

## **PLANNING COMMITTEE**

TUESDAY, 26TH SEPTEMBER, 2017, 6.00 PM

SHIELD ROOM, CIVIC CENTRE, WEST Paddock, LEYLAND PR25  
1DH

### **SUPPLEMENTARY AGENDA**

I am now able to enclose, for consideration at the above meeting of the Planning Committee, the following information:

- 5 Planning Application 07/2017/0211/ORM - Cuerden Strategic Site, East of Stanifield Lane, North of Clayton Farm, West of Wigan Road, Lostock Lane, Lostock Hall, Preston, Lancashire**

(Pages 146 - 161)

Updated information relating to the application.

Heather McManus  
CHIEF EXECUTIVE

Electronic agendas sent to Members of the Planning Committee

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# Agenda Item 5

## PLANNING UPDATE SHEET 26<sup>TH</sup> SEPTEMBER

### CUERDEN STRATEGIC SITE - 07/2017/0211ORM

This update sheet covers the following matters:

1. Chorley Letter of 15/09/2017
2. Response from Keppie Massie to Chorley's Representation
3. Response from WYG to Chorley's original representation
4. DP9 letter of 15/09/2017
5. Response from WYG to DP9 letter
6. Update to Conditions
7. Summary of further representations received from members of the public
8. Tree Preservation Orders
9. Amendment to Para 12.188

#### **Chorley Letter of 15/09/2017**

1.1 Chorley Council submitted a further representation on 15/09/2017. The representation is as follows:

*1.2 "Chorley Council responded to the Cuerden application on 25 August 2017. We have been made aware of new information which has since been published at very short notice. Chorley Council therefore has additional comments to make since the release of the Keppie Massie Financial Viability Report on the Cuerden Strategic Site prepared on behalf of South Ribble Council:*

#### Policy Compliance

*1.3 Policy C4 is clear that the Cuerden Strategic Site will "maintain a primary employment function". As seen the proposal is for a major retail development which will cover 70,400 sq.m (Barton Wilmore report) including a pub and restaurant and food store across an area of 12.29ha. Including the residential and sui generis, hotel, gym and crèche/nursery healthcare the development proposed covers 15.5 ha and amounts to a further 19,200sqm. A total of 89,600 sq. m.*

*1.4 The employment uses amount to 91,050 sq. m. Taking the retail uses/other uses as mentioned above, and considering the employment uses this relates to, there is nearly a 50/50% split across the site. There is a marginal difference of 1,450 sq. m between retail and non-commercial use. The Keppie Massie report does not even cover the primary health care use. The employment development is clearly not a primary employment function as it has become a secondary function in respect of all the activities on the site.*

*1.5 We reiterate the Cuerden proposal is not policy compliant.*

#### Assumptions of the Keppie Massie Report

*1.6 We have already made a detailed commentary on the Ridge viability report (plus update) that supports the CSS Planning Application. We have been permitted sight of the Keppie Massie (KM) work that analyses the Ridge report. The KM report is dated 29<sup>th</sup> August but was not circulated until the 12<sup>th</sup> September. We have been given little time to formally digest the findings of the KM report before the close of the consultation period. In the limited time made available, we respond as follows:-*

*1.7 Page 11 of the KM report rightly identifies that Ridge chose not to follow standard protocols in relation to an Enabling argument (and thus compliance with requirements of policy C4).*

1.8 There is a need to demonstrate that development of the site for its allocated use would not be viable. The theory is that enabling development (the introduction of higher value uses) would then be permitted to assist in filling the viability gap. Ridge chose to rectify this in a letter of 20<sup>th</sup> July where they seek to demonstrate the lack of viability in all schemes other than the proposed one using 3 scenarios.

1.9 KM comment in point 3.4 (on page 12) of their report that “we briefly summarise below the assumptions made under each of the scenarios and the outcome in viability terms”. Scenario 1 (detailed on page 13) suggests that an employment development would generate a negative outturn of £81,876,595. This is a startling figure. KM’s comment in conclusion is:

1.10 “The appraisals which have been prepared to model the impact of alternative development scenarios show that in the absence of the enabling development proposed, the scheme makes a significant loss. In the case of scenario 1 in particular with an employment scheme across the site, the deficit is substantial at £81.9M.”

1.11 It would appear that KM have accepted the figure provided at face value and quote that figure in justification for accepting the Ridge argument. Chorley Council would assert that the Viability practitioner should interrogate these figures in detail in order to assess figures whether they present an accurate calculation of any such deficit.

1.12 Following a simple review of the table provided by Ridge to justify the £81.9M, one figure stands out as peculiar. It is suggested that an interest charge of £44,606,853 will be incurred when delivering the employment only scheme. KM are aware that the interest rate used by Ridge in their modelling is 5%. The figure of £44M in interest charges would appear excessive on an annual interest rate of 5%. On the evidence presented, it would be legitimate to challenge Ridge on how their financial model functions to discover if there is a serious error. The KM report identifies a flaw in the value calculation (3.7 page 13) and this requires further examination. Should there be an issue with the functioning of the financial model then it is essential this be understood before accepting the figures it produces. The same model has been used to generate the numbers for the application scheme. These may need to be reviewed as the conclusions on land value and developer return could be called into question.

1.13 KM state in point 5.6 on page 19 “In the circumstances the approach to the viability assessment that has been adopted by Ridge appears to be the most realistic basis for assessing viability at this time.” The circumstances related to are that due to the early point in the development process, there is not sufficient information to financially model the outputs if buildings were developed on site and thus assumes all land on the CSS site will be sold as serviced plots.

1.14 The assertion given to the viability position is that both developer and land owner are not involved in or benefit from building construction. This, in reality is understood not to be the case as the retail block that sits behind Ikea is to be built out as occupiers have already committed (subject to planning) to take lease hold interests (KM report 5.69 page 30

1.15 “A number of the key occupiers have already been secured and hence there is a degree of certainty in relation to this part of the expenditure”).

1.16 It is also understood that the funding of this part of the development will be provided by the party that will own the completed development, in what is termed a ‘forward funding’ arrangement. For this substantial retail block there will not be a land sale, profit and proportional land value will be based on the buildings and the income they generate, known as the investment value. It is unclear why KM suggest that there is not sufficient information to model the actual outcome and agree with Ridge that a scenario would be appropriate.

1.17 If buildings and income are valued through a development appraisal, the return to developers is greater than if serviced land is sold. It is incumbent on all involved, to present a financial viability case that demonstrates as closely as it can the actual development circumstances. Throughout pages 20 to 25, KM comment on the contents of a report by JLL which provides opinions of land value. KM support each of the values presented and where evidence is limited or non-existent in the JLL report, they present their own to support the case that is made.

1.18 We would argue that the burden of proof lies with the applicant. If their case is weak, it is not the job of the viability practitioner to provide support to the applicant in the making of their case. KM, in point 5.72 states the following: "For commercial development profits may range from 5% for design and build schemes or schemes with pre-lets or pre-sales to 15% or more on cost for full speculative developments. We have recently undertaken a number of viability assessments for public sector funding purposes based on returns of 5% for pre-sales and 15% for the speculative elements. In this case, the phase 1 development is effectively a pre-sale given the progress in negotiations and hence there is a more limited degree of risk. This would suggest a more limited return for this aspect of the development. Later phases are however at this stage speculative and hence it would be more appropriate to consider a higher level of return in the order of 15% at this stage. Therefore the assumption by Ridge of an overall return based on 10% of costs is a reasonable assumption at this stage".

1.19 We as a local authority deal with the built environment on a daily basis. We are involved in development and construction projects. We also deal with viability cases presented by commercial developers where profit margins are a key element of discussion. Based on this knowledge and experience, we would challenge the above assertions made. A figure of 5% for design and build scheme would be a contractor margin. We have no experience of developers suggesting or accepting a margin of 5% for pre-let or pre-sale schemes. We are unsure why spending upwards of £50M to service and infrastructure, the CSS site would not be regarded as a high risk venture. A return will only be generated once the final plots are sold. Plots, which the Ridge report states may prove difficult to sell. We would pose the question "Is there not the need for a developer contingency to cover cost overrun for elements not dealt with in the build contract?" From our own development experience, we find the suggested developer return at 10% of cost for a scheme with such inherent risk difficult to justify.

1.20 The conclusion we reach from our review of the KM report is that further detailed scrutiny of the applicant's viability appraisal is required before a conclusion can be reached.

#### Enabling Works

1.21 The City Deal Business and Delivery Plan 2016/19 provides details of the programme for the Preston, South Ribble and Lancashire City Deal which has been 'designed to drive forward local growth by empowering the City Deal to make the most of its economic assets and opportunities'. The document goes on to state 'The City Deal (sic) will help ensure the City Deal area continues to grow by addressing strategic transport infrastructure challenges to enable the delivery of new jobs and housing'.(page 3)

1.22 The delivery plan sets out the investment allocated to infrastructure and table 2 illustrates the detailed programme and identifies Cuerden Strategic Site Road infrastructure and allocates a total of £6.0002M to this in addition to an array of other itemised transport schemes, and one stated as 'South Ribble Other' at £5M plus other significant funding which will support and mitigate the impacts of the significant growth planned. Chorley Borough has been afforded no such mitigation or support yet will be impacted as a result of this growth

1.23 The Cuerden Strategic site is a City Deal project. This project cannot be looked at in isolation without City Deal funding. This project needs to be incorporated into the body of City Deal funding to enable the impacts of the development to be mitigated. The mitigation measures required by Chorley Council have been provided in our letter dated 25 August 2017.

Chorley Council's letter dated 25 Aug 2017

1.24 We have not yet received a response to our letter which detailed our concerns, submitted in respect of the Cuerden application.

1.25 I trust the content of this letter will be included in your Planning Committee Report”

## **2. Keppie Massie response to Chorley BC letter of 15/09/2017**

2.1 Keppie Massie, the Council's consultants on viability, were asked to provide a response to the points raised by Chorley in their further representation. Their response is as follows:

2.2 “I have had the opportunity of considering the comments contained in the letter from Mr Lester, in broad terms he raises the following points

- Consideration of primary health care use in the appraisal
- Full interrogation of the viability appraisals prepared for the alternative development scenarios to establish whether they represent an accurate calculation of the deficit. In particular reference is made to the interest charge of £44,606,853 contained in the appraisal for employment development only.
- Appraisal of the plot 2 retail block on the basis of an investment valuation rather than a land sale.
- Support of the land values with our own evidence where the JLL assessment is weak
- Profit – challenges 5% for design and build, pre-lets etc. suggesting this is contractor margin and suggesting that 10% is difficult to justify. Questions whether should there be a developer contingency to cover cost overrun?

2.3 Taking each of these matters in turn please see our comments below.

### Health Care

2.4 The letter states that our report doesn't even cover primary health care use. The planning application does not include primary health care use so far as I am aware it refers to health fitness and leisure. These types of uses may typically be provided in conjunction with the hotel and in terms of land value are likely to be similar to the land values adopted for the other 'mixed use' elements of the development.

### Alternative Development Scenarios

2.5 As part of the further information submitted by Ridge they provided viability appraisals for 3 alternative development scenarios namely:-

**Alternative Scenario 1 – No Enabling Development**

**Alternative Scenario 2 – Excluding the Phase 1 Enabling Area**

**Alternative Scenario 3 – Excluding the Phase 2 Enabling Development**

2.6 The appraisals for these alternative scenarios are based on the same infrastructure works that are within the application appraisal. We have noted in our report that we are not able to comment on highway design matters. We have therefore assumed the assertion made by

Ridge that the required works will be the same to be correct. We have however recommended that the LPA satisfy themselves as to this point.

2.7 In terms of interrogating the appraisals for these 3 alternative options then the comments made by Chorley are not correct and these appraisals haven't just been accepted at face value. Each of these alternative appraisals includes the same infrastructure works and costs as that in the appraisal for the application development. We have noted that the Council should satisfy itself as to highway design matters to confirm that these requirements will be the same but so far as the infrastructure costs are concerned these have been fully interrogated by WYG and found to be reasonable. Similarly the allowances made for professional fees, planning and other costs and contingency accord to those in the assessment of the application proposals and have been fully checked and considered as part of the review. The three alternative options all include a benchmark land value of £4.5m, this accords to the assumption made in the assessment of the main application and has been fully considered as part of this.

2.8 The main difference between the appraisals for the three alternative development scenarios results from the extent of the lower value employment uses assumed which means that the total revenues from land sales reduces accordingly. We have provided specific comments regarding this within our report. The associated land and disposal costs also reduce accordingly as the percentage rates adopted are applied to a lower land receipt.

2.9 The final element of these alternative appraisals which the Chorley letter makes specific reference to is the extent of the finance costs that the Ridge model produces, particularly in relation to scenario 1. As part of the review that we have undertaken we have been provided with the Ridge model and have been able to interrogate this. As a check we have also reproduced the application appraisal in Argus developer. Although we have made differing assumptions to Ridge in preparing our appraisal, we are satisfied that the two models produce broadly similar results.

2.10 The finance costs that are calculated by the Ridge Model in the 3 alternative scenarios are very high due to the fact that the appraisal is financing a significant deficit. This has the effect of distorting the finance costs and does so in our own Argus appraisal model as well. In cases such as this it is often simpler to show the deficit net of finance costs. In this case the losses net of finance are still significant and are as follows:-

Alternative Scenario 1 – **-£32,809,057**

Alternative Scenario 2 – **-£25,989,626**

Alternative Scenario 3 – **-£2,448,437**

2.11 Further modelling can then be undertaken as Ridge have done to identify the extent of public sector funding support that would be required to achieve a 'breakeven position'. This allows a more informed assessment of finance costs to be calculated.

#### Plot 2 Retail Unit

2.12 Development may be delivered in many different ways for example serviced plots which are sold on, development for owner occupation, development for investment either to hold or sell or in indeed there may be a combinations of these approaches in the same development. Viability assessments are a reflection of the different approaches to development and all of these then are valid approaches to assessing viability.

2.13 In this case having regard to the scale and nature of the development and indeed the development proposals we considered the serviced site approach the most appropriate and that approach was used in our assessment.

#### JLL Land Values

2.14 We have undertaken very many reviews of viability assessments on behalf of local planning authorities and the RICS guidance states that assessing viability in this context should be

*2.15 'An objective financial viability test of the ability of a development project to meet its costs including the cost of planning obligations, while ensuring an appropriate Site Value for the landowner and a market risk adjusted return to the developer in delivering that project.'*

2.16 In preparing any assessment we undertake appropriate research and due diligence in relation to all appraisal - variables cost and revenue. Irrespective of whether the applicant provides details of many or few transactions we would always undertake our own research both in relation to the comparables provided by the applicant and any others that we were aware of. This is the case here and for completeness we have provided details of our research accordingly.

#### Profit

2.17 The letter from Chorley questions our comment relating to the level of developers profit at 5% on the pre-let/pre-sale elements of the scheme. There is little we can add to the comments already contained in our report regarding this point. Chorley suggest that 5% is a contractors margin but as we have explained in our report contractors profit and overhead (margin) is already included in the total infrastructure costs that have been assessed by Ridge and WYG. So under this heading we are simply assessing the profit that the developer themselves should achieve on this site. Chorley suggest that they have no experience of developers accepting or suggesting a 5% margin on sales or pre-lets. This is not our experience and as noted in our report we have recently prepared assessments of developer appraisals for public sector funding purposes where returns of 5% have been used on pre-sales.

2.18 The Chorley letter also asks whether there is a need for a developer contingency to cover cost overrun for elements not dealt with in the build contract. A developer contingency is included to cover cost overrun at 2.5% of all costs. This is in addition to the normal contingency allowance of 5% on construction works."

### **3. WYG Response to Chorley's Original Objection**

3.1 Further to the detailed representation from Chorley Borough Council, the Councils retail consultants WYG were asked to provide a comprehensive response. This response relates specifically to the concerns expressed by Chorley as to the potential impact of the proposed development on both committed investment in Chorley town centre (Market Walk) and on the vitality and viability of Chorley town centre as a whole. WYG advise that these comments should be read in conjunction with their earlier responses and principally their August 2017 formal appraisal of main town centre use policy considerations.

3.2 The response is broken down into topic areas

#### Impact on Investment

3.3 In response to the concerns of Chorley that the scheme will harm Chorley Market Walk extension by either;

1. Inhibiting delivery and affecting the ability to attract non-food retailers and attract the necessary tenant mix that would otherwise invest in the town centre; or
2. Resulting in the Market Walk development failing to trade successfully.

3.4 WYG note that the Flat Iron Car Park in Chorley Town Centre is subject to a planning permission which provides for its redevelopment to accommodate retail, restaurant and leisure floorspace. A further permission to vary conditions attached to this permission varied the permission to allow one unit occupied by a cinema, three units by leisure/restaurant uses, and two units by comparison goods retailers, and one unit by a convenience goods retailer.

3.5 They advise that the Cuerden application was submitted in January 2017 and therefore it has taken 7 months for Chorley to object to the scheme. During this time, work has begun on the Market Walk extension and three key anchor operators have confirmed in the press as recently as August 2017 that they will be taking space in the extension. One of the operators, Marks and Spencer has also signed up to occupy space at Cuerden and this is in the full knowledge that the Cuerden scheme is progressing through the application process.

3.6 As they previously concluded in their August 2017 response, they reiterate in respect of the Chorley scheme that:

- The scheme is anchored (at least in part) by a cinema, which is not one of the uses proposed at the Cuerden site;
- The pre-lets which have been agreed account for the majority of the proposed floorspace to be delivered; and
- One of the operators associated with the proposal, Marks&Spencer, is in WYG's view, the likely operator of the Anchor Unit 1 at the Cuerden scheme (which incorporates a level of convenience goods floorspace which is commensurate with M&S's typical requirements)

3.7 They therefore conclude that the prospective tenants at Market Walk are proceeding in the full knowledge that substantial retail development may come forward at Cuerden. As such, they do not believe that the grant of planning permission for Cuerden development would likely have any significant adverse impact on the implementation of the planned investment into Chorley town centre at Market Walk. Furthermore they do not consider that there is any evidence to suggest that the proposed extension would fail to trade successfully if Cuerden was to proceed.

3.8 Notwithstanding this, the matter of trade diversion to Cuerden will be of relevance to the ability of Market Walk development to trade successfully in the future, they therefore consider this point below when discussing the future viability and viability of Chorley town centre as a whole.

#### Impact on Vitality and Viability

3.9 WYG advise that the matters raised by Chorley Council in respect of the applicant's methodology behind assessing the impact of the proposal on the vitality and viability of the defined centres have been previously addressed in August 2017. They consider their previous correspondence to the Council in relation to the applicant's submissions provides substantial and detailed analysis in respect of the impact tests. To arrive at their conclusions in August 2017, numerous additional pieces of work have had to be provided to better meet WYG's expectations in respect of the proposal's performance, trade draw and trade

diversion of the proposal. As a result of this work, the applicant provided a 'sensitivity test' which WYG eventually concluded satisfactorily provided a credible case upon which to assess the potential impact of the proposal.

3.10 They provide a summary of the key considerations, but don't go into full detail as they are covered in their full appraisal.

#### Turnover of the Proposed Development

3.11 WYG found the original assumed turnover for the Ikea store was too cautious. This was increased and WYG following discussions with Ikea's own retail planning advisors as to how they envisaged the store trading in 2022, and they now consider the new figure to be robust and broadly reflective of how it would trade in practice.

#### Trade Draw

3.12 WYG initially requested that the applicant revisited the matter of assumed trade draw from zones in the catchment area. In particular concerns were raised regarding levels of trade draw from the peripheral parts of the catchment area which would result in an underestimation of the trade draw from Preston City Centre and overestimation of trade diversion from centres located outside the periphery of the catchment area. Following numerous discussions regarding this point alternative trade draw assumptions were provided which WYG considered reasonable.

3.13 WYG acknowledge that Chorley BC accept that the trade draw assumptions for the convenience floorspace and the trade draw levels for Ikea and other non-food floorspace are also reasonable these are therefore important points in then determining the levels of trade diversion and subsequent quantitative impact as the two are intrinsically linked.

#### Trade Diversion

3.14 WYG note that Chorley Council has requested that an alternative 'sensitivity assessment' is provided with a higher turnover rate for Ikea and non-food floorspace. They note that they are satisfied with the sensitivity testing carried out and do not consider it reasonable to ask for further increases.

3.15 In respect of the revised trade draw figures that Chorley have prepared themselves, WYG conclude that the cumulative impact on Chorley town centre will be +0.3% which is unlikely to be considered significant adverse and therefore the conclusions confirm that paragraph 26 of the NPPF is satisfied.

3.16 Notwithstanding the above WYG do not agree with Chorley's revised sensitivity testing; nor that the result of the proposal is to 'nullify' the benefits of Market Walk extension; or the conclusion that the town centre would be no better off because of the application. Furthermore, they note that Chorley has stated that the applicant's approach does not allow for commitments to impact upon each other, this is not the case. They advise that Table 11 of the sensitivity test demonstrates that Market Walk will divert trade from Queen St commitment and the existing Chorley town centre.

#### Implications of the Trade Diversion on Chorley Town Centre

3.17 Market Walk will bring 4,500 sq.m of Class A1 floorspace, a six-screen cinema and a two-storey restaurant and WYG note the proposal is not of a comparable scale to the development proposed at Cuerden. Furthermore, Marks and Spencer has formally signed up to both schemes, confirming that the operator itself does not consider that the two schemes will compete directly and that they can coexist.

3.18 Chorley town centre acts as an important retail and service centre serving residents in Chorley. The applicant's November 2016 survey found the proportion of commercial units which are vacant in Chorley town centre to be below national average levels. The centre provides a number of national multiples which are complemented by a relatively strong convenience sector. The applicant's health check audit notes that the Requirement List website identified eight retailer requirements for Chorley area in December 2016 which has increased to 14 retailer requirements in September 2017.

3.19 WYG therefore conclude in respect of this point that all evidence indicates that Chorley town centre is performing well and Market Walk is underway, with no signs that the development will not be completed or that operators are pulling out of the scheme and the key anchors are still committed to bringing forward new stores at Market Walk. Furthermore, they and Chorley's retail advisor still consider that at the test year of 2022, turnover of Chorley town centre will have increased and although WYG do not consider Chorley's sensitivity is robust or credible, it is of relevance to note the positive increase in turnover regardless of the trade diversion impacts of Cuerden.

3.20 Finally WYG note that a condition or S106 Agreement is imposed to control the relocation of operators from Chorley town centre to the scheme for a period of five years. The applicant's proposed condition would ensure that an operator who wishes to open a store at Cuerden, must also retain its presence in Preston, Leyland or Chorley centres for five years.

#### Summary and Conclusion

3.21 WYG conclude by stating that they have reviewed Chorley's objection in detail and do not consider the matters raised by Chorley alter their detailed consideration or overall conclusions in respect of the implications of the proposal on Chorley town centre in particular. They consider Chorley's consideration of the potential impacts on Chorley town centre are overstated and do not reflect what is likely to happen in practice, given the qualitative different nature of the offer of the two schemes and current health of Chorley town centre. Whilst they acknowledge there will be an impact they conclude this could not be deemed significant. Furthermore, there is no evidence to suggest that any retailer has lost confidence in the proposed Market Walk extension despite very public knowledge that Cuerden may come forward. Recent press suggests that the scheme is progressing well, regardless of the fact that an application for Cuerden has been with SRBC since the end of January.

3.22 Additionally the imposition of a condition limiting the loss of retailers from nearby centres to mitigate against the proposal on Chorley town centre, will assist in ensuring that the impacts on the centre will not result in the relocation of a retailer from the centre to the proposed development.

3.23 WYG note that Chorley has requested a monetary contribution of £11.5m to be used towards public realm improvements in the town centre to offset the potential impact of the scheme on the town centre. In this respect they advise it is necessary to have regard to Regulation 122 of the Community Infrastructure Regulations 2010 (as amended) which indicates that such planning obligations may only constitute a reason for granting planning permission where they are:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and

- Fairly and reasonably related in scale and kind to the development.

3.24 They do not agree that the contributions are required to make the development acceptable in planning terms from a retail policy perspective, as they are of the view that it is unlikely that the proposal will have a significant adverse impact on Chorley town centre, both in terms of vitality and viability as a whole and in terms of the Market Walk investment

#### **4. DP9 response of 15/09/2017**

4.1 The agents for the owners of the Fishergate Centre submitted the following representation:

4.2 “DP9 act on behalf of BE Preston BV, owners of Fishergate Shopping Centre (FSC), who are one of the principle landowners and investors in Preston City Centre (PCC).

4.3 Given these proposals comprise over 70,000 sq. m GIA of retail floorspace, on an out of town site circa 5km south of Preston City Centre, we are naturally concerned at the potential significant impact of the development on PCC. Whilst IKEA remain the only tenants specifically identified by the Applicant, WYG’s August 2017 report notes at Paragraph 1.9:

*4.4 “Whilst operators have not been formally named for the two other retail anchor stores, we note that the format of the large store equates to that which would likely be required by Marks & Spencer (i.e. significant comparison goods floorspace together with a food hall) and the second anchor unit provides a format which could accommodate a Next Home store. We note that Lambert Smith Hampton’s Retail Demand Commentary which comprises Appendix A of the applicant’s Employment Land & Market Commentary of December 2016 confirms that head of terms have been agreed for these two anchor units, which, in our view (given the nature and format of the floorspace, and our knowledge of the market) suggests that these two units have been specifically designed to accommodate Marks & Spencer and Next.”*

4.5 The clear potential to incorporate flagship stores for M&S and Next, both key anchor stores in PCC further exacerbates this concern regarding impact.

4.6 In our previous correspondence of 2 March 2017, we raised a number of issues with the scheme and the information submitted to date, and as such reserved our position to respond further once further information was forthcoming. While we have multiple concerns in respect of the proposals (including inter alia; their compliance with the development plan, sustainability, accessibility and traffic issues, the extent to which the retail and other town centre uses constitute ‘enabling development and whether they will in practice ever result the delivery of employment uses), our main concerns are in respect of the retail policy implications and compliance with the development plan retail and town centre policies , and their impact on PCC, as the closest ‘higher order’ town centre most directly affected by the scheme.

4.7 We note that since our previous email, WYG set out the findings of their initial review of the retail issues, in a report dated 28<sup>th</sup> March 2017. This identified, inter alia, significant concerns in respect of the methodology employed by BW to consider impact, and concluded that the RLA was likely to have underestimated the proposals impact on Preston City Centre. WYG recommended that further analysis was necessary to address this issue.

4.8 Notwithstanding this conclusion, we were concerned to note that PCC in its response dated 10 May 2017 concluded that: -

*4.9 “Following our assessment of the proposals we conclude that the development as configured would not have an unacceptable adverse retail impact upon Preston city centre*

*and we are satisfied by the evidence that both Cuerden and Preston city centre can successfully co-exist.”*

4.10 The basis for this conclusion is unclear, and appears not to have been based on any expert advice. However, leaving aside the absence of any technical evidence or critical review of the applicant’s Retail Impact Assessment, the assertion that Preston and Cuerden can co-exist appears to have no regard to the clearly defined policy context of the Core Strategy, the planned role of Preston within the retail hierarchy, and the explicit local policy context for Cuerden which limits support for any retail/main town centre uses to the “minimum necessary” to unlock employment uses.

4.11 Subsequently, in August 2017 WYG completed its further review, which considers the additional sensitivity testing carried out by BW. While we have not at this stage tested the detailed data inputs and assumptions used by BW and WYG which underpin this report, even on cursory reading it clearly confirms that the initial concerns about the impact of the Cuerden scheme on Preston City Centre were well founded, and the response of PCC was premature, unfounded, and illustrative of what our client regards as a significant level of complacency as to the current and future vitality and viability of PCC.

4.12 Before considering the significant adverse retail impact of the Cuerden scheme on Preston City Centre, it is relevant to note the basis on which the applicant seeks to dismiss opportunities for retail and other town centre uses within PCC, in seeking to address the requirements of the ‘sequential approach’ as set out in national and local policy. In respect of the FSC site, WYG appears to accept the BW conclusion that this opportunity, while within PCC, and capable of accommodating additional retail and other town centre uses, “fails to provide comparable access to the motorway and the wider catchment”. This conclusion ignores the policy context and role of Preston, and would suggest that it is considered appropriate to advocate a new car based regional retail destination rather than supporting the well-defined ‘town centre’ approach set through national planning policy. This is clearly an unsound as a basis for discounting a town centre site.

4.13 The other key town centre site in PCC discounted by the applicants, as accepted by WYG, is the Markets area, on the basis that this was anticipated to come forward as a leisure based scheme underpinned by a multi-screen cinema operated by The Light. After making no progress for the last 12 months, our understanding is that the delivery of this scheme has stalled, with the future of this development now uncertain this has a number of consequences. First, it calls into question the basis for dismissing this opportunity as there are no contractual commitments in place which would prevent the site being considered available; and second, the uncertainty as to when or if this or any other new investment is likely to come forward in PCC has a fundamental bearing on the significance of the impact of the Cuerden Scheme. As the Core Strategy notes, Preston City Centre has seen no significant new retail investment for 30 years, and the failure of this scheme, following the failure of the Tithebarn Scheme, have potentially profound and serious implications for the centre.

4.14 In this context, WYG has now advised that the cumulative impact of the Cuerden scheme will result in the loss of more than 10% of Preston City Centre’s turnover, and as a consequence, the City’s turnover, in real terms, will be lower in 2022 than in 2017, despite forecast spending growth in the catchment. By any measure, this is a significant impact, but in line with good practice, it is necessary to consider the context and the vitality and viability of the centre, to judge how significant this impact would be for Preston.

4.15 In this respect, in addition to failing to secure any significant new retail development in the City for 30 years (in particular the failure of the Tithebarn scheme following the decision of

JLP to pull out, the Council's decision to place sequential and temporal preference on the Market Quarter scheme over the planned investment in a new Cinema as part of an extension of FSC, and the apparent stalling of the Market Quarter scheme ), WYG highlight that the level of retail vacancy in Preston City Centre is nearly 20%, well above the national average. Based on this, and other relevant indicators, the prospect of a 10% impact and no real increase in turnovers by 2022 are a significant cause for concern, and would represent a significant adverse impact as defined in the NPPF.

4.16 This concern is acknowledged by WYG, who advise that the high level of vacancies are a cause for concern (para 4.63) but go on to suggest that the centres position will be underpinned by further investment. For the reasons set out above, based on the current position, the prospect of any further investment in PCC over the next 5 years appears remote. We also note that the WYG conclusion is predicated on their assumption that key retailers such as Marks and Spencer and Next will remain within the City Centre. There are clear examples of these retailers closing town centre stores following the opening of larger out of centre stores. We note the suggestion that this matter could be addressed by condition, but in order to be effective, given the advice of WYG, such condition or S106 obligation would have to remain in perpetuity.

4.17 Preston is the 'Tier 1' centre for Central Lancashire, and despite the challenges in the retail environment, is a centre with significant potential. After 5 years of no growth in turnover, and potentially no further large-scale retail/leisure development in the City Centre, the closure of key anchor stores such as M&S or Next would constitute a significant adverse impact. It is vital that development in Central Lancashire supports the role of Preston as the Tier 1 centre and do not undermine the vitality and viability of the centre or undermine its potential as a leading centre for the North West.

4.18 In these circumstances, with the exception of the Ikea store, which (subject to appropriate controls) will sell largely bulky goods and displace trade from other out of centre stores, our client strongly objects to the retail elements of the Cuerden scheme.

4.19 It is noted that WYG and other interested parties have recommended a number of restrictive planning conditions and S106 obligations. In the absence of a published Officer's Report we are not able to confirm whether these are to be incorporated into any draft decision. As such we reserve the right to make further comments and submissions as appropriate once the Officer's Report and suggested planning conditions/s106 agreement terms are made available."

## **5. WYG response to DP9 response on behalf of the Fishergate Centre**

5.1 "An objection to the Cuerden scheme has been issued by DP9 (planning consultants) on behalf of BE Preston BV, the owners of Fishergate Shopping Centre, which is located in Preston city centre.

5.2 The objection relates in particular to the sequential test (and particularly sites within Preston city centre) and the potential impacts of the proposed development on the vitality and viability of Preston city centre. We note also that the objection refers to the prematurity of Preston City Council's representations, which do not raise any objections to the proposed development. We are of the view that Preston City Council's position is a matter for them to formulate, relative to the evidence available to them at the time of writing their representation.

5.3 The objection refers in particular to the following matters:

- In terms of the sequential assessment, the objection states that the Markets Area has not been satisfactorily discounted, particularly as there is no indication that the leisure based scheme will come forward and that there are no contractual commitments in place which would prevent the site from being considered available. Furthermore, DP8 raises concerns with regard to whether it is appropriate to advocate a new car based regional retail destination rather than supporting the well-defined 'town centre' approach.

- In terms of impact, the objection refers to the potential implications of the proposal due to the lack of any recent investment, the high vacancy rate and the potential for retailers to leave the city centre.

5.4 Turning firstly to the matter of the sequential approach, WYG has fully considered all relevant sites as part of the appraisal of the scheme. In terms of the City Centre North Opportunity Area in Preston city centre, which DP9 refers to as the Markets Area, we are satisfied that as the Opportunity Area incorporates a range of existing uses and landholdings, it is not an available site for the purposes of the sequential test. We note DP9's comments that the cinema-led scheme has appeared to stall following consent in 2016, we have not seen any evidence to confirm this. The project phases as set out online (source: [www.prestonguildcity.co.uk](http://www.prestonguildcity.co.uk)), indicates that Phase 5 which will see the construction of the cinema and restaurants, is due to take place late 2017 into 2018 following the demolition of the current market hall and car park. In any event, and as previously concluded, we do not consider that the site is of a suitable size to accommodate the proposed development, even when considering a sufficient degree of flexibility, and neither are we of the view that the site is available regardless of DP9's further submissions. In light of these further considerations, we are still of the view that the proposal accords with paragraph 24 of the NPPF.

5.5 Secondly, turning to impact considerations, WYG has fully considered all of the relevant matters when appraising the potential impact of the proposed development on the vitality and viability of Preston city centre. In our appraisal of August 2017, we considered whether the proposal would impact on Preston city centre given the findings of the latest healthcheck survey of the centre. Our overall conclusion was that whilst we acknowledge the current health of the centre and the level of diversion expected to be taken from the city centre to the proposal, we did not consider that this would, by itself, undermine the health of the centre. We were also of the view that the 'no-poaching' condition would ensure that the development would not result in a retailer departing from the centre, and our assessment was predicated on that basis. The submissions from DP9 do not alter our overall conclusions, that subject to the conditions and recommendations as set out in our August 2017 appraisal, the level of impact would not merit the refusal of the application in accordance with paragraphs 26 and 27 of the NPPF."

## 6. Update to Conditions

### Condition 5

#### 6.1 Condition 5 Highway Improvement Works

6.2 Para vii) second clause of the condition amended to read:

6.3 Network management measures on Wigan Road supported by a review of speed limits and traffic regulation orders (such as parking restrictions) as a minimum between Wigan Road /Station Road Junction **to Lancaster Lane**. Changes will be an outcome of the review as well as gateway features to the south of the site and treatment at the public and service access points to highlight the development and other features served off this road (not

development related). All changes have regard to the green environment to the east of Wigan Road where possible using appropriate materials. Measures will also include signing and Speed Indicator Display Signs (SPIDs) or similar.

#### Condition 18

6.4 Condition 18 updated to include Blackburn as a named town and the period prior to opening increased from 6 to 12 months to accord with WYG's advice.

#### 6.5 Town Centre Protection

6.6 None of the approved Use Class A1 retail floorspace should be opened for trade by any retailer who at the date of first opening, or within a period of **12** months immediately prior to first opening, occupies retail floorspace within the Primary Shopping Areas of Preston City Centre, Leyland Town Centre, Chorley Town Centre or **Blackburn Town Centre** unless a scheme which commits the retailer to retaining their presence as a retailer within that Centre, for a minimum period of 5 years following the date of opening for trade within the development, or until such time as they cease to occupy retail floorspace within the development, whichever is the sooner, has been submitted to and approved in writing in writing by the Local Planning authority.

6.7 REASON: To define and limit the proposed retail use on the site in order to, protect town centre vitality and viability

#### Condition 63

6.8 Alteration to the wording of condition 63. Condition will now read:

6.9 Notwithstanding the provision of the Town and Country Planning (Use Classes) Order 1987 (as amended) Paragraph 3(1) or any provision equivalent to this in any statutory instrument revoking and re-enacting this Order, the use of the development hereby permitted shall be restricted to the use applied for. **The Health and Fitness club / gym within Class D2 shall only be used for that purpose and for no other purpose within Use Class D2.**

6.10 REASON: To define and limit the proposed retail use on the site to that set out in the planning application.

#### Condition 116

6.11 An additional condition added to accord with LCC Highways advice this will be condition 116.

6.12 A highway scheme monitoring and management strategy shall be submitted and approved in writing by the local planning authority prior to any element of the scheme hereby approved opening for trading. The strategy shall include programme of surveys, observations and define targets and mechanism where targets are not achieved to deliver further highway change. The strategy shall be carried out in accordance with the approved strategy.

6.13 REASON: To define the permission and in the interests of proper site development

## **7. Further Representations Received from Members of the Public**

7.1 As of 21/09/2017, a further 13 responses have been received from members of the public. Four of these representations object to the proposals, and nine are in favour. The only points raised which are not already covered in the report are:

- The Scouting Group support the development but query whether or not there would be opportunity to get premises on the site in future.

## **8. Tree Preservation Orders**

8.1 There is some missing text relating to the Tree Preservation Order in paragraph 12.247 *line 5*. It should read:

8.2 "Tree Preservation Order No 14 covers a number of trees on the site. Policy G13 sets out a presumption against proposals that adversely affect trees protected by a TPO.

8.3 However where loss is unavoidable suitable tree replacement will be required. Given the scale of the development the loss of some of trees will be unavoidable. Proposals for tree replacement and landscaping will adequately mitigate for this loss in Phase 1 and will be considered for further phases at Reserved Matters stage."

## **9. Amendment to Paragraph 12.188**

9.1 The final sentence of the paragraph, which says "This will be conditioned" needs to be replaced with "This will be taken forward via Travel Plans for the site. Travel Plans will be conditioned". This is because there is no condition to cover the issue being discussed, but it would be covered under Travel Planning.

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