

Application No: 160868

Location: Tollgate Village, Land North & South of Tollgate West, Stanway

Scale (approx): 1:1250

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Committee Report

Agenda item

7

To the meeting of **Planning Committee**
on: **24th November 2016**
Report of: **Head of Professional/Commercial Services**
Title: **Planning Applications**

Case Officer: Vincent Pearce **Due Date:** 12/07/2016

Site: Land North & South of Tollgate West, Stanway

Application No: 160868

Date Received: 12 April 2016

Agent: Mr Paul Newton (Barton Willmore LLP)

Applicant: Tollgate Partnership Ltd

Development: Outline application for mixed-use development comprising leisure uses (use class d2) including a cinema and retail (use classes A1, A2, A3, A4 and A5), with associated parking including a multi-storey car park, public realm improvements, access, highways, landscaping and associated works. (Re-submission)

Ward: STANWAY with potential wider impacts affecting wards including Marks Tey & Layer and those in the Town Centre

Summary of Recommendation: Refusal

1.0 Reason for Referral to the Planning Committee

1.1 This application is referred to the Planning Committee because:-

- The proposal is a significant Departure from the Adopted Development Plan. The Council's Written Constitution requires such proposals to be determined by the Planning Committee only in cases where the recommendation is for approval. That is not the case here. The significance of the planning issues and the broad range of benefits and dis-benefits raised by this proposal is such that the weight ultimately given to various material considerations will be decisive. It is considered appropriate for such a decision to be taken democratically by Members.

- The applicants have offered to mitigate certain impacts of the proposed development via a S106 Agreement and the Council's Written Constitution requires such proposals to be determined by the Planning Committee.
- The initial identical proposal (reference 150239) is now the subject of an appeal via Public Inquiry (commencing 10 January 2017) and the review of relevant material considerations included in this report may have relevance to the Council's case at that appeal. Members will need to consider the implications of any amended recommendation/decision on that outstanding appeal and may as a consequence and if relevant need to authorise the amendment of the case being presented by the Council at that appeal.
- The previous identical proposal proved highly controversial and attracted intense debate at Committee at two separate meetings (the first triggering the Council's Deferral & Recommendation Overturn Procedure (DROP) ultimately culminating in a resolution to refuse the proposal.
- It is considered appropriate in terms of transparency of decision-taking for this application to be determined in public if for no other reason than the fact that the Council owns a number of sites where certain components to those being proposed here are potentially being (or will be) pursued through the planning process. In this context it is important for the Council as local planning authority to act independently of the Council as a land owner and for the applicants and the public at large to see and hear the evidence of that to ensure that the consideration of the merits of the proposal are restricted only to those which constitute material planning considerations. The Council as local planning authority will not, must not and has not had any regard to the financial interests of the Council as land owner.
- It has attracted a significant level of public interest.
- It raises the issue of 'prematurity' in the context of the current Local Plan process being undertaken by the Council
- The proposal falls within a category of development that could in certain circumstances require referral to the Secretary of State under the Town & Country Planning (Consultation) (England) Direction 2009.

2.0 Synopsis

2.1 **This report, having considered all material planning considerations recommends that the proposed development be refused.** It does so on the basis of:

- the significant proposed increase in floorspace for Town Centre uses which would fundamentally challenge the existing spatial hierarchy which puts the Town Centre at the top of the hierarchy;
- the consequential significant adverse impact on investment in the Town Centre and the adverse knock-on impacts on the viability and vitality of the Town Centre thereby undermining sustainable development principles; Tollgate is less sustainable than the Town Centre and the Town Centre should be the focus for this type of development.
- it is considered that this speculative proposal is premature and seeks to re-order the established hierarchy via the development process instead of the appropriate and established local plan process resulting in harm through the elevation of Tollgate in the hierarchy without the consideration of that consequence through the development plan on other centres and in particular, the Town Centre;
- Finally the benefits arising from the proposal in the form of an expansion in jobs and the widening of local consumer choice along with, the boost to the local economy in Stanway and limited public realm improvements do not outweigh the

harm that will arise as a result of the undermining of Colchester's retail hierarchy and the consequent retail growth stagnation and harm to investment confidence in the Town Centre.

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Abbreviations used in this report

C&W: Cushman & Wakefield (CBC current retail consultants)
ELNA: Employment Land Needs Assessment
NPPF: National Planning Policy Framework
NLP: Nathaniel Lichfield & Partners (CBC's earlier retail consultants)
NPPG: National Planning Policy Guidance
SEZ: Strategic Employment Zone
SGA: Stanway Growth Area
UDC: Urban District Centre

Glossary of terminology

What is the sequential test?

The sequential test guides main town centre uses towards town centre locations first, then, if no town centre locations are available, to edge of centre locations, and, if neither town centre locations nor edge of centre locations are available, to out of town centre locations, with preference for accessible sites which are well connected to the town centre. It supports the viability and vitality of town centres by placing existing town centres foremost in both plan-making and decision-taking. (National Planning Policy Guidance [NPPG]; Ensuring the vitality of town centres paragraph 008 – rev date 06.03.2014)

What is the impact test?

The purpose of the test is to ensure that the impact over time (up to five years (ten for major schemes)) of certain out of centre and edge of centre proposals on existing town centres is not significantly adverse. The test relates to retail, office and leisure development (not all main town centre uses) which are not in accordance with an up to date Local Plan and outside of existing town centres. It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas. (National Planning Policy Guidance [NPPG]; Ensuring the vitality of town centres paragraph 013 – rev date 06.03.2014)

Main town centre uses: Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities). (National Planning Policy Guidance [NPPG]; Annex 2:Glossary).

3.0 Site Description and Context

- 3.1 This site sits within the area known as Tollgate within the Parish of Stanway.
- 3.2 It extends to some 11.75ha of land and sits in two parcels – one north of Tollgate West and the other south of Tollgate West. The northern portion is bounded on two sides in their entirety by highway. The eastern edge is defined by Tollgate Road with the southern edge defined by Tollgate West and in part bounded on its northern edge by London Road. The remaining side runs diagonally south-west to north-east approximately from the Stanway Western by-Pass / Tollgate West roundabout along the backs of properties in London Road where it joins the northern edge that runs along London Road.
- 3.3 The site topography reflects its former quarrying history as it lies considerably below the level of London Road and Tollgate Road which inclines northwards.
- 3.4 This parcel contains the cleared former Sainsbury's site (eastern end of site) and the current retail units (western end).
- 3.5 The site of the original Sainsbury's superstore site is vacant as the building was demolished and the site cleared following the relocation of the store to a new site and a

new building just to the north (also in the ownership of the applicants but outside of the current proposal site).

- 3.6 The southern portion is bounded by the residential development site 'Lakelands' to the south, the Tollgate Centre (not part of this proposal and owned by British Land) to the east, Tollgate West to the north and the Stanway Western By-Pass to the west.
- 3.7 The site is cleared and has not been used since the site was quarried for sand and gravel. There is a difference in levels across the site as part of the southern half is modestly terraced below that to the north.
- 3.8 Following quarrying, in the latter quarter of the twentieth century the area was redeveloped in part for retail superstore purposes (Sainsbury's) and retail warehouse purposes. Tollgate East (which is not part of this proposal) was also part of the earlier development and included a DIY store and various warehouses.
- 3.9 The applicant has divided the site into three parts for the purpose of description.

These are:

- Zone 1: Former Sainsbury's site (allocated for employment uses);
- Zone 2: Existing Urban District Centre allocation;
- Zone 3: Employment allocation but undeveloped.

These are identified thus:-

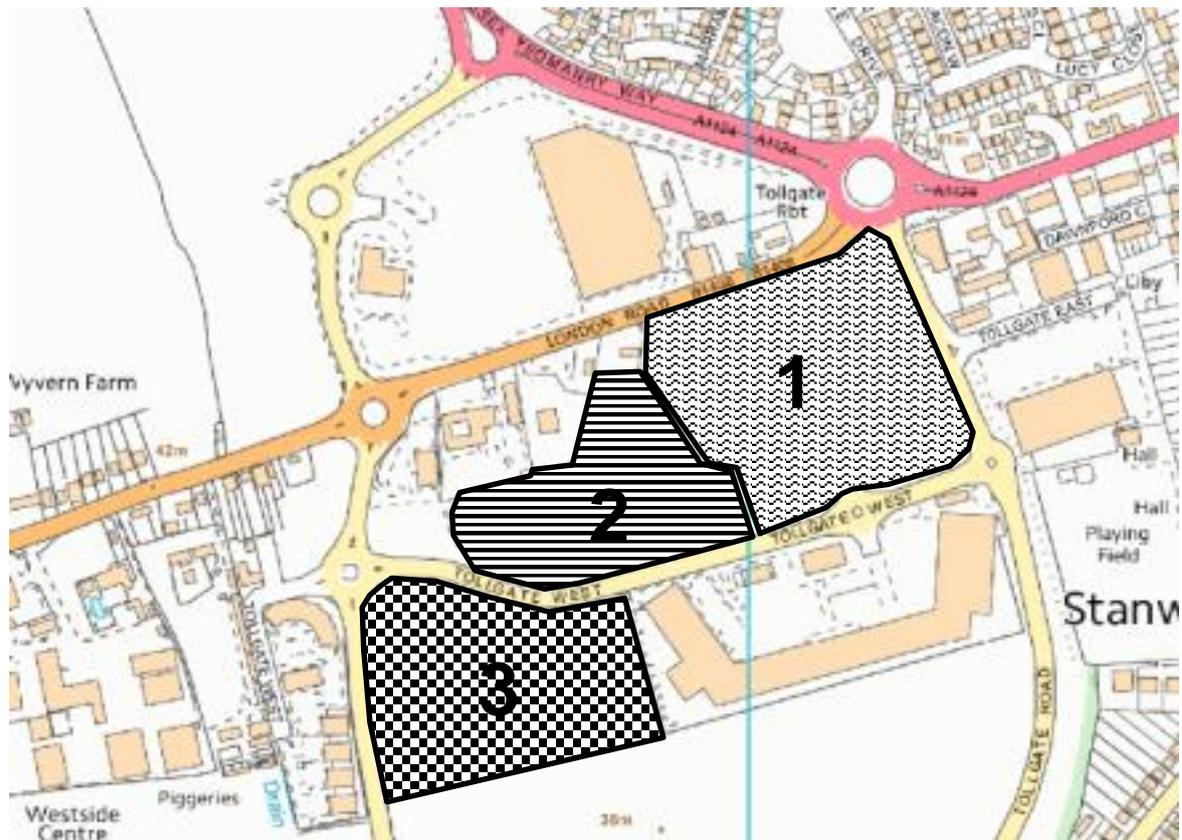


Figure 1: The three development zones identified by the applicant

4.0 Description of the Proposal and applicant justification

4.1 The application form describes the OUTLINE proposal as:-

“Mixed use development comprising leisure uses (Use Class D2) including a cinema and retail (Use Classes A1, A2, A3, A4 and A5) with associated parking including a multi-storey car park, public realm improvements, access, highways, landscaping and associated works.”

Note:

A1 = shops and retail outlets

A2 = professional services (e.g.: solicitor, financial advisor)

A3 = food and drink

A4 = drinking establishment

A5 = hot food takeaway

All matters other than ACCESS are RESERVED.

Whilst the application is described as above on the application form the applicant's agent Barton Willmore introduces the scheme in the Planning Statement (page 1) that supports the application as:-

“A major mixed-use development providing additional retail and leisure floorspace for this part of Colchester and substantial public realm improvements to link the disparate parts of the existing Tollgate Urban District Centre.

The proposal includes leisure uses (D2) including a cinema (D2), retail uses including shops (A1), Financial and professional services (A2), restaurants (A3), drinking establishments (A4) and takeaways (A5) with associated parking including a multi-storey car park, public realm improvements, access highways, landscaping and associated works”

Whilst both are correct and describe the same scheme the description in the Planning Statement better reflects the scale of individual components because the largest component by far is retail. It is in fact a mixed-use development comprising retail use with a leisure element. It is important to make this differentiation because the policy issues that flow are significant (as will be explored in this report).

4.2 The application describes the proposal as comprising the following mix of uses (by gross internal floor area). totaling 30,812 sq.m of commercial floorspace:

- Class A1 comparison goods up to 16,304sq.m. gross
- Class A1 convenience goods of 1858sq.m. gross
- Flexible Class A1-A5 of 5010sq.m. gross
- Flexible A3-A5 of 950sq.m. gross
- D2 of 6690sq.m. gross

4.3 The balance between retail and leisure floorspace within the scheme can be expressed in diagrammatic form as follows-

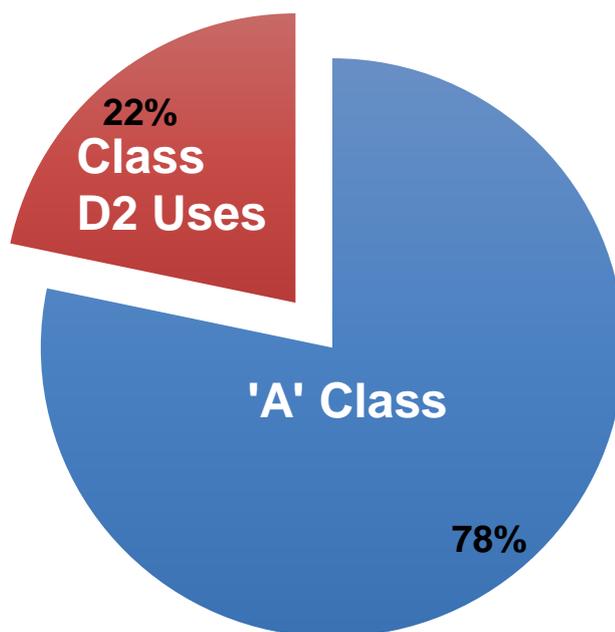


Figure 2: Balance of uses within the application

- 4.4 Existing retail floorspace (gross internal) is cited as 4669sq.m.
- 4.5 The jobs uplift derived from the proposal is cited as being as many as 1000 during construction and operation (page two of agent's supporting cover letter 12 April 2016). No indication is given as to whether these jobs represent full time equivalents or are a composite of part-time / seasonal / and full time opportunities. No indication is given as to whether all of the potential predicted jobs are new jobs or include jobs transferred from elsewhere in the town. As the application is in outline it is understandably difficult for the applicants to describe actual job numbers in detail. It is fair to say however that a development of this size and scale is likely to generate a significant number of jobs (in the hundreds).
- 4.6 The applicant's website www.tollgatevillage.co.uk provides promotional information about the proposal within which the number of construction jobs likely to be created are assessed as up to 480. (Clearly once construction of the development is completed these jobs will cease and depending upon who wins the contract to build the development [in the event that permission is granted] there is no guarantee these will all be filled using local labour. The same website predicts that over 520 jobs will be created within the development itself. (not expressed as full time equivalents [fte]).
- 4.7 The application as submitted proposed 1523 car parking spaces and the applicants described the current number as 293. In the new development 280 of these will be in the form of surface parking with the remaining 1243 being accommodated in a new multi-storey car park.
- 4.8 The applicants have indicated that if the proposed development is approved the construction programme from start on site to completion is likely to take 24 months.

4.9 The proposal involves the following mixture of new build and remodelling of existing buildings, comprising:

Zone 1: new build

Zone 2: remodeling, extension, new build

Zone 3: new build

4.10 Heights of proposed retail and leisure buildings vary from commercial single storey (6m) and two storey through to 3 floors. Proposed heights are as follows:-

Zone 1: 6-24m

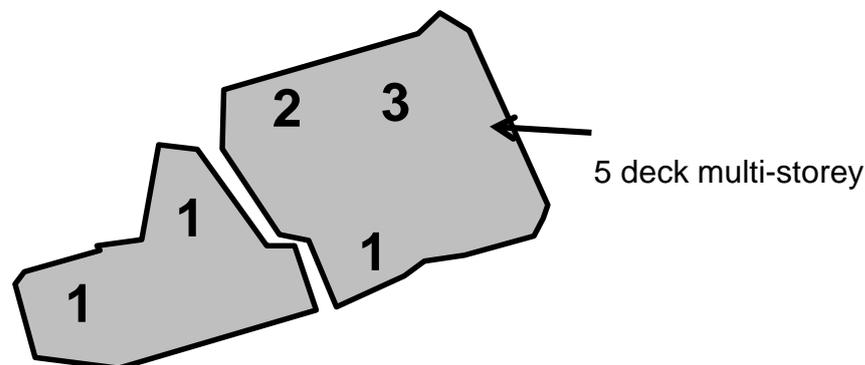
Zone 2: 6-12m

Zone 3: 6-16m

4.11 Layouts for zones 1 and 2 are more advanced than for zone 3 where the applicant requires greater flexibility at this stage to respond to the market when marketing (if the application is successful).

4.12 However with zones 1 and 2 the scale is broadly as shown below in indicative form

Figure 3: Building heights



4.13 The applicants have submitted the extensive package of supporting documents described below:-

- Retail and leisure assessment
- Employment land study
- Transport assessment
- Ecological appraisal
- Health impact assessment
- Landscape and visual appraisal
- Planning statement
- Travel plan framework

- Tank validation report (re historic removal of petrol tanks from former Sainsbury's filling station - Tollgate West)
- Desk top contamination study
- Reptile survey report
- Design principles statement
- Parameter plans
- Design and access statement
- Flood risk assessment
- Associated plans

4.14 The proposal was the subject of a Screening Opinion and the Council determined that an Environmental Impact Assessment (EIA) was not required. However the supporting documents listed above were considered necessary.

4.15 The application includes the following summary justification provided in a letter (dated 16 April 2016) supporting the latest submission -

“This Application is a resubmission of Planning Application Ref: 150239 which was refused by CBC by decision dated 19th February 2016. The decision notice contained four reasons for refusal, which TPL does not consider to be valid. In this respect, the justification for the scheme, including its compliance with the development plan, material considerations and our response to the Council's reasons for refusal, are set out below and in the application supporting documentation.

Applicants' Justification for Scheme

Compliance with the development Plan

- The scheme accords with the NPPF and relevant policies of the Development Plan (where they are up-to-date), and therefore represents sustainable development under the NPPF. Planning permission should therefore be granted.
- With reference to the Local Plan Inspector's Report (into the Local Plan Focused Review) and the NPPF, the retail policies contained within the Development Plan are not up to date and are not consistent with the NPPF.
- The Development Plan Proposals Map confirms that the site falls within the Settlement Boundary of Colchester and is part of the wider Stanway Growth Area. The Site falls partly within and partly adjoining Tollgate Urban District Centre. Land (within the Site) but outside of the Urban District Centre is identified as part of a wider Strategic Employment Zone.
- The scheme complies with the employment and retail policies along with the detailed development management policies relating to highways, landscape, design, accessibility and sustainability.

Material Considerations

There are a number of significant material considerations that should be weighed in support of the proposal, in particular the proposal will:

- Create over 1,000 new job opportunities (during construction and operation);
- Create a direct GVA of up to £16.9m, in Colchester;
- Clawback expenditure currently being spent outside of the Borough, to the benefit of Colchester
- Provide new facilities, not currently available within Colchester;
- Deliver a number of spin-off benefits for existing operators in Tollgate;
- Deliver substantial public realm, landscape and access enhancements ensuring improved physical and visual links between the disparate parts of the defined Urban District Centre;
- Deliver improvements to the wider highway network and improve pedestrian and cycle accessibility to the site; and
- Provide additional choice and competition to existing retail and leisure provision within the Borough.

Reason for Refusal 1: Loss of Employment Land

- The Scheme will not prejudice the overall ability of the Council to meet its employment land needs. Whilst the Scheme will result in the loss of circa 10 hectares of allocated employment land, it can be justified against the policies of the Development Plan. Part of the Application Site was only designated as 'employment land' following a land swap (and was previously designated as part of the Urban District Centre). It cannot therefore be considered as a strategic allocation.
- The Council's Employment Land Assessment (2015) identifies just under 77ha of available employment land in the Borough. Even when considering the most optimistic employment land requirement of 55.8ha against the identified land supply of 76.9ha, there is an oversupply of 21.1ha. The loss of 10ha of employment land from the Application Site would still leave an oversupply in excess of 10ha.
- The retention of employment land cannot be justified in the context of the full extent of (and higher ranked) undeveloped employment allocations at Stanway and the wider Borough from both a quantitative and qualitative market perspective.

- It should be noted that the majority of employment allocations have been rolled forward from the previous 2004 Local Plan and it should be recognised that Paragraph 22 of the NPPF states that local planning authorities should avoid the long term protection of sites allocated for employment where there is no reasonable prospect of the land being used for that purpose.
- The scheme will generate in the order of 1,000 full / part time job opportunities (during construction and operation), with circa 550 jobs once complete. It will result in the creation of substantially more job opportunities than would be the case if the Site retained the existing B Class use. The proposal would represent an investment in Colchester totalling £65 million, that will bring significant benefits for the construction sector with an estimated 480 jobs created over the 2 year build programme.
- job creation will assist in reducing the level of unemployment within Colchester and go some way to achieving the required 14,200 jobs in Colchester between 2001 and 2021 (Policy SD1, Focused Review, July 2014).
- In light of the above and when considered against the policies of the NPPF and the Development Plan, the 'loss' of part of the Strategic Employment Zone can be fully justified. It is not therefore considered that the first reason for refusal can be substantiated or justified.

Reason for Refusal 2: Retail Hierarchy & Impact on Investment

- The retail policies (and retail hierarchy) set out in the Development Plan are not consistent with the NPPF. The scheme will not materially alter the adopted retail hierarchy, with Colchester Town Centre remaining the dominant centre supported by a number of Urban District Centres.
- The scheme represents a natural extension of land adjoining Tollgate Urban District Centre and will provide new retail and leisure floorspace within and adjoining Tollgate District Centre, attracting new operators and resulting in the potential for spin-off benefits for existing retailers at the Centre, arising from linked trips.
- The Retail and Leisure Assessment (and Supplementary Information) submitted in support of the application demonstrate that the retail and leisure components of the scheme comply with the NPPF sequential and impact tests (paragraphs 26 and 27).

- As recognised by the Council and their retail advisor (NLP), the scheme meets the sequential approach to site selection and therefore represents the most appropriate location for the proposed development.
- Whilst 'need' is no longer a test in a development management scenario, it should be noted that the proposed retail floorspace will contribute towards meeting the identified need for additional comparison goods floorspace in Colchester, set out in the 2013 Retail and Town Centre Uses Study.
- The Council accepted that the previous application would not have a significant adverse impact on the vitality and viability of Colchester Town Centre (NPPF Paragraph 26 second bullet).
- It has been demonstrated in the application documentation that the scheme will not have a significant adverse impact on existing, committed and planned public and private investment in Colchester Town Centre (NPPF Paragraph 26 first bullet).
- It is concluded that the proposed retail and leisure uses comply with the sequential and impact tests as set out in the NPPF paragraphs 26 and 27. As a result, the second reason for refusal cannot be substantiated.

Reason for Refusal 3: Prematurity

- In line with the Planning Practice Guidance, the scheme is not so substantial that to grant planning permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to the emerging plan, and neither is the Council's emerging plan at a sufficiently advanced stage. The Local Plan remains at an early stage in preparation and has not yet been submitted for examination.

As set out above and when appropriately considered in the context of the Planning Practice Guidance, it is considered that the third reason for refusal cannot be substantiated.

Reason for Refusal 4: Sustainable Development

- The Scheme is considered to represent sustainable development consistent with the NPPF. It is not considered that it will result in an over dominance of private car and it is considered capable of encouraging trips by non-car modes.

- The site is a sustainable and accessible location, which is easily accessible by bus, foot and by cycle to the significant residential areas that exist and are planned in the wider area. The scheme will deliver substantial improvements to the public realm and create a pedestrian friendly environment.

In light of the above, it is considered that the fourth reason for refusal cannot be substantiated.

Conclusions

Against this backdrop of compliance with the Development Plan, National Guidance and other material considerations, the Applicant considers that, in the absence of harm and considering the numerous tangible benefits arising from the proposal, Planning Permission should be granted.

- 4.16 This application is an identical duplicate of a proposal (reference 150239) that was REFUSED by the Council earlier this year (decision notice dated 19 February 2016).
- 4.17 That decision is now the subject of a planning appeal with the relevant Public Inquiry set to start on 10 January 2017 (estimated six-day Inquiry).
- 4.18 The applicants have offered to mitigate development impacts via a S106 Agreement that could include:-
- £125,140 contribution to the Council towards expansion of community bus service (£25,028 pa for five years)
 - £125,000 contribution to the Council towards marketing and promotion of the Town Centre as a sub-regional centre and related events (£25,000 pa over 5 years)
 - £125,000 contribution to the Council towards litter clearing in vicinity (excluding the development site itself) of Tollgate Village.
 - Highway works as required by ECC (if not secured by way of a Grampian Condition [Grampian Condition = condition preventing (in this case) occupation until 'prescribed work' (in this case highway improvements) have been delivered])
 - A recruitment scheme agreed with the Council
 - Travel Plan
 - CCTV connection contribution to enable Council to extend its CCTV coverage to Tollgate

5.0 Land Use Allocation

5.1 Within the Adopted Development Plan

- **part Urban District Centre (UDC)**
- **part Strategic Employment Zone (SEZ)**
- **Stanway Growth Area (SGA)**

5.2 Preferred Options Consultation Document (public consultation ended 16 September 2016) (local Plan 2017-2033 process) [THAT DOCUMENT CARRIED NO STATUTORY PLANNING WEIGHT AT THAT STAGE but it gave a clear indication of likely future strategic direction]

- Part Stanway Employment Area 1 (SEA1)
- Part Stanway Employment Area 2 (SEA2)

5.3 Policy WC1: Stanway Strategic Economic Area

“All land and premises within the area allocated as the Stanway Economic Area will be safeguarded for economic / employment uses based on a zoned approach in accordance with the following principles;

Zone 1: as defined on the West Colchester Policies map will be the primary focus for B class employment uses and as such, alternative non-B class uses will only be supported where they;

- (i) Are ancillary to the employment uses on the site intended to serve the function of the site as an employment area;
- (ii) Provide the opportunity to maximise the sites potential for economic growth and support the continued operation of existing employment uses within the economic area
- (iii) Do not generate potential conflicts with the existing proposed B class uses / activities on the site
- (iv) There is no reasonable prospect of the site being used for employment purposes

Proposals for main town centre uses will not be permitted within Zone 1 of the Stanway Strategic Economic Area.

Zone 2: as shown on the West Colchester Policies map which comprises an existing mixed use commercial area which has established uses and serves a current function important to the surrounding area

The current function of the area will be safeguarded and proposals for development which are complimentary to this will be supported.

Where the proposal is for a main town centre use, it must be of a scale appropriate to the economic area and must satisfy the criteria set out below:

- Meet the requirements of the sequential test as set out in policy TC1 in so far as the Council should be satisfied that there are no alternative sites located closer to the town centre in accordance with the hierarchy; and
- Where the scale of the proposal requires a retail impact assessment in accordance with TC1 the Council are [sic] satisfied that the proposal will not adversely impact of [sic] the vitality and viability of the town centre.....”

- 5.4 Also of relevance are the following:-
- Town Centre Policy and Hierarchy (TC1)
 - Town Centre Allocations (TC3)

5.5 Policy TC1: Town Centre Policy and Hierarchy

Colchester Town Centre is at the top of the retail hierarchy. Accordingly it will be the focus for new Town Centre uses and will be the preferred location for such uses in relation to the sequential test contained in the National Planning Policy Framework (paragraph 24).

The Borough Council will encourage development in the Town Centre (as defined on the Policies Map) which is focused on retail (particularly comparison) and supporting leisure, culture, and food/drink uses to enhance the Borough's role as a sub-regional shopping and leisure destination and important tourism destination.

- 5.6 The Town Centre boasts important historic character which must be protected and enhanced by all development as set out in Policy DM16 Historic Environment and relevant supporting guidance updated as required. The Council will seek to deliver more attractive public spaces and streetscapes in the Town Centre. The Council will support proposals that positively contribute towards creating an attractive, vibrant and safe Town Centre that offers a diverse mix of uses and extend the time when the Town Centre is active subject to their impact on local amenity.

Colchester Borough Council, working with its project partners, will work to deliver high quality digital connectivity to support Town Centre businesses and residents.

In addition to the sequential test, proposals for town centre uses of a scale greater than the 2500 sq.m. threshold outside the Town Centre and 500 sq.m. in District and Local Centres will be required to undertake a retail impact assessment in order to safeguard the vitality and viability of the town centre

- 5.7 Town Centre uses: The 2013 Retail Study identified a need for 36,730 sq. m additional floorspace capacity for comparison retail uses over the period 2012-26 which can be accommodated within the defined Town Centre boundary. Updated evidence will inform specific allocations within these areas and additional areas will be allocated within the Town Centre if required. To address the need for additional town centre use floorspace providing a mix of comparison shopping; food and drink; entertainment; and residential uses over the plan period to 2033, additional potential capacity has been identified as follows and is shown on the Policies Map:

- St. Botolphs Mixed use scheme providing cinema, 85-room hotel; restaurant cluster; student accommodation; Creative Business Centre (1.86 ha) Requirements:
 - Access off Queen Street
 - Archaeological investigation required
 - Development will need to protect and enhance the character of the Conservation Area and listed buildings

- Vineyard Gate Redevelopment of Vineyard Gate in 2 phases over the plan period: Area 1 – Vineyard Street car park (1.04ha) Area 2 – Osborne St. car park and area bounded by St. John’s Street, Abbeygate, Stanwell Street and Southway (1.39ha)
- Redevelopment and reuse of Priory Walk area (0.95ha)

5.8 The significance of these latter two emerging policies is that The Council is seeking to maintain a well-defined retail hierarchy within which the Town Centre remains at its apex and the focus for town-centre uses.

5.9 Helpfully the Government has defined what type of uses constitute ‘town centre uses’:-

“Retail development (including warehouse clubs and factory outlet centres); leisure, entertainment facilities the more intensive sport and recreation uses (including cinemas, restaurants, drive-through restaurants, bars and pubs, night-clubs, casinos, health and fitness centres, indoor bowling centres, and bingo halls); offices; and arts, culture and tourism development (including theatres, museums, galleries and concert halls, hotels and conference facilities).”

Taken from NPPG: Annex 2: Glossary.

5.10 The uses being proposed at Tollgate Village are therefore Town Centre uses as defined by the Government

5.11 Read in conjunction with WC1 it is absolutely clear that the Council expects the Town Centre to serve a sub-regional functional and Tollgate to continue serving a local function within the Plan Period 2017-2032.

5.12 Members attention is drawn to the fact that the applicant, Tollgate Partnership, has via various agents formally objected to the following draft Preferred Options Document policies:-

WC1 Stanway Strategic Economic Area
 SG5 Existing Mixed Use Commercial Areas within Colchester
 NC1 North Colchester and Severalls Strategic Economic Area
 TC1 Town Centre Policy and Hierarchy
 TC3 Town Centre Allocations
 SG3 Economic growth provision and centre Hierarchy
 SP3 Providing for Employment
 Local Plan: The process

5.13 **Constraints:**

- Conservation area - no
- TPO (Tree Preservation Order) - none
- Listed Buildings - none within the site
- PROW (Public Rights of Way) – none within site FP5 to south

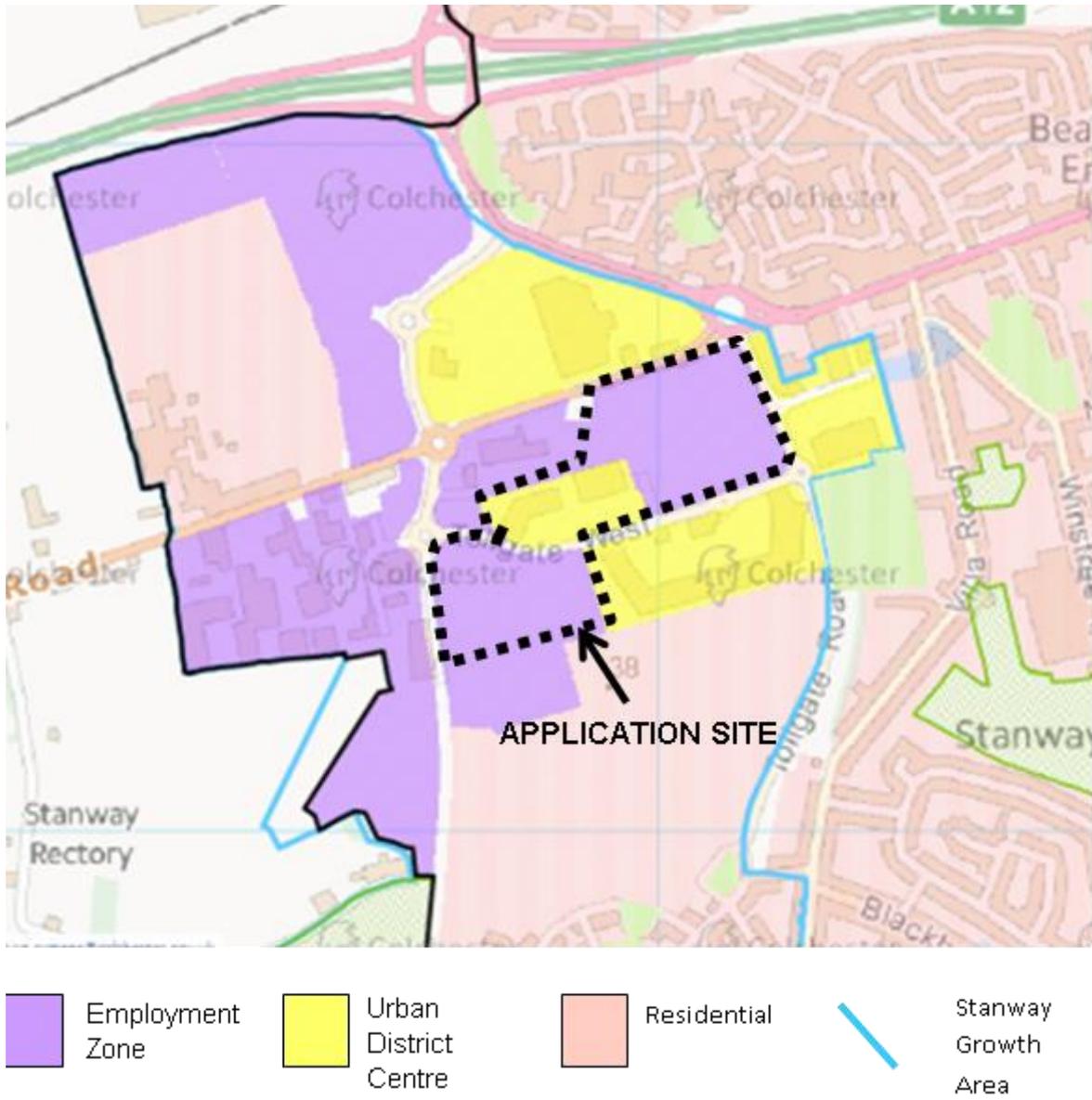


Figure 4: Proposals Map extract reflecting policies SA / STA3

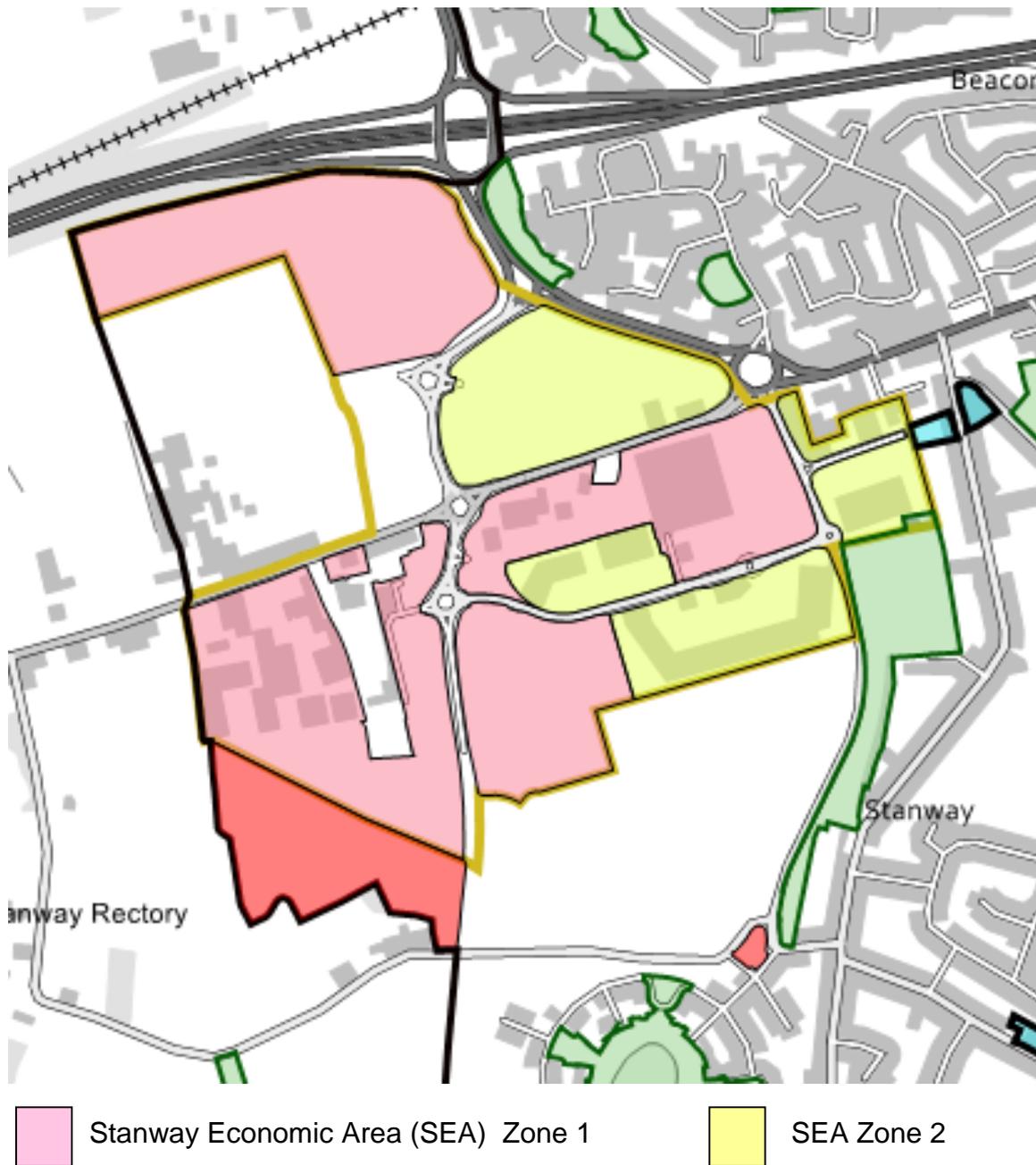


Figure 5: Extract from Preferred Options West Colchester Policies Map 2016

5.14 The emerging Local Plan is advancing rapidly towards Submission to the Secretary of State currently set within the Council's Local Development Scheme (LDS) for May 2017. (extract shown below in Figure 6).

generate new jobs in the service and hospitality sectors the proposal would erode the integrity and future attractiveness of The Tollgate SEZ for business park development that requires excellent access to the Nation's strategic trunk road system. This concern is further compounded by the fact that Stanway is expanding rapidly through planned housing delivery and the Strategic Employment Site offers potentially sustainable employment opportunities for residents who are otherwise forced to travel in search of job opportunities. This site and its wider hinterland is allocated in the Council's Adopted Core Strategy - Policy SD1 as the Stanway Growth Area (SGA) where development is expected to be focused and where proposals that accord with other policies in the Local Plan will be approved without delay. In defining the Stanway Strategic Employment Zone, within which the application site lies, the Council identified the type of development that would be appropriate to achieve its medium to long-term economic objectives within Table CE1b (as supports employment classification and hierarchy policy CE1 and the strategic designation provided by table CE1a). These appropriate uses are defined as B1b research and development, studios, laboratories, hi-tech; B1c light industry; B2 general industry; and B8 storage and distribution. Secondary land uses are described as B1a offices; C1 hotels, D2 assembly and leisure and sui generis. The proposed land uses comprising A3 or A4 uses do not comply with that policy. The proposed development on this strategically important Employment Zone would seriously undermine the Council's ability to plan for the medium to long term expansion of the Town's economy to create sustainable high value jobs in locations that complement areas experiencing rapid and significant housing growth and with excellent access to the strategic highway network. The Council's carefully planned employment strategy is reinforced within its Adopted Site Allocations (2010) in so far as Policy SA STA1 and SA STA 3 that make provision for employment use (which exclude those proposed here) and reject the need for town centre uses as proposed.

2. Conflict with retail hierarchy policy and Urban District Centre (UDC) policy

A large part of the application falls outside of the designated Urban District Centre and proposes a significant expansion of retail and town centre use floorspace outside of the defined UDC contrary to Policy CE2b of the Adopted Core Strategy (revised July 2014). It is the Council's opinion that the scale and type of retailing and town centre uses proposed is of an order of scale that would effectively make Tollgate a sub-regional retail/leisure attractor that will inevitably harm Colchester's Town Centre at the apex of the Adopted retail hierarchy as the pre-eminent sustainable destination for such activity within the Borough and sub-region. Adopted Core Strategy Policy CE1 directs that the Town Centre shall be protected as the sub-regional shopping centre within the Town's retail hierarchy and the Council believes that as a consequence planned investment in the Town Centre will be seriously prejudiced and future investor confidence in the Town Centre harmed to the extent that growth in the Town Centre will stagnate for at least 10 years whilst Tollgate diverts footfall and trade away from the Town Centre. As a result, key regeneration sites within the Town Centre may not come forward as planned and that in the intervening period Colchester's Town Centre will fall behind its regional competitors as they continue to invest in their town centres. Having considered the proposal in the context of the National Planning Policy Framework (especially paragraphs 23-27) and associated National Planning Practice Guidance the Council considers that the harm to retailing in the Town Centre arising from the proposal is not outweighed by the benefits that are likely to arise from the proposal in the form of additional new jobs, widened consumer choice at Tollgate and associated public realm improvements.

3. Prematurity

In the opinion of the Council, the Tollgate Village proposal is premature within the context of the Council's ongoing Local Plan process and the programmed publication of Preferred Options and Site Allocations in summer 2016 with the anticipated submission of the final Draft Local Plan in 2017. Key elements of the emerging Local Plan are a review of the future strategic employment land and retail requirements of the Borough. This will involve both a quantitative assessment and a qualitative assessment together with a spatial analysis of the optimal distribution and location of significant growth in Town Centre and employment uses. This analysis will take account of wider sustainability issues and the Council opines that determination of the Tollgate Village proposal ahead of the next stage of the Local Plan (which will include comprehensive public consultation) will prejudice the ability of the Council to make strategic decisions based on a thorough evidence and analysis of all possible options rather than one that has an advantage of timing through the submission of a speculative planning application. A grant of consent for a proposal of this magnitude would effectively dictate issues of hierarchy prior to any consideration of such issues in the development plan.

4. Sustainable Development

The expansion of town centre uses of the magnitude proposed in this location with heavy reliance on trip generation by the private car with the resultant adverse impact identified upon the Town Centre together with the potential loss of planned employment growth within this strategic employment site and the resultant harm to the planned economic growth significantly outweighs the benefits identified to be delivered by the proposals. Consequently, in the opinion of the Council the development is inherently unsustainable contrary to paragraphs 6-14 of the Framework and the Government's explicit intention that the purpose of the planning system is to contribute to the achievement of sustainable development. The proposal is thus contrary to the strategic aims of the adopted local plan. The car-dominated nature of the proposal is further evidenced by the associated highway improvements required by the Highway Authority that would result in the creation of a poor pedestrian environment contrary to adopted policy CE2b and Design Principles set out in the Stanway Vision Statement (2013) that require new development to deliver improvements to the public realm and create a pedestrian-friendly environment. The proposals are therefore also contrary to paragraph 64 of the NPPF and the Government's intention to contribute positively to making places better for people.

- 6.2 Application 150239 was first considered by the Planning Committee on 17th December 2015 where the Council's DROP procedure was invoked. The relevant minute records:-

“RESOLVED that the Deferral and Recommendation Overturn Procedure be invoked and a further report be submitted to the Committee giving details of the risks to the Council, the financial implications including the need to refer the matter to the Secretary of State for Communities and Local Government, together with recommended conditions and Heads of Terms should the application be granted. “

- 6.3 At the meeting of the Planning Committee held on 18 February 2016 the application was considered further. An additional report was considered. The Committee agreed the recommendation to REFUSE the application.
- 6.4 Tollgate was developed as a bulky goods/white goods retail park during the 1980's and included a Sainsbury's superstore (now demolished):
- Adopted Review Colchester Borough Local Plan (March 2004)
- "TCS11 (a) The Plan defines bulky goods retailing locations at Tollgate (Stanway).....
- ...(i) the range of retail products will be limited to bulky goods.
- The Tollgate Centre was developed with a similar restriction.
- 6.5 Northern Leg of the Western By-Pass 2000-2001
- 6.6 Erection of distribution centre 2007 (approved 2008) (in what is described as zone 3 in current application) not implemented
- 6.7 Erection of car showroom 2007 (approved 2008) (in what is described as zone 3 in current application) not implemented
- 6.8 New food store north of London Rd 2010
(this permission required the closure of the then Sainsbury's store south of London Road in a site swap. The former Sainsbury's site was then to revert to employment zone use.
- 6.9 Various across parts of the site bulky goods restrictions on some units have been eased.
- 6.10 Regard must now also be given to the recent appeal decisions (September 2016) in respect of the proposed Stane Park developments. In these cases the Inspector allowed development comprising a mix of five restaurants and takeaways (including drive-throughs) and a pub on land allocated in the Local Plan as high quality employment zone land. This decision is now a material planning consideration.
- 6.11 At the Planning Committee meeting of 6 September 2016 Members agreed to grant planning permission for a change of use of the site known as NE2 (Lakelands) (application reference 151479) from employment to residential subject to the prior completion of a s106 Agreement delivering appropriate mitigation. The site is question is within the Stanway Employment Zone.

7.0 Principal Policies

- 7.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate

otherwise. (Further to section 38(6) of the Planning & Compulsory Purchase Act 2004 and 70(2) of the Town & Country Planning Act 1990.) The National Planning Policy Framework (NPPF) must also be taken into account in planning decisions as a material consideration. The NPPF sets out how the Government's planning policies are to be applied. It makes clear that the purpose of the planning system is to contribute to the achievement of sustainable development. There are three dimensions to sustainable development: economic, social and environmental. The NPPF succinctly identifies these (paragraph 7) as follows:-

- an economic role – contributing to building a strong, responsive and competitive economy, by ensuring that sufficient land of the right type is available in the right places and at the right time to support growth and innovation; and by identifying and coordinating development requirements, including the provision of infrastructure;
- a social role – supporting strong, vibrant and healthy communities, by providing the supply of housing required to meet the needs of present and future generations; and by creating a high quality built environment, with accessible local services that reflect the community's needs and support its health, social and cultural well-being; and
- an environmental role – contributing to protecting and enhancing our natural, built and historic environment; and, as part of this, helping to improve biodiversity, use natural resources prudently, minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.

7.2 Much of the NPPF is relevant to the proper consideration of the merits of this proposal. Particular (but not exclusive) attention is drawn to the relevance of the following sections:-

7.3 **Presumption in favour of sustainable development (paragraphs 11-16).**

7.4 Particular attention is drawn to paragraph 14 therein:-

Paragraph 14:

“14. At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-taking.

*For **plan-making** this means that:*

- *local planning authorities should positively seek opportunities to meet the development needs of their area;*
- *Local Plans should meet objectively assessed needs, with sufficient flexibility to adapt to rapid change, unless:*
 - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or*
 - *specific policies in this Framework indicate development should be restricted.*

*For **decision-taking** this means:*

- *approving development proposals that accord with the development plan without delay;*
- and*

- *where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: – any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or – specific policies in this Framework indicate development should be restricted.*

7.5 The Council has an Adopted Development Plan consisting of the:

- Adopted Core Strategy (CS); and,
- Adopted Development Policies Document (DP): and,
- Adopted Site Allocations SA) Document.

7.6 In the context paragraph 14 of the NPPF this the Council is currently advancing its new Local Plan as described above.

7.7 As part of that consultative and ongoing evidence based Local Plan process and in the light of the Inspector's Decision in respect of the two planning appeals at Stane Park (appeal decision dated 6 September 2016) the Council is now reviewing and further developing its planning strategy for growth in employment, the supply of strategic employment land and the optimum location for such sites so as to have appropriate regard to those decisions. (The version of the Preferred Options Document that was recently exposed to public consultation did not propose a change to the extent of allocated Strategic Employment Zone land within the application site).

7.8 In considering the relative weight that can be afforded to these 'Adopted Development Plan' policies the Inspector in the case of Stane Park formally commented thus:-

“10. The development plan includes the Colchester Borough Core Strategy 2008 (CS); the Site Allocations DPD (2010) (SA DPD); and the Development Policies DPD (2010) (DP DPD). The CS and the DP DPD were partially updated in July 2014 as a result of a Focused Review (FR). The principal policies referred to in these appeals [*Stane Park*] were policies SD1, SD2, CE1, CE2, CE2a, CE3, TA1 of the CS; Policy DP5 of the DP DPD; and Policies SA STA1 and SA STA3 of the SA DPD.

11. As the principal policies relied on by the Council pre-date the publication of the National Planning Policy Framework (2012) (the Framework), it is necessary to determine whether the cited policies are consistent with it so that the weight that can be given to any conflict with the development plan can be identified.

12. Of particular relevance to many of the cited policies is the FR. The Draft Submission Consultation identifies that only those policies that clearly required updating due to non-compliance with the framework formed part of this stage of the Local Plan review. It identifies which policies were being reviewed, including all those CS policies cited above apart from TA1. With regard to the policies in the SA DPD, the FR says that the relevant revised policies will note that the new policies supersede those aspects of Policy STA3 insofar as they relate to retail and employment. The Examining Inspector concluded that the proposed combination of changes to

Policies CE1, CE3 and DP5 in the FR do not create a justified and coherent set of policies in the development plan as a whole to promote economic growth consistent with the framework.

13 The Inspector did not criticise CS Policy SD1 and this can be given full weight. I have also noted that the Secretary of state has given full weight to Policy TA1 as being consistent with the Framework. The cited Centres and Employment Policies, including Policies CE1, CE2 and CE3 cannot be given full weight given that the Council accepted this by including them in the FR for precisely the reason that it did not consider them to be fully consistent with the Framework. They were not amended by the FR. It follows that the Site Allocations policies that stem from these policies cannot carry full weight.

14. Policy SD1 (Sustainable Development Locations) of the CS identifies that growth will be located at the most accessible and sustainable locations. Five broad locations are identified in the policy, including the Stanway Growth Area. SA DPD Policy SA STA3 sets out the types of development considered appropriate in the Stanway Growth Area. It limits the amount of office development to that the subject of the 2006 planning application on the land to the north of the appeal sites [i.e.: Stane Park]. It also says that new town centre uses will not be permitted although a limited amount of retailing will be permitted where it is ancillary to another main employment use and may be permitted to meet identified local need and not compete with the town centre. **I see no reason for not giving full weight to this policy as there is no conflict with the Framework.....”**

7.9 Members will have noted from the ‘reasons for refusal’ in respect of the identical 2015 proposal reproduced earlier in this report that a number of the Development Plan policies were identified by the Stane Park Inspector as not being capable of being given full weight were used by the Council. Namely:-

CE1
CE2
CE3
DP5

7.10 In considering the merits of this duplicate application Members must now have regard to the Inspector’s comments and consider the relative weight that must be given to these particular policies when weighing up all material planning considerations

7.11 Specific attention is drawn to paragraph 18 of the NPPF that states:

“18. The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country’s inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.”

7.12 In considering the current proposal this report will look objectively at what the proposal offers in terms of direct and indirect job creation opportunities.

7.13 Members may be aware that Colchester as a town performs below many other Essex towns in terms of average wage levels and has been seeking to attract or encourage higher paid jobs to the town to widen the town's economic base and allow residents to work locally rather than commute out (usually towards south Essex /London) which is not particularly sustainable. Higher paid jobs within Colchester secured by Colchester residents allow more wealth to be captured and retained within the town thereby enhancing local prosperity and boosting the local economy.

7.14 Paragraph 20 NPPF states:

“20. To help achieve economic growth, local planning authorities should plan proactively to meet the development needs of business and support an economy fit for the 21st century.”

7.15 Within this context members will be asked to take into account the needs and prospects of existing Colchester retail businesses; especially those located in the Town Centre, the commercial needs of the applicants who are an established local development company and the potential needs of retailers looking to locate or develop an additional presence in the town.

7.16 Paragraph 22 NPPF: states:

“22.Planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities.”

7.17 This is an important consideration as parts of the application site fall within a designated strategically important employment zone. Members will be helped in examining this issue by reference to the Council's Employment Land Needs Assessment published January 2015 (as undertaken on behalf of the Council by Nathaniel Lichfield & Partners (NLP).

7.18 Any consideration of the economic performance of allocated employment sites must also have regard to the wider impact of the 2008 world banking crisis and the economic turbulence that has followed and continues to leave its footprints on the national economy.

7.19 **Building Sustainable Development 2: Ensuring the vitality of town centres**
(NPPF paragraphs 23-27)

7.20 All of the paragraphs in this section are relevant as they provide a comprehensive framework for supporting the continued vitality and viability of town centres. This involves in the first instance developing a spatial policy framework that clarifies local links and functions and seeks to ensure new development is directed to locations that will support and strengthen the pivotal role of main town centres. The sequential test is provided as the technical means for assessing the relative appropriateness of alternative sites for development. Proposals also need to satisfy an impact test to demonstrate

they would not have a significant adverse effect on town centres. Finally the Government's position expressed within paragraph 27 is pivotal:-

"Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused".

7.21 Members need to carefully consider the content of these paragraphs as they are critical to the consideration of the proposals. For this reason, they are set out in full below:

"2. Ensuring the vitality of town centres

23. Planning policies should be positive, promote competitive town centre environments and set out policies for the management and growth of centres over the plan period. In drawing up Local Plans, local planning authorities should:

- recognise town centres as the heart of their communities and pursue policies to support their viability and vitality;
- define a network and hierarchy of centres that is resilient to anticipated future economic changes;
- define the extent of town centres and primary shopping areas, based on a clear definition of primary and secondary frontages in designated centres, and set policies that make clear which uses will be permitted in such locations;
- promote competitive town centres that provide customer choice and a diverse retail offer and which reflect the individuality of town centres;
- retain and enhance existing markets and, where appropriate, re-introduce or create new ones, ensuring that markets remain attractive and competitive;
- allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, cultural, community and residential development needed in town centres. It is important that needs for retail, leisure, office and other main town centre uses are met in full and are not compromised by limited site availability. Local planning authorities should therefore undertake an assessment of the need to expand town centres to ensure a sufficient supply of suitable sites;
- allocate appropriate edge of centre sites for main town centre uses that are well connected to the town centre where suitable and viable town centre sites are not available. If sufficient edge of centre sites cannot be identified, set policies for meeting the identified needs in other accessible locations that are well connected to the town centre;
- set policies for the consideration of proposals for main town centre uses which cannot be accommodated in or adjacent to town centres;
- recognise that residential development can play an important role in ensuring the vitality of centres and set out policies to encourage residential development on appropriate sites; and
- where town centres are in decline, local planning authorities should plan positively for their future to encourage economic activity.

24. Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to 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. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.

25. This sequential approach should not be applied to applications for small scale rural offices or other small scale rural development.

26. When assessing applications for retail, leisure and office development 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). This should include assessment of:

- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
- the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years, the impact should also be assessed up to ten years from the time the application is made.

27. Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.”

7.22 The applicants have produced a supporting retail impact analysis as part of their submission which in their view strongly indicates that the proposed development will not have a significant adverse impact in the context of issues identified in paragraphs 23-27 (inclusive) above and will not be contrary to the sequential test. This report will explore the extent to which these conclusions are accepted by the Council.

7.23 Local authorities are required to have regard, when assessing impact assessments, to:- (paragraph 26 of the NPPF)

- The impact of the proposal on **existing, committed** and **planned** public and private investment in a centre or centres in the catchment of the proposal
- The impact of the proposal on town centre **vitality and viability**, including local consumer choice and trade in the town centre and wider area, up to five years from the time the application is made. For major schemes where the full impact will not be realised in five years the impact should also be assessed up to ten years from the time the application is made

7.24 **4. Promoting sustainable transport** (paragraphs 29-41)

7.25 Particular regard needs to be given to the following paragraphs:-

Paragraph 32

32. All developments that generate significant amounts of movement should be supported by a Transport Statement or Transport Assessment. Plans and decisions should take account of whether:

- the opportunities for sustainable transport modes have been taken up depending on the nature and location of the site, to reduce the need for major transport infrastructure;

- safe and suitable access to the site can be achieved for all people; and
- improvements can be undertaken within the transport network that cost effectively limit the significant impacts of the development. Development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe.

- 7.26 The application is supported by extensive highway/traffic impact analysis work and the application has been the subject of in depth negotiation with both Highways England (strategic network impacts – A12 and local junctions) and Essex County Council (local network impacts)
- 7.27 Members who are familiar with Stanway/ Tollgate will be aware that the local highway network suffers regular congestion and this has been a long-standing concern with residents. This report will carefully consider highway impacts and the likely impact of proposed mitigation measures.
- 7.28 Paragraph 34. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas.
- 7.29 Paragraph 38. For larger scale residential developments in particular, planning policies should promote a mix of uses in order to provide opportunities to undertake day-to-day activities including work on site. Where practical, particularly within large-scale developments, key facilities such as primary schools and local shops should be located within walking distance of most properties.
- 7.30 Stanway has seen a rapid and expansive growth in the number of new homes from the 1980's and that pattern is set to continue. Until relatively recently a village, Stanway has now become the outer edge of urban Colchester. In the context of paragraph 38 it is certainly appropriate to consider how this burgeoning new community is currently supported by local facilities and whether the Tollgate Village proposal will provide local people with opportunities to undertake day-to-day activities without harming other 'interests of material importance'.
- 7.31 Paragraph 40. Local authorities should seek to improve the quality of parking in town centres so that it is convenient, safe and secure, including appropriate provision for motorcycles. They should set appropriate parking charges that do not undermine the vitality of town centres. Parking enforcement should be proportionate.
- 7.32 The Tollgate Village proposal includes the provision of 1523 parking spaces which are expected to be free to use. The availability of free parking must be assessed against the promotion of modal shift towards sustainable modes of travel. The impact of this free parking in terms of the ability of the town centre to compete and maintain vitality will be explored in the report. Consideration of the impact of Tollgate Village on the Council's town centre parking income is not a material planning consideration and is not a matter to be taken into consideration.
- 7.33 This report will, where appropriate, also refer to other specific sections and paragraphs of the NPPF as needs be.

- 7.34 Members are advised that as a result of the Stane Park appeal decision the Council cannot say that all of its adopted planning policies are fully compatible with the NPPF and therefore as up to date as those that have been successfully through the Focused Review process. (with the amended policies adopted in 2014). They do however remain the Councils adopted policies. In the case of Stane Park the Inspector accepted that certain aspects of the proposed development were contrary to such policies however he gave greater weight to the NPPF where full weight could no longer be given to local policies.
- 7.35 Of the policies considered by the Inspector in respect of Stane Park he concluded that SD1, TA1 & SA /STA3 can be given full weight. CE1, CE2, CE23 & DP5 cannot be given full weight.
- 7.36 Continuing the themes of the NPPF, the adopted Colchester Borough Core Strategy (adopted 2008, amended 2014) adds detail through local strategic policies. Particular to this application, the following policies are most relevant:
- SD1 - Sustainable Development Locations (full weight can be given as a result of the Stane Park appeal decisions)
 - SD2 - Delivering Facilities and Infrastructure
 - CE1 - Centres and Employment Classification and Hierarchy (full weight cannot be given as a result of the Stane park appeal decisions)
 - CE2a - Town Centre (full weight cannot be given as a result of the Stane Park appeal decisions)
 - CE2c - Local Centres(full weight cannot be given)
 - CE3 - Employment Zones (full weight cannot be given as a result of the Stane Park appeal decisions)
 - UR1 - Regeneration Areas
 - UR2 - Built Design and Character
 - PR1 - Open Space
 - PR2 - People-friendly Streets
 - TA1 - Accessibility and Changing Travel Behaviour (full weight can be given as a result of the Stane Park appeal decisions)
 - TA2 - Walking and Cycling
 - TA3 - Public Transport
 - TA4 - Roads and Traffic
 - TA5 - Parking
 - ER1 - Energy, Resources, Waste, Water and Recycling
- 7.37 In addition, the following are relevant adopted Colchester Borough Development Policies (adopted 2010, amended 2014):
- DP1 Design and Amenity
 - DP2 Health Assessments
 - DP3 Planning Obligations and the Community Infrastructure Levy
 - DP5 Appropriate Employment Uses and Protection of Employment Land and Existing Businesses (full weight cannot be given as a result of the Stane park appeal decisions)
 - DP6 Colchester Town Centre Uses
 - DP7 Local Centres and Individual Shops
 - DP10 Tourism, Leisure and Culture
 - DP14 Historic Environment Assets
 - DP17 Accessibility and Access

DP18 Transport Infrastructure Proposals
DP19 Parking Standards
DP20 Flood Risk and Management of Surface Water Drainage
DP21 Nature Conservation and Protected Lanes

7.38 Further to the above, the adopted Site Allocations (adopted 2010) policies set out below should also be taken into account in the decision making process:

Paragraph 3.13 Strategic Employment Zones (Stanway 34.43ha)
SA TC1 Appropriate Uses within the Town Centre and North Station Regeneration Area
SA STA1 Appropriate Uses within the Stanway Growth Area
SA STA3 Employment and Retail Uses in Stanway Growth Area
SA STA4 Transportation in Stanway Growth Area

7.39 The following non-statutory guidance document is also relevant: The future of Tollgate: A Framework Vision (July 2013) and the Stanway Parish Plan & Design Statement (March 2011)

In the context of the Parish Plan, particular attention is drawn to:-

- P30: Recreation & Leisure

“With shopping coming top of the list for adults’ leisure activities it wasn’t a surprise that wider shopping choice was the clear leader in the choice of new facilities with 40% in favour. British land’s proposed changes to the Tollgate Centre, if accepted, may go some way to meeting this need. A swimming pool (27.5%), sports complex (25.5%), bigger library (16.5%) and more allotments (14%) also attracted significant minority support with cinema, ten pin bowling and ice rink, all at just under 10%.....”

- P43: Community facilities (Recommendations from the Stanway Parish Plan: recommendations for planning...)

Paragraph 31

“Improve and expand shopping choice at the Tollgate Centre that does not conflict with Town Centre uses and introduce environmental improvements to enhance the overall shopping experience.”

- P44: Commercial (Recommendations from the Stanway Parish Plan: recommendations for planning...)

Paragraph 32

“ensure that future development proposals provide a range of commercial premises (size and type), including incubation units, that sustain existing businesses and create opportunities for business to expand in Stanway.”

7.40 Other material statutory documents:

Vehicle Parking Standards (2009)
Sustainable Construction (2012)
Cycling Delivery Strategy (2012)

7.41 It is noted that Stanway Parish Council now has an agreed Neighbourhood Plan Area but little else at this stage and so there is no neighbourhood plan weight that can be given to the consideration of the Tollgate Village application at this time.

8.0 Consultations

8.1 **Spatial Policy** comments thus:

“

1. The application is a duplicate of application 150239 which was previously refused by the Council and is now a subject of appeal. The comments below reflect the comments made on the original proposal, which remain largely relevant. They have been updated to reflect developments since the comments were made in November 2015, including progress with the Local Plan and associated evidence base as well as the Inspector's decision on the Stane Park proposal. The comments also include responses to points made by the applicants' agents Barton Willmore to the original planning policy comments.

Proposed uses

2. The proposal involves a total of 30,812 sq.m of commercial floorspace, split as follows:
 - a. Class A1 comparison goods – up to 16,304 sq.m gross
 - b. Class A2 convenience goods – 1,858 sq.m gross
 - c. Flexible Class A1 to A5 – 5,010 sq.m gross
 - d. Flexible Class A3 to A5 – 950 sq.m gross

The above figures include 4,699 sq.m of existing Class A1 retail floorspace in Development Zone 2.

3. Development of town centre floorspace in Development Zones 1 and 3 would involve the loss of land designated for B uses. The total loss of employment land in the two parcels is 9.07ha which would reduce the employment land supply at Stanway from 26.8has to 17.7ha, a reduction of 34%. In Borough wide terms the loss of these two sites would result in a 12% loss in total supply, or a 15% reduction in Strategic Employment Zone land.
4. The Supplementary Information document submitted by Barton Willmore in June 2015 suggested that the applicant would be willing to accept conditions restricting floorspace levels and the ability to move from one use class to another to address concerns about the proposal's impact on the town centre.

Policy context

5. The following section outlines the national and local policies guiding consideration of the planning application. Section 38(6) of the Planning and Compulsory

Purchase Act 2004 states: “If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.” Para 12 of the NPPF also reinforces this point and makes clear that where development is in accordance with the development plan, it should be approved without delay and proposed development that conflicts should be refused unless other material considerations indicate otherwise. (paragraph 14).

6. Colchester’s Local Plan was the subject of a Focused Review in July 2014 which updated selected policies to bring them into accordance with the NPPF. The Inspector in the Stane Park decision (APP/A1530/W/15/3139492 and APP/A1530/W/15/3139491) found that, following that review, Core Strategy policies SD1 (Sustainable Development), TA1 (Accessibility and Changing Travel Behaviour), and Site Allocations policy STA3 (Employment and Retail Uses in Stanway Growth Area) should be given full weight (with the exception of the status of the Stane Park reference in STA3). As the Centres and Employment policies were not amended by the Focussed Review, the Inspector considered that they should not carry full weight. Accordingly, for the purposes of considering the current application, Local Plan policies on sustainable development, spatial hierarchy and transport accessibility in the Local Plan will be utilised in addition to NPPF guidance, while considerations on retail and employment issues will be focussed on NPPF guidance alone. Planning Policy agrees with Barton Willmore’s Dec. 2015 submission that the proposals fall to be assessed against the NPPF sequential and retail impact tests. Given the overall general alignment between the Colchester Local Plan adopted Centres and Employment policies and the NPPF in their support for town centres and the sustainable location of new employment uses, the reference to the NPPF alone is not considered to lead to different policy views than if Local Plan policies had also been used.

Achieving sustainable development

7. The presumption in favour of sustainable development lies at the heart of the National Planning Policy Framework (NPPF) and is the overarching principle governing consideration of this application. Paragraph 6 of the NPPF states that “*the purpose of the planning system is to contribute to the achievement of sustainable development*” which includes interlinked economic, social and environmental objectives. Determination of this application accordingly needs to have regard to the balance between these contributing elements of sustainable development. This includes weighing the job creation and consumer choice benefits of the scheme against its longer term effect on the Borough’s commercial hierarchy and quality of place.
8. The principle of sustainable development contained in the NPPF is reflected in Colchester’s Core Strategy Policy SD1 of the Local Plan (as amended 2014) which states that “*Throughout the borough, growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy... Development proposals will be expected to make efficient use of land and take a sequential approach that gives priority to accessible locations and previously developed land (PDL).*” The Local Plan approach to sustainable growth in Colchester accordingly considers all proposals for growth in relation to the Borough’s spatial hierarchy.

Pursuing a plan-led approach to significant development

9. The NPPF provides that planning should be ‘genuinely plan-led’. (Para 17) Para 23 goes on to outline how plans should set out policies ‘for the management and growth of centres over the plan period’. This includes defining ‘a network and hierarchy of centres that is resilient to anticipated future economic changes.’ This means that decisions on large-scale significant planning applications should be compatible with a plan-led approach to development and be consistent with the adopted spatial hierarchy.

10. The Town Centre is at the top of the Borough’s spatial hierarchy and is given pre-eminent status throughout the plan, beginning with the Vision which states: ‘The historic Town Centre will be the cultural and economic heart of the borough, surrounded by thriving suburbs, villages and countryside. New cultural, retail, office and mixed use developments will be delivered through regeneration of the Town Centre and its fringe.’ This broad principle is supported by policy SD1 (Sustainable Development). The principle is carried forward in CE1 (Centres and Employment Classification and Hierarchy) and CE2a (Town Centre), and while these policies will not be given full weight in light of the Stane Park decision, the provision of this hierarchy is noted to be in accordance with the requirements of NPPF para 23 to ‘define a network and hierarchy of centres...’. Adopted Local Plan Policy CE1 provides that the Town Centre sits at the top of the centres hierarchy, followed by edge of centre locations and then District Centres.

11. The intent to pursue a co-ordinated approach to development in the Tollgate area was reinforced in July 2013 with the adoption as guidance of ‘The Future of Tollgate: A Framework Vision. The document was prepared by local landowners in consultation with the Council and the local community. The purpose of the Vision was to ‘encourage high quality proposals that will enhance the quality of the public realm and townscape, seek to create an interconnected environment and contribute towards a vibrant and successful ‘humanised’ environment’.

12. The Council completed a 10-week Preferred Options Local Plan consultation on 16th September 2016. The document includes policies and allocations to ensure the delivery of well-located sites to support employment with particular regard to growing sectors of the economy; and a retail hierarchy which safeguards the pre-eminence of the Town Centre. Officers are now analysing consultation feedback to inform the submission document which is programmed for consultation in early 2017, with adoption expected in 2018. Additional work on employment and retail has been commissioned to ensure an up-to-date evidence base on those issues. (See section on Evidence Base documents below)

13. The adjacent authorities of Braintree and Tendring have similar time frames for their Local Plan process. Overall planning for the area is accordingly proceeding in a co-ordinated manner, in line with Government ‘duty to cooperate’ requirements.

14. Planning Practice Guidance explains that a substantial proposal such as Tollgate must meet the following criteria if its determination were to be considered to undermine the plan-making process:

- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and*
- b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.*

Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.

Ensuring the vitality of town centres

15. The NPPF recognises that town centres lie at the heart of their communities (Para 23), and that local authorities should ‘define a network and hierarchy of centres that is resilient to anticipated future economic changes’.
16. The NPPF provides for two key tests to assess the potential effect of new town centre proposals – the sequential test and the impact assessment;
- a. Sequential test - Para 24 sets out a sequential approach to site selection to ensure that town centre sites are given priority.
- b. Impact test - Para 26 addresses the potential impact of new town centre proposals on the vitality of existing town centres and states that planning applications for town centre uses should be assessed against:
- the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;
 - The impact of the proposal on the town centre vitality and viability, including local consumer choice and trade in the town centre and wider area.

The NPPF provides that where there is no locally set floorspace threshold, then impact assessments will be required for retail and leisure developments of 2,500 sqm gross or more. The proposal for over 30,00 sqm gross floorspace clearly exceeds this threshold, so the determination of the proposal’s impact on the town centre is a key consideration. The NPPF states that planning applications for town centre uses should be assessed against the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal, as well as the impact of the proposal on the town centre vitality and viability, including local consumer choice and trade in the town centre and wider area. Para 27 of the NPPF states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on, it should be refused.

17. The section on 'Ensuring Town Centre Vitality' in Planning Practice Guidance provides further detail on the sequential test and impact assessments. In particular, it explains how the impact assessment should address the issue of impact on investment:

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

- *the policy status of the investment (i.e. whether it is outlined in the Development Plan)*
- *the progress made towards securing the investment (for example if contracts are established)*
- *the extent to which an application is likely to undermine planned developments or investments based on the effects on current/ forecast turnovers, operator demand and investor confidence*

18. Site Allocations Policy SA STA3 (Employment and Retail Uses in Stanway Growth Area) does not support additional Town Centre uses within the Stanway Growth Area. STA3 allows for small scale retail facilities if they meet local needs and do not compete with the Town Centre. The policy also notes the relocation of Sainsbury's to a new site and the swap of land uses resulting in the new Sainsbury's being included in the Urban District Centre, while the old site is allocated to employment use.

Safeguarding Employment Land

19. Paragraph 22 of the NPPF states: "*planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits...*"

20. Policy SA STA3 of the Local Plan allocates the proposed development site within the Strategic Employment Zone for employment use and sets out the uses considered to be appropriate on that land, including B1 a-c, B2, B8 and selected sui generis uses. It is noted that two thirds of the site lies within an area designated as Strategic Employment Zone, and one third lies within the Tollgate Urban District Centre. This differentiation is carried forward in the Preferred Options Local Plan with the allocation of a Stanway Strategic Economic Area (Policy WC1) which contains Zone 1 as the primary focus for B class employment uses, and Zone 2 which comprises 'an existing mixed use commercial area which has established uses and serves a current function important to the surrounding area'.

Additional policy considerations

21. The following additional adopted local planning policies are relevant to the application and will need to be the subject of detailed development management consideration.

Core Strategy Policies

Policy SD3 – Community Facilities

Policy UR2 – Built Design and Character

Policy PR1 – Open Space

Policy TA1 – Accessibility and Changing travel Behaviour

Policy TA2 – Walking and Cycling

Policy TA5 – Parking

Policy ENV1 – Environment

Policy ER1 – Energy, Resources, Waste Water and Recycling

Development Policies

DP1 – Design and Amenity

DP2 – Health Assessments

DP17 – Accessibility and Access

DP19 – Parking Standards

DP20 – Flood Risk and Management of Surface Water Drainage

DP21 – Nature Conservation and Protected Lanes

Site Allocations

SA STA1 – Appropriate Uses within the Stanway Growth Area

SA STA4 – Transportation in Stanway Growth Area

SA STA5 – Open Space in Stanway Growth Area

Evidence Base for consideration of the application

The following documents provide key evidence which has been relied upon to guide consideration of the application. In particular, the NLP critique (para 29) relates specifically to this proposal and accordingly should be referred to for further detail on the potential impacts of its retail and employment aspects.

Retail Study on Colchester's Town Centre (October 2011), King Sturge

22. The study carried out a health check on Colchester's retail and leisure offer and included an assessment of the possible impact of changes in futures supply both internal to Colchester and in competing centres, along with a strategy for long-term retail health and vitality. It found that there were no tangible threats to Colchester on the immediate time horizon, but they did highlight a number of intervention-based priorities to ensure the Town Centre remained competitive. Future investment in Vineyard Gate was supported in harness with other initiatives to help kick-start wider improvement in the wider retail offer and avoid failure to capitalise on the town's full trading potential.

Retail Study Update (March 2013) Nathaniel Lichfield & Partners

23. The study updated the findings of 2006 and 2009 work and assessed the future need and capacity for retail floorspace up to 2026. The quantitative assessment of the

potential capacity for new retail floorspace suggested that there was scope for new retail development over and above commitments. For comparison goods retail development (the primary element of the Tollgate proposal) the study recommended the following phasing:

- Up to 2016: implementation of commitments/town centre proposals and the reoccupation of vacant units
- 2016 to 2021: implementation of up to 13,000 sq m gross
- 2021 to 2026: implementation of up to a further 19,000 sq m gross.

24. The report states that retail development should not be permitted outside the Town Centre Core unless it can clearly be demonstrated that the proposed development cannot be accommodated in the Town Centre Core, and the proposals will not harm the vitality and viability of designated centres and planned investment. It is considered that the defined urban and rural district centres should continue to complement the town centre by providing for bulk convenience food shopping and a more limited range of comparison shopping facilities and other services.

25. Further work to update the 2013 Retail Study is now being undertaken to assess in particular the requirements for further town centre use floorspace from 2026 to 2033. The Preferred Options Local Plan identifies sufficient Town Centre sites which could be redeveloped to accommodate such uses. The Council's Town Centre first strategy supports identification of further town centre use sites in the Town Centre, and it would only be if sufficient sites there could not be identified that further sites elsewhere would be sought by means of a sequential test.

Employment Land Needs Assessment (January 2015) Nathaniel Lichfield & Partners

26. The Council appointed Nathaniel Lichfield & Partners to carry out an employment land needs assessment in conformity with national requirements as set forth in the NPPF and Planning Practice Guidance. It provided the Council with an understanding of its Functional Economic Market Area and its current and potential requirements for employment land. This was based on considering a range of scenarios for how the Colchester economy could change in the future:

27. The study concluded that based on available employment space, Colchester has sufficient employment floorspace in quantitative terms to meet future needs up to 2032 (Para 7.36). The study however, refines this point by noting that 'to ensure a flexible and responsive policy framework, it will be necessary not just to focus on meeting forecast quantitative requirements (which will fluctuate over time), but to think about the opportunities and risks that flow from particular policy approaches' (Para 8.16.)

28. The report provides scored assessments of employment sites within Colchester, including the employment allocations within the proposal site. The study recommends that the Council adopts 'a selective approach to safeguarding these undeveloped allocations for future development, by retaining those sites with the best intrinsic qualities and the greatest prospects of coming forward for employment development' (Para 8.48.) The site's score placed it slightly below the highest ranking Stanway site, Stane Park, which is earmarked as warranting protection, (Para 8.49) but decisions on the level of sites to be retained or de-allocated are left to the next stage of plan-making, particularly given that only a small margin separates the scores

of Stanway sites (3 points out of a 30 point scale). The report recommends that the Council should evidence how its portfolio of allocations and other development opportunities will support delivery of new space over the short, medium and long-term. (Para 8.57)

29. Further work to update the 2015 Employment Land Needs Assessment is now being undertaken to inform an employment land trajectory identifying a 15-year supply of B-use employment land. The trajectory will also highlight the suitability of these allocations for non-B use employment opportunities.

Site Specific Retail and Employment assessment

30. In light of the large size and potential impact of the Tollgate West proposed development, the Council commissioned Nathaniel Lichfield & Partners to evaluate its potential retail and employment implications to aid determination of the application. Their independent evaluation of the scheme accords with national and local planning policy, in particular Planning Policy Guidance on the evaluation of major town centre and employment schemes and accordingly underpins Council views on the application. The Council, NLP, applicants and their planning consultants worked together to agree methodological approaches to assessment of the scheme, and the resulting statements submitted by the applicant on retail and employment matters reflected discussions between all parties on the best approach in the light of the particular circumstances of the proposal. While modifications and further information was submitted on some points, the following areas remain as unresolved points of difference between the parties:

- c. Status and timing of Vineyard Gate application and the extent to which it should be factored in to impact calculations
- d. Implications of the speculative nature of the proposal and the lack of certainty on the following areas given that they could vary significantly based on different types of occupier:
 - i. Use class and categorisation of different types of tenant – i.e. bulky goods, fashion retail, A1 uses vs. other A and D uses
 - ii. Floorspace requirements - Net to gross ratio
 - iii. Sales densities and turnover
 - iv. No analysis of trade diversion/impact was provided by the applicant for the non-Class A1 uses and proposed cinema

Assessment of planning policy implications

Key Issues

31. The above summary of relevant policy guidance highlights the key policy considerations for this application:

- a. pursuing a plan-led approach to development;
- b. town centre impact;
- c. safeguarding employment land;
- d. sustainability.

The following sections explore these key issues, with sustainability considered at the end due to its overarching impact on the evaluation of the proposal.

Spatial hierarchy and plan-led approach to development- Policy assessment

32. The existing spatial hierarchy in Colchester reflects the ongoing pre-eminence of the historic Town Centre as well as the development in the 70s-90s of out-of-centre shopping centres anchored by supermarkets and/or bulky goods retailers. As noted in the NLP critique, the 2013 Retail Study found that none of the five Urban District Centres (UDCs) in Colchester, including Tollgate, provide all of the characteristic typically found within District Centres, as set out in Government guidance, which usually comprise a group of shops containing at least one supermarket, a range of non-retail services, and local public facilities. All of the five UDCs are currently anchored by large food superstores but the range of non-retail uses is limited in all centres. (para 8.7) The NLP work goes on to detail the types of retail development in each of the centre, noting that they provide a reasonable distribution of large food stores and bulky goods retail warehousing within Colchester's urban area, with gaps in coverage in the north east and south.

33. Adopted policy seeks to limit the expansion of town centre uses outside the town centre by restricting further new retail development unless it meets identified local needs and does not compete with the Town Centre. The Council's approach is considered to accord with the NPPF's requirement in para 23 to recognise town centres as the heart of their communities and pursue policies to support their viability and vitality, and to define a network and hierarchy of centres'. NLP conclude that the Tollgate Village proposals are at odds with this town centre first approach, because the development effectively expands town centre uses beyond the Urban District Centres boundary. (para 8.18)

34. The scale and extent of the Tollgate proposals are considered to be significant enough to alter the balance and functionality of centres within Colchester. The development proposals, in combination with existing uses, would provide a concentration of over 50,000 sq. m gross of Class A uses and a new leisure destination. A centre of this size would be more than two and a half times bigger than the next largest UDC (Turner Rise) and, particularly given the focus of the other four UDCs on convenience rather than comparison shopping, would provide a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping.

35. NLP concludes that: *If permitted and developed before 2019 (the design year) this development will pre-determine future decisions relating to the future scale and distribution of retail and leisure development within Colchester. The appropriate strategy for the shopping hierarchy should ideally be considered within the new Local Plan. The approval of the expansion proposed at Tollgate Village will have significant implications for the review of the hierarchy and the emerging development strategy for these centres in Colchester Borough and will predetermine the new Local Plan in this respect.* (Para 8.27 and 8.28)

36. The changes in the Tollgate Urban District Centre have, to date, been incremental and difficult for the Council to resist given their lack of individual impact on the town centre. Demand has reduced for the original type of bulky goods floorspace found in the UDCs, reflecting the increase in on-line purchase of these items. These uses have been replaced by a wider range of retail uses, including some that also

have a town centre presence (i.e. Argos, Boots, Next, Iceland). The Council has appreciated the societal trends driving the pressure on the Urban District Centres and has adopted a flexible, pragmatic approach to accepting a wider range of uses. It has, however, approached variation of condition applications by widening the range of permitted uses rather than by jettisoning scrutiny of uses within centres. The Council still wishes to scrutinise proposals to widen uses to ensure they avoid cumulative impact on the town centre and achieve compatibility with policy aims to diversify existing facilities and improve the public realm. Acceptance of a limited degree of change to more town centre uses should not, accordingly, be considered to constitute acceptance of a large proposal which would challenge the role of the town centre.

37. The Council's approach to centres and their hierarchy reflected national policy in PPS6 which was current at the time of developing the Core Strategy in 2008. The policy approach regarding the definition of the hierarchy of centres and the application of the sequential approach is considered to remain largely unchanged with the NPPF, notwithstanding the glossary definition which states that references to town centre apply to all forms of centres. On that basis, the proposal is considered not to comply with adopted Council policies on appropriate developments for its centre hierarchy due to the scale of development proposed and the assumption that this scale of use would be directed to the town centre.

38. Furthermore, approval of the scheme in advance of publication of the Council's submission version of a new Local Plan would prematurely close off decisions that should be made through the Local Plan process rather than by an isolated development management decision. Granting planning permission now for a large scale development outside the scope of adopted policy is considered to harm the robustness of strategic long-term planning for the area. To grant planning permission would, in effect, release a significant amount of land for development for town centre purposes outside the Local Plan review process, against the current intentions of the local planning authority. This would also conflict with the advice in the Framework, which makes clear that the preferred route by which such releases are decided is through the LP process. [para. 14] It is noted that in their Dec. 2015 response to planning policy comments Barton Willmore reject the prematurity argument because the Local Plan was at the Issues and Options stage, but the Local Plan is now approaching submission and accordingly is acquiring greater weight.

39. The applicants have put forward their site through the Local Plan process, and this is considered the most appropriate mechanism to address a large scale proposal with the potential for significant impact on the Borough's spatial hierarchy. There are going to be difficult decisions to make on this subject and the submission version of the plan has scope to further review the policies and allocations made in the Preferred Options version to reflect the latest retail and employment evidence base. The harm caused by the introduction of a strategic site by a scheme of this size in this location could only be justified by factors that were clearly of even greater magnitude. The factors weighing in favour of the proposal are not strong enough to indicate that this site should be reallocated without a full and robust public assessment of all options.

Sequential test – Policy assessment

40. The proposal includes land both within and adjacent to an Urban District Centre (UDC). Land within the area lying within the Urban District Centre designated in the

adopted Local Plan needs to be considered under Policy STA3, which does not support new town centre uses unless they are small scale and do not compete with the town centre. This issue is covered below in the section on impact. In terms of the two thirds lying outside the UDC, the proposal needs to be evaluated in terms of the sequential test as required in the NPPF for proposals which 'are not in an existing centre and are not in accordance with an up-to-date Local Plan.

41. To address the requirements of a sequential test, the applicants submitted information to address potential sites in the Town Centre and in the Tollgate Urban District Centre, which has been reviewed by the Council's consultants NLP. The applicant's view is accepted that because the site is partly within and partly adjoining Tollgate Urban District Centre, only potential Town Centre sites required assessment given that other UDC-adjacent sites would be equal in rank rather than sequentially preferable to the Tollgate UDC. As NLP note, the application of the sequential approach needs to be considered within the context of the Rushden and Dundee decisions. The application of the approach outlined in these decisions suggests emerging developments within the town centre cannot accommodate the Tollgate Village development in its entirety and probably not within the same timeframe. The applicants' consultants, Barton Willmore, identified in pre-application discussion with officers two potential sequentially preferable sites – the Cowdray Centre and Vineyard Gate.

Cowdray Centre: NLP consider that emerging development proposals suggest not all of the Cowdray Centre will be available and they also have reservations about the suitability of the Cowdray Centre for the size of development proposed at Tollgate Village.

Vineyard Gate: NLP consider that it is unlikely that Vineyard Gate can be brought forward to deliver development before 2019, and therefore is not available to deliver development within the same timetable as Tollgate Village. (see para 62 below)

42. Objectors to the scheme (GL Hearn on behalf of M&GRE) have argued that the development is separated into three physical zones and three phases and therefore can easily be disaggregated. This argument, however, is considered to have limited weight given that it is accepted that there is a synergy between the retail and leisure elements of the Tollgate proposal and furthermore, it has not been established that there are suitable and available sites for all the disaggregated elements of the proposal. NLP accordingly conclude that the proposal is not considered to be contrary to the NPPF, Policy SD1, Policy CE1 (Table CE1a) and Policy CE2a in relation to the sequential approach.

43. It is, however, important to note that out-of-centre development that prevents the proposed uses being developed within the town centre (i.e. impact on planned investment) could be considered contrary to the objectives of the sequential approach. In this respect, the sequential approach is interrelated with impact on planned town centre investment.

44. This is an important point to make, given that the Borough is concerned that the Tollgate scheme would have a deadening effect on all future town centre expansion and investment plans, and could affect a range of businesses from small independents to existing large retailers and new retailers seeking a presence somewhere in the Colchester area.

45. The Secretary of State decision on an application for a new out-of-centre Sainsbury's store in Braintree reinforces the limited role of the sequential test. It was found that the application met the sequential approach test as defined, but if the impacts of the appeal proposal and the commitments were added to the retail landscape, the impact on the centre was considered to be significantly adverse. It was agreed that the Braintree proposal would secure the redevelopment of a largely vacant industrial site, however, paragraphs 26-27 of the NPPF were clear that where an application is likely to have a significant adverse impact on a town centre, it should be refused. (Ref. APP/Z1510/A/14/2219101, para 548 of Inspector's decision and paras 18-21 of SoS letter of 25 June 2015). Thus, while the Council does not contest the acceptability of the scheme on sequential test grounds the impact test is similarly key in this case to the assessment of the overall merits of the Tollgate proposal.

Impact – Policy assessment

46. NLP have assessed the applicant's work on the potential impact of the proposed development at Tollgate on both comparison and convenience shopping in the Colchester catchment area as well as the impact of the proposal on town centre vitality and viability.

Convenience Shopping

47. For convenience shopping, NLP consider that the proportional impact on food stores in Colchester ranges from -2.6 to -11.2%, with an impact of -7.4% in the town centre. Convenience shopping forms a relatively small part of the proposal which is expected to be provided within a single standalone store or as part of an anchor retail tenant. NLP note that Barton Willmore's convenience goods impact analysis includes two proposed Tesco stores that are not now expected to be implemented, which results in an over-estimate of cumulative impact, but NLP conclude that it is in any case appropriate to assume a higher level of impact. (para 2.70 point 2)

48. The applicants proposed a suggested condition, if felt necessary, to limit the net convenience goods retail sales are of the development to 1,394 square metres (BW Supplementary Retail and Leisure Assessment, June 2015, para 2.7). NLP note that 'without a named food store operator there is a risk a food store occupier will not be found and there may be pressure for this space to be occupied by other types of retail uses. A condition would be necessary to ensure the food store is not converted back to comparison good sales' (NLP critique, para 2.36.) Such a condition, however, would not be in keeping with the current relaxation by the Government of restrictions on uses to stimulate growth and provide flexible floorspace, and an application to vary such a condition could prove difficult to resist if foodstore operators weren't interested in the space.

49. NLP conclude that no significant adverse impact is envisaged on the convenience goods sector that would warrant refusal of the convenience good element proposed within the scheme. (para 3.55) This in part reflects that the convenience part of the scheme and the convenience market overall is smaller than the comparison part of the scheme and the overall market. The projected convenience turnover is £16.44 million, with the Colchester convenience market in 2019 estimated at £395 million, while the projected comparison turnover of the scheme is estimated at

between £74.6 million (applicant) to £104.44 million (NLP fashion-led scheme) with the Colchester comparison market estimated at between £923.8 million (applicant) to £959.26 million (NLP) in 2019).

Comparison Shopping

50. The key issue accordingly is the impact of the comparison aspects of the Tollgate proposal on the Town Centre. The exact nature of the comparison impact is complicated by the lack of known end users and by the potential for other uses such as convenience (noted in the above paragraph) and leisure use to swap to comparison use in future. A further element of variability arising from the uncertainty over end users is the difficulty of accurately predicting the net to gross ratio. The applicants have adopted a net to gross ratio of 70%, but NLP suggest that a figure of 80% is more realistic for modern, regular shaped, larger units (para 2.40.)

51. The applicants adopted an average comparison good turnover density of £5000 per sq.m net. NLP, however, did not unconditionally accept that this figure was appropriate for the proposed development, particularly given that the 2013 Retail Study adopted an average sales density of £7000 psm at 2012 for all new comparison goods floorspace in Colchester, which was projected to increase thereafter taking into account growth in turnover efficiency (para 2.46 and 2.47)

52. In response to the Council and NLP's request for further information on the tenant mix, the applicant submitted supplementary information on a potential tenant target list. The information, however, did not provide a clear view on the likely end users of the scheme, given the wide range of potential bulky goods, non-bulky comparison goods, and discount retailer occupiers. The applicants have not suggested any conditions that are considered to be able to effectively control the nature of town centre users within the site. This means the scheme needs to be evaluated on its maximum impact, including assumptions of higher sales density.

53. NLP believes much higher figures should be tested because of the following factors:

- e. The lack of certainty regarding the likely trade/tenant mix and the flexible planning conditions proposed;
- f. The existing high comparison turnover density of Tollgate Retail Park;
and
- g. The scale of development and likely sub-regional attraction of existing and proposed facilities at Stanway. (para 2.56)

54. NLP accordingly adopted two potential scenarios assessing combined convenience and comparison impact to address these concerns. The first was a mixed scheme with a balance of bulky goods, fashion and other comparison goods retailers as suggested by a target list of potential occupiers submitted by the applicants. This scenario was considered to generate an average sales density of around £5,500 psm net in 2019, with a turnover of £82.06 million, compared with the applicant's estimate of £74.6 million. (para 2.57)

55. The second scenario tested included primarily fashion retailers and retailers who usually trade from town centres. This generated a higher turnover of £7,000 psm at 2019, which would provide a comparison turnover of £104.44 million (para 2.50.) If a fashion-led scheme at Tollgate was implemented along with commitments, then the comparison goods turnover of existing floorspace within Colchester town centre is estimated to decrease from £709.87 million to £612.36 million in 2019, which is a cumulative impact of -13.7% (Para 3.38.) Cumulative trade diversion will not be offset by projected population and expenditure growth between 2015 and 2019. As with the mixed scenario, the predicted level of trade diversion for the fashion-led scenario is not expected to lead to a significant number of shop closures, but the shop vacancy rate would be expected to remain around 10% and the centre would stagnate, with increased concerns over the impact on longer term planned investment in the town centre.

56. NLP conclude that under either scenario, the Tollgate development is expected to include good quality comparison goods retailers who will compete directly with Colchester town centre for higher order comparison shopping trips. The development will create a sub-regional comparison shopping and leisure destination that will inevitably compete directly with Colchester own centre (4.29). This means that the proposal would have an unacceptable impact on the Town Centre. Para 27 of the NPPF provides that if an application is likely to have a significant adverse impact on the Town Centre it should be refused.

Other Town Centre uses

57. NLP flag up that the impact assessment submitted by the applicant does not include the impact of food and beverage floorspace (para 2.64.) The proposed scheme provides for a high degree of flexibility for A3-A5 uses, ranging from a minimum of 950 sqm to 5,960 sqm if less A1 floorspace is occupied. NLP states that they 'cannot conclude a development with anything approaching 5,960 of Class A3 to A5 will have an acceptable impact on Colchester town centre'. (Para 2.68) This reflects the concern that a higher ratio of food/drink establishments would further Tollgate's move toward a centre replicating and competing with the Town Centre mix.

58. Additionally, the applicant's impact assessment does not include analysis of a potential cinema at Tollgate. This lack of analysis on A3-5 uses and leisure uses is an important concern in view of the ever-growing importance of food and drink and leisure activities in sustaining and supporting town centres. The Council is seeking to strengthen the leisure offer in the Town Centre through a variety of new activities and venues, including a new Curzon cinema within the St. Botolph's quarter. The Council is also seeking to develop the sport and leisure offer in the Northern Gateway, including a cinema. Appraisal of this scheme will entail a full assessment of its potential town centre impact and would only be expected to proceed on the basis of sufficient evidence on this issue. Determination of the Tollgate application at this stage would pre-empt decisions on overall growth of leisure uses that will be developed through the Local Plan process.

Trade Diversion

59. NLP concluded that while the expenditure deficit which could be created by the Tollgate Village development as projected in 2019 and 2021 would not be expected to

lead to a significant number of shop closures within the town centre, it would nevertheless have the following effects:

- h. Existing comparison goods facilities will not achieve a 2.5% per annum growth in turnover efficiency between 2015 and 2019 or 2015 and 2021. A growth rate of less than 0.8% could be achieved to 2019 and 1.8% in 2021.
- i. The £23.1 million of surplus expenditure over and above commitments expected for Colchester in 2019 (£47.94 in 2021) would be absorbed by Tollgate Village, leaving limited expenditure growth to support the re-occupation of vacant shop units in the town centre or further development investment by 2019/21. (Para 4.16 and 4.19)

60. NLP figures indicate that the Tollgate Village development would absorb projected surplus comparison goods expenditure up to 2023/2024, with an even greater impact if a fashion-led scheme is pursued. NLP accordingly concludes that 'these comparison goods expenditure projections indicate there is a significant risk that the Town Centre will stagnate for the next decade.' (Para 4.28)

Effects on Planned Investment

61. The applicant originally factored in Vineyard Gate as planned investment, but later work submitted in June 2015 states that Vineyard Gate cannot be classed as a viable scheme which could accordingly be affected by competition elsewhere (Supplementary Information para 3.26). While NLP do not consider that Vineyard Gate is an immediate competitor with the Tollgate proposal as it is unlikely to be completed before 2019/20, they do consider that it is critical to consider the potential impact of Tollgate on planned investment at Vineyard Gate.

62. Since the NLP work was carried out, the Council has taken further actions to increase the viability of the Vineyard Gate proposal. The Council has acquired additional land in the area, including the land previously controlled by Caddicks. This additional investment in the scheme is intended to help kick start delivery, however the scheme still remains vulnerable to competition from a non-town centre scheme such as Tollgate.

63. This view about the relationship between Tollgate and Vineyard Gate reflects guidance in the NPPF, which refers to impact on 'existing, committed and planned public and private sector investment' in para 26. Planning Practice Guidance provides more detail on this, stating that:

Where wider town centre developments or investments are in progress, it will also be appropriate to assess the impact of relevant applications on that investment. Key considerations will include:

-the policy status of the investment (i.e. whether it is outlined in the Development Plan);

-the progress made towards securing the investment (for example if contracts are established);

- the extent to which an application is likely to undermine planned developments or investments based on the effects on current/forecast turnovers, operator demand and investor confidence.

64. The Vineyard Gate development has been an important longstanding Council commitment, and is allocated for development in the adopted Local Plan (Core Strategy policy UR1 – Regeneration Areas, and Site Allocation policy TC1 – Appropriate Uses within the Town Centre and North Station Regeneration Area). It also appears as an allocation in the Preferred Options version of the new Local Plan (policy TC3).

65. The proposed development at Tollgate is, however, of a sufficiently large scale to pose a threat to investor confidence in Vineyard Gate, particularly given the speculative nature of the Tollgate scheme and potential competition for the same tenants. The Vineyard Gate development, accordingly, is seen to be at a point of maximum vulnerability to a similar nearby scheme and could be fundamentally compromised by a rival scheme which did not need to fund the additional investment required on a historically significant brownfield site.

66. In the Braintree case referenced above the Inspector and SoS agreed that there was a significant impact even though there was no specific planned or committed town centre investment directly at risk. This emphasises the importance of considering the impact on potential future investment and suggests that the issue is not when Vineyard Gate will be delivered but whether its delivery would be stopped in its tracks by competition from Tollgate.

67. Given the speculative nature of the scheme, it is difficult to accurately quantify the impact of the Tollgate scheme on the town centre, but if the fashion-led scheme is taken to be a worst-case scenario, then a 13.6% trade diversion could be expected to have a significant effect on town centre confidence. Importantly, the impact on planned investment in the Town Centre is not confined to the Vineyard Gate scheme. The consideration of impact also needs to include existing and planned investment. CBRE, under instruction from Fenwicks (owners of Williams & Griffin Department Store) and Sovereign Land (owners of Lion Walk), along with GL Hearn, under instruction from M&G Real Estate (owners of Culver Square) submitted representations on the application noting concerns about the effect of Tollgate on their existing and planned investment. All three major retailer interests have completed or are underway with improvements to their facilities. CBRE note that 'Fenwick's, Sovereign and M&G are particularly concerned at the assertion that the proposals will provide space for new retailers and those seeking additional premises. In truth, this could herald a departure from the town centre which will affect footfall, consumer confidence and will impact on future investment decision making, both in the assets held by key stakeholders and those wishing to invest in schemes such as Vineyard Gate.' The applicants have proposed various conditions to restrict floorspace and limit trades between use classes, but conditions would be unlikely to be sustainable over time if market forces dictated a switch to alternative uses. Conditioning of the proposal is accordingly not considered to be an effective way of limiting the potential impact on the town centre. NLP suggests there could be potential to limit town centre impact by imposition of a condition restricting the maximum amount of built Class A1 to A5 to not more than 24,122 sqm gross, of which the overall comparison goods sales floorspace should not exceed 14,920 sqm net, but note that these types of conditions

can be difficult to monitor and enforce, particularly across a large development within a number of separate units (para 2.38-2.41).

68. In addition to assessing the potential impact on the Town Centre, NLP have also carried out work on the potential impact of the proposal on the other Urban District Centres in Colchester – Highwoods, Peartree, Turner Rise and Greenstead. They did not find that the Tollgate Village development would undermine the vitality and viability of these centres, so the objection to the impact on the existing adopted Local Plan centres is confined to the Town Centre.

Safeguarding Employment Land – policy assessment

69. The Council's Employment Land Needs Assessment (ELNA) indicates that Colchester has a sufficient supply of employment land in quantitative terms to meet demand based on current trends to 2032. The study does however, go on to advise the Council to consider its employment land supply by reviewing its portfolio through the Local Plan process to develop a portfolio of sites that would support a pro-active strategy for attracting inward investment to the Borough by retaining a portfolio of good quality development opportunities that are most likely to prove attractive to prospective firms. The Council is now refining this portfolio for the submission version of the Plan and has commissioned further work to inform an employment land trajectory.

70. The Council's Local Plan development process is in accordance with the provision of para 20 and 22 of the NPPF which provides that local authorities should plan proactively to meet business development needs while avoiding the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Notwithstanding this process, Planning Policy accepts that in this instance the Inspector's decision in the Stane Park appeal means that the loss of employment land resulting from the application proposal should not be maintained as a reason of refusal due to the overall sufficiency of employment land in Stanway.

71. Sustainability- policy assessment

72. National and local policy guides new development to the most accessible and sustainable locations. This reflects the greater sustainability of town centre locations which can be accessed by a range of transport modes. Colchester's Town Centre provides a high concentration of town centre uses within a compact area that is walkable and easily accessible by public transport. With its 14,000 jobs and high density surrounding residential areas, the Town Centre has a critical mass of residents and workers who can take advantage of its facilities. While Tollgate is accessible by bus from the Town Centre, the availability of free parking, the lower surrounding residential densities and the lack of accessibility to all parts of Colchester mean that journeys to and from Tollgate are dominated by the private car. The proposals for Tollgate Village would reinforce this dominance by increasing the amount of large scale retail and leisure development, particularly if the development functions as a sub-regional attractor.

73. NLP conclude that the proposal is of a sub-regional scale that would inevitably compete with the Town Centre. The proposal would enlarge the existing District Centre to a disproportionate extent and would not be consistent with the Council's adopted spatial hierarchy. This hierarchy directs town centre uses to the Town Centre

and seeks to maintain the Town Centre's pre-eminence by strictly controlling further growth of Urban District Centres. Development of such a scale and significance as the Tollgate proposal would pre-empt decisions best made through the Local Plan on the scale, function and distribution of commercial activity in the Borough. Approval of a large development of town centre uses outside the approved spatial hierarchy would be contrary to Core Strategy Policy SD1 (Sustainable Development) which provides that growth will be located at the most accessible and sustainable locations in accordance with the Settlement Hierarchy.

74. In considering the three dimensions of sustainability, economic, social and environmental, the key concerns in this case are weighing up the advantages of employment creation and provision of more consumer choice over the dis-benefits of harm to the vitality of the Town Centre; conflict with the existing spatial hierarchy; the pre-empting of decisions on changes to the spatial hierarchy; the reinforcement of existing car-dominated travel patterns; and the loss of land safeguarded through the Local Plan for alternative B use employment uses.

75. Additionally, the overall appraisal of the scheme involves determination of the contribution the proposal would make to the overall quality of place in Colchester by virtue of its design, layout and functions. The design merits of the scheme would need to be considerable, given that a new large-format development cannot replicate the fine grain detail and mixture of historical periods and styles found in the town centre that give it its unique character and attractiveness.

76. In their Dec. 2015 response to the original planning policy comments, Barton Willmore asserts that Planning Policy has not assessed the benefits of the scheme in full. These comments take on board the potential for the scheme to provide employment and to provide consumer choice, but given the speculative nature of the scheme as noted above, there is an absence of concrete data on the specific benefits of the scheme.

Conclusion

77. While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with national and local policy as set out above. It is accordingly concluded that the proposal should be refused on the following four policy grounds:

a. **Harm to the development plan retail strategy**

The NLP work clearly establishes that the proposal would involve the creation of a sub-regional scale development that would not accord with the principle contained in adopted Core Strategy Policy SD1 that growth will be located at the most sustainable locations.

b. **Harm to the emerging development plan and in particular, the proposal is premature**

The proposal is considered to pre-empt significant decisions on the Borough's spatial hierarchy which should instead be reached through the Local Plan process.

c. **Harm to planned investment in the town centre**

This reflects the potential for the proposal to have a significant negative effect on the town centre due to the impact on planned investment.

d. **The proposal does not accord with paragraph 14 of the NPPF because the proposal is not considered to have benefits that outweigh the adverse impacts due to the three impacts identified above.**

While the proposal would deliver benefits in employment creation and provision of new facilities and services, the proposal would also conflict with numerous policies as set out above. The proposal does not accord with national policy and policies in the Local Plan afforded full weight and should therefore be refused. The Council does not consider that the presumption in favour of sustainable development described in the National Planning Policy Framework (paragraph 14) can be properly applied to the proposal given that the adverse impacts of doing so are considered to significantly and demonstrably outweigh the benefits.

8.2 **Transportation Policy Manager** comments thus:-

“The town centre is a highly accessible location and the town centre is accessible to all modes from all directions. In sustainable transport terms the town centre makes excellent sense for a number of reasons underpinned by the fact that the town centre is considerably more accessible than the Appeal site. The walking and cycling network across the area in and around the town centre is permeable e.g. through Castle Park, with either pedestrian only, pedestrian priority or lightly trafficked streets prevalent, e.g. through the Dutch Quarter and St Marys. The town centre can be reached by approximately six times more people via regular bus services with a journey time of 20 minutes or less. All the major bus services pass through and stop in the town centre. Access to the town centre from outlying communities is available by park and ride and rail into the town centre. Equivalent rail journeys are impossible to the site.”

- 8.3 **Contaminated Land Officer** having considered the submitted information recommends that in the event of planning permission being granted the standard investigation, remediation and validation conditions be attached
- 8.4 **Landscape Planning Officer** raises no objection subject to attachment of conditions requiring the further submission full landscape and earthworks details along with a landscape management plan in the event that planning permission is granted
- 8.5 **Highways England** recommends that conditions should be attached to any planning permission that may be granted (for full details please see appendix)
- 8.6 **Essex County Council** as local highway authority comments that the proposal is acceptable to them subject to agreed mitigation highway works being implemented prior to commencement

- 8.7 **Essex County Council Infrastructure Planning** requests that the developer makes a financial contribution of £557,200 towards the provision of 40 additional early years and childcare places likely to be generated by the creation of 1000 fte jobs.
- 8.8 **Essex County Council** as SuDS authority do not object subject to conditions
- 8.9 **Natural England** raises no objection and refers to standing advice
- 8.10 **Environment Agency** wishes to make no comment in relation to active landfills as the nearest site is 1km from the proposed development with the active area being almost 2km away. They point out that part of the site is within 250m of a currently closed permitted landfill site. [Any associated risk of landfill gas presence is a matter covered by the response from the Council's contaminated land officer].

9.0 Parish Council Response

- 9.1 **Stanway Parish Council** raises 'NO OBJECTION to this proposal, and strongly supports the application.'

10.0 Representations

- 10.1 CBRE on behalf of CBRE Global owners of Lion Walk Shopping Centre renew their objection on the grounds that the application is identical to that refused in 2015 and it fails to address any of the reasons for refusal
- 10.2 Colchester Retail Business Association (CORBA) renews its objection on the grounds that previous reasons for refusal remain valid as this is a duplicate proposal
- 10.3 GL Heart on behalf of M&G Real Estate (M&GRE) owners of the Culver Centre renew their objection. In doing so they re-examine the merits of the proposal and conclude:-

"We conclude that the proposal does not accord with local or national planning policy, particularly in terms of employment and retail policies and should be refused. Furthermore the alleged benefits of the proposal will not outweigh the harm.

The application does not accord with adopted planning policy and fails to satisfy the requirements of the NPPF in terms of its approach to assessing the impact of proposal upon the town centre. With proposals Vineyard Gate at a vulnerable stage the proposal could call into question the future viability of this allocated town centre opportunity and impact upon planned investment.

Adopted planning policy recognises that Colchester town centre should be the focus for retail development and new proposals in the urban district centres will not be supported unless they meet an identified local need and will not impact upon the town centre. The importance of protecting the retail focus in the town centre and balancing

priorities between land uses is well established in the development plan, with retail uses identified as the core use underpinning the town centre's viability and vitality

Strategic Employment Zones, within which Tollgate sits should be the focus for business development and allocated employment sites safeguarded. The applicants do not provide a compelling case as to why the application site is unlikely to be developed for employment use. The Council are currently considering a number of applications which similarly justify town centre uses in SEZ]. No consideration is given by the applicant to what the cumulative impact of these proposals might be on the supply of the Borough's SEZ.

Given the similarities between the refused and re-submitted proposals and in the absence of any further information to the contrary, we cannot conceive of a situation whereby the officer's report to members would not be making a similar recommendation, that of refusal."

10.4 CBRE on behalf of Fenwick's restate their objection

10.5 In response to the notification process (at the time of writing this report (11/11/16)) the Council had received:-

216 expressions of support for the Tollgate Village proposal; and,

17 expressions of objection

3 neutral expressions

10.6 The details can be summarised thus (figure in brackets represents frequency with which that view was expressed):-

Support for proposal

- general support (73)
- jobs benefits (35)
- Town Centre is run down, unattractive / I don't go there (34)
- will mean fewer visits to Chelmsford, Ipswich and/or Braintree (33)
- won't harm the town centre / it's a different offer/ its complementary (32)
- more shops, leisure infrastructure welcome in Stanway (29)
- investment in Colchester welcome (13)
- will increase visits to Colchester from outside (12)
- there is a conflict of interest at the Council prejudicing decision (9)
- Tollgate is easily accessible (9)
- If Cinema & development is acceptable on Council land at CNG then should be acceptable at Tollgate (8)
- Will increase consumer choice (7)
- No demand for 'employment' uses at Tollgate (4)
- CBC policy is out of date and unresponsive to change (4)
- Fenwick's should not be able to influence planning decisions (2)

- Office development would be out of character (2)
- Largescale development of this scale inappropriate in historic Town Centre (1)
- Give private sector a chance as public sector doesn't deliver (1)
- Town centre is not disabled friendly (1)
- Proposal will improve disabled access at Tollgate (1)
- Will make Tollgate a 'place' (1)
- Will reduce pollution in Town Centre (1)

Objection to proposal

- Traffic congestion (14)
- Harm to the Town Centre (6)
- Buildings out of scale (3)
- Tollgate is scruffy (1)
- No guarantee jobs will benefit locals (1)
- Feeds car dependency (1)
- Will increase pollution in Stanway (1)
- Stanway needs quality jobs not those on offer (1)

Neutral

- Ensure no traffic problems (2)
- Ensure good footways, cycleways seating and is disabled friendly if approved (2)

10.7 The full text of all of the representations received is available to view on the Council's website.

11.0 Parking Provision

11.1 Parking space numbers provided within the development are acceptable as they do not exceed the Adopted maximum.

12.0 Open Space Provisions

12.1 N/A

13.0 Air Quality

13.1 The site is outside of any Air Quality Management Area and will not generate significant impacts upon the zones.

14.0 Development Team and Planning Obligations

14.1 The Development Team agreed the broad heads of agreement that have framed the S106 offer made by the applicants. The Development Team rejected the request made by ECC Infrastructure for a contribution of more than £500,000 towards early years and childcare places on the basis that it was not considered reasonable. Colchester Borough Council may agree education contributions where new qualifying dwellings

are being created as such units increase the potential pressure on school places. If Tollgate Village were to be approved then employees who are resident in the Borough would expect school places to be available not because they work here but because they live here. Employees at the Tollgate Village development who live outside the Borough should not expect early years places to be available to them paid for by community gain.

detailed planning report assessing the merits of the proposal follows....

15.0 Report

Note: This report makes reference to short-term, medium-term and long-term impacts and/or benefits. Members are advised that in doing so the following time scales are attached to each:-

- *Short-term* *up to 5 years*
- *Medium-term* *beyond 5 and up to 10 years*
- *Long-term* *beyond 10 years*

- 15.1 As the current proposal is an identical duplicate of that refused earlier this year this report considers the material planning context some nine months later and discusses whether the previous recommendation remains valid and whether the reasons for refusal cited at that time also remain valid.

Reason 1: Conflict with site allocation as a Strategic Employment Zone

- 15.2 Included in the new material planning considerations that have arisen since February 2016 are:-

- The Stane Park appeal decisions
- The Council's resolution to grant planning permission on the site at Tollgate (Lakelands) known as NE2 from employment to residential
- Updating of the Local Plan evidence base in respect of employment land and retail demand (for the Local Plan period to 2033)

- 15.3 Also since the Committee last considered this proposal the following have occurred:-

(i) the public consultation phase on the Council's Preferred Options Document has closed and the responses have been analysed by the Local Plan Committee (7 November 2016) . Further reports to be considered by the Local Plan Committee in December 2016 and January 2017 will finalise the content of the Submission Document.

(ii) a reserved matters application (reference: 160623) for

“the erection of Use Class A3 restaurant units (10,400sq m), erection of Use Class C1 hotel (80 beds), provision of a landscaped piazza and associated landscaped areas, erection of an ancillary multi-storey car park and the provision of separate drop off/parking areas” in the Northern Gateway was received in March 2016. That merits of this reserved matters application are expected to be considered the Planning Committee at its meeting of 17 November 2016. This follows the grant of outline planning permission on 21 March 2006.

- (iii) a full application (reference 160825) for

“The erection of use class A3/A5 restaurant/hot food takeaway units (in the alternative), erection a use class C1 hotel, erection of use class D2 multiplex cinema, erection of use class D2 leisure units, erection of a use class A3/D2 restaurant/leisure uses (in the alternative), provision of a landscaped piazza that shall include associated landscaped areas, erection of an ancillary multi-storey car park, provision of separate drop-off/parking areas, the provision of cycle/pedestrian link to tower lane and associated works including the erection of substations and associated infrastructure apparatus” in the Northern Gateway was received in April 2016. That has yet to be determined.

15.4 Reference is made here to the Northern Gateway (NG) because the Stane Park Inspector chose to make reference to the current proposals on that site in his decision even though those proposals had not been determined and did not and do not comprise a predominantly retail proposal. (in fact the proposal at NG contains no retail). Land in the Northern gateway is also owned by Colchester Borough Council and it is important for transparency for this report as previously to recognise that fact.

15.5 Consideration here will focus on two main aspects of the employment situation:-

- The significant employment benefits of the proposal assessed against the types of jobs considered appropriate within the Local Plan in an Employment Zone and in other parts of the town along with relevant Framework guidance: and,
- The benefits of the proposal assessed against the quantum of employment land that will be lost and whether or not its loss, were planning permission to be granted, will prejudice the Council's ability to respond positively and supportively to future demand from businesses wishing to set up or expand in Colchester.

Types of Job

15.6 As previously the applicants predict that the proposal will create as many as 1000 unspecified jobs. The applicants have this number as full time equivalents and therefore the number of jobs if accurate would be higher as part-time jobs are likely to make up many of these jobs bearing in mind the sectors represented in the proposal.

15.7 It is difficult, this being an outline planning application, to say confidently that the predicted level of jobs is realistic, to define over what period these will be delivered, and to state how many of these represent new jobs to Colchester rather than jobs migrating from sites elsewhere in the Borough. That said it is clear that a mixed retail and leisure scheme of this magnitude must generate significant job opportunities both in terms of short-term construction and related jobs and subsequent P/T & F/T employment within the finished development. The Council believes that 550 F/T jobs is likely to be an more accurate estimate of jobs arising from a development of this size and nature

15.8 As you might expect the ELNA 2015 takes a look at the nature and composition of the employment make-up of the Town (based on 2014 data). It describes the following:-

“

- 2.7 Overall the proportion of B class jobs in the Borough has remained relatively stable over recent years, representing between 36% and 41% of all jobs in Colchester. (in 2014 office jobs accounted for significantly more of the B-use jobs than manufacturing jobs to the tune of 1.8 to 1)
- “2.8 In employment terms, the largest sector in Colchester in 2014 was healthcare (13.0%), while the education (11.5%), retail (11.5%) and professional services (11.0%) sectors also accounted for a high proportion of workforce jobs. The professional services, manufacturing and transport industries in Colchester are under-represented compared with regional and national proportions.”
- 2.10 . Workforce job growth has historically lagged behind working age population growth in Colchester, a trend which is in contrast with nearly all other local authorities within the sub-region. This is likely to be driven by significant levels of new residential development in the Borough (and in Colchester town specifically) in recent years, which has outpaced net employment growth.
- 2.12 ...between 2001 and 2012, 98.4% of the increase in all employees in the Borough was accounted for by part-time jobs..... “
- 2.14 This [lower productivity than some sub-regional competitors] could reflect the concentration of lower value retail, leisure and hospitality employment within Colchester and indicates scope to enhance the Borough’s productivity levels and output, particularly if more of Colchester’s highly skilled residents can be encouraged to work in the Borough.
- 2.38 Colchester is a net exporter of labour. With an outflow of around 1830 workers, equivalent to around 3% of all workplace jobs within the Borough.

15.9 The picture that is created is one where the proposed service sector jobs that would be provided by the Tollgate Village proposal were it to be approved are representative of those currently found in significant numbers in the town. Furthermore part-time jobs have fuelled Colchester’s job growth in recent years. Again the Tollgate Village proposals are likely to generate a significant proportion of part-time jobs directly as a result of the nature of the proposed uses. Part-time working tends to suit local people who can fit their working lives around other commitments. B use type jobs have remained a remarkably steady percentage of the job composition of the town with office working replacing manufacturing in importance. The high numbers of part-time jobs now in the local economy may explain why average wage levels are relatively low in the town compared to most Essex competitors. To some extent this justifies the Council’s stance in trying to encourage full-time skilled employment to boost the strength of the local economy and to retain more money within the local economy. On the other hand the Council’s adherence to DP5 type jobs in employment zones could be ignoring strong market forces. In other words is the town in danger of losing jobs potentially on offer now in the hope of something better later without any certainty that they will come.

15.10 The type of jobs being encouraged by the Council in Employment Zones through its planning policies is defined within the Council's Adopted Development Policies (2010) – Policy DP5 “Appropriate Employment Uses and Protection of Employment Land and Existing Businesses”

“Appropriate employment uses within the designated employment zones will include:

- (a) business (B1), general industrial (B2), storage and distribution (B8);
- (b) Display, repair and sale of vehicles and vehicle parts, including cars, boats and caravans;
- (c) Indoor sports uses, exhibition centres and conference centres;
- (d) A limited element of retailing where this is ancillary to another main use under (a);
- (e) Serves specifically provided for the benefit of business based on, or workers employed within, the Employment Zone; and
- (f) Other employment generating uses such as those related to recreation and tourism, which meet local needs and/or promote rural enterprise

15.11 In the context of DP5 the retail jobs included in the Tollgate Village proposal are contrary to current adopted policy DP5. However those related to indoor sports uses recreation and tourism may well comply. Other employment generating uses may also be acceptable where these meet local needs and/or promote tourism. In terms of meeting local needs the policy is not clear whether that means exclusively, primarily or incidentally. A sub-regional attraction may ‘meet’ local needs but its catchment will be far wider. In such circumstances it is held that such an attraction would be contrary to DP5.

15.12 However this report must raise a note of caution in respect of DP5 as the Inspector in upholding the Stane Park appeals stated that DP5 cannot be given full weight [as previously described in paragraph 7.7 of this report].

15.13 The Inspector had significant regard to and gave significant weight to the new jobs that would be created by the Stane Park proposals (even though they did not all conform to DP5 - being service based rather than traditional B1 based). He stated:-

“ 37. The proposed development would result in a number of benefits that weigh in favour of the proposals. The six prospective occupiers have signed up to the development and so the likely employment opportunities are known. The units would provide 115 full-time and 125 part-time jobs. Those operators who have already got a presence in the town centre have indicated that the new units would be in addition to, and not in place of, existing outlets. The provision of a significant number of jobs is in accordance with the development plan employment objectives. Due to the likely evening operation of all the units, the probability is that many of the jobs would be taken by local residents. The length of the leases (5 units at 15-25 years; one unit at 150 years) is much better than is normal for say, class B uses, where 5 year terms are more usual.”

15.14 In concluding as he did the Inspector clearly gave greater weight than the Council [when it refused the applications on grounds that included the development being contrary to DP5] to securing 'jobs' rather than particular types of jobs.

15.15 Whilst there are important differences in circumstance between the Stane Park proposals and the Tollgate Village proposal including:-

- Tollgate Village being an outline proposal where as Stane Park was full;
- The applicants for Tollgate Village have not indicated they have tenants ready to sign leases (Agreement to Lease) subject to planning. Indeed they have given no indication of there being any interested named party;
- Actual job numbers are therefore not known in the case of Tollgate Village;
- The mix of uses within the Tollgate Village proposal is different to that within the Stane Park proposals in that Tollgate Village is less likely to have 100% of units opening in the evening - although in terms of overall floorspace open in the evening Tollgate Village if approved and implemented would be likely to exceed that of Stane Park which was itself a much smaller development.

it is clear that with the reduced weight that must now be given to the current policy DP5 it cannot in itself now trump the NPPF in terms of the Government's objective of encouraging new job opportunities in their generality.

“ 1. Building a strong, competitive economy

18. The Government is committed to securing economic growth in order to create jobs and prosperity, building on the country's inherent strengths, and to meeting the twin challenges of global competition and of a low carbon future.

19. The Government is committed to ensuring that the planning system does everything it can to support sustainable economic growth. Planning should operate to encourage and not act as an impediment to sustainable growth. Therefore significant weight should be placed on the need to support economic growth through the planning system.”

Availability of employment land

15.16 When previously considering the merits of the Tollgate Village proposal in February the Council considered that amount of high quality employment land that would be lost were the Tollgate Village proposal to be approved would prejudice its long-term employment strategy.

15.17 In considering this issue in relation to the Stane Park appeals the Inspector made comments on the overall value of employment land at Stanway and the strategic direction of the Council in allocating employment land that are relevant to the current consideration of the Tollgate Village proposal.

15.18 The relevant extracts from the Inspector's Stane Park decision are quoted below:-

- “17. The site [*Stane Park appeals*] forms part of a SEZ allocation in the development plan. It appears, and the Council’s witnesses concurred, that Stane park was allocated for employment use based upon the resolution to grant planning permission for the land to the north in 2006, even though that proposal was withdrawn.... They were not identified for employment use in the 2007 Atkins Report.....
18. In quantitative terms the Atkins requirement was for 30 ha to be provided between 2004 and 2021 while the supply was identified as 67.89 ha. CS Policy CE3 describes this supply as ample capacity to accommodate projected growth during the plan period. The Colchester Employment Land Needs Assessment (Nathaniel Lichfield and Partners 2015) (ELNA) is the basis for the emerging local plan to 2032. This identifies a requirement in the range of 22 to 29.8ha and a supply of almost 77ha.
19. The current position, as agreed at the Inquiry.....is that there are about 65ha of vacant employment land including SEZ and Local Employment Sites. The Council conceded that the appeal sites are not critical to this supply and that in accordance with DP DPD Policy DP5 it is possible to consider alternative uses favourably on such sites, provided certain criteria are all met. It was further agreed at the Inquiry that the take up of employment land, based upon the last 10 year’s economic cycle, is in the region of 1 ha per year. The agreed position, therefore, is that there is a 65 years’ supply which the Council agreed constituted very substantially more than sufficient land. Based upon the agreed figures, that seems a fair conclusion.
- 20 In qualitative terms, paragraphs 7.37 & 7.38 of ELNA make it clear that there is a more limited level of demand at Stanway SEZ compared to Colchester town centre and the Northern gateway Growth Area. It says that in both quantitative and qualitative terms the demand would appear insufficient to necessitate retaining the full quantum of employment land identified as available.
- 22 Realistically, the land is not going to come forward for B Class uses in the foreseeable future. [*“unless rental levels were to be very substantially higher than any rents achieved anywhere else in Colchester”*]
- 24 The sites are identified as falling within a SEZ in the development plan and A Class uses are not amongst the uses acceptable in such locations. The proposals are therefore contrary to the development plan. However, the cited Centres and Employment policies are, in the light of the FR, not in full compliance with the Framework. That acceptance is clear from various documents concerning the FR, and in particular pages 2 and 3 of the Draft Submission Document and the Summary of Responses. Nonetheless, the overall conflict with adopted policy carries weight against the proposals.”
- 15.19 This report now considers the impact on the Council’s employment strategy were the Tollgate Village proposal to be approved and the approximately 8ha of current employment zone land involved lost. In doing so we need to considered tis impact at two levels. The localised level and the borough-wide level.

- 15.20 Using the consistent take-up rates for employment land in Colchester accepted at the Stane Park Inquiry of 1ha per year the employment land involved in the Tollgate Village proposal equates to an 8-year supply. This crude calculation takes no account of relative quality and ease with which it may or may not come forward compared to other allocated employment zone land. However in the context of a current 65-year employment land supply which the Stane Park Inspector agreed was very substantially more than sufficient is relatively inconsequential. (the current Plan period being up to 2021 (5 years) and the emerging Local Plan period being up to 2033 (17 years). Indeed the ELNA 2015 identifies there being a need for between 22ha and 30ha of employment land during the period to 2033. At this rate and at current take-up rates that level represents more than a 17 year supply and if nothing changes in terms of economic conditions and the relative attractiveness of Colchester it is likely to represent twice as much as is likely to actually come forward.
- 15.21 At the Stane Park Inquiry the Council accepted that the primary focus for employment uses is the highest quality land at the Northern Gateway / North Colchester where there is already a significant concentration of B uses and that market demand for land for B uses at Stanway is low. (as expressed in rental levels achievable). The Council has historically intervened in the market to bring forward or facilitate commercial B use development on land it owns in order to drive employment policy in the face of limited enthusiasm to do so from the private sector. The latest example is the Amphora development (offices) at Sheepen Road and the BIC in North Colchester.
- 15.22 Even with the grant of the Stane Park appeals and the NE2 (Lakelands) change of use there will remain some 12 ha of employment zone land at Stanway. Again in crude terms and in itself this still represents a 12 year supply were Stanway the only area to come forward in the borough for new employment use development. (realistically this is highly unlikely to be the case).
- 15.23 Therefore in the local context the loss of this employment land is unlikely in itself to materially reduce the number of B use jobs being delivered in Stanway there being sufficient land available for such uses in the event of the market deciding to invest there.
- 15.24 In the context of the borough-wide position the loss of the employment land involved in the Tollgate Village proposal were it to be approved would not materially impact the Council's overall employment strategy.
- 15.25 Whilst most of the maths described above was true when the Committee last considered the Tollgate village proposal in February of this year the relevant reports presented the case and impacts in the context of an up to date local plan employment policies. The Stane Park Inspector has now clearly established that such policies as they are not fully consistent with the NPPF. Furthermore he clearly established that there is a substantial oversupply of B use employment land in Colchester and that most of the allocation will consequently not come forward at current take-up rates. (which are unlikely to change despite the Council's desire to ensure new jobs keep up with residential growth because market conditions in Colchester are not conducive to large-scale commercial B use development investors).

15.26 The Stane Park Inspector in his decision clearly implied in the case of Stane Park that the Council had rolled forward the allocation on the back of a development proposal that was eventually withdrawn even though the Council's consultants at the time did not recommend its inclusion. The fact that the Inspector saw the current employment land allocation as very substantially more than sufficient in itself implies that some allocations have been kept rolling forward from plan to plan in the hope that take-up picks up. Clearly within the overall employment land supply in the current Local Plan there are poor quality sites with significant obstacles to them coming forward.

15.27 The reason this is significant is because Government advice in paragraph 22 of the NPPF states:-

“Planning policies should avoid the long-term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Land allocations should be regularly reviewed. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses of land or buildings should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable local communities”

15.28 Previously officers addressed this point in the report of December 2015 thus:

“ Ruling out the Tollgate employment land at this stage is accordingly considered to ignore the latest developments in the area and to pre-empt the process of considering the wider spatial and phasing issues in a Borough-wide context. The rapid nature of change in the commercial property market and the need to retain flexibility and additional capacity. The Borough needs to ensure that the longer term employment options for the area are not limited by the premature removal of a site well placed to meet the need for B employment uses. Applying the test in the NPPF at paragraph 22, it is considered that there is reasonable prospect of the land being used for employment purposes, and it is therefore justifiable to continue to safeguard the land within the Strategic Employment Zone for B uses.”

15.29 In the light of the Stane Park decisions it is now considered that this position could not be sustained at appeal and that the Council has been over-cautious in allocating far more employment land than will reasonably be needed at historic take-up rates and that there is no prospect of all this coming forward. Indeed that is likely to be the case at Stanway in terms of all the land presently allocated. Whilst the employment land within the Tollgate Village proposal scores relatively highly (ELNA 2015) it is not the best. (not just in Colchester but also in Stanway).

Conclusion to “Conflict with site allocation as a Strategic Employment Zone” section of report.

15.30 The continued retention of the Tollgate Village SEZ land is no longer considered justifiable in the light of the fact that there is a substantial oversupply of employment land in the Borough to accommodate the expected level of job growth during the current plan period to 2017 and that of the emerging local plan to 2032.

In terms of the quality of employment land at Stanway the application site does not represent the highest quality land currently allocated – that accolade continues to rest with the remaining larger northern parcel of Stane Park that sits beyond the sites subject to the recent appeal decision for A3 – A5 uses. In view of the fact that rental levels achievable at Stanway were and are below what is required by the commercial development industry to bring such sites forward for such B uses in the foreseeable future (and with the associated infrastructure costs) and in view of the fact that the highest quality employment land is located within the Northern Gateway area of the Town where there are already high concentrations of B uses it is no longer considered that the proposed development can be reasonably resisted on the grounds of loss of employment land in itself. In addition whilst the types of jobs likely to be created through the Tollgate Village development are not all the full-time, high skilled, high paid jobs sought in employment zones they represent jobs in sectors that are clearly established as already playing an important role in providing jobs opportunities in the Town. On that basis and in the light of the Stane Park Inspector’s comments in this regard there is no longer considered to be justifiable grounds to resist the proposed development on the grounds in itself of it being contrary to DP5, particularly when this policy can no longer be given full weight.

- 15.31 When considering the impact of the proposed Tollgate Village development on employment land allocations in the context of new material planning considerations it is now considered that the application cannot reasonably be refused on the grounds of adverse impact on the supply of employment land and nor can the Council dismiss the prospect of between 550 and 1000 jobs (depending on whose figures ultimately prove the most accurate) on the basis on them being the ‘wrong’ type of job to comply with the Councils aims to encourage higher paid full-time employment opportunities having accepted that the Tollgate Village land cannot reasonably be protected for Employment Zone uses.
- 15.32 In reaching this conclusion in respect of the employment issues raised by this proposal officers are mindful that the Local Plan Committee is in the process of agreeing a new Local Plan. Any implications arising for that process from any decision to no longer resist the Tollgate Village development on strategic employment grounds (if this is indeed what Planning Committee Members agree after consideration of all material considerations) will be considered by the Local Plan Committee with advice from the Council’s Place Policy Team at the appropriate time.
- 15.33 The next question the Council must consider in determining the merits of this application is “What impact (positive and/or negative) will the proposed development have on the economic performance of the Town Centre as a sub-regional shopping centre”. Only then can Members begin to apply their own weighting to these core components of the proposal.
- 15.34 The report now turns to the second reason for refusal previously agreed earlier this year in respect of the identical duplicate application (150239) and what if any changed material planning considerations apply.

Reason 2: Conflict with retail hierarchy policy and Urban District Centre (UDC) policy

15.35 Included in the new material planning considerations that have arisen since February 2016 are:-

- The Stane Park appeal decisions;
- Updating of the Local Plan evidence base in respect of employment land and retail demand (for the Local Plan period to 2033);
- Preparation of the Council's case in respect of the Tollgate Village appeal and new advice received from its current retail consultant 'Cushman & Wakefield' working with it in terms of its Local Plan evidence base and reviewing retail impact work provided by Barton Willmore & NLP as part of that process.

Colchester Shopping Hierarchy:

15.36 Approximately one third of the application site lies within a currently designated Urban District Centre (it is already in retail use). The remainder of the application site sits outside of the designated UDC and is within land allocated as Strategic Employment Zone.

15.37 Three questions arise from the nature of the proposal in the context of the designated UDC. These are:-

- a) What is the significance of a UDC and what role is it expected to play within the established retail hierarchy of the town?
- b) What is the nature of existing retail uses at Tollgate and how do they conform?
- c) To what extent is the proposed development consistent with the role and function of a UDC?

15.38 These are now considered below:-

15.39 A hierarchy naturally means an ordering within which components are ranked according to relative status and function.

15.40 Identifying a retail hierarchy within a Core Strategy is a well-established and fundamental way for local planning authorities to describe the ordered functioning of retail places and activity within and beyond a town.

15.41 The Government remains committed to Council's having town centre strategies containing an appropriate hierarchy as is clearly evidenced by NPPG paragraph 003 reference ID: 2b-003-20140306 which states:-

Strategies should answer the following questions:

- *What is the appropriate and realistic role, function and hierarchy of town centres in the area over the plan period?*

Strategies should identify changes in the hierarchy of town centres, including where a town centre is in decline. In these cases, strategies should seek to manage decline positively to encourage economic activity and achieve an appropriate mix of uses commensurate with a realistic future for that town centre”

- 15.42 The Stane Park Inspector stated that Council Policies CE1, 2 & 3 cannot now be given full-weight because they were not considered and amended by the Local Plan Review.
- 15.43 Core Strategy ‘CE’ policies describe the Council’s Centres and Employment Policies, including its retail hierarchy in CE2 (a-c). As these cannot now be given full weight significant account needs to be taken of relevant NPPF policies as being the most up to date expression of policy.
- 15.44 Before this report considers these it is important to note that the Stane Park inspector did state that:-

“Policy SD1 (Sustainable Development Locations) of the CS identifies that growth will be located at the most accessible and sustainable locations. Five broad locations are identified in the policy, including the Stanway Growth Area. SA DPD Policy SA STA3 sets out the types of development considered appropriate in the Stanway Growth Area. It limits the amount of office development to that the subject of the 2006 planning application on the land to the north of the appeal sites [i.e.: Stane Park]. It also says that new town centre uses will not be permitted although a limited amount of retailing will be permitted where it is ancillary to another main employment use and may be permitted to meet identified local need and not compete with the town centre. I see no reason for not giving full weight to this policy as there is no conflict with the Framework.....”

- 15.45 He therefore accepted that full weight can however be given to the Council’s policy (SA STA 3) in its Adopted Development Policies Document that states:-

“...New town centre uses will not be permitted within the Stanway Growth Area. [Tollgate Village sits within the Stanway Growth Area] A limited amount of retailing will be permitted only where this is ancillary to another main employment use in Class B1b, B1c, B2 or B8. Small scale retail uses may also be permitted if they can be demonstrated to meet identified local needs and not compete with the town centre....”

- 15.46 In this sense he accepted it was legitimate for the Council to resist new retail growth comprising town centre uses catering for more than an identified local need on the Tollgate Village site.
- 15.47 Members are advised that the Council can be confident that the Adopted Development Plan cannot be said to be absent, silent or out of date in terms of its

overall spatial strategy (SD1 [CS 2008/2014]) and its Employment and Retail Uses In Stanway Growth Area policy (SA STA3 [SA 2010]).

15.48 That said and despite this because of the issue with the CE policies Members must consider the application in the context of Government advice within the NPPF on retailing.

15.49 The 'town centre-first approach' remains a Government planning priority even with the emphasis from 2008 around driving a national economic recovery through the promotion of sustainable growth. The Council strongly supports the town centre first approach as is clearly reflected in the shape and form of its current spatial strategy and in its emerging strategy.

15.50 NPPG para 001 states:-

"...Local planning authorities should assess and plan to meet the needs of main town centre uses in full, in broadly the same way as for their housing and economic needs, adopting a 'town centre first' approach and taking account of specific town centre policy. In doing so, local planning authorities need to be mindful of the different rates of development in town centres compared with out of centre...."

15.51 The Government's support for the 'town centre first' approach has most recently been expressed through:-

- The Digital High Street Report 2020: March 2015;
- The Great British High Street July 2016;
- Policy paper 2010 to 2015 Government Policy: High Streets and Town Centres May 2015;
- Ensuring the Vitality of Town Centres (NPPF).

15.52 A letter in the January 2015 issue of the DCLG's Planning Update Newsletter Steve Quartermain, Chief Planning Officer of the DCLG re-emphasised the importance of the Town Centre First Policy as set out in the NPPF and supported by the NPPG. In that letter he referred directly to the view of Ministers when he states:-

"Ministers wish to restate policy which makes clear that where an application fails to satisfy the sequential test or is likely to have significant adverse impact on the town centre as set out in the Framework, it should be refused. It is for local authorities to ensure that the sequential test and impact test have been properly applied, and that the "town centre first" approach has been followed. This does not mean that out-of-centre development is necessarily inappropriate"

15.53 The Council's retail hierarchy is considered to support the town centre first approach. The Council looks for support in this respect from paragraph 23 of the NPPF and in particular bullet point two which emphasizes that local planning authorities should 'define a network and hierarchy of centres that is resilient to anticipated future economic changes'. Some of that resilience arises from its position at the head of the hierarchy. It's what investors in the Town Centre reasonably expect. Certainty and consistency in the plan-led planning system underpin commercial investment.

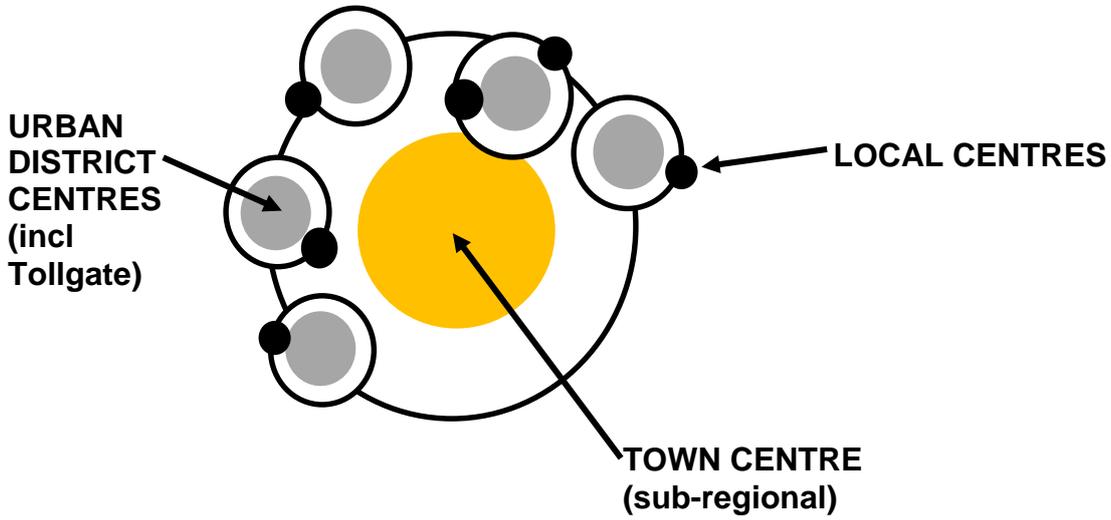


Figure 7: Diagrammatic representation of Colchester's Adopted retail hierarchy

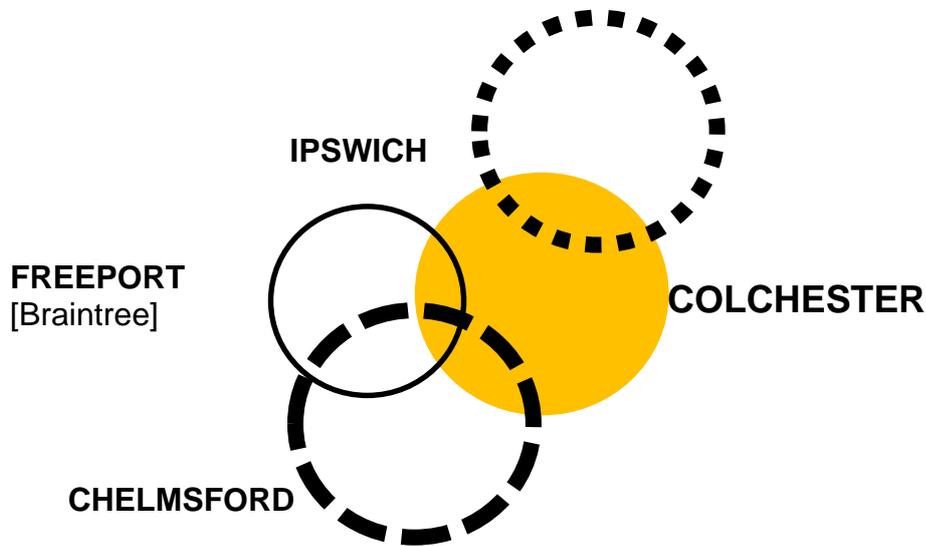


Figure 8: Diagrammatic representation of sub-regional centre competition

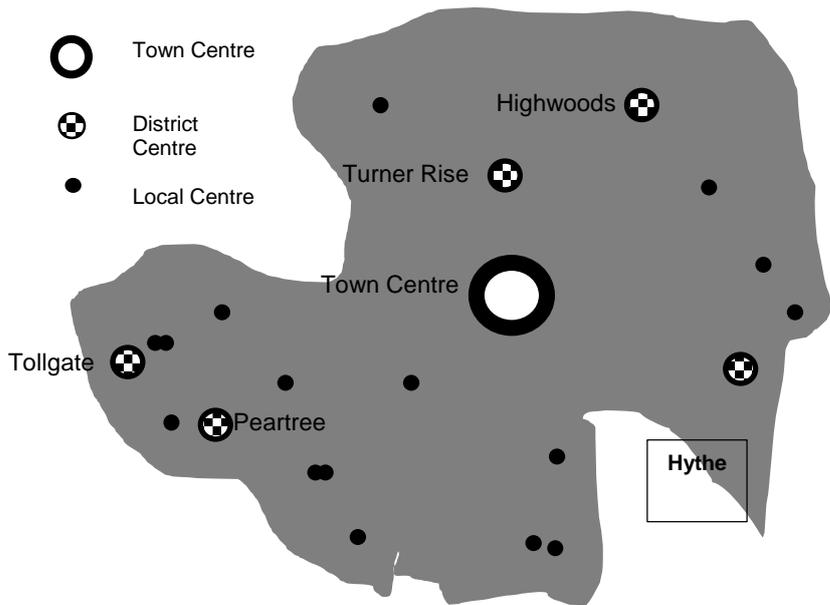


Figure 9: Spatial depiction of current Adopted retail hierarchy

15.54 When development at Tollgate was originally permitted in the 1980's it comprised a large Sainsbury's supermarket and an out-of-town retail warehouse park with permissions restricted to bulky goods - as was the norm. In previous Local Plans from the end of the last century the area was allocated as Retail Warehouse Park and reflected the then national trend to locate large bulky goods retail warehousing in 'out of town' locations in large purpose built sheds where the entire range of stock could be displayed and ordered and occasionally driven away by customers but principally delivered by the operator. In this context Tollgate had a life involving forms of retail before the designation as a formal UDC. This wasn't the case in respect of all UDC's.

15.55 All five of the borough UDC's are currently anchored by a large food superstore with varying degrees of other retail and non-retail uses.

- Highwoods: Tesco superstore and small shops
- Turner Rise: Asda superstore and large retail warehouse type units
- Peartree Road: Fiveways supermarket and larger shops (much in the form of historic warehouse retailing)
- Hythe: Tesco superstore
- Tollgate Sainsbury's superstore (outside the original designated UDC but now inside as a result of an associated site swap) and larger shops, (much in the form of historic warehouse retailing), A3 & A5 and non-retail

15.56 It is clear that the Tollgate UDC designation has developed from what was an out-of-town retail warehouse development as with those at Turner Rise and Blackberry Road (incl. DIY). In explaining the emergence of UDC's the Core Strategy (revised 2014) states:-

"There are a number of large format retail centres around the Town Centre and Colchester Town, including Tollgate and Turner Rise. These centres comprise large supermarkets, bulky goods retail, and large surface parking areas that could provide space for intensification. Expanding the retail components significantly could undermine the viability of the Town Centre, however it is important to increase the mix of uses and improve the provision of community facilities, office floorspace or housing, as well as enhancing the quality of the public realm and the townscape"

15.57 Policy CE2b UDC's makes the explicit statement that:-

"..New retail proposals (including change of use to retail) will not be supported unless they meet identified local needs and do not compete with the Town Centre"

15.58 Members are now aware the Stane Park Inspector cited CE2 as one of the Council CS Policies that now cannot be given full weight. He did however accept that the Stane Park proposals were "clearly contrary to the development plan". The current Tollgate Village proposal; (Tollgate Village 2) is similarly clearly contrary to the development plan.

15.59 Members must in considering the merits of the current retail-led proposal in the light of the Stane Park decision also have regard to the obvious main differences in nature between the two. These can be broadly summarized as follows:-

Tollgate Village	Stane Park appeal sites
Outline application	Full application
Principally retail-led but with elements of leisure and hospitality	Entirely hospitality based
Speculative proposal	Tenants agreed for every unit at time of application
Retail-led scheme with some leisure/hospitality	Entirely hospitality

15.60 By the same token there are obvious similarities:-

Tollgate Village	Stane Park appeal sites
Departure from Local Plan	Departure from Local Plan
Predominantly car-based custom	Predominantly car-based custom
On the west side of Colchester	On the west side of Colchester
Jobs creation (Predicted potential jobs 500-1000)	Job creation (More certain job delivery 115 f/t & 125 p/t as a result of known tenants)
Has Town Centre retail, hierarchy (and employment) and sustainability issues at its core	Has Town Centre retail, hierarchy (and employment) and sustainability issues at its core

15.61 To help understand how uses such as Next and Argos within the Tollgate Centre were justified in the context of the above we need to examine the Planning Policy Services comments on those proposals to see what parallels, if any, exist between those cases and what is now being proposed.

15.62 Whilst CE2b 'District Centres' does not define what is meant by 'identified local needs' This could mean an objectively assessed need (i.e. evidence based arising from capacity and demand); it could be interpreted as that which fits within the appropriate category for a particular tier within the adopted hierarchy to meet local needs. In Colchester's case reference to what is appropriate in a UDC can be gauged by looking at what is appropriate within the tier immediately above and below a UDC:-

- CE2c Local Centres (below UDCs in the hierarchy)
Small scale local shops
- CE2 a – Town Centre (above UDCs in the hierarchy)

15.63 This tends to suggest that UDCs are not confined to small shops (as this would make them a local centre) and can include larger stores where these are catering for local demand but it also indicates that scale and size becomes important in that the types of retail activity appropriate within a UDC should not be those that you would expect to serve a wider than local catchment as these are only appropriate within the Town Centre, with its wider than local catchment and functionality.

15.64 It is interesting to note that in their summary justification the applicants describe one of the benefits of the proposal as:-

“The provision of a range of unit sizes for national, regional and local scaled facilities”

- 15.65 It is important to consider the appropriateness of the scale of development within its context in the retail hierarchy. The benefit is cited as “It will allow representation within the UDC of national, regional and local operators” rather it tellingly refers to scale in that the unit sizes will be such as to allow not local scale facilities but regional and national scale. Within the adopted retail hierarchy in Colchester it is considered that the appropriate location for such a development is at the apex and that is the Town Centre with sub-regional importance. The reference made in support of the application that the intention is to create a high order retail destination within/adjacent to an UDC as opposed to the town centre at the apex of the retail hierarchy.
- 15.66 Any assessment based against the desires of local people would fail to reflect the relevant statutory duties and at a basic level planning operates on the basis of a wider common good rather than parochial interests. (Otherwise there would no doubt be local demand for all kinds of facilities in hundreds or possibly even thousands of unsustainable locations). Members of the Committee will want to have regard to local opinions. Members invariably have to grapple with this within the context of a national planning system that remains ‘plan-led’ and constrained by reference to national planning policy and local policies in Adopted Development Plans.
- 15.67 Members will have noted the overwhelming number of responses from the public support the application whereas those opposing the development are from (or on behalf of) established Town Centre retailers/investors.
- 15.68 The responses recorded above and summarised in the consultation analysis section of this report provided earlier are consistent with the evidence gathering that informed the production of the Stanway Parish Plan in that shopping was identified as the most popular leisure pursuit amongst adults in Stanway and that an increase in the choice of shops was desirable. Indeed the Stanway Parish Plan refers to this in its recommendations but it is careful to put such demands in the context of not harming the Town Centre when it states:-

“Improve and expand shopping choice at the Tollgate Centre that does not conflict with Town Centre uses and introduce environmental improvements to enhance the overall shopping experience.”

b) Retail representation at Tollgate

- 15.69 Currently the following retailers operate from Tollgate

North of Tollgate West

B&M Bargains

Costa (north-west)

Curry’s/PC World (including Carphone warehouse)

Hughes Electrical

Staples

South of Tollgate West (Tollgate Centre)

AHF Furniture

Argos
Bensons for beds (Harveys upper floor)
Boots
Carpetright
Carpets 4 less
Costa
Dreams
Harveys
Iceland
McDonalds
Next
Next Home
ScS
Smyths Toys
Sports Direct
Wren Kitchens

Tollgate East

Homebase
Magnet

15.70 Many of these traders represent remnants of occupiers from the former out of town bulky goods/white goods days of the former retail warehouse park with some newer arrivals who do have high street representation in the town but are of a size that appears to be catering for local demand.

a) To what extent is the retail component of the Tollgate Village proposal in conformity with the current UDC status?

15.71 In this section of the report the current Adopted Local Plan context will be explored. This will then be followed by consideration of the proposal against the comments made by the Stane Park Inspector in respect to the fact that full weight cannot now be given to a number of the policies quoted herein and used in the reasons for refusal of the earlier Tollgate Village proposal. The report will then consider to what extent the Council can support or oppose the Tollgate Village development by reference to the context of the NPPF and the reduced weight now affordable to the Council's own 'Centres' policies

15.72 Tollgate Village is unquestionably a retail dominated proposal as evidenced by figure 2 in this report. In evaluating the type and scale of retail development proposed we are obliged to consider the extent to which the proposal can be said to be 'expanding' the UDC as policy CE2b states:-

"..Expansion of the UDC's will not be supported but within the centre will be supported where the quality of the public realm and built character is improved"

15.73 Policy CE2b explains what is meant by intensification when it states:-

“Development within the centres should deliver a more diverse range of uses, including community facilities, services, offices and housing. Development should be oriented towards pedestrians and present active frontages to the street.”

- 15.74 This intensification focusses on non-retail uses and are designed to make such centres a true local hub of community activity.
- 15.75 The defined UDC within the Adopted Proposals Map (see Figure 5 below) shows the extent of the Tollgate UDC in yellow.
- 15.76 The UDC designation does not extend to include the current Sainsbury’s superstore north of London Road since the site swap that resulted in the old Sainsbury’s site becoming employment zone. In this context the Council does not consider the allocation of the former Sainsbury’s site as employment zone is rolling forward of a type considered inappropriate by paragraph 22 of the NPPF.
- 15.77 As can be seen from Figure 3 earlier in this report the proposal does involve the de facto expansion of the UDC. On this basis it is contrary to CE2b which states that “Expansion of UDC’s will not be supported” Members will be aware that applications should be determined in accordance with the development plan unless material considerations indicate otherwise. (s.38(6) PI & Compulsory Purchase Act 2006).
- 15.78 The proposed expansion extends to an additional 3.62ha which represents a 27.5% increase in the footprint of the Adopted Tollgate UDC. This is material and in conflict with the provisions of the local plan.
- 15.79 Whilst expansion within the current UDC is ‘conditionally’ supported by adopted policy CE2b the significant increase in site footprint (scale) is not. Members may query the difference between permitting intensification within the current UDC boundary but not allowing expansion beyond, if - development within the existing boundary was very intensive (high density of floorspace) compared to a scenario whereby expansion within and outside was low density?
- 15.80 The important element is ‘intensification’ if expansion beyond established UDC boundaries was permitted then intensification would then be conditionally supported in the context of UDC policy. This would then potentially create an overall level of floorspace and subsequent attraction that would mean the area no longer functioned as a UDC. It would as a result effectively function higher up the established hierarchy. (Even with the safeguard in CE2b that new retail development will not be supported unless they meet identified local needs and do not compete with the Town Centre. As Members may have seen, once a building exists it can over time be difficult to ensure controls over use remain enforceable; either as a result of slow imperceptible changes in behaviour or through changes in secondary planning legislation).
- 15.81 It is the Council’s contention that the significant expansion of the UDC beyond its established designated boundaries would result in Tollgate detrimentally and harmfully competing with the Town Centre contrary to adopted planning policy and established retail hierarchy..
- 15.82 It is acknowledged that it has been difficult for the Council to resist incremental changes within the Tollgate UDC due to their lack of individual impact on the Town

Centre and demand for bulky goods floorspace receding due to changed shopping behaviour (e.g. on-line purchases).

- 15.83 Bulky goods trading at Tollgate has to some extent been replaced by a wider range of retail uses, including some that also have a town centre presence (i.e. Argos, Boots, Next, Sports Direct, Iceland). The Council has appreciated the societal trends driving the pressure on the Urban District Centres and has adopted a flexible, pragmatic approach to accepting a wider range of uses. It has, however, approached variation of condition applications by widening the range of permitted uses rather than by jettisoning scrutiny of uses within centres. The Council still wishes to scrutinise proposals to widen uses to ensure they avoid cumulative impact on the town centre and achieve compatibility with policy aims to diversify Urban District Centres and improve their public realm. Acceptance of a limited degree of change to more town centre uses should not, accordingly, be considered to constitute acceptance of a large proposal which would challenge the role of the town centre
- 15.84 It is important to note that if the proposal before Members is permitted then Tollgate would be 250% bigger than the next largest UDC (Turner Rise). Given the clear emphasis on comparison (clothing, furniture, fashion, electricals) retailing within the Tollgate Village proposal rather than convenience (groceries) as found in the majority of other UDC's there would be a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping.
- 15.85 Thinking about the next plan period, whilst little weight can currently be given to the Council's current Preferred Options Document it is important to reflect at the very least on where retail policy might be heading as it involves a number of important sites in the Town Centre and in North Colchester.
- 15.86 It is important for the integrity of the planning system and public confidence in it that consistency of approach is being applied and that application and interpretation of policy in different locations is justifiable
- 15.87 The suggested changes to the Stanway UDC to become two distinct Economic Areas (Zone 1 and Zone 2) have been highlighted earlier on this report. The suggested zoning does not preclude further retail activity but clearly emphasises that it should not compete with the town centre.
- 15.88 In terms of North Colchester the Preferred Options Document identifies three economic areas. Zones 1, 2 & 3 through its suggested Policy NC1 'North Colchester and Severalls Strategic Economic Area'.
- Zone 1 will be the focus for B class uses
Zone 2 will be for mixed uses but no retail will be permitted unless ancillary to another use
Zone 3 will be safeguarded for a range of sport and recreation uses within Class d
- 15.89 Currently (Adopted Development Plan) the areas forming Zones 1 & 2 are allocated as Strategic Employment Zone and open space. Members will recall that North

Colchester has the highest quality employment land in the Borough as identified in the 2015 ELNA.

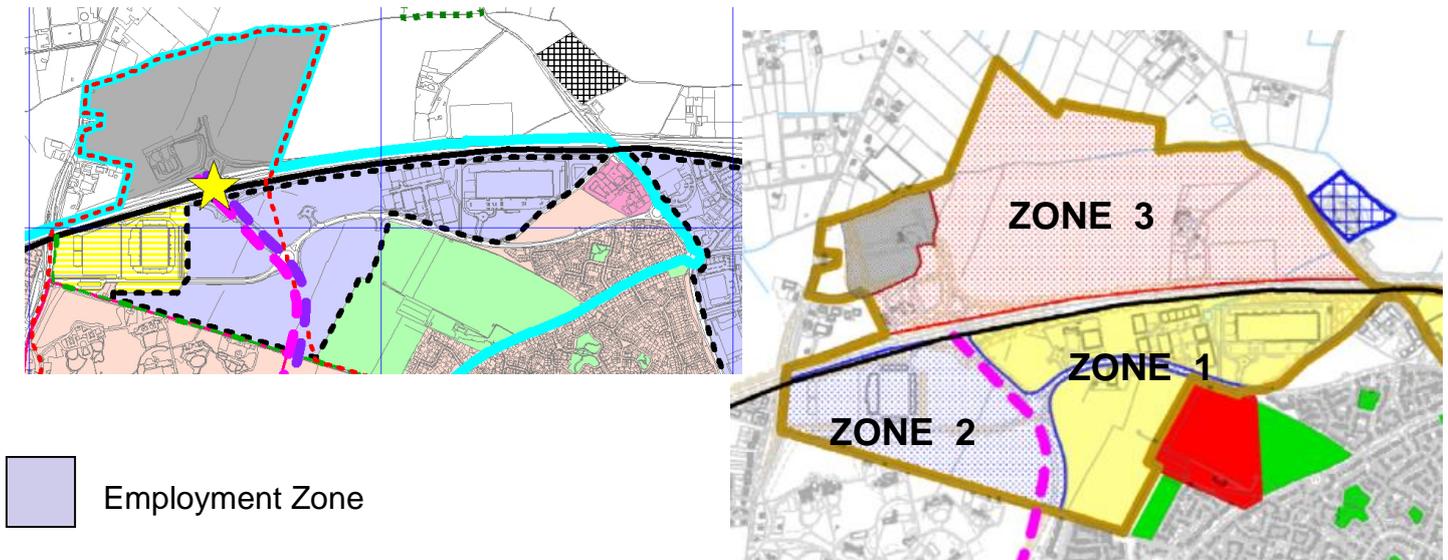


Figure 10A: Adopted allocations - North Colchester Figure 10B: Preferred Options

15.90 In terms of key town centre sites in the Council's ownership (Vineyard Gate area and St Botolph's) the Preferred Options Document suggests the following:-

“Paragraph 6.7
 The need for further development capacity within the Town Centre will largely be met by redevelopment of existing areas, given the land use, environmental and topographical constraints on further Town Centre expansion. The St Botolph's area to the east will continue to be a focus for new development in the Town Centre, with the Firstsite gallery, opened in 2011, serving as a catalyst for further culture and leisure related development. With permissions granted for an arthouse cinema, further development is programmed (but not approved) to include development of an 85-bed hotel, restaurant cluster; and student accommodation.”

15.91 The Preferred Options Document Policy TC1 within which St Botolph's sits makes it clear that “...The Council will encourage development in the Town centre which is focussed on retail (particularly comparison) and supporting leisure, culture and food/drink uses to enhance the Borough's role as a sub-regional shopping and leisure destination and important tourism destination “

15.92 In terms of Vineyard Gate paragraph 6.8 states:-

“6.8
 The need identified in the Council's retail evidence base for additional comparison retail capacity will be addressed by development of the Vineyard Gate site, beginning with the Vineyard Street car park area. Development there will also

include related leisure and food/drink uses to ensure the viability and vitality of the proposal. Medium to longer term need for town centre use floorspace will also be addressed by redevelopment of the St John's and Priory Walk developments, providing potential opportunities for redevelopment of existing buildings and car parks

- 15.93 Again Vineyard Gate sits within the area of the Town Centre identified by TC1 as a focus for retail activity and all that supports it.

The Sequential Test

- 15.94 Paragraph 24 of the NPPF states:

'Local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to 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. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale.'

- 15.95 Paragraph 27 of the NPPF confirms that, where an application fails the sequential test, it should be refused.
- 15.96 Tollgate UDC is considered a 'town centre' in NPPF terms and on this basis, the application site is partly in-centre and partly edge-of-centre for the purposes of applying the sequential test.
- 15.97 When considering the merits of the earlier (and identical) Tollgate Village proposal members were advised that the proposal was acceptable on sequential test grounds.
- 15.98 That position has now changed in the light of independent advice from Cushman & Wakefield (C&W), who have been commissioned by the Council to prepare a new and up-to-date retail evidence base to inform the new Local Plan and decisions on planning applications for retail and related development. This evidence base has not been published at the time of writing this report, although the emerging findings of significance to the consideration of the Tollgate Village application have been shared by C&W.
- 15.99 The emerging findings (which are informed by a new household interview survey of shopping patterns in Colchester's catchment area) demonstrate that Tollgate is already a sub-regional shopping destination, attracting substantial market shares of comparison goods expenditure from across the catchment area. Tollgate competes with Colchester Town Centre for such catchment area expenditure. The advice received from C&W confirms that the scale of the Tollgate Village proposal, in an established comparison goods shopping destination, is likely to significantly further

enhance the attractiveness of Tollgate to shoppers to the detriment of the Town Centre.

- 15.100 Whilst it is acknowledged that scale is not a policy test, the scale of development proposed is relevant having regard for the Borough's network and hierarchy of centres (which Policies SD1 and CE2a seek to protect with Colchester Town Centre at the apex). Scale is also directly relevant to the degree of harm caused by the development proposed on the Borough's existing centres (as considered in the sections below). This report has already discussed [the Council's adopted Town Centre and UDC policies], which seek to direct larger scale retail proposals to Colchester Town Centre. The Tollgate Village proposal clearly falls within this bracket, and C&W consider that it should be directed towards the Town Centre in accordance with the sequential approach. This would require flexibility in scale and format (as required by the NPPF). C&W's advice to the Council is that there is no commercial requirement for the proposal (noting that it is promoted by the applicant as three separate Development Zones) to be situated on the same site and in the precise arrangement envisaged by the entirely speculative, outline application.
- 15.101 On this basis, C&W have advised the Council that the application fails to demonstrate compliance with the sequential test set out in the NPPF.

Convenience shopping sales and impacts

- 15.102 The Place Service continues to advise that the proposed convenience shopping element of the Tollgate Village proposal will not have a significantly adverse impact on the convenience market in Colchester and as such this component of the project does not justify a refusal.

Comparison shopping sales and impacts

- 15.103 It is this component of the Tollgate Village proposal that needs to be carefully analysed because its likely impact on Colchester's comparison market is larger than that arising from the convenience component. It is important to reiterate here that the application is speculative; there are no confirmed occupiers and on this basis there is little certainty about what the comparison component will comprise and how it will trade (and therefore the degree to which it is likely to impact on existing floorspace in the Borough). Whichever scenario is used – the applicant's 'mixed' scheme or NLP's assumed fashion led scheme – the Tollgate Village proposal is expected to include good quality comparison goods retailers who will compete directly and effectively with Colchester Town Centre for higher order comparison shopping trips
- 15.104 Previously NLP advised the Council that the Tollgate Village comparison component is likely to represent between 8.1% and 10.89% of the overall Colchester Borough-wide comparison market in 2019. (generating comparison turnover of between £74.6m [applicant] and £104.44m [NLP with fashion led scheme] of a total market of £923.8m [applicant] or £959.26m [NLP] in 2019).
- 15.105 Given that the majority of the comparison goods retail impacts are likely to fall on Colchester Town Centre (while the impact test set out at paragraph 26 of the NPPF is specifically concerned with retail impacts on a town centre or centres), it is more

relevant to consider the effect of the Tollgate Village comparison component on Colchester Town Centre's comparison market. NLP's advice to the Council is that the Town Centre, as at 2015, generates comparison goods sales of £627.4m (slightly higher than the £605.5m estimated by the applicant); rising to £714.06m and £694.5m respectively excluding commitments by 2019. On this basis, it is estimated that the comparison goods retail impacts of Tollgate Village on existing Town Centre floorspace at 2019, excluding commitments, are likely to be between 11.3% [NLP with fashion led scheme] and 5.4% [applicant]. Taking commitments into account, cumulative retail impacts are estimated to be between 13.7% [NLP] and 12.6% [applicant]. It is important to note that NLP's advice to the Council is that the cumulative retail impacts should be considered, and their figure in particular.

15.106 NLP's advice to the Council goes on to conclude that the expenditure deficit likely to arise from the Tollgate Village development as estimated at 2019 would not be expected to lead to a significant number of shops closures within the Town Centre in the short term but the town centre offer would not be expected to grow having had most of its potential expenditure growth removed (para.3.61), it would consequently have the following effects:-

- The growth rate in Town Centre comparison goods would be limited to only 0.8% to 2019 and 1.8% in 2021
- The £23.1m of surplus expenditure over and above commitments expected for Colchester in 2019 (£47.94 in 2021) would be absorbed by Tollgate Village leaving limited expenditure growth to support the re-occupation of vacant shop units in the town centre or further development investment by 2021

15.107 NLP conclude from this analysis that:-

“These comparison goods expenditure projections indicate there is a significant risk that the town centre will stagnate for the next decade”

15.108 It is preferable that headroom growth in expenditure available in the catchment in the next 5-10 years is captured by Colchester town centre in order to maintain the primacy and range/choice available rather than diverting to other centres within or outside the Borough.

15.109 Since this advice from NLP, the Council has commissioned C&W (as mentioned above) to prepare a new and up-to-date retail evidence base to inform the new Local Plan and decisions on planning applications for retail and related development. Work on this evidence base is still ongoing. However, the emerging findings of significance to the consideration of the Tollgate Village application have been shared by C&W. These are outlined as follows:

“The purpose of this note is to advise Colchester Borough Council on the retail planning issues relating to the ‘duplicate’ second application (ref. 160868) for the proposed Tollgate Village development, in the light of the emerging findings of the new retail evidence base currently being prepared by Cushman & Wakefield. Whilst currently not finalised, it is at a sufficiently advanced stage to outline some important considerations in view of the second application being considered by the Council’s Planning Committee on 24 November 2016.”

We are familiar with the Reasons for Refusal relating to the first application (ref. 150239). However it is important, we consider, to highlight some issues concerning the impact of the proposal on town centre vitality and viability, in addition to the sequential test.

Impact test

Reason for Refusal 2 relating to the first application cites harm to the Borough's retail hierarchy and Urban District Centre (UDC) policies; and harm to planned investment in Colchester Town Centre, which concerns the first impact test set out under paragraph 26 of the National Planning Policy Framework (NPPF). We agree with this position, which is only strengthened through the new retail evidence base.

We further consider, in the light of the new retail evidence base, that the proposed Tollgate Village development gives rise to serious concerns as regards the second impact test set out under paragraph 26 of the NPPF, specifically 'the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre.' The principal reasons for our concerns can be summarised as follows:

- 1. The new retail evidence base includes a detailed 'healthcheck' assessment of Colchester Town Centre. Emerging findings confirm that the Town Centre is relatively healthy; however, our research and analysis has identified some weaknesses and potential threats. These threats are significant in the light of market conditions and the polarisation (and downsizing) of retailers to a smaller number of 'prime' locations. Pertinent in this respect is the ongoing decline of the Town Centre's status and performance, based on two sets of national retail rankings¹, because there are correlations between a centre's position in the retail rankings and its attractiveness to (and ability to retain) retailers and thus shoppers.*
- 2. A new and extensive household interview survey of shopping patterns in Colchester's catchment area has been commissioned for the purpose of the new retail evidence base. The results confirm that Tollgate is already a sub-regional shopping destination, attracting substantial market shares of comparison goods expenditure from across the catchment area; and it competes with Colchester Town Centre for such catchment area expenditure. The proposed Tollgate Village development is likely to significantly further enhance the attractiveness of Tollgate to shoppers and ensure it becomes an even greater competitor to the Town Centre. [The fact that the proposal is speculative, with no end occupiers identified by the applicant, is highly relevant in this respect.] To this end, we consider that Barton Willmore's (BW) retail impact assessment, as set out in their Retail & Leisure Assessment dated February 2015 submitted in support of the application, substantially under-estimates – at £74.6m – the likely comparison goods sales of the proposed development; and substantially under-estimates the likely retail impacts on Colchester Town Centre in particular.*
- 3. It is our view that both BW and Nathaniel Lichfield & Partners (NLP), in their advice to the Council dated 29 October 2015, have significantly over-estimated 'baseline' comparison goods sales in Colchester Town Centre (£605.5m and*

¹ CACI Retail Footprint report a decline from 51 to 59 in the rankings (2012-2015) and PMA report a decline from 35 to 48 (2005-2016).

£627.4m respectively in 2015)², where the principal retail impacts are likely to fall. Emerging findings from the new retail evidence base indicate that Colchester Town Centre is achieving comparison goods sales of £395.8m in 2016 (the sales in 2015 would be slightly lower taking into account negative 'growth' in population and expenditure). In effect, the BW / NLP analysis over-estimates – by more than 50% – comparison goods sales in the Town Centre and therefore seriously under-estimates the likely retail impacts of the proposal on it.

4. We would further highlight that NLP's advice to the Council suggests that the proposed Tollgate Village development would potentially cause Colchester Town Centre to 'stagnate and leave it vulnerable to further trade loss' and this, in our judgement, is sufficient to conclude that the proposal is likely to prevent sustainable economic growth in the Town Centre and have a significant adverse impact on its vitality and viability.

On this basis, we would advise the Council that the proposed Tollgate Village development fails the second impact test set out under paragraph 26 of the NPPF.

Sequential test

It is necessary to note that Tollgate UDC is recognised by the development plan – and the new retail evidence base – as a 'town centre' in NPPF terms and, on this basis, the proposal is considered part in-centre, part edge-of-centre for the purposes of applying the sequential test.

Whilst there is no scale (or need) test in the NPPF, the scale of development proposed at Tollgate Village is a very relevant consideration having regard for 'a network and hierarchy of centres' (as required under paragraph 23 of the NPPF) and the impact on existing centres, [while a hierarchy also has an important bearing on the sequential test]. The adopted Core Strategy, at Policy CE2b, does not support new retail proposals in UDCs unless they meet identified local needs and do not compete with the Town Centre; rather it encourages the diversification of non-retail uses. The emerging conclusions from the new retail evidence base would support such a strategy for Tollgate in the light of its established scale and attractiveness, and its potential to become an even greater competitor to the Town Centre if substantial new retail development is achieved there.

The same applies to substantial new leisure development, in our view, and in this context we have regard for the proposals at Northern Gateway. It is our understanding that a full application (ref. 160825) is due to be considered by the Council's Planning Committee on 1 December 2016. The full application proposes:

Erection of use class A3/A5 restaurant/hot food takeaway units (in the alternative), erection a use class C1 hotel, erection of use class D2 multiplex cinema, erection of use class D2 leisure units, erection of a use class A3/D2 restaurant/leisure uses (in the alternative), provision of a landscaped piazza that shall include associated landscaped.

² The similarity between the BW and NLP estimates is not entirely surprising given that BW derive their 'baseline' turnovers from the Retail and Town Centre Uses Study (2013) prepared by NLP.

The plain application of the sequential test would determine that Tollgate is a sequentially preferable location for such uses compared with Northern Gateway, which is out-of-centre in NPPF terms. However, the objective for a network and hierarchy of centres is an important consideration given the scale of development proposed at Northern Gateway which, if directed to Tollgate – thereby further increasing its scale and attractiveness – would likely cause significant harm to the Borough’s hierarchy and Colchester Town Centre in particular. We consider that the cumulative harm caused by directing the proposal to Tollgate would be greater than its delivery at Northern Gateway, where there are no established ‘sub-regional’ retail attractions.

We would make a further observation regarding the sequential test and the proposed Tollgate Village development in particular. BW’s Retail & Leisure Assessment promotes the development as ‘two constituent parts’ (i.e. Class A retail and Class D2 leisure), while the Parameter Plans dated March 2015 submitted in support of the application clearly define three separate Development Zones. In addition, we would note that the application has been submitted in outline form and is speculative with no identified end occupiers.

Taken as a whole we would accept that the proposed development cannot be accommodated in or on the edge of Colchester Town Centre, or any other existing centres, even with due flexibility in format and scale (as required by paragraph 24 of the NPPF). However it is our view that there is no commercial requirement for ‘the proposal’ to be situated on the same site and in the precise arrangement envisaged by the applicant. Accordingly, we consider that the site-search parameters adopted by BW and set out in their Retail & Leisure Assessment are flawed; they fail to demonstrate any real degree of flexibility on the part of the applicant. We therefore take the view that the sequential test set out in paragraph 24 of the NPPF has not be satisfied beyond doubt.

Conclusions

On the basis of the foregoing and the emerging findings of the new retail evidence base in particular, we consider that the Council should be minded to refuse the second application for the proposed Tollgate Village development on the grounds of (additional to Reason for Refusal 2 relating to the first application):

- A significant adverse impact on the vitality and viability of Colchester Town Centre; and*
- The failure to satisfy the sequential test.”*

15.110 The Place Service continues to believe that the proposal will create a sub-regional comparison shopping and leisure destination that will inevitably compete directly with Colchester’s principal centre. The conclusion therefore is that the proposal would have an unacceptable impact on the Town Centre and fail to accord with the Council’s adopted Centres and Employment Policies protecting the Town Centre.

15.111 **The conclusion that the proposal fails to meet the sequential test contradicts the advice previously offered to the Council by NLP but Cushman & Wakefield have had regard to the cumulative impact of the proposal as a whole on the Town Centre whereas this was not the case previously and C&W have had regard to recent appeal decisions which have identified that prospective developers of this type of proposal in this type of location must be ready to demonstrate some flexibility around their requirements. This is an important new dimension to the consideration of the merits of the proposal.**

Other Town Centre uses

15.112 As the applicants have not undertaken an impact test in respect of the leisure and hospitality components of their proposal it is difficult to advise on whether these elements would in themselves have a significant adverse impact on the Town Centre. To some extent the Stane Park appeal explored this issue in the context of A3-A5 uses and it is worth considering the Inspectors comments here as there are some obvious parallels.

15.113 The Stane Park Inspector noted that because the aggregate floorspace comprised in the Stane Park appeals was below the NPPF default figure of 2500 sq.m. applied and so no impact assessment was required.

15.114 That said the leisure and hospitality elements of the Tollgate Village proposal when combined with the significant retail element, in addition to the substantial existing and committed (i.e. Stane park) provision at Tollgate, will create a significant destination of a scale likely to threaten the Town Centre's sub-regional position in the hierarchy.

15.115 However in terms of the adaptability suggested by the applicants (depending on A1 shop demand/take-up) the between 950sq.m. and 5960sq.m. of new A3/A4/A5 (restaurant, drinking establishment or takeaway respectively) floorspace may have a harmful impact particularly when existing floorspace across Tollgate is aggregated. Given the speculative nature of the proposal there is a potentially powerful effect on consumer choice and the increased likelihood that the increased Tollgate offer would be in direct competition to the Town Centre and lead to a long term decline in the Town Centre's relative competitiveness.

Impact on investment in the Town Centre.

15.116 In considering this issue it is necessary, as required by paragraph 26 of the NPPF, to consider:

- Existing public and private investment
- Committed public and private investment
- Planned public and private investment

15.117 Members will not need any reminding that in late 2008 a recession impacted on Britain and the development industry, in particular, with the country only officially emerging from this investment crisis in mid-2014. This trauma percolated down from

the financial sector to all regions and sectors of the UK economy to varying extent, in including retail.

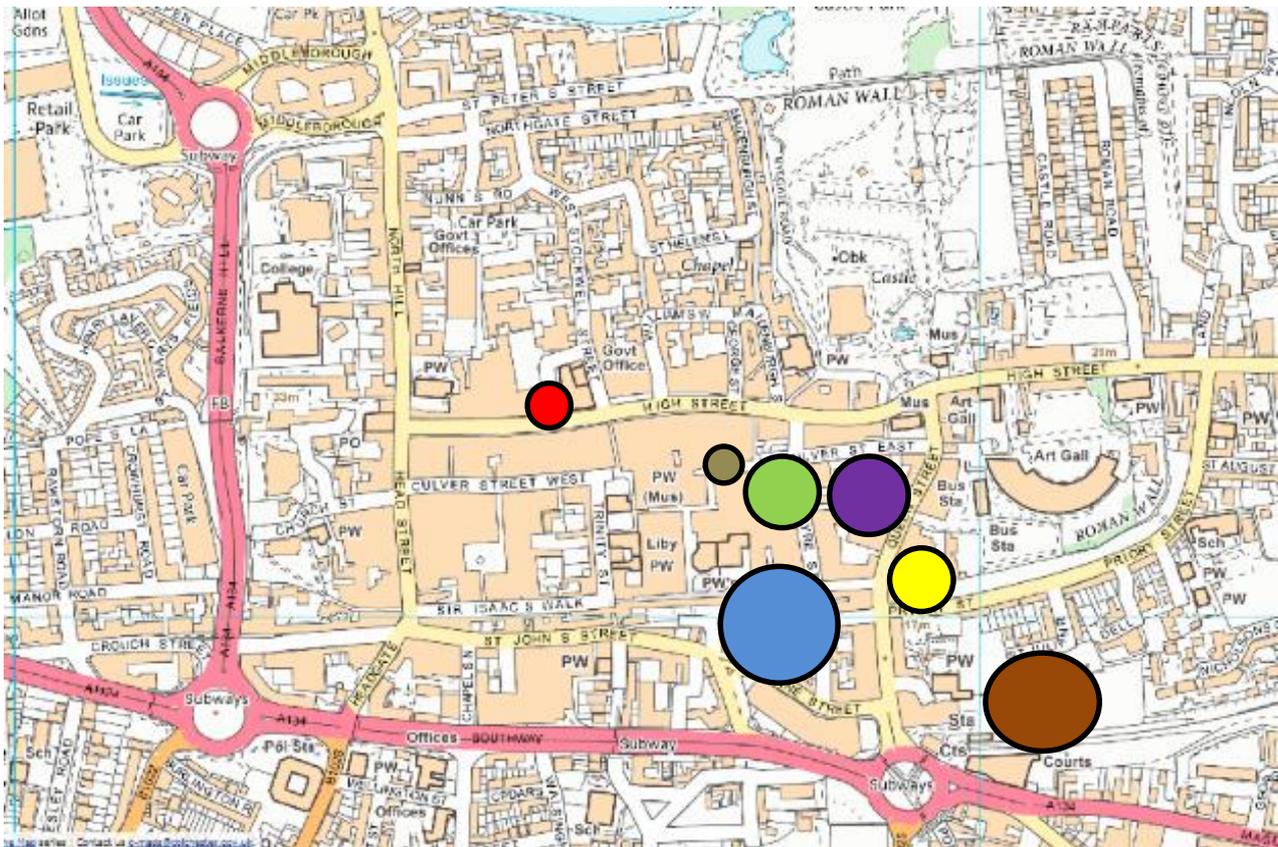
- 15.118 The national recovery is delicate although the trend has been one of significant improvement. Recent downturns in China and India may result in a new cycle of economic uncertainty. The Country will be grappling with Brexit and its economic implications (whatever they turn out to be) for a number of years to come and Members will have noted how quick world markets were to react to the result of the 2016 US presidential election and then recover. There remains nervousness across the world economy which in turn impacts the national and then the local economy.
- 15.119 The future shape of retailing in the UK remains uncertain with many former big players having fallen by the way-side as they have been slow to respond to changes in shopping formats and customer behaviour. Most recently the once unassailable high street giant Marks & Spencer has announced store closures and changes to its format in the wake of poor figures and falling competitiveness. This is very much representative of wider structural changes in the retail sector, with the trend of major retailers downsizing and focusing on an increasingly smaller number of 'prime' shopping locations creating particular problems for the UK's high streets.
- 15.120 This is mentioned because the Borough and Town Centre has managed to pull through the years' of austerity relatively intact, although emerging findings from the new retail evidence base would suggest that Colchester Town Centre's relative status and attractiveness has been falling steadily in recent years, compared to many and remains in the top 75 'retail locations' in the country. As evidence of the Town centre's vulnerable position Members are referred to the CACI rankings which show Colchester's position falling at least since 2007:-

YEAR	UK RANKING
2007	43
2008	44
2009	46
2010	43
2011	50
2012	52
2015	59

- 15.121 Notwithstanding this, in the last three years some retailers / retail development owners have shown sufficient confidence in the town to make multi-million pound investments in upgrading and expanding facilities. Examples here are Sovereign and their major re-vamp of Lion Walk /Red Lion Yard and more recently Fenwick's with their current £30m+ expansion of their High Street department store (Williams and Griffin) where work is underway. St Nicholas House has been and is being refurbished and the ground floor is back in use for retail purposes after sitting empty for some time. Angel Court has been completely refurbished and converted. The Council is working with new development partners to bring forward regeneration sites such as Vineyard Gate and St Botolph's for development. The Council is actively intervening to purchase additional properties within these regeneration areas to facilitate comprehensive

redevelopment. The public sector and Lottery has funded a multi-million refurbishment of Colchester Castle building and museum which was re-opened in 2014 and Essex County Council recently opened its £5.5m Park and Ride site in North Colchester to serve the Town Centre. Just recently, the Council's redevelopment of St Botolph's has re-ignited with the former Police Station's conversion into a Council-owned Creative and Digital Media Business Centre opening and Curzon Cinemas moving forward on their redevelopment plans for part of the former Keddies department store in Queen Street as a new 3-screen cinema with associated bar and restaurants. Building Partnership is working up its St Botolph's plans.

- 15.122 As mentioned above, the Council, in support of regeneration aspirations in the Town Centre the Council has recently invested in excess of £1,000,000 (£1m) in acquiring further properties in the Town Centre on Osborne Street. This represents significant new investment on the basis that the Town Centre will continue to sit at the head of the established retail hierarchy.
- 15.123 The Council is currently supporting investment in improving high speed broadband and wi-fi coverage across the Town with a focus on the Town Centre as encouraged by the Government to add to the attractiveness of its sub-regional centre and the offer it makes to businesses and visitors.
- 15.124 The train operating company and Essex County Council have recently invested more than £150,000 in the 'fixing the link initiative' which signposts the pedestrian links between the Town's main station and the Town Centre. The Council is poised to invest a further £100,000 in further linkage improvements bringing spend above ¼ million pounds.
- 15.125 The Council is about to implement its Passageway Enhancement Initiative to improve the quality of the public realm and legibility in the Town Centre.
- 15.126 The Mercury Theatre is currently planning significant investment in improving its facilities.
- 15.127 From just these few examples it can be seen that the list includes considerable existing, committed and planned investment within the Town Centre designed to ensure that the Town Centre continues to function as a major attractor supporting amongst other things a significant Regional (top five locations) and sub-regional (Haven Gateway) retail and leisure destination.



- Greytown House
 - Phase 3 Red Lion
 - Former Co-op
 - Priory Walk Culver St East
- Vineyard Gate
 - Queen Street
 - St Botolph's

Figure 11; Town Centre planned investment at risk from Tollgate Village

- 15.128 Tollgate Village will put this growing momentum and energy at risk by undermining confidence in the Town Centre as the Towns and sub-region's pre-eminent retail location.
- 15.129 The Council has received representations on behalf of town centre retailers opposing the planned Tollgate Village development. The concern generally being expressed is that the proposal will divert sufficient trade away from the Town Centre to result in a harmful reduction in total footfall and therefore spend and this will in turn adversely impact viability and vitality and will threaten to drive some businesses out of business (particularly the concern amongst small specialist independent traders). The Council's own retail consultants appear not to accept this as the likely outcome.
- 15.130 Greytown House in the High Street is awaiting conversion to residential development on the upper floors with a mix of A1 & A3 uses on the ground floor.
- 15.131 Members will recall that in the Corporate planning training for those councillors wishing to sit or "sub" on the Planning Committee that 'individual competition' is not a material planning objection to a proposed development. The Council cannot protect through the planning system one trader from another wishing to sell similar products on the grounds that this would expose the first trader to competition. Within this general constraint of the planning system, the market will decide if two traders selling similar products can viably survive. That said, the Council as Local Planning Authority can legitimately look to protect its retail hierarchy because this is what provides retail and development investors with certainty, stability and ensures that confidence is maintained. This is in the wider public interest – it is a "public good" - in order to maintain the vitality and attractiveness of the town centre for residents, visitors and investors.
- 15.132 The importance of confidence should not be underestimated or dismissed lightly. The Tollgate Partnership is a successful Colchester business, which is seeking to speculatively invest the not inconsiderable sum of £60m whilst the other town centre operators such as Fenwick's are investing some £30m on one store on the basis that the Council has a strict and established retail hierarchy that puts the Town Centre first.
- 15.133 Public comment on social media and in the press in recent months has been concerned with this Council's ownership of land also being promoted for commercial development purposes within the Town Centre and at the Northern Gateway. Members are required to concern themselves only with the application before them and it is clear that the Council's alleged financial interests must be excluded from any part of the consideration of this application.
- 15.134 It is important to address this issue directly because, as a responsible and accountable public authority, any issue or matter that undermines the integrity of the planning system will bring the Council into disrepute and will erode the public's confidence in the transparency and fairness of the decision-taking process.
- 15.135 The Full application for the Northern Gateway that includes a cinema contains no retail use/s. It is a leisure based proposal. That application will be considered on its individual merits

Conclusion to retail / town centre section of report

- 15.136 The Place Service continues to advise that the proposed convenience shopping element of the Tollgate Village proposal will not have a significantly adverse impact on the convenience market in Colchester and as such this component of the project does not justify a refusal.
- 15.137 The Place Service continues to believe that the proposal will create a sub-regional comparison shopping and leisure destination that will inevitably compete directly with Colchester's Town Centre
- Tollgate Village proposal will have a significant adverse impact on existing, planned and committed investment in Colchester Town Centre including Vineyard Gate, St Botolph's, Priory Walk.
- 15.138 It is considered that the proposal will have a significant adverse impact on the Town Centre as a result of triggering the prolonged stagnation of investment in the Town Centre for some 10 years during which time the Town Centre's competitiveness and status will be eroded by sub-regional competitors thereby undermining the status of the Town Centre as the Borough's most sustainable location
- 15.128 The proposal is considered to fail the sequential test when cumulative impact is taken into account and because the applicants have shown no flexibility in their spatial requirements compared to a town centre location. The proposal is therefore contrary to NPPF advice
- 15.139 These impacts will combine along with the high level of trade diversion away from the Town Centre to Tollgate to result in a significant adverse impact on the viability and vitality of the Town Centre contrary to the 'Town Centre First' Approach and contrary to the NPPF

Reason 3: Prematurity

- 15.140 The applicants have made strong representations that it is unreasonable for the Council to have refused the first Tollgate Village application (ref: 150239) on grounds of prematurity and contrary to NPPG advice and that it would be equally unreasonable and contrary to NPPG advice of the Council to refuse the current application for the same reasons.
- 15.141 Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:
- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making

process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and

b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.

- 15.142 Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.
- 15.143 Officers continue believe that the proposal falls well within the category of development identified as substantial with a significant cumulative effect which pre-determines decisions about the location and phasing of new development.
- 15.144 This report has already explained that the Council is rapidly progressing its Local Plan. Our Local Development Scheme timetable also accords with those of Braintree and Tendring Councils. Joint work is underway with the other Councils under the Duty to Co-operate and the Department of Communities and Local Government (DCLG) have awarded a grant of £640k to investigate the potential for new Garden Settlements in a number of locations, two of which are cross border sites. The nearest site being investigated for a Garden Settlement is at Marks Tey, less than 3 miles from the application site. Any decision taken on Tollgate could therefore impact on the future strategic planning not just in Colchester but also Braintree. One of the key principles in the Government document “Locally led Garden Cities” is that garden settlements are expected to have “strong local cultural, recreational and shopping facilities in walkable neighbourhoods.” If retail facilities are available in a sub-regional scale centre less than 3 miles away it is difficult to envisage shopping facilities within any future garden settlement at Marks Tey.
- 15.145 The wording in the NPPF set out above is key. Part (B) states ‘seldom’ will prematurity ‘be justified where a draft Local Plan has yet to be submitted for examination’. Helpfully the NPPG describes how a local planning authority will need to indicate how the grant of planning permission for the development will prejudice the outcome of the plan-making process. By implication this means that there are circumstances in which failure to meet circumstance (b) would not prejudice the use of prematurity as a reason for refusal.
- 15.146 Officers believe there are further exceptional circumstances in this instance that justify grounds of prematurity.
- The consideration of the merits of the application coincides with Local Plan policies to assess, amongst other things, how they should address the future strategic needs of the town (and sub-region) in terms of its retail hierarchy and associated land use allocations.

- In recommending in this report that the Council no longer opposes the Tollgate Village proposal on loss of strategic employment land grounds (for the reasons described earlier) new strategic issues are raised for the ongoing and well progressed local plan process. If one of the strategic local plan options facing the Council is to reduce the overall amount of allocated employment land and strategic employment land what is likely to be the most appropriate strategic option for the use of such land? Remember the Stane Park Inspector accepted that currently some 77 ha of employment land is allocated - this being some 47ha more than is now predicted as being necessary between 2017 and 2032 at current take-up rates. These are potentially large areas of land which could accommodate highly sustainable development and expand existing communities.
- Floorspace and location requirements are rapidly changing in the wake of the growth of internet shopping and click & collect; the challenge posed to existing once predominant national high street operators by nimbler competitors; and the increasing importance of food/drink and leisure uses in retail centres. The impact of these changes has been demonstrated by the big four convenience retailers curtailing expansion plans and cutting large numbers of planned large stores from their build programmes and most recently Marks & Spencer announcing a rationalisation in the number of its large stores across the country.
- The Council has accepted the need to accept changes within existing retail developments within the Borough, but the weight of current trends does not support a significant increase in new large format out-of-centre developments. To the contrary, it reinforces the need to support the historic Town Centre as the appropriate focus for the demonstrable trend for high quality environments that combine retail and leisure attractions.
- If there is strategic justification for further out-of-centre development it should be pursued through the evidence based Local Plan process, which could come to the conclusion that future retail expansion should be located in other parts of the town to support sustainable new residential communities.

Reason 4 : Sustainable development

- 15.147 As previously stated neither Essex County Council nor Highways England have raised an objection in principle to the proposed development on highway capacity or highway safety grounds, subject to mitigation works being implemented. That was also the case in respect of the Stane Park developments.
- 15.148 Whilst the Council may have its own doubts as to the likely actual impacts of such a large development and destination trip generator on the well reported congested local highway network it cannot sustain a highway objection itself if this is unsupported by the relevant highway authorities, which is not based on their own analysis of the traffic Assessment data submitted by the applicants.
- 15.149 The Stane Park Inspector also considered the issue of accessibility stating:-

“ CS Policy TA1, which carries full weight, says that future development will be focussed on highly accessible locations, such as centres, to reduce the need to travel. While the appeal sites are not in a centre it is acknowledged in the development plan that Stanway is a highly accessible location. The schemes would assist in the provision of sustainable modes of travel and there is a large and growing residential population in the vicinity. However, the scheme would be largely car dependent and so there would be conflict with this policy.” [paragraph 29 of the decision]

15.150 Earlier in his decision the Inspector accepted that the Stane Park proposal would in Framework terms be an out-of-centre site. Stating:-

“ The catchment area for the proposed scheme is not easily defined. Some customers to the new development would inevitably be drawn from trips linked to the Tollgate retail area, which is a defined Urban District Centre (UDC). Others, as evidenced by the many letters of support from nearby residents, would be drawn from housing in the vicinity of the appeal sites. There is currently a residential catchment of around 20,000 residents within 2.5km of the sites and this figure is set to grow” [paragraph 26 of the decision]

“Colchester Town centre is some 5km away. Three of the identified occupiers of the new units already have a presence in the Town centre. Due to a combination of the relatively small scale of the proposed development on the appeal sites and their distance from the town centre, I consider it highly unlikely that there would be any significant overlap in any catchment areas between the Town centre and Stanway...” [paragraph 27 of the decision]

15.151 Clearly in the case of the Tollgate Village proposal there will be a significant overlap of catchments. Presumably in making the comment he did the Inspector was by implication suggesting a significant overlap would be a problem

15.152 He went on to seemingly address the Council’s concerns that Stane Park is a less sustainable location than the Town Centre by stating:-

“It is not disputed that the site is in a highly accessible position. It is well served by public transport.. The schemes would enable the proposed bus link and pedestrian links to the adjoining Wyvern Farm housing to be provided. Its proximity to a large and growing residential population would enable pedestrian access. Nonetheless , the schemes provide for a total of 228 car parking spaces which is a clear indication that the operators anticipate a heavy reliance on the private car.” [paragraph 28 of the decision]

15.153 With more than 1500 spaces being provided with in the proposed Tollgate Village development, even though this is below the permissible maximum it must be true that the operators anticipate a heavy reliance on the private car. Indeed as the Tollgate Village development will be expected to attract customers from a sub-regional catchment area it is reasonable to assume these would be largely car based.

15.154 Stanway does not have its own railway station whereas the Town Centre does - it has St Botolph's Station. The Town Centre also has excellent access links to the Town's main Station – North Station.

Marks Tey Station	>	Tollgate	3367m
North Station	>	Tollgate	4527m

North Station	>	Town centre	1285m
St Botolph's Station	>	Town centre	519m

15.155 The Town Centre is served by a regular 12 minute interval bus service from a new Park & Ride facility delivered by Essex County Council in North Colchester using a new designated busway. Stanway lacks this access to sustainable transport.

15.156 In contrast to Stanway, The Town Centre has an extensive network of direct public transport links with outlying towns and villages around 360 degrees around it. It also provides two transport interchange hubs.

15.157 The Town Centre also offers myriad opportunities for linked trips across the broad spectrum of Town Centre attractions, activities and uses within any easily walkable radius. This synergy does not exist at Stanway.

Other Issues

Design

15.158 Owners and operators of out of town centres have realised that shopper habits, behaviours and expectations have changed dramatically since inception in the 1980's but they have inherited old layouts which are not highly adaptable. British Land with their Tollgate Centre and now the Tollgate Partnership are trying to create a new 'place' with a completely different ambiance that makes the shopping trip more pleasurable and encourages people to stay.

15.159 However, Tollgate and many other out of town venues struggle to reproduce the fine grain, charm, intimacy, human scale and the character that has evolved in town centres over centuries with a rich patina etched into every surface from the passing of time, the impact of human activity and the slow actions of change.

15.160 The Tollgate Partnership has responded to the need to create a sense of place in some of their more recent developments. Parking is now more visually subservient 'round the back' and no longer a dominant feature in the street scene. In working up preliminary concept sketch layouts with the Major Development Service, the Tollgate Partnership and their architects looked to develop the various components of the Tollgate Village proposal in a pedestrian friendly way whilst also lining the British Land development in a newly modified sector of Tollgate West. Buildings are of an appropriate scale in this location and the scheme takes advantage of the significant difference in levels between the old Sainsbury's site and the adjacent road levels. The illustrative drawings indicate that customers would be able to enter the main

anchor unit directly from London Road at current pavement level or from an entrance 3 storeys lower on the Tollgate West side of the building. Customers would be able to navigate through the building to enter or leave at different levels.

- 15.161 Undoubtedly the proposal improves some limited parts of the public realm in the form of new plaza's and open spaces and would provide landscape interest on a site that is currently largely devoid of such interest except on its periphery.



Figure 12: Tollgate West and the proposed central space

- 15.162 The buildings depicted in the supporting material are all contemporary in appearance. The multi -storey car park exploits changes in level.
- 15.163 Car parking would continue to make its presence felt visually in the landscape being created but would be less the dominant feature than currently.
- 15.164 Unfortunately Essex County Council as local highway authority in attempting to resolve highway issues has required the applicants at a late stage without consultation with the Major Development Service at Colchester to amend the road layout on Tollgate West to an extent that is incompatible with an Urban District Centre and contrary to the Stanway Vision Statement. Far from enhancing the sense of place and building a new pedestrian friendly ambiance it has made the barrier to movement formed by Tollgate West between the Tollgate Centre and the UDC on the north-side of Tollgate West and more of a physical and visual hurdle.
- 15.165 The extract below highlights just how dominant the road would be in the event of planning permission being granted.
- 15.166 Whilst the Council may not have objected to the general illustrative layout of the proposed development the latest highway amendments in respect of Tollgate West

completely undermine the pedestrian friendly character developed in those illustrative drawings. Whereas the Council had sought to enhance the pedestrian public realm in Tollgate West the latest highway proposals now introduce additional lanes (doubling them at the eastern end of the site) and create an in slip within that part of the site that was to form part of a shared pedestrian realm.

15.167 Members are reminded of the design principles espoused in the Stanway Vision Statement 2013 when it states:-

- Enhancing the sense of place for the local community in Stanway as well as for Colchester and the surrounding area.
- Prioritising the linkage of development plots to encourage pedestrian and cycle movement
- Provision of shared access for pedestrians and cyclists to surrounding residential neighbourhoods » Provision of routes following pedestrian desire lines to encourage easy movement between destinations
- Ensuring appropriate levels of access and parking for cyclists.
- Provision of high quality design, way marking and landscaping to promote usage of non-vehicular link
- Ensure easy access to the existing public transport network
- Creation of a bus hub for Stanway
- Easy pedestrian access to public transport from other residential and commercial areas

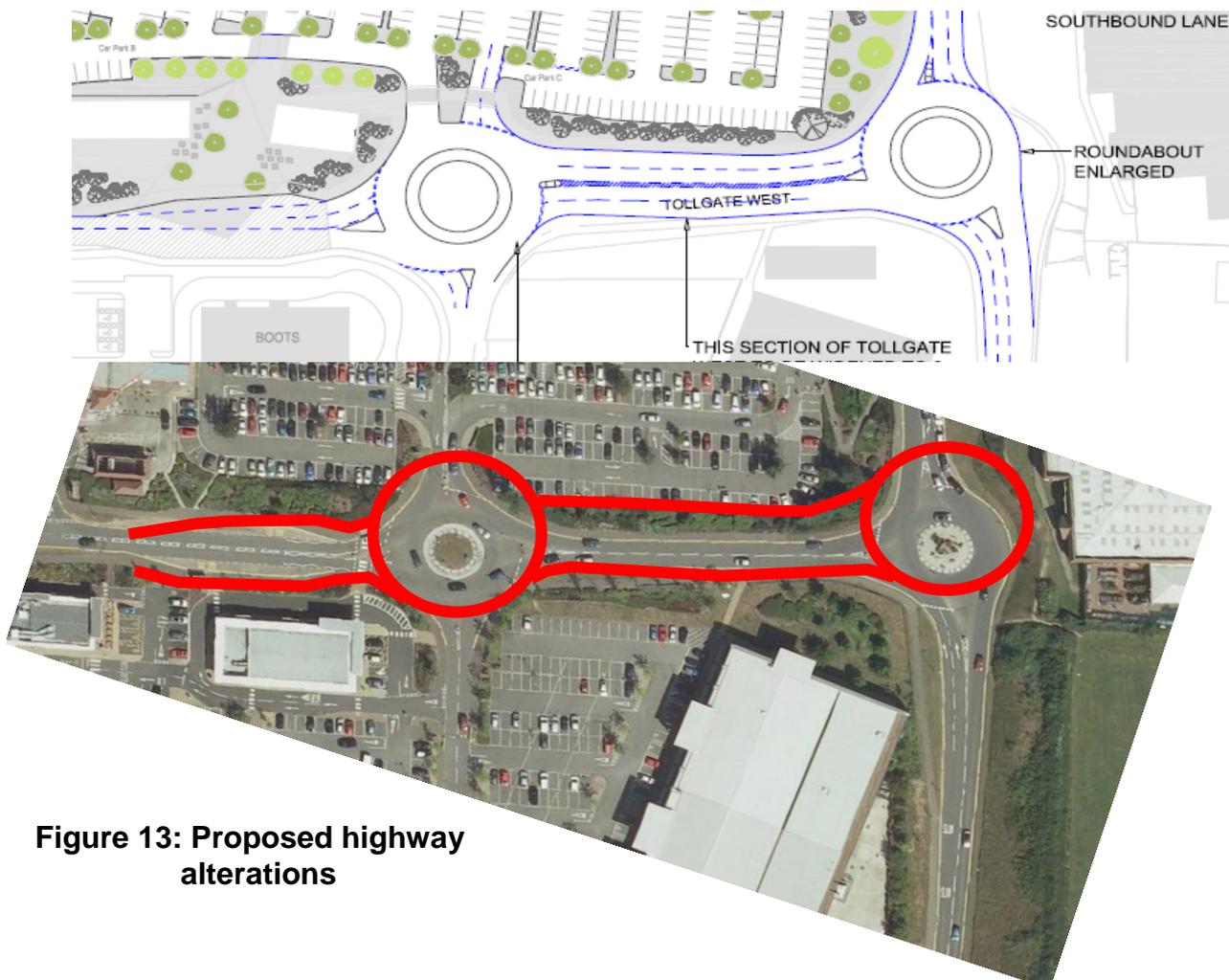


Figure 13: Proposed highway alterations

- 15.168 As with application 150239 the support of both ECC as local highway authority and Highways England as trunk road authority (subject to conditions/agreements) for the proposal on highway capacity and highway safety grounds means that a highway reason for refusal cannot be reasonably be sustained by the Council as local planning authority.

Parking

- 15.169 The proposal complies with the Council's adopted parking standards which are expressed as a maximum and ECC as local highway authority has not objected on highway grounds to the proposed levels of parking.

Drainage

- 15.170 From responses received from the relevant drainage bodies it would appear that the proposed development is not expected to have adverse impacts that cannot be appropriately and properly mitigated via reserved matters submissions. No ground/s for refusal exist in this regard.

Archaeology

- 15.171 The Council's Archaeological Officer is satisfied that the proposed development can proceed without harm to archaeological assets. No grounds exist for refusal in this regard.

15.172 Landscape

The Council's Landscape Officer is satisfied that the proposed development will not harm any landscape of significance and that the scheme can be adequately enhanced through the submission of landscape details in the event that planning permission is granted. No ground/s for refusal exist in this regard.

Contamination

- 15.173 The proposed development is not expected to pose impacts that cannot be adequately mitigated. No ground/s for refusal exist in this regard.

Ecology

- 15.174 The proposed development is not likely to adversely harm local ecology. No ground/s for refusal exist in this regard.

Heritage

- 15.175 Section 66(1) of the PI (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker to pay special regard to the desirability of preserving the setting of listed buildings. In this case, the site is remote from the listed cottage 'Foakes' on London Road which is itself now bounded on its eastern and southern sides by new development and so the proposal is unlikely to have any material or harmful impact on the character and setting of that building. It is therefore considered that this statutory test is satisfied. The historic setting of this building has already been

dramatically changed from its former rural context and the proposal would not exacerbate the existing position in your officers opinion.

- 15.176 Cherry Tree farmhouse a grade II listed building (now a restaurant and associated accommodation) on the north side of London Road is close to the northern edge of the Tollgate Village site. In developing the area to the south care will need to be taken especially with the proposed street level access to the anchor unit not to dominate the modest farmhouse with oversized new build. Cross sections suggest that with the significant level difference between the front and back of the development site that it should be possible to present modest height building form to London Road thereby protecting the setting of Cherry Tree farmhouse.

Amenity

- 15.177 The Council's environmental control service is satisfied that any likely harm to amenity (noise, lighting, odours can be controlled and mitigated through the application of suitable conditions and so there is no ground/s for refusal in this regard.

Air quality

- 15.178 The proposal is not expected to adversely impact designated Air Quality Management Areas (AQMA's) and so there is no ground/s for refusal in this regard.

conclusions follow.....

16.0 Conclusions

16.1 Whilst the outline proposal offers a number of benefits including:-

- the creation of a significant number of new jobs,
- widening consumer choice at Tollgate,
- enhancing the public realm in part at Tollgate; and,
- injecting significant investment into the Stanway local economy
- contributing to highway improvements in an area noted for regular traffic congestion

in the context of NPPF paragraph 14 these benefits are considered not to outweigh :-

The harm to:-

- development plan retail strategy and retail hierarchy
- the emerging development plan and the local plan process. The proposal is considered '*premature*'
- '*investment*' in the Town Centre The resultant prolonged period of stagnation will; have a serious adverse impact on the viability and vitality of the Town Centre
- The proposal fails the sequential test as prescribed in the NPPF and is therefore unacceptable and contrary to the Government's Town Centre First Approach
- The status of the Town Centre as the Borough's most sustainable location for this type of development through the very clear evidence that the use of Tollgate Village will be dominated by trips via the private car.

17.0 Risks

The Risks to the Council of Approving the Application

- 17.1 There are a number of risks to the Council should the Planning Committee be minded to approve the application. These include the following;
- Risks associated with undermining the existing adopted Local Plan Retail Hierarchy;
 - Risks to the production of the new local plan;
 - Concern about the ability to deliver the objectives of the Council's Strategic Plan.

The Council's Strategic Plan 2015 -2018 sets out the Council's "direction and potential for the Borough" It describes the ambitious range of goals that the Council will look to successfully deliver for the people of Colchester. It is not a planning document but some of the objectives therein are related to the planning process. It is divided into four main themes:-

Vibrant
Prosperous
Thriving
Welcoming

- 17.2 Of particular interest are the following elements of the Strategic Plan;

- [Vibrant] Enhance the diverse retail and leisure mix supporting independent businesses valued by residents and visitors
- [Prosperous] Promote Colchester to attract inward investment and additional businesses, providing greater and more diverse employment and tourism opportunities
- [Thriving] Promote Colchester's heritage and wide ranging tourism attractions to enhance our reputation as a destination
- [Welcoming] Make Colchester confident about its own abilities to compete with the best of the towns in the region to generate a sense of pride.

- 17.3 The Council's Adopted Local Plan documents set out the Council's planning policies but Members will note that the way in which the Council's Strategic Plan objectives get delivered may in part be through the planning process.

- 17.4 In considering these the Planning Committee can only have regard to the planning issues raised by the Tollgate Village proposal and cannot have any regard to the Council's position as land owner on any (or part of any) other site that may be affected by the Tollgate village proposal.

17.5 It is important to state this clearly as it would pose a significant risk to the Council if the Planning Committee were in any way to have regard to the Council's commercial/financial position as a land owner. These risks include:-

- Legal challenge on the basis that the decision was flawed as a result of the Committee having had regard to matters that should not have been taken into account (i.e. the wider financial interest of the Council)
- Loss of public confidence in the operation of the planning system in Colchester
- Tarnishing of the reputation and integrity of the Council
- Claims of impropriety and unfair bias

17.6 The Council's Planning Procedures Code of Practice sets out the framework within which planning decisions at Colchester will be taken and suggests how risks can be minimised:-

Introduction: paragraph (iv) states

“Councillors have a special duty to their constituents, but their first duty is to the whole community of the Borough of Colchester. They must vote in the interests of the whole Borough where planning matters are concerned. Councillors, like Officers, should have regard to the law, statutory duties, national policy, the Development Plan and all other relevant material planning considerations (The Development Plan incorporates the adopted Colchester Borough Core Strategy, Development Policies, and Site Allocations).”

17.7 Section1: paragraph (2) states:-

“The planning system exists to consider development proposals in the light of the wider public interest. Councillors must take into account the interests of the whole of the Borough of Colchester and act in a way which is fair and is clearly seen to be so. There is also a presumption in favour of sustainable development, and encouragement for Local Planning Authorities to take a positive approach towards planning decision making.

17.8 The Code of Conduct makes it clear that whilst parochial considerations are important these should be secondary to an overall duty to consider the interest of the Borough as a whole. This is the basic tenet of the English Planning system and the role of planning committees.

17.9 The reference in the Code of Conduct to the need to have regard to the Development Plan is fully in line with the National Planning Policy Framework which members will recall from planning training usefully describes the significance of an up to date Local Plan and its role in guiding decisions:-

17.10 It states in paragraph 007 of “How must decisions on applications for planning permission be made?” that:-

“To the extent that development plan policies are material to an application for planning permission the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise”.

- 17.11 The NPPF stresses importance of a plan-led system. Where proposals accord they should be approved without delay.
- “ Where a development plan is absent, silent or the relevant policies are out of date the NPPF requires the application to be determined in accordance with the presumption in favour of sustainable development”
- 17.12 Members’ attention is drawn to the Government’s reference to planning being ‘plan-led’ because the English planning system is based on local planning authorities setting out their planning policies which then direct development. This provides the development industry, prospective developers/investors, landowners and the public certainty as to how development proposals will be assessed by the local planning authority and is also meant to avoid rogue decisions being taken.
- 17.13 That said the advice does allow decisions to be taken that do not accord with the development Plan where material considerations that indicate otherwise. This supplementary report will consider what these might be in the context of the Tollgate Village development.
- 17.14 At the meeting of 17 December 2016 when application 150239 (now the subject of an appeal) was considered comment was made during discussion to the effect that ‘the Town Centre must stand on its own two feet’. The NPPG is helpful in assessing the extent to which the Government accepts that proposition. In paragraph 001 it states:-
- “Local planning authorities should plan positively, to support town centres to generate local employment, promote beneficial competition within and between town centres, and create attractive, diverse places where people want to live, visit and work”
- “Local authorities should plan... adopting a town centre first approach and taking account of specific town centre policy. In doing so, local planning authorities need to be mindful of different rates of development in town centres compared with out of centre.”
- “...The impact test determines whether there would be likely significant adverse impacts of locating main town centre development outside of existing town centres (and therefore whether the proposal should be refused in line with policy)...”
- 17.15 In this context the Government is strongly advising local authorities to take care to ensure that planning decisions do not undermine the important role that Town Centres play in the life of towns. This would tend to suggest that it is inappropriate to suggest that Town Centres must ‘stand on their own two feet’ if that means abandoning adopted retail hierarchy policies to allow major departures from that policy outside of designated centres.
- 17.16 In restating this again in this report, officers are anxious to ensure that the context for doing so is clearly understood. It is not a question of officers trying to apply undue pressure on councillors. That would be wholly unacceptable and improper and is alien to the relationship that has been cultivated over decades in Colchester. That is not the intention.

17.17 Implications for the existing adopted Local Plan

Section 38(6) of the Planning and Compulsory Purchase Act 2004 and paragraph 11 of the National Planning Policy Framework both state that applications must be determined in accordance with the development plan unless material considerations indicate otherwise.

17.18 Since the earlier application was considered, the Stane Park appeal decision has determined that some, but not all, of the Adopted Local Plan policies directly relevant to the proper consideration of this application cannot now be given full weight. (others still can). It would therefore be a risk to the Council if proper regard was not given to relevant advice within the NPPF because where full weight cannot be given a particular Adopted policy or policies the NPPF has primacy. That is why this report has been at pains to explore the relevance of the NPPF and set the merits of the current proposal within its context.

17.18 A decision to approve the scheme would accordingly need to be based on the view that material considerations were strong enough to outweigh the policy presumptions against a scheme which did not accord with plan policies in terms of the spatial hierarchy, sustainable development and employment land.

17.19 Implications for the Local Plan process

Approval of the scheme in advance of submission of the Local Plan to the Secretary of State next year would prematurely close off options to choices that should be made through the Local Plan process and not by an isolated development management decision. Granting planning permission now for a large scale development outside the scope of adopted policy and contrary to the NPPF is considered to harm the robustness of strategic planning for the area, with particular regard to the following issues:

17.20 Spatial Hierarchy: The scale and extent of the Tollgate proposals are considered to be significant enough to alter the balance and functionality of centres within Colchester. Plan policies help guide investment decisions, and if a particular centre is promoted, this will inevitably have consequences for competing centres. The development proposals, in combination with existing uses, would provide a concentration of over 50,000 sq. m gross of Class A uses and a new leisure destination. A centre of this size would be more than two and a half times bigger than the next largest UDC (Turner Rise) and, particularly given the focus of the other four Urban District Centres (UDCs) on convenience rather than comparison shopping, would provide a clear challenge to the predominance of the Town Centre as the pre-eminent destination in the Borough for comparison shopping.

17.21 Such a significant alteration to the Borough's spatial hierarchy involving the introduction of a new level below the Town Centre but above the size of existing UDCs should be considered through the plan-making process. This would involve consideration of the need for such a centre; the effects of such a centre on existing and potential Borough links, travel patterns, and functions; and the analysis of alternative sites. Whilst the spatial strategy for the Borough is currently under review, initial work and national guidance supporting prioritisation of the Town Centre do not support introduction of a new tier into the spatial hierarchy. In fact, the lack of clarity arising from the NPPF definition of centres over what sort of town centre activities should be encouraged in an UDC support a simpler hierarchy removing the UDC designation from the Council's hierarchy. An approval of the Tollgate development at this stage of the plan-making

process would accordingly limit the Council's ability to safeguard and promote the Town Centre.

- 17.22 New Retail Allocations: Development of Tollgate would also reduce the potential requirement for new retail space anywhere in the borough to be identified and allocated as part of the Local Plan process. There is a limited amount of new expenditure created by a growing population and careful consideration should be given to where new retail space is provided. Given that new investment is required to maintain the Town Centre's position, the lack of expenditure capacity justifying growth opportunities would limit the Council's ability to argue for regeneration of town centre sites such as Priory Walk, St. Botolph's and smaller brownfield sites, in addition to the existing commitment at Vineyard Gate. An update on retail capacity will be provided at the meeting following the decision on the application for a Sainsbury's store at the Hythe.
- 17.23 The Review of the Local Plan is the most appropriate process to look at retail needs across the borough to ensure new floorspace is located in the right place to sustain viability and vitality of the Town Centre in a Town centre First context.
- 17.24 Annex 1 of the National Planning Policy Framework explains how weight may be given to policies in emerging plans. However in the context of the Framework and in particular the presumption in favour of sustainable development – arguments that an application is premature are unlikely to justify a refusal of planning permission other than where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. Such circumstances are likely, but not exclusively, to be limited to situations where both:
- a) the development proposed is so substantial, or its cumulative effect would be so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan or Neighbourhood Planning; and
 - b) the emerging plan is at an advanced stage but is not yet formally part of the development plan for the area.
- 17.25 Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination, or in the case of a Neighbourhood Plan, before the end of the local planning authority publicity period. Where planning permission is refused on grounds of prematurity, the local planning authority will need to indicate clearly how the grant of permission for the development concerned would prejudice the outcome of the plan-making process.
- 17.26 Officers believe that the proposal falls well within the category of development identified as substantial with a significant cumulative effect which pre-determines decisions about the location and phasing of new development. The risk to the Council is if the application were to be refused and an appeal submitted, whether an Inspector would consider the Local Plan to be at an advanced stage.
- 17.27 The Council in preparing its Local Plan 2017-2032 is working with neighbouring Borough's under the Duty to Co-operate and the Department of Communities and Local Government (DCLG) has awarded a grant of £640k to investigate the potential for new

Garden Settlements in a number of locations, two of which are cross border sites. The nearest site being investigated for a Garden Settlement is at Marks Tey, less than 3 miles from the application site. Any decision taken on Tollgate could therefore impact on the future strategic planning not just in Colchester but also Braintree. One of the key principles in the Government document “Locally led Garden Cities” is that garden settlements are expected to have “strong local cultural, recreational and shopping facilities in walkable neighbourhoods.” If retail facilities are available in a sub-regional scale centre less than 3 miles away it is difficult to envisage shopping facilities within any future garden settlement at Marks Tey.

- 17.28 An additional risk therefore for the Council to consider is if another Council argued that CBC had failed under the Duty to Co-operate by taking strategic growth decisions through a planning application that ought to be considered through examination of a plan. Chelmsford City Council have objected to the Tollgate Village application.
- 17.29 The wording in the NPPF set out above is key. Part (B) states ‘seldom’ will prematurity ‘be justified where a draft Local Plan has yet to be submitted for examination’. Helpfully the NPPG describes how a local planning authority will need to indicate how the grant of planning permission for the development will prejudice the outcome of the plan-making process. By implication this means that there are circumstances in which failure to meet circumstance (b) would not prejudice the use of prematurity as a reason for refusal.
- 17.30 Members will therefore have to consider the risks associated with approving this development in terms of undermining the efficacy of the Local Plan process and the associated risk of a challenge under the duty to co-operate and the risk of a reason for refusal based on prematurity which is not subsequently supported at appeal.

The Strategic Plan 2015 – 2018

- 17.31 As explained earlier the Council adopted its Strategic Plan in 2015 to set out the direction and future potential for the borough. The Council has an ambitious range of goals to achieve that build on the successes of the previous three years, working with a large number of partners to get the best for residents. Some of the actions in the Strategic Plan Action Plan are of relevance to the consideration of this application in referring to the Town Centre and Northern Gateway;
- Work with development partners to bring exciting new retail and leisure to the eastern part of Colchester town centre
 - Ensure sufficient land is allocated in the right places to attract and retain businesses, supply homes and identify the infrastructure that is needed by developing a Local Plan for the borough
 - Co-ordinate partners and funding streams in the Northern Gateway and the Hythe to generate a wide range of jobs and facilities
 - Review the Better Colchester Town Centre website to promote Colchester
 - Improve the walking and cycling links between Colchester North Station and the town centre through initiatives such as ‘Fixing the Link’
- 17.32 Approval of the Tollgate Village application will impact on the Councils ability to deliver these actions. Further details are set out below.

Northern Gateway

- 17.33 Since 2006, the Council has held outline permission for amongst other things hot, food & drink, employment, sports and leisure uses on the Northern Gateway sites to the west of NAR3. The Stadium was the first element delivered in 2008. In addition, various infrastructure projects, including Junction 28, relocation of the BP garage, Axial Way and United Way, and more recently NAR3, have been developed to support the extant sport and leisure and employment outline permissions. The existing permission expires on 21 March 2016 if no compliant Reserved Matters application has been received by that date.
- 17.34 At the time of writing this report a Reserved Matters application for hotel & food and drink uses was due to have been determined by the Planning Committee on 17 November 2016.
- 17.35 Applications beyond the scope of the earlier outline planning permissions at CNG, such as the full application for amongst other things a cinema on land must be determined on their own individual planning merits after consideration of all material planning considerations.
- 17.36 The Economic Growth team previously advised that Tollgate Village will risk the following benefits to the Borough that the Northern Gateway scheme will otherwise deliver:
- Loss of an annual rental income stream.
 - Loss of approximately £1.5m pa business rates income for the fully developed scheme.
 - Loss of 600 new full and part time jobs directly related to the Turnstone development and a consequent delay in the delivery of the 3500 jobs anticipated from the full development of the Northern Gateway.
 - Loss of an estimated 260 direct jobs that will be generated during the construction phase.
- 17.37 Although it is accepted that the job numbers described above, may be provided by the Tollgate scheme if the departure is supported, the proposed Tollgate development cannot provide for the Sports Village north of the A12, which will also be at risk of delivery if the commercial leisure scheme does not go ahead. Other than the obvious consequence of loss of considerable sport participation opportunities including a new home for the growing Colchester Rugby Club, the inability to move forward a scheme of this type at this time will put potential Sport England funding at risk and other emerging funding pots from a range of national governing bodies. This opportunity to develop new facilities, thereby increasing participation and sports performance levels within the Borough population, with proven benefits to the health of the Borough, will be lost. Whilst economic growth is a material consideration, members are reminded that the financial interests of the Council as landowner must be set aside in their consideration of the Tollgate proposals.
- 17.38 Furthermore the Economic Development Team indicates, it is currently anticipated that the proposed Northern Gateway sports and leisure scheme will provide a firm foundation, which, when mixed with the planned delivery of gigabit fibre connectivity, greatly increases the opportunity to attract real high value, high quality employment uses to the remainder of the site. If Tollgate proceeds and the Northern Gateway leisure

anchor is lost, this foundation will be removed, with no certainty of being replaced in the near future.

- 17.39 The proposed developments at the Northern Gateway, both north and south of the A12, are expected to attract significant numbers of visitors to the site on an annual basis. Officers believe these developments are complementary to the Town Centre and shall be taking proactive measures to encourage these visitors from both within and outside the Borough to visit and enjoy the quality facilities in the Town Centre, by means of the Park and Ride.

Impact on the Town Centre

- 17.40 The thrust of the NPPF and government retail guidance for many years has been about directing retail development to the town centre first. In determining retail decisions at all times it must be considered what will be the effect on the Town Centre as policy dictates. This proposal will affect the Town Centre by changing fundamentally the retail hierarchy in Colchester with the provision of a very extensive retail centre which will seek to trade in competition with the town centre. That will inevitably have a powerful effect on shoppers' choices between the town centre and Tollgate.

- 17.41 Further work on the impact issue carried out by the Council's consultants NLP (attached as Appendix 1) calculated that:

Colchester town centre's comparison good turnover is projected to increase by +£87 million (14%) between 2015 and 2019, if the Tollgate Village development is not implemented. However if the Tollgate Village development and commitments are implemented, Colchester town centre's turnover (worst case) is projected to increase by only 1% between 2015 and 2019. Tollgate Retail Park's turnover is expected to double if the proposed development is implemented.

- 17.42 Previously NLP concluded that 'If implemented Tollgate Village would as a maximum divert £803 million from Colchester town centre, which exceeds the projected available expenditure to support new comparison development in Colchester (£392 million). Therefore £411 million of the trade diverted to Tollgate Village from the town centre, is likely to be diverted from existing businesses and commitments in the town centre. Given the town centre's first policy, this £411 million diversion is a clear dis-benefit of the development. The Council's current retail consultants advising in respect of the Local Plan have indicated that the impact of Tollgate Village is likely to be even deeper than that predicted by NLP. In their view the impact will be significantly adverse in terms of the overall viability and vitality of the Town Centre. In addition Cushman & Wakefield having taken account of recent retail appeal decisions elsewhere in the UK now advise that the Tollgate Village proposal does not meet the sequential test as prescribed by the Government.

- 17.43 This further reinforces the reason why the proposal should be refused.

Town Centre Investment

- 17.44 Approximately £500m has been and continues to be invested in the town centre since 2010. It is an ongoing figure not broken down into years as it includes pipeline projects such as Vineyard Gate. The 10 year investment plan includes the following projects

some of which may not proceed if Tollgate Village goes ahead and there is not the investor confidence in the Town Centre;

- £15m on new / refurbished hotels: Greyfriars, Blue Ivy, Premier Inn and others in the pipeline
- £580k on refurbishing Mercury Theatre Studio
- £44m on improving retail: W&G refurb/extension, Lion Walk & Yard refurb, Culver Square and other shop refits
- £70m projected for Vineyard Gate
- £32m on improving places to visit such as The Castle Museum refurbishment and Firstsite plus
- £9m funding bid by the Mercury Theatre for improvements
- £30m New Magistrates' Court & more for public realm surrounding
- £7m new Park & Ride and Colchester Bus Station
- £7m further town centre road networks improvements 2016
- £3.5m for Creative Business Centre
- Relocation of the market (April 2015) with the intention and capability to have themed markets which could run into the evening.
- The investments by the current owners of Lion Walk shopping centre
- Investment in bringing new retailers to Culver Square
- Traffic changes both implemented in March 2013 and planned for the future such as the St Botolph's roundabout
- The new Magistrates Court
- The St Botolph's Quarter development
- The Walls project
- Events such as the Big Screen: a new attraction for Colchester
- The Waiting Room: a community space with a comprehensive event programme, opened in 2013.
- The George Hotel has been taken over and will be completely refurbished starting 2016
- Surya/Flying Trade proposals for new café and museum in Museum Street
- Increasing number of residential properties in the town centre above shops, which add to the diversity and mix in the town centre.

17.45 An unknown sum has also been invested in the Town centre on refurbishments to provide new and improved restaurants:

- Hudsons: New restaurant/club opened December 2014.
- Bills: new family restaurant opened in the High Street July 2015
- The Church Street Tavern – opened in Spring 2014 to rave reviews (The Independent 4.4.15)
- The Three Wise Monkeys – this former member only night club is now a Tap House, restaurant and live music venue set over three floors. Opened in Dec 2013 with full opening in Feb 2014.
- El Guaca – Mexican restaurant opened in 2014 in the former 'Layer Cake' premises transforming a problem bar into a family restaurant
- Love Thy Burger – opened in 2015
- Pizza Express – undergone a complete refurb in 2014
- Aburi – a new Japanese restaurant opened in September 2015 in Short Wyre Street
- Piattos – a new Salsa Café opened in September 2015 in Queen Street
- Tysa Desserts & Coffee – late night café opened in September 2015 in the High Street

- Carluccios Restaurant – opened within Williams & Griffin (Fenwicks) dept store October 2015.
- Hunt & Darton Café at Firstsite Gallery – (June 2015). Opened as the only café art installation in the country (temporary basis as H&D also perform at other events like the Edinburgh Festival)
- The Cells at the old Magistrates’ Court – opened in August 2015 as part of the
- Memoirs Restaurant, which opened in 2014

Financial and Procedural Implications of Approving the Application

Implications of Judicial Review – financial and other costs

- 17.46 There are a variety of legal obligations which public bodies have to follow when making decisions and a failure to do so renders any subsequent decision potentially unlawful and vulnerable to challenge. This is also the case in planning decisions – section 38(6) of the Planning & Compulsory Purchase Act 2004 prescribes that applications must be determined in accordance with the development plan unless material considerations indicate otherwise. If a decision that departs from the development plan is contemplated then clear and convincing material planning considerations are required. There are also key procedures set out in statutory instruments (‘orders’) that must be followed to prevent any decision taken being legally flawed and vulnerable to challenge.
- 17.47 Judicial review is a process by which the courts review the lawfulness of a decision made (or sometimes lack of a decision made or action taken or sometimes failure to act) by a public body. It is mechanism by which a judge considers whether a public body has acted in accordance with its legal obligations and if not, can declare a decision taken by it invalid. From 1 July 2013 judicial review of planning cases must be started within a strict deadline of 6 weeks from the date of the decision under section 288 of TCPA 1990.
- 17.47 Either party can appeal against the court’s decision to the court of appeal. However, the Judge hearing the case has to be asked for permission to appeal. If it is refused an application has to be made to the court of appeal within 14 days of the administrative court’s decision. Judges usually refuse permission to appeal, and one has to apply to the Court of Appeal directly for permission.
- 17.48 The associated financial cost of bringing judicial review claims can be very high as all parties need to be represented by costly specialist barristers, especially where a case proceeds to a full court hearing and the claimant is unsuccessful. This is because if unsuccessful, the claimant is likely to be ordered to pay the defendant’s costs as well as their own. If the claimant is successful then the defendant will be ordered to pay their costs. However, that leaves the defendant costs should the claim be unsuccessful. Legal costs can be high given that this is a very specialist area of law usually requiring representation by senior counsel or QC’s.
- 17.49 In judicial review proceedings of planning decisions the court will usually intervene as a matter of discretion to quash a decision. The court cannot rule on the policy merits of a decision, only in order to right a recognisable public wrong. If an application for judicial review is successful the court can grant to the claimant a Quashing order where the original decision is declared invalid and is struck down and the public body has to take the decision again.

- 17.50 Arguably the greatest impact of this court process is delay, uncertainty and cost to developers. There have been a number of judicial reviews which have resulted in considerable delay to development projects, including infrastructure, housing, retail and residential developments.
- 17.51 In conclusion, the principal risks associated with judicial review relate to the uncertainty and delay that a decision may be quashed with the award of costs against the unsuccessful party. These costs can be significant.
- 17.52 If a decision is quashed then the Lpa may consider a new application afresh and address the flaws identified by the Court in the previous decision making process. In itself, the threat of judicial review should not be seen as a material planning consideration in the determination of the application either way. However, departure from the adopted and up-to-date local plan requires robust material planning considerations to justify setting aside the policy framework and in the absence of such a justification, any decision could be considered vulnerable to successful court challenge.
- 17.53 In this particular case if the Council approved planning permission an aggrieved third party might seek to challenge the decision if in their opinion a legal mistake had been made by the Council when reaching the decision to approve and they could evidence this. - this might include, for example, that the Local Authority failed to take into account opinions put forward (this does not mean that the Council has to agree with them), had undue regard to matters that were not material planning considerations, had not had due regard to material planning considerations, that the procedure in dealing with the application was flawed, that a Councillor failed to declare an interest
- 17.54 In the event of a refusal of permission you might normally expect the applicant to appeal the decision but a third party could seek to challenge the refusal via a JR if they believed a legal mistake had been made
- 17.55 The question here for the Council is that decision on a sound legal basis having had proper regard to all material factors and/or followed all appropriate procedure and/or all interests had been properly declared. That is what it is essential that the officers report is thorough and that the Committee in reaching its decision clearly provides justifiable reasons for reaching that decision. This is particularly important where the Committee looks to overturn a recommendation where a major departure from policy would result –such as in this particular case.

In a situation where a major plank of National and Local retail planning policy is being overturned it opens the door to third parties to challenge that decision if it can be demonstrated that decision was reached without due regard to those policies. A number of Town Centre retailers have made representations objecting to the proposed development on the grounds it is contrary to local and national planning policy. It is therefore important that any decision to approve that development can be properly justified if a JR is to be successfully resisted.

Departures from the Development Plan and 'call-in' for determination by the Secretary of State

- 17.56 A major departure application is a planning application that is not in line with, or 'departs from', the development plan in force in the area where the application is being made. It

used to be the case that the Secretary of State had to be notified if a local planning authority intended to approve a departure application.

17.57 In April 2009 a new circular and direction, The Town and Country Planning (Consultation) (England) Direction 2009, came into force which defined which applications local authorities must notify the Secretary of State of. This direction removed the need for local authorities to inform the Secretary of State if they intend to approve a departure application.

17.58 The 2009 Direction does still require local planning authorities to notify the Secretary of State before approving certain types of very significant development.

17.59 It is clear that the Secretary of State believes the Tollgate Village proposal raises important planning issues have more than local significance because he has already indicated that he will recover the impending appeal. (This means he will determine the appeal decision having had regard to the Inspectors eventual report).

17.60 It therefore seems inevitable that the Secretary of State will also want to be directly involved in considering the merits of this the duplicate application

17.61 Even though local planning authorities no longer have to inform the Secretary of State about all departure applications they intend to approve, these applications have to be publicised locally more than other types of application. When a local authority receives a departure application, it must:

- display a notice at the development site for at least 21 days
- place an advertisement in the local newspaper

(Article 13 of the Town & Country Planning (Development Management Procedure) Order 2010).

17.62 Section 77 of the Town and Country Planning Act 1990 is also relevant. It provides that the Secretary of State may direct that any particular planning application should be called in for determination, irrespective of whether it falls within the terms of the new direction, having regard to the policy on call-in. This Direction shall apply in relation to any application for planning permission which is inter-alia for development outside town centres defined as “development outside town centres” means development which consists of or includes retail, leisure or office use, and which – (a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and (b) is not in accordance with one or more provisions of the development plan in force in relation to the area in which the development is to be carried out; and (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is 5,000 square metres or more. The Direction requires ‘Where a local planning authority does not propose to refuse an application for planning permission to which this Direction applies, the authority shall consult the Secretary of State (SoS). In the event that members resolve to grant planning permission then the SoS will need to be notified in accordance with the provisions of the 2009 Direction’. The SoS may then decide to call-in the application and a local inquiry would then be held under the direction of a planning Inspector who would report directly to the SoS; who retains the discretionary power to determine the application.

17.63 This process could result in considerable delay and uncertainty for investors and could have considerable implications for the local plan. There are considerable direct costs

associated with hosting and staffing a complex inquiry (in excess of £100K) with expert witnesses and advice from specialist senior counsel. These are similar to those associated with an appeal against refusal under section 38 of the 1990 Act. The financial costs should not be seen as a material consideration and should not be afforded weight in the determination of an application. The Tollgate proposals were advertised as a departure in accordance with the relevant regulations and due procedure has been followed.

17.64 Appeals under s.38 of the Town & Country Planning Act

If members are minded to refuse the application in accordance with the Officer recommendation then the applicants would have resort to appeal. Given the level of public interest, this is likely to be via a public inquiry hosted by the Borough. An Inspector appointed by the Secretary of State would then determine the application in due course (unless 'recovered' by the SoS for determination). The costs associated with a large public inquiry are considerable (in excess of £100k) given the essential input required from expert witnesses and legal representation. This is not a material consideration in the determination of the application.

17.65 As members will appreciate the cost of mounting a defence at appeal is a legitimate cost of democracy. Members should not approve an application merely to avoid the high cost of an appeal if they feel such a refusal is justified - the Council has ways of funding such appeals as a contingency.

17.66 The important question for the Committee when refusing an application is "Is it acting reasonably in doing so. If an appellant can demonstrate that the Council acted unreasonably he/she can seek to recover appropriate costs from the Council. The appeal inspector would consider claims for costs on their merits. Local planning authorities can also seek to recover costs from appellants where they have acted unreasonably.

17.67 NPPG paragraph 031 advises that costs may be awarded where:-

- a party has behaved unreasonably; and
- the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

17.68 This poses the question – "What does 'unreasonable' mean?"

17.69 Again the NPPG provides helpful advice in paragraph 032 when it states

"The word "unreasonable" is used in its ordinary meaning, as established by the courts in Manchester City Council v SSE & Mercury Communications Limited [1988] JPL 774.

Unreasonable behaviour in the context of an application for an award of costs may be either:

- procedural – relating to the process; or
- substantive – relating to the issues arising from the merits of the appeal.

The Inspector has discretion when deciding an award, enabling extenuating circumstances to be taken into account."

17.70 Further clarification is provided by paragraph 033:-

“An application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. This could be the expense of the entire appeal or other proceeding or only for part of the process.

Costs may include, for example, the time spent by appellants and their representatives, or by local authority staff, in preparing for an appeal and attending the appeal event, including the use of consultants to provide detailed technical advice, and expert and other witnesses.

Costs applications may relate to events before the appeal or other proceeding was brought, but costs that are unrelated to the appeal or other proceeding are ineligible. Awards cannot extend to compensation for indirect losses, such as those which may result from alleged delay in obtaining planning permission.”

17.71 Members are advised that if the recommendation to drop the loss of employment land reason for refusal is agreed and this is run forward into the forthcoming appeal this could bring with it a risk of a costs claim by the appellants on the grounds that they were notified late in the process and had by then undertaken what is now abortive work around that reason with associated financial cost that need not have been incurred. However were the Council to maintain its defence of such a reason at the forthcoming appeal it could leave itself open to a costs claim on the ground that the Stane Park decision made such a defence unreasonable. (by that time the appellant would have incurred even greater costs than will have accrued under the previous scenario. What didn't exist previously was the Stane Park decision . The Council will be able to demonstrate that it has had regard to its implications and amended its position which is in itself reasonable.

17.72 Similarly by expanding its reasons for refusal under the retail impact heading it may leave itself open to an increased risk of a cost claim however at the time of the 2015 decision it did not have the evidence base it now has as part of its advancing Local Plan process. Nor did it have the latest advice from Cushman & Wakefield who have been advising the local plan process more recently.

17.73 The stakes are high and it is important that the Council makes the right decision in the light of all the evidence before it. If that means a shift of position with a risk of a costs claim at the forthcoming appeal then that is what should happen.

17.74 It should be noted that a claim is not guaranteed to result in an award. The Council will need to explain at the Inquiry why its position changed (if that is what Members agree) and why it has taken until this meeting to secure approval for that change in direction. The Inspector must then decide the reasonableness of those actions.

Officers do not consider that the recommendation to refuse permission contained in this report in themselves expose the Council to a serious claim for a costs award at appeal as it is based solidly on strong policy grounds. In terms of the question of prematurity the Council is able to support its claim that the application is significant and will harm the economic prospects of the Town Centre and is strongly contrary to local and national planning policy/guidance. The Council is also able to evidence why approving the

proposed development ahead of adopting a new Local plan would be prejudicial to the planning process in a plan-led system.

18.0 Recommendation

Recommendation 1

REFUSE planning permission for the reasons set out below:

1. Conflict with retail hierarchy policy, Urban District Centre (UDC) policy and the NPPF.

A large part of the application falls outside of the designated Urban District Centre and proposes a significant expansion of retail and town centre use floorspace outside of the defined UDC contrary to Policy CE2b of the Adopted Core Strategy (revised July 2014).

The expansion of such uses on this site is also contrary to SA STA3 of the Adopted Site Allocations Document (October 2010) which does permit small scale retailing where they can be demonstrated to meet identified local needs and not compete with the Town Centre. The development proposed here will compete with the Town centre and will have a wider than local catchment. It therefore represents a 'greater than local' scale of development not permitted in Stanway.

It is the Council's opinion that the scale and type of retailing, leisure and food and drink uses proposed are of an order of scale that would effectively make Tollgate a sub-regional retail/leisure attractor that will inevitably harm Colchester's Town Centre at the apex of the Adopted retail hierarchy as the pre-eminent sustainable destination for such activity within the Borough and sub-region.

Adopted Core Strategy Policy CE1 directs that the Town Centre shall be protected as the sub-regional shopping centre within the Town's retail hierarchy and the Council believes that as a consequence planned investment in the Town Centre will be seriously prejudiced and future investor confidence in the Town centre harmed to the extent that growth in the Town Centre will stagnate for at least 10 years whilst Tollgate diverts footfall and trade away from the Town Centre. As a result, key regeneration sites within the Town Centre may not come forward as planned and that in the intervening period Colchester's town centre will fall behind its sub-regional competitors as they continue to invest in their town centres. This is considered a significant adverse impact.

The proposal fails the Impact test and the Sequential Test and is therefore contrary to the NPPF.

The proposal will have a significant adverse impact on the vitality and viability of the town centre.

Having considered the proposal in the context of the National Planning Policy Framework (especially paragraphs 23-27) and associated National Planning Practice

Guidance the Council considers that the harm to retailing in the Town Centre arising from the proposal is not outweighed by the benefits that are likely to arise from the proposal in the form of additional new jobs, widened consumer choice at Tollgate and associated public realm improvements.

2. Prematurity

In the opinion of the Council, the Tollgate Village proposal is premature within the context of the Council's ongoing and well advanced Local Plan process as described in the published Local Development Scheme (LDS).

The Council acknowledges the significance of Annex 1 of the National Planning Policy Framework which explains how weight may be given to policies in emerging plans. Whilst it is noted that arguments that an application is premature are unlikely to justify a refusal of planning permission the Council is of the opinion that this is a case where it is clear that the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, taking the policies in the Framework and any other material considerations into account. The Council considers the proposal to be so substantial and its cumulative effect so significant, that to grant permission would undermine the plan-making process by predetermining decisions about the scale, location or phasing of new development that are central to an emerging Local Plan.

3. Sustainable Development

The expansion of Town Centre uses of the magnitude proposed in this location with heavy reliance on trip generation by the private car with the resultant adverse impact identified upon the town centre together with the potential loss of planned employment growth within this strategic employment site and the resultant harm to the planned economic growth significantly outweighs the benefits identified to be delivered by the proposals. Consequently, in the opinion of the Council the development is inherently unsustainable contrary to paragraphs 6-14 of the Framework and the Government's explicit intention that the purpose of the planning system is to contribute to the achievement of sustainable development. The proposal is thus contrary to the strategic aims of the adopted local plan. The car-dominated nature of the proposal is further evidenced by the associated highway improvements required by the Highway Authority that would result in the creation of a poor pedestrian environment contrary to adopted policy CE2b and Design Principles set out in the Stanway Vision Statement (2013) that require new development to deliver improvements to the public realm and create a pedestrian-friendly environment. The proposals are therefore also contrary to paragraph 64 of the NPPF and the Government's intention to contribute positively to making places better for people.

continued

Recommendation 2:

In the event that the Planning Committee agrees the main recommendation 1 above in respect of application 160868

THEN:

The Head of Commercial Services be authorised to contact the Planning Inspectorate (PINS) and the applicants/appellants, Tollgate Partnership, in writing as soon as is practically possible in respect of application reference 150239 to advise them that:-

1)

The Council is formally withdrawing the ground of refusal '1' (loss of employment land) from its decision and will not be defending that particular reason for refusal at the forthcoming Public Inquiry set to commence on 10 January 2017 for the reasons described in this report; and,

2)

The Council is formally expanding its ground of refusal '2' (significant adverse impact on the Town Centre and retail hierarchy) and will now defend those additional aspects of significant adverse impact agreed in respect of application reference 160868 at the forthcoming Public Inquiry set to commence on 10 January 2017 for the reasons described in this report; and,

3)

The Council will continue to defend reason for refusal 3 (prematurity) with wording amended to reflect ongoing progress with the Local Plan process at the forthcoming Public Inquiry set to commence on 10 January 2017; and,

4)

The Council will continue to defend reason for refusal 4 (sustainability) at the forthcoming Public Inquiry set to commence on 10 January 2017.

19.0 Positivity Statement:

19.1 The Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the material harm which has clearly been identified within the reasons for refusal, approval has not been possible. In refusing this application which is a duplicate of 150239 the Council has had regard to certain changed material circumstances and this is way the reasons for refusal here are different in some respects to those cited in respect of the earlier application reference 150239.