile Machinery has been received. The objection letter states that the applicant's assessment that the fall back position is realistic is flawed. It is submitted that in actual fact the fall back position is not commercially attractive, with particular concerns presented over the viability of servicing, given the distance that delivery vehicles would need to reverse, and that the store entrance would interrupt existing customer parking provision. In addition the objection states that a Retail Impact Assessment should be provided with the application to comply with the requirements of the NPPF and the accompanying guide to PPS4. It is also submitted that a sequential test should be undertaken and a Transport Assessment be provided to support the application. The objection concludes that the fall back position does not justify granting planning permission without considering the impact on existing centres and the impact on highway and transport issues.
- 5.3 Three of the other responses object to the application with reasons again including that the absence a Retail Impact Assessment, the sequential test assessment and a Transport Assessment will mean that the application will not be appropriately considered. Why is this different from the Tesco application in 2008? The fallback position is considered to be flawed by an objector who cites that it contravenes the existing planning restrictions on site and furthermore is an unrealistic option. An objector advises that the Bobbers Mill site, which is being promoted through the Land And Planning Policies (LAPP) process, represents a far more appropriate site and is sequentially preferable. To permit a food retail outlet of this size at the retail park would adversely affect the character of the area.
- 5.4 One local shop owner advises that they have no objection and that the proposed use would have less harm than the existing occupants of one of the units. He comments that a condition should be imposed to limit use to 9pm (Monday to Saturdays) and Sunday at 4pm.

## **Additional consultation letters sent to:**

- 5.5 **Highways:** Advise that they would normally require a Transport Assessment for a development of this type and size but note the legal advice that the units could be occupied for A1 (food) purposes to the size proposed without planning permission under a different configuration. Whilst this is accepted, the Highway Authority still has concerns with the proposal, in the absence of submission of a Transport Assessment, including that the traffic generated is likely to cause congestion, firstly within the site itself and then consequently at the site access junction and potentially further onto the highway network. Normally a package of measures would be secured through either condition or a Section 106 obligation to mitigate any traffic impacts. Improvements may need to be made for pedestrians within the retail park as currently they are required to walk across the car park with no dedicated footway. A car park management plan is recommended to be secured via condition.
- 5.6 **Noise and Pollution Control:** No objections subject to conditions covering noise from plant, delivery times, ventilation and extraction and top soil to be deposited in the landscaped areas.

## **6 RELEVANT POLICIES AND GUIDANCE**

### **National Planning Policy Framework:**

- 6.1 The National Planning Policy Framework (NPPF) sets out the Government's planning policies. While planning applications still need to be determined in accordance with the development plan, which are set out in the report, the NPPF is a material consideration in the assessment of this application. The NPPF advises that there is a presumption in favour of sustainable development and that development which is sustainable should be approved.
- 6.2 Paragraph 24 states that local planning authorities should apply the sequential test for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. The requirement is for retail development to first be located in town centres, then in edge of centre locations and only if suitable sites are not available should out of centre sites be considered. When considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre.
- 6.3 Paragraph 26 states that applications for retail developments outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500 sq m). Advice is given in the NPPF as to the content of the assessment. Paragraph 27 concludes that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on town centres or on existing, committed and planned public and private investment in a centre or centres in the identified catchment area of the proposal, that application should be refused.
- 6.4 Paragraph 32 states all developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment and provides criteria on what factors should be taken into account.

- 6.5 Planning for Town Centres – A Practice Guide on Need, Impact and the Sequential Approach was published in 2009 as an accompanying document to PPS4. Whilst PPS4 itself is now superseded by the NPPF, the practice guide remains a material consideration. Of particular relevance is Appendix D which deals with quantifying the impact of retail development, specifically paragraphs D9 and D10 which provide advice on the merits of considering the fallback position. The guidance explains

*“There is a difference between a purely ‘hypothetical’ fall back position, and a position which actually could be implemented. If there is a realistic prospect that the fall back position would be brought forward, then it would be appropriate to attach significant weight to it in judging the impact of the proposal in question.”*

**Nottingham Local Plan (November 2005):**

ST1 – Sustainable Communities. Complies

S5 - Retail development, Edge/Outside Centres - Complies

BE2 - Layout and Community Safety. Complies

BE3 - Building Design. Complies

BE4 - Sustainable Design. Complies

T1 - Location of development - Complies

T2 – Planning Obligations and Conditions - Complies

T3 - Car, Cycle and Servicing Parking – Complies

**Nottingham City Council Interim Retail Planning Guidance (2010)**

The Council published in October 2010 an interim retail planning guidance document. The Council recognises that this guidance is not part of the Development plan, and as such it cannot be afforded full weight in the decision making process. However, this document was subject to public consultation and has been adopted by the City Council’s Executive Board on 19<sup>th</sup> October 2010 as Interim Retail Planning Guidance (IRPG). It represents the current view of the City Council in relation to a series of retail issues.

**7. APPRAISAL OF PROPOSED DEVELOPMENT**

**Main Issues**

- i) Whether the justification for excluding the submission of a Retail Impact Assessment, a sequential test and a Transport Assessment is sound (the assessment of the ‘fall back position’).
- ii) The impact of the proposal on the vitality and viability of existing Centres, either by itself, or cumulatively with other proposals.
- iii) Impact on Traffic, Parking and Pedestrian Movements
- iv) External alterations and landscaping.

**i) Whether the justification for excluding the submission of a Retail Impact Assessment, a sequential test and a Transport Assessment is sound. (NPPF paragraphs 24 & 26, Policy S5 of the Local Plan and Policy 5 of interim retail guidance)**

7.1 The application seeks to amalgamate Units 1A and 1B to create a single food retail unit comprising approximately 4200m<sup>2</sup> of gross floor space and 2356m<sup>2</sup> of net retail floor space. From the planning history it is clear that the certificate issued in 2007 establishes that Unit 1A has unrestricted A1 retail use. This unit has 2480m<sup>2</sup> of floor space at ground floor, but the further certificate granted in 2008 established the lawfulness of the mezzanine floor which provides a further 2,135m<sup>2</sup> of unrestricted floor space. This results in a total floorspace within Unit 1A of 4615m<sup>2</sup>. With regard to Unit 1B this has permission to be used as either a bingo hall or for retail purposes subject to restrictions on the goods to be sold and excludes food retail use. Unit 1B has floor space of 1210m<sup>2</sup> at ground floor and a further 1197m<sup>2</sup> at mezzanine level (which was constructed in 1996), giving a total of 2407m<sup>2</sup>. This results in an overall gross floor space total across both units of 7022m<sup>2</sup>. There are no restrictions on the retail park with regard to amalgamation. The Table below summarises the currently permitted floor space.

	Ground Floor	Mezzanine	Total
Unit 1A	2480m <sup>2</sup>	2135m <sup>2</sup>	4615m <sup>2</sup>
Unit 1B	1210m <sup>2</sup>	1197m <sup>2</sup>	2407m <sup>2</sup>
Total	3690m <sup>2</sup>	3332m <sup>2</sup>	7022m <sup>2</sup>

\* Note Unit 1B floor space subject to restrictions outlined above

7.2 The applicant submits that they could achieve the floor space they desire without requiring permission. As set out above, the total amount of floor space sought pursuant to the application is 4200m<sup>2</sup> which could be achieved within Unit 1A which currently has unfettered A1 use. However this would be across two floors, with a comparatively even distribution of floor space which would not be attractive to a potential retailer. An alternative option is presented as the applicant's main case in terms of establishing a fall back position. This proposes the accommodation of all the retail floor space within the ground floor of what is currently Unit 1A and the supporting facilities such as the servicing warehouse, toilets etc within what is currently Unit 1B from which no goods would be sold. This would provide a net retail floor space of 2480m<sup>2</sup> compared to 2356m<sup>2</sup> proposed in the application. The application is supported by a QC opinion which confirms that whilst the condition on Unit 1B would still bite if the units were amalgamated, this arrangement would not breach that condition.

7.3 The weight of the potential fallback position is also discussed within the QC opinion and case law is referred to which confirms that it should be a material consideration providing that there is a real prospect, and not merely a theoretical one, of the fallback development taking place. The application documentation submitted has been considered very carefully and the Council's legal section has advised that the QC approach is correct. A1 use would be permitted throughout the amalgamated units and providing that the area comprising the former unit 1B is not used for the sale of any goods other than those permitted by condition 5 of the March 2012 permission there would be no breach of planning control. Thus, it would be permissible for the former unit 1B to be used as a warehouse ancillary to the 'shop floor', for staff facilities / toilets or indeed for the sale of goods permitted by the 2012 condition.

- 7.4 The question remains as to the weight to be afforded to the fall back option in the decision making process; this will vary according to the likelihood of the option actually being implemented. Further to the preparation of the previous report, investigations have been carried out and information gathered as to the likelihood of a food retailer choosing to operate from a store, the layout of which is constrained as per the fallback option.
- 7.5 Some of the objections submitted clearly disagree with the applicant's submission the fallback position is realistic. It is noted that the servicing arrangements under the fall back position are questioned, with the submission from GL Hearn specifically referencing that delivery lorries would need to undertake a 60m+ reversing manoeuvre. It is evident that this situation is far from ideal and it is considered that GL Hearn's concerns about the commercial attractiveness of such an arrangement are valid. Whilst on its own this may not be sufficient to justifiably conclude that the fallback position is unrealistic, this needs to be considered with other factors.
- 7.6 Information gathered has also revealed a number of other difficulties that operators would face trading from the fallback position store, which would reduce the commercial desirability of occupying the unit. The proposed store configuration does not appear to present well in terms of profile to the surrounding streets. As the unit was built as a non-food retail outlet the ratio of glazing to solid walls along the northern elevation to the car park is poor and as such there would be little natural daylight within the store under the fallback configuration. Furthermore the east elevation facing Radford Boulevard, which should be the most prominent retail façade, presents itself as a solid wall and significantly under values the presence of a main pedestrian access and major highway frontage and thus the opportunity for maximising visible trading opportunities. The fact that the application proposes to address these issues adds weight to this concern.
- 7.7 The fallback layout includes a café which would not be considered permitted development and therefore would need planning permission, due to the restriction on the sale of goods within the 'Unit 1B' section of the amalgamated store. The café is a key component of the current proposal, which is positioned to provide an active 'shop' front to both the north and east elevation. The absence of such an element clearly diminishes the commercial attractiveness of the fallback position.
- 7.8 On balance it is considered that the lack of visibility and profile of the store and poor servicing facilities under the fallback position, are likely to undermine its operational efficiency and therefore its commercial attractiveness. It is therefore acknowledged that whilst the existence of the fallback position is a material consideration, its weight is not so great that it overrides all other considerations. It has been demonstrated that there are several deficiencies in the fallback position layout and therefore to conclude with any degree of certainty that such a proposal would be implemented would appear unreasonable.
- 7.9 The applicant's submission is based upon the presumption that the fallback position is both valid and realistic and accordingly no retail impact assessment, sequential test or transport assessment has been submitted. The above arguments have demonstrated that there is doubt as to whether the fallback position is realistic and so the absence of these assessments appears to undermine the proper consideration of the application. In terms of a retail impact assessment, paragraph 26 of the NPPF advises that the minimum threshold should be set locally, or



otherwise is defaulted to 2500m<sup>2</sup>. The supporting text of Policy S5 states that developments over 2500m<sup>2</sup> should be accompanied by a retail impact assessment, though the supporting text comments that occasionally it would be reasonable to require this for smaller developments. The Interim Retail Planning Guidance (IRPG) provides a lower threshold of 1000m<sup>2</sup>. The application is proposing to add 1210m<sup>2</sup> of new gross food retail floor space at ground floor. This is above the IRPG threshold but some way below the threshold contained within Policy S5. However, the proposal to use Unit 1B as food retail will facilitate a store of a gross size of 4,200m<sup>2</sup>. This proposal does not represent an extension of an existing facility but will result in a new food store and consequently it is considered that both a retail impact assessment and the sequential test assessment should accompany this application. It is noted that the QC opinion accompanying the application remarks that no new floorspace is being created and so a retail impact assessment is not justified, but the type of floor space is being altered and was restricted by condition for retail impact reasons. The absence of these assessments means that consideration against the NPPF, Policy S5 and the IRPG is not possible and for this reason it is considered legitimate that the application be refused on this basis.

- 7.10 Based on the above position the same conclusion must be drawn with regard to the Transport Assessment. As it is not considered that the fallback position should be given significant weight, it is reasonable to evaluate the traffic and other transport related issues that the proposal may create in the usual manner. The floor space proposed in the development would exceed the threshold (800m<sup>2</sup>) that would normally trigger a requirement for a transport assessment. Furthermore, whilst the retail floor space exists, albeit restricted in type, traffic movements associated with food retail are considered sufficiently different to that of bulky goods to justify an assessment.

**ii) The impact of the proposal on the vitality and viability of existing Centres, either by itself, or cumulatively with other proposals. (Policies ST1 and S5 of the Local Plan and Policy 5 of the interim retail guidance)**

- 7.11 The position that has been established on the above issue essentially governs the outcome of this consideration. Given the doubts that exist about whether the fallback position is commercially realistic, it is considered that a retail impact assessment and sequential test assessment are necessary and without this information the impact upon existing centres cannot be established or assessed.

**iii) Impact on Traffic, Parking and Pedestrian Movements (Policies BE2, T1, T2 and T3)**

- 7.12 As established above the fallback position is not considered sufficiently realistic and consequently a Transport Assessment is required with the application. Highways have raised concerns about the potential impact on the highway network through increased traffic created by the development. In the absence of a Transport Assessment it is very hard to establish the level of likely impact that would result from the proposal and on this basis it is recommended that this should comprise a reason for refusal of the application.
- 7.13 The application includes alterations to the layout of the car park for the section to the south of the main access road. The legibility of the existing car park layout is poor and so this would be an enhancement for visitors to the retail park and should help customers find spaces and exit the site more quickly. The overall number of spaces as proposed is marginally less, with a reduction of five, but there is

provision for four more disabled bays, three parent and child bays and ten cycle stands. The application originally proposed approximately 14-16 additional parking spaces to the east of the building but this would restrict pedestrian movements and any potential enhancement to this area and has therefore been removed from the scheme. An internal pedestrian walkway within the car park is also proposed which will enhance pedestrian safety. The benefits from the proposed improvements to the car park would not however outweigh the requirement for a retail impact assessment, sequential test and transport assessment.

- 7.14 The applicant has offered to make a contribution of £50,000 towards, firstly, the monitoring of the traffic impact of the development once operational and, if required, improvements to access and egress from the retail park to Radford Boulevard and pedestrian accessibility. This is offered by way of mitigating any adverse impacts of the development. It is not considered that this contribution should replace the requirement for a Transport Assessment, as the figure is offered without an understanding of the traffic implications of the development that would normally be understood through the submission and consideration of a Transport Assessment.

#### **iv) External alterations and landscaping. (Policy BE3)**

- 7.15 The new proposed entrance lobby is considered to be acceptable in design terms. The existing retail park frontages appear a little dated in architectural terms and given the position of the proposed amalgamated units within the retail park it is considered that the introduction of this glazed entrance would not adversely alter the character or appearance of the park. The other main alteration to the building consists of increasing the amount of glazing on the east elevation to provide an active frontage. This would be considered an enhancement with the benefit of making the area to the east of the building more attractive in what is currently an unwelcoming environment. The sprinkler tank would be situated to the south of the building, close to the delivery yard. The existing brick boundary wall would partially screen the tank and though this would be still visible in the street-scene, it would be seen in the context of the rear elevation of the building. It is considered that if an approval were to be forthcoming, a condition would be required to determine that its final appearance would be acceptable.
- 7.16 It is considered that the area to the east of the building could be further improved with some alterations to open up the space and improve permeability. This could consist of removing part of the retaining wall which contains a large low level planting and possibly introducing some trees to have a more significant landscaping impact. The applicant has agreed in principle to provide a scheme to improve this area and it is considered that the details of this should be secured by condition. In addition the submitted scheme proposes formal tree planting within the car park which should improve the attractiveness of the environment and soften what is quite a hard landscaped area. Whilst the external alterations and landscaping proposals are considered acceptable, the benefit of these proposals do not outweigh the requirements for a retail impact assessment, sequential test and transport assessment in order to allow a full and proper consideration of all retail and highway issues raised by the application.

## **8. SUSTAINABILITY / BIODIVERSITY**

An Energy Statement has been submitted with the application which sets out how the applicant will attempt to achieve the Council's target of 10% reduction in carbon

emissions. This is proposed to be achieved through the proposed physical works to the building (new roof and cladding) and operational process installations which would ensure that the energy performance of the building is significantly enhanced and the energy consumption of the store is minimised. It is considered that the submission in this regard is too generic and if minded to approve, a condition would be required to ensure that sufficient measures are proposed and implemented to achieve compliance with Policy BE4 of the Local Plan.

## **9 FINANCIAL IMPLICATIONS**

None.

## **10 LEGAL IMPLICATIONS**

The issues raised in this report are primarily ones of planning judgement. However, the application raises issues regarding reliance on the fall back position as a material consideration in the determination of the application, which involves an element of legal interpretation. Accordingly legal advice on this issue has been incorporated into the report. Should any further legal considerations arise these will be addressed at the meeting.

## **11 EQUALITY AND DIVERSITY IMPLICATIONS**

None.

## **12 RISK MANAGEMENT ISSUES**

None.

## **13 STRATEGIC PRIORITIES**

Working Nottingham: The development will deliver local employment and training opportunities during both the construction and subsequent operation of the development.

## **14 CRIME AND DISORDER ACT IMPLICATIONS**

None.

## **15 VALUE FOR MONEY**

None.

## **16 List of background papers other than published works or those disclosing confidential or exempt information**

1. Application reference number: 13/00242/PFUL3  
<http://plan4.nottinghamcity.gov.uk/WAM/pas/findCaseFile.do?appNumber=13%2F00242&action=Search>
2. NCC Highways comments dated 12-2-13
3. NCC Noise and Pollution Control comments dated 18-2-13
4. Local resident/business comments dated 19-2-13(x2), 5-3-13, 21-3-13
5. Comments of GL Hearn dated 28-3-13
6. Nottingham Regeneration Limited 02-05-13

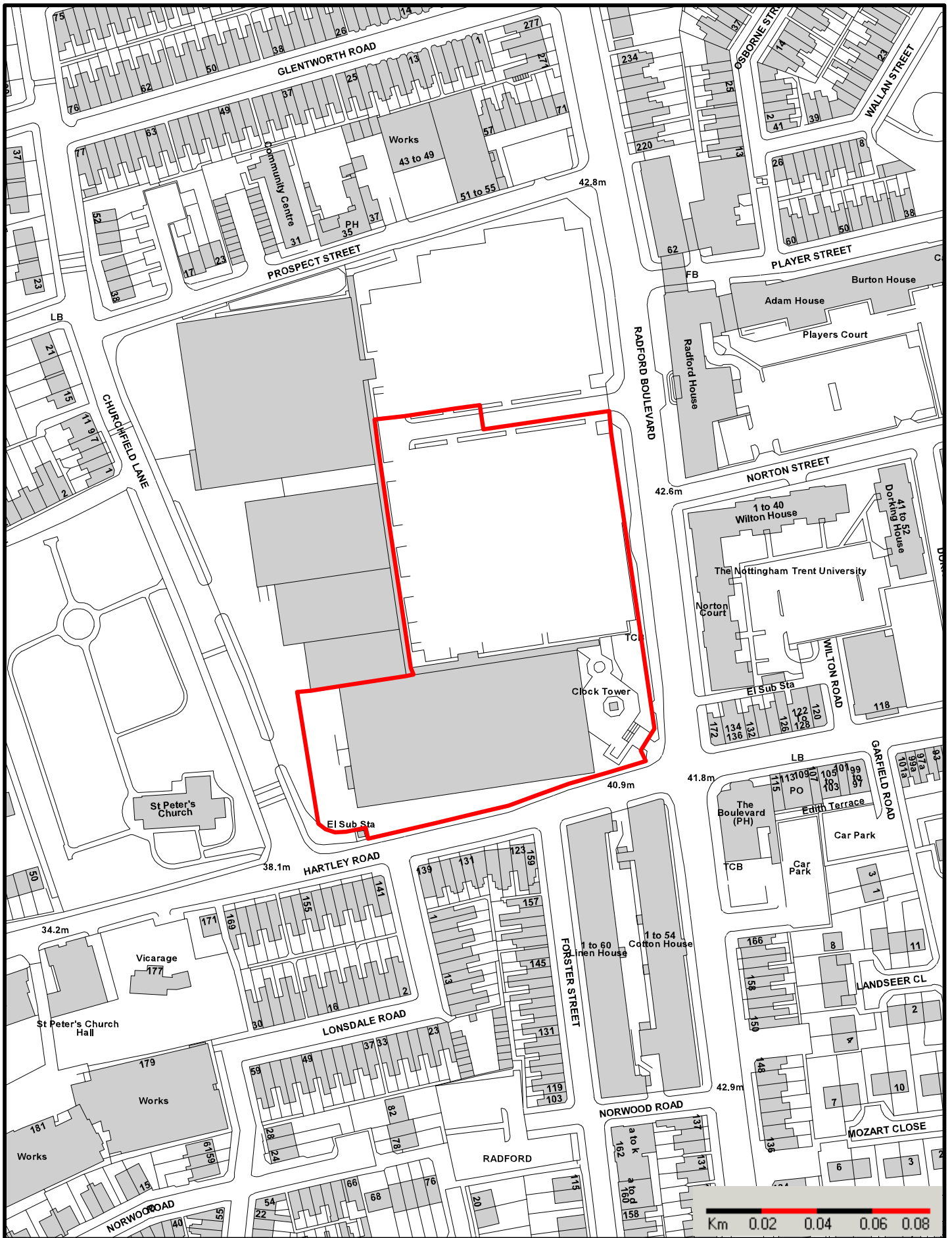
**17 Published documents referred to in compiling this report**

1. Nottingham Local Plan (November 2005).
2. National Planning Policy Framework.

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**Nottingham**  
City Council

**My Ref:** 13/00242/PFUL3 (PP-02439479)

**Your Ref:**

**Contact:** Mr Mark Bassett

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**Nottingham  
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Savills Commercial Limited  
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20 Grosvenor Hill  
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Date of decision:

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**TOWN AND COUNTRY PLANNING ACT 1990  
APPLICATION FOR PLANNING PERMISSION**

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Application No: 13/00242/PFUL3 (PP-02439479)  
Application by: UBS Global Asset Management (UK) Limited  
Location: Unit 1A And 1B, Castle Retail Park, Radford Boulevard  
Proposal: Amalgamation of Units 1A and 1B and change of use of Unit 1B, to create a new food retail store (Class A1), external alterations, installation of sprinkler tank and alterations to car park layout. Resubmission of planning application reference 12/03177/PFUL3.

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Nottingham City Council as Local Planning Authority hereby **REFUSES PLANNING PERMISSION** for the development described in the above application for the following reason(s):-

1. The development proposed exceeds the floor space threshold for requiring a Retail Impact Assessment, Sequential Test Assessment and Transport Assessment, none of which are provided with the application. The Local Planning Authority is not satisfied that the 'fall back' position promoted by the applicant is sufficiently realistic to justify omitting these documents from the application. Accordingly the Local Planning Authority is unable to consider the retail impact of the proposal on town centre vitality and viability, contrary to paragraphs 24 and 26 of the NPPF, Policy S5 of the Nottingham Local Plan (2005) and the Nottingham City Council Interim Retail Planning Guidance (2010). Furthermore the absence of a Transport Assessment is contrary to paragraph 32 of the NPPF and does not permit proper consideration of the requirements of Policies ST1, S5, T1, T2 and BE2 of the Nottingham Local Plan (2005).

**Notes**

1. The reason for this decision, and a summary of the policies the local planning authority has had regard to are set out in the committee report, enclosed herewith and forming part of this decision.

Your attention is drawn to the rights of appeal set out on the attached sheet.



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Continued...

## **RIGHTS OF APPEAL**

Application No: 13/00242/PFUL3 (PP-02439479)

If the applicant is aggrieved by the decision of the City Council to refuse permission for the proposed development, then he or she can appeal to the Secretary of State under section 78 of the Town and Country Planning Act 1990.

Any appeal must be submitted within six months of the date of this notice. You can obtain an appeal form from the Customer Support Unit, The Planning Inspectorate, Room 3/15 Eagle Wing, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN. Phone: 0117 372 6372. Appeal forms can also be downloaded from the Planning Inspectorate website at <http://www.planning-inspectorate.gov.uk/pins/index.htm>. Alternatively, the Planning Inspectorate have introduced an online appeals service which you can use to make your appeal online. You can find the service through the Appeals area of the Planning Portal - see [www.planningportal.gov.uk/pes](http://www.planningportal.gov.uk/pes).

The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

The Secretary of State can allow a longer period for giving notice of an appeal, but will not normally be prepared to use this power unless there are special circumstances which excuse the delay.

The Secretary of State need not consider an appeal if the City Council could not for legal reasons have granted permission or approved the proposals without the conditions it imposed.

In practice, the Secretary of State does not refuse to consider appeals solely because the City Council based its decision on a direction given by him.

## **PURCHASE NOTICES**

If either the City Council or the Secretary of State refuses permission to develop land or grants it subject to conditions, the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted. This procedure is set out in Part VI of the Town and Country Planning Act 1990.

## **COMPENSATION**

In certain limited circumstances, a claim may be made against the City Council for compensation where permission is refused or granted subject to conditions by the Secretary of State. The circumstances in which compensation is payable are set out in Section 114 of the Town & Country Planning Act 1990.



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