

5a 3/10/0386/FP - Redevelopment of 2.15 ha brownfield site to include new Asda foodstore (2601 sqm net); 13 dwellings (5 affordable) with 21 car parking spaces; retention and redesign of children's nursery; retention and refurbishment of Kiln and Maltings buildings together with associated access, 283 car parking spaces (including 10 spaces for nursery), servicing and landscaping, associated highways and pedestrian improvements (as amended) at Cintel site, Watton Road, Ware SG12 OAE for Asda Stores Ltd

Date of Receipt: 03.03.2010

Type: Full - Major

Parish: WARE

Ward: WARE – ST MARYS

RECOMMENDATION

That the application be **REFUSED** for the following reasons:-

1. The Crane Mead/Swains Mill site provides an alternative edge of centre site which is available, viable and suitable and therefore sequentially preferable to the proposed food store at the application site. The proposal has therefore failed to demonstrate that the sequential test of PPS4 has been satisfied and would be contrary to Policies EC14, EC15 and EC17 of national planning guidance in PPS4 Planning for Economic Growth and Policy STC1 and STC6 of the East Herts Local Plan April 2007.

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1.0 Background

- 1.1 This application was first considered at the 20th October Development Control Committee when Members resolved to support the proposal in principle but deferred the decision for officers to report back with recommended S106 obligations and planning conditions. A report was subsequently prepared for the 17th November committee but withdrawn from the agenda prior to the meeting. A copy of both the October and November reports are attached at Appendix A and B respectively. The reports fully summarise the background to the application, its history and public consultation responses and it is not intended to repeat these again but simply now to update members on the latest submissions, including a revised Crane Mead proposal, any changed site circumstances and planning considerations and allow a full reconsideration of the application and the range of planning issues involved. In particular, Officers wish to emphasise within the report that the key sequential test is a site comparison exercise unrelated to the identities and individual needs of store operators.

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1.2 The 17th November report was withdrawn in the light of further submissions made by representatives of the Swains Mill / Crane Mead site owners and Tesco's amongst others and in order to consider legal advice that the Council had taken about the original October resolution. Members at the October committee voted in relation to the application that the Cintel site was considered to be sequentially preferable to the Swains Mill site for four reasons:-

- that it is suitably placed to serve the residential areas of the town located to the north of the town centre;
- that a significant amount of regeneration of the site and area would result;
- that it is a larger site than the alternative and represents an opportunity to ensure a wider range of goods are offered to meet the needs of the town;
- that there was doubt about the ability of the alternative site to come forward.

1.3 Following the deferral of the matter from the 17 November meeting, all additional submissions and advice have been carefully considered. Your Officers conclusion is that there are areas of the committee's earlier decision making which might expose the Council to possible legal challenge. In particular, in relation to the reasons given above it is considered that:

- the committee's view, that the Cintel site was more suitable for a store due to its location near to residential areas to the north of the town is not a proper application of the principle of geographic preference contained in PPS4 and not relevant to the sequential test considerations;
- the committee's view that the regeneration benefits of the development make it sequentially preferable is a concern, as while these may be planning merits, they are unrelated to the sequential test and the questions of availability, suitability and viability;
- the view that a larger site was necessary to meet the needs of Ware was a point that was not clearly expressed. Moreover, the issue to be resolved when considering the question of suitability is whether or not the more central site can be considered capable of accommodating the needs or demands the applicant's proposal is intended to meet.

- 1.4 It is therefore recommended that the committee consider this report and recommendation and all the relevant planning issues anew, not least the retail issues of the sequential test. In considering the application members are referred in particular to paragraphs 3.14 – 3.43 of this report which set out the criteria and considerations of the sequential test.

2.0 Further representations

- 2.1 Since the 20th October committee resolution, and up to and beyond the 17th November report, a number of representations with claims and counter claims responding to each other have been made. The key interested parties making representations are the applicant (Asda), Martin Robeson Planning Practice on behalf of the 3 owners of the Swains Mill/Crane Mead site; Ashurst solicitors on behalf of Tesco and Nathaniel Lichfield and Partners on behalf of Glaxo Smith Kline.
- 2.2 In addition a number of further residents representations, including 13 supporters and 5 objectors to the scheme, have been received although the matters raised were covered by the original summary of public comments within the 20th October report.
- 2.3 A meeting with Asda and Chase and Partners, intended in the run up to the 20th October committee meeting, has been held to explore the outstanding issues on retail impact. Following this Chase and Partners are now able to accept the overall turnover figure and retail impact calculations which better reflect the likely impact of the proposed store on existing stores in the area. This clarifies and addresses their uncertainty on the issue and Chase concludes that “the impact arising from the proposed store is unlikely to cause serious harm to the vitality and viability of Ware or other nearby centres”.

Martin Robeson Planning Practice – Crane Mead

- 2.4 The representations by Martin Robeson Planning Practice (MRPP) are on behalf of the owners of the Swains Mill, Mill Studio and other adjacent land at Crane Mead. While critical of the October committee decision and the way the members were informed, and they quote extracts at length with comment, they also promote what they consider is the sequentially preferable Crane Mead site. A plan has now been submitted and is intended to indicate how the Crane Mead site can provide a larger store up to 32,500 sq ft (net), greater than the size of the Asda proposal, and with 180 parking spaces. MRPP have copied correspondence including a letter from the Head of Property Development at Sainsbury’s expressing an interest in the site. MRPP also say that another operator is interested and that Waitrose

have a continuing interest.

- 2.5 MRPP state that they believe the committee were incorrectly advised on the application of national planning policy in PPS4 and that the consideration of the application demonstrates errors of law. They have also argued that as PPS4 identifies a sequence of assessments to take place, namely town centre first, then edge of centre and only then out of centre, and because Swains Mill is edge of centre and Cintel is out of centre no comparative exercise should even have taken place between the two sites. A reconsideration of the application is therefore necessary.

Ashurst Solicitors - Tesco

- 2.6 Tesco (Ashurst) have written to object that the Council has not given due regard to the application of the sequential test; impact; the precise scale of the Asda scheme and the lawfulness of the S106 obligations. Members focussed on whether the scale of the Asda scheme could be accommodated on the alternative site and failed to focus on the contribution that a more central site could make to meeting the same requirements. As members did not understand the likely impact of the Asda proposal then the application should be deferred until such time as further evidence is submitted to clarify the extent of impact.
- 2.7 They are concerned that a net to gross ratio of 38.5% is low and needs careful examination and that no steps have been taken to guard against future floorspace expansion. The report (October) referred to £950,000 of planning obligations without explaining the reasoning behind the conclusion that the package would fall within CIL regulation 122 and meet the requirements of Circular 05/2005. Fundamentally they conclude that the application must be reconsidered and that members must be properly appraised of the sequential test and fully informed of the impact of the store on the town centre.

NLP - Glaxo Smith Kline GSK

- 2.8 Nathaniel Lichfield and Partners, on behalf of Glaxo Smith Kline comment on the planning conditions and S106 obligations within the 17th November report. They welcome proposed conditions on retention of car parking for customers (11) and the restriction on sales area (19) but given the implications of a breach of either condition on the public highway they feel these conditions should be planning obligations. GSK are concerned that the Green Travel Plan is not robust as this indicates permits will be given out for staff parking, this will conflict with condition 11. They believe the requirements of the condition be made part of the Travel Plan and also that the annual reviews should allow strict measures to be imposed, this should

be signed by both HCC and East Herts Council.

- 2.9 With regards to the pricing regime of the car park, although they understand the benefit of encouraging linked trips, they are concerned that allowing customers to stay for 3 hours will exacerbate the shortfall of provision. GSK would wish to be consulted on the proposed car park / management / pricing system. Finally they request again consultation on highways works.

Planning Potential – Thomas Eggar LLP - Asda

- 2.10 Planning agents and legal advisors for Asda have written to respond to some of the criticisms of the committee decision by other parties and also to respond to the submissions for a proposed larger store at Crane Mead. They consider the references to legal proceedings and late submissions of plans are spoiling tactics to prevent their investment in Ware. They see no need for the decision to be reviewed and are confident that any legal challenge would fail.
- 2.11 Regarding impact, following further meetings, they have been able to clarify for the Council's own retail advisers, Chase and Partners, how figures have been derived. They assert that the store will not have any material impact on Ware town centre and certainly not any significant adverse impacts as referred to in Policy EC17.1 of PPS4.
- 2.12 They consider that the Swains Mill / Crane Mead site can be dismissed as unavailable, unsuitable and unviable for the size of store that Ware needs and remind that Chase and Partners had said Crane Mead could be discounted as unsuitable if members came to the conclusion that Ware needed a larger store. They believe there is uncertainty about Crane Mead's availability due to the overage restrictions on Network Rail land on the south side of Crane Mead and the presence of tenants in the Mill Studios. There is no timescale for the store in order to demonstrate availability and its deliverability. The planning application for a temporary car park on part of the site is further evidence that the site is not available.
- 2.13 East Herts policy position is to continue the designated employment use of the Crane Mead site and therefore its use for retailing is not suitable. The new proposal for a larger store shows the Mill Studio being redeveloped, a benefit of the previous proposals was that this office use would be retained. Asda is critical of the detail of the proposals all of which, in its view, demonstrate its unsuitability for a larger store. Asda also claim there are highway constraints to the Crane Mead site. With regards to viability they argue that if Sainsbury's were to pursue interest here it will establish its store in Hertford first and only then consider whether to develop a Crane Mead site which will not be to the benefit of Ware.

- 2.14 Asda have submitted a competition and choice analysis which shows if their proposal proceeds then this will provide 4 potential operators encouraging competition and maximises choice of four operators.
- 2.15 Furthermore Asda have submitted a “Community Charter” worked out with the local Cintel Residents Committee to cover the details of various neighbourly issues and how some planning conditions will be satisfied. While not a legal document like a planning permission, the charter is set out as a separate pledge by the store to honour agreements made with residents and includes the establishment of a Construction Liaison Committee.

Others

- 2.16 The Dolphin House surgery has written to ask the Waitrose scheme to be supported, highlighting that a much needed new surgery has been offered for their practice of 6 GP’s next to the proposed supermarket. They say they have greatly outgrown their premises in East Street and the accommodation is unsuited to the needs of disabled and elderly.

3.0 Considerations

Principle of development

- 3.1 Although now mostly unused, the application site is a significant employment site within Ware by its historic use, buildings and size. As a substantial brownfield site with few buildings that are worthy of retention its redevelopment accords with national and local planning policies for recycling and making the best use of urban land. Although there has been local opposition to previous housing and retail applications, as well as the current scheme, the Council knows from its survey 3 years ago that there is general support locally for the principle of a well designed, environmentally friendly, comprehensive mixed use redevelopment of the site.
- 3.2 Having regard to this and the established local and national planning policies including PPS1, PPS3 and PPS4 a retail led mixed use scheme, including housing and a retained nursery use, is therefore considered to be acceptable in principle subject to the key tests of retail, highways and parking, neighbour impacts, design and conservation including its impact on the adjacent Conservation Area, the setting of listed buildings and the significant heritage assets at the site.
- 3.3 The main planning issues to consider in the determination of this application are therefore whether:

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- the site makes sufficient provision for employment uses as part of a mixed use redevelopment (Policy EDE2)
- there is justification for an “out of centre” retail store not in accordance with the development plan having regard to the tests of PPS4.
- there is a sequentially preferable site to the proposed store in accordance with the tests of PPS4
- the retail impact of the store will be detrimental to the vitality and viability of the existing Ware town centre (PPS4 and Policies STC1 and STC6)
- the traffic impacts of the development are acceptable and the existing highway network is able to accommodate the additional traffic and servicing demands generated (TR1)
- the development makes adequate provisions for car parking, transport and access to the site and in particular if sufficient provision is made to encourage non private car modes of transport such as walking, cycling and passenger transport (TR7 and PPG13)
- the development will cause undue detriment to the amenities of nearby residents (Policy ENV1)
- the development preserves and enhances the appearance and character of the adjacent Ware Conservation Area (Policy BH6 and PPS5)
- the proposal preserves and enhances the setting of the listed Rose and Crown Public House and gives due regard to significant heritage assets within and around the site (PPS5)
- the development is otherwise of a high standard of design quality reflecting the local pattern of development, providing for connection with its surroundings and landscaping (Policy ENV1 and ENV2 and PPS1)
- whether the housing proposal is appropriately designed, of satisfactory quality and makes due provision for affordable housing (Policy ENV1, HSG3 and HSG4 and PPS3)
- whether the development makes necessary S106 provisions to mitigate the impacts of the development (Policy IMP1)

Employment Impact

- 3.4 Local Plan policy EDE2 requires and sets out tests for existing employment sites that are not designated employment areas to ensure that they are as far as possible retained in continuing employment use.
- 3.5 The proposed development of the site will include employment in the retained nursery use at the site and provide an estimated 250 jobs (full time equivalent). National planning guidance in PPS4 (para 4) recognises that town centre uses such as retail development can be considered as “economic development” which authorities should view positively (Policy EC10) including their impacts on local employment. The employment benefits of retail development are therefore a valid consideration of the application. Proposals will still need to be in accordance with the detailed tests set out in Local Plan Policy.
- 3.6 The site would be acceptable for redevelopment for other high end employment uses and this has been encouraged at previous stages by the council, although that is not the proposal now presented for the Council to determine. In negotiations on previous applications at the site it was accepted that the site had limited suitability for B2 (industrial) or B8 (warehouse) development.
- 3.7 Bearing in mind the current weak market for commercial development and the costs of cleaning up the site and repairing the maltings and kiln building, it would be likely to be a significantly long time before any alternative business led regeneration of the site were feasible that delivered the same benefits of comprehensive regeneration. The applicant has estimated that there is 5,500 sqm of vacant business space at the site.
- 3.8 The previous retail led scheme included a care home and an estimated larger number of jobs (500) at the site but was not recommended for refusal on employment grounds. Notwithstanding the reduced employment in this current scheme, this is mainly a consequence of the reduced size of the store and the introduction of a housing element to replace the care home (which has been promoted by officers) so there is still a significant and acceptable employment element. Overall, having regard to the above matters I do not consider there to be an objection on employment grounds to the scheme.

Retail Considerations

- 3.9 The site is agreed by all parties to be outside Ware town centre. Asda consider their store to be “edge of centre” whereas I agree with Chase and Partner’s consistent and firmly held view that the site is “out of centre”

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because it is more than 300m from an assumed Primary Shopping Area.

- 3.10 It should be emphasised that there is no defined Primary Shopping Area (PSA) , as distinct from the Primary Shopping Frontages, in the East Herts Local Plan for Ware or any of the district's town centres. The plan at Appendix C identifies the Cintel (Asda) site in relation to the designated secondary and primary shopping frontages in the adopted Local Plan.
- 3.11 Policy EC3 of National Guidance in PPS4, and the definition contained in Annex B of the same, advises that Primary Shopping Areas (PSA) be identified in Local Development Frameworks and that they will broadly comprise "*the primary shopping frontages and those secondary frontages which are contiguous and closely related to the primary shopping frontage*" (Annex B). As neither the Local Plan nor the 2008 Retail and Town Centre Study recommended a PSA then this has to be a matter of judgement for the local planning authority.
- 3.12 The two main tests contained in PPS4 which are to be applied to applications for development for town centre uses on sites outside the town centre and not in accordance with the development plan are those of sequential assessment and retail impact as set out in Policy EC17.1. Firstly, the applicant needs to demonstrate compliance with the requirements of the sequential approach (policy EC15) and secondly that the development will not result in "significant adverse impacts" having regard to the considerations identified in policies EC10.2 and EC16.1. These cover a range of retail impact considerations including the impact on investment in towns, town centre vitality and viability, and other locally important centres, as well as non retail issues including climate change, transport, design, regeneration, and employment.
- 3.13 Legal advice the council has obtained is that in reaching a reasonable and defensible planning decision the local planning authority must give due weight to the sequential and impact tests. In particular, the expectation of Policy EC17.1 that unless a development (i) comply with the sequential test, and (ii) if there is clear evidence of significant adverse impacts as mentioned above, it should be refused. Only where there are other overriding considerations justifying the grant of permission, and where the Council can give clear reasons explaining, should a development be agreed contrary to the policy. Such cases are likely to be few and far between.
- 3.14 Sequential Assessment: In its original submission, Asda identified, with the cooperation of your officers, nine alternative sites in and around Ware Town Centre for appraisal in order to identify whether they could be determined to be sequentially preferable sites to the Cintel site. The Sequential Assessment was originally accepted by Chase and Partners to demonstrate

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that there were not any sequentially preferable sites. Asda discounted the Swains Mill / Crane Mead site as being unsuitable due to its designation for employment use in the local plan and a restrictive covenant for rail maintenance, as well as to its unavailability due to 3 separate land ownerships. The Co-op site (part of a larger identified site) was discounted as too small and therefore unsuitable and unviable.

- 3.15 The assessment was first challenged by the Coop who objected and announced that they intended to develop a mixed use scheme of residential and retail floorspace (approx 4000 sq ft net sales) at Star Street on the edge of the town centre, and then secondly in June this year when Waitrose publicly entered the discussion with their outline proposal for an alternative smaller food only store (15,000 sq ft) at Crane Mead. Waitrose stated that the 3 landowners had now come together in principle with a property developer to secure an agreement for the site's redevelopment. Chase and Partners asked for the sequential analysis to be reviewed, and their revised view is that while the Co-op site is not suitable to provide a food store of choice, the Crane Mead site is closer to the town centre, available, suitable and viable for development of the type proposed by Asda. This means that, in their view, the Asda proposal has failed the sequential test and permission for the development at the Cintel site should be refused.
- 3.16 PPS4 practice guidance notes that all sequentially preferable sites (i.e. sites that are in centre, or edge of centre) must be assessed in terms of their:
- availability – whether sites are available or are likely to become available for development within a reasonable time period;
 - suitability – whether sites are suited to accommodate the need or demand that the proposal is intended to meet;
 - viability – whether there is a reasonable prospect that development will occur on the site at a particular point in time.
- 3.17 It should be noted that neither the proposed Asda store at the Cintel site or the Swains Mill site is particularly favourably located for the town centre. Edge of centre sites for retail will only be preferable when they are both well connected to the centre by means of pedestrian access and within easy walking distance of the Primary Shopping Area. When measuring comparable walking distances for linked pedestrian journeys between the stores and town centre, the now indicated Crane Mead store would be about 264m to the nearest secondary frontage whereas the Asda store would be about 297m; the Crane Mead store is about 287m from the nearest primary shopping frontage whereas the nearest primary shopping

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frontage to the Asda store would be about 520m (see site comparison plan at Appendix C). The comparison of distances between the sites shows that in terms of a centre judged to be that of retail concentration, the Primary Shopping Area, then a store at the Swains Mill site would potentially be some 200m closer to the town centre than a store at the Cintel site.

- 3.18 Chase and Partners do not agree with Asda's view that Baldock Street can be considered to be within the Primary Shopping Area as this street is characterised by offices, A2 uses and restaurant/takeaways and it cannot be viewed as an area of retail concentration. Chase do not agree with the view of Asda that the linkage to the store and increased pedestrian activity and vitality of Baldock Street would make it part of the PSA in the future. This they argue pre-empts the planning authority's decision on how it intends to define a PSA for Ware in its Local Development Framework.
- 3.19 In favour of the Cintel site, I would acknowledge that the proposed Asda store at the Cintel site may be visible at a distance from the top of Baldock Street whereas a store at the Swains Mill site would not be visible from any town centre shopping frontage. Neither store would be visible from the Primary Shopping Area. Furthermore, a store at the Swains Mill site would be separated from the town centre by a somewhat inactive residential area whereas the route from a store at the Cintel site would pass along Park Road, Watton Road and Baldock Street and are of a mixed residential and commercial character. This linkage in part reflects the linear form of the town's commercial area.
- 3.20 In Swains Mill/Crane Mead site's consideration a store here could be well placed to provide attractive riverside pedestrian links to the town and is better placed for public transport being nearer to the station and town centre buses although there is no bus route into Crane Mead itself. The Cintel site is served by a limited bus service along Watton Road but is further from other bus routes and also the main railway station. Overall I consider the Crane Mead site to have better connections to public transport.
- 3.21 Both of the sites offer reasonably level walks into the town and neither requires the crossing of major road barriers. The Crane Mead site depends on the delivery of links beneath Viaduct Road, across Wickhams Wharf and some improvements to the riverside route. However, because of the fact that the Crane Mead site is physically much closer to the PSA, is therefore an easier walking distance to town, has better access to public transport and as it can be considered "edge of centre" then on balance I agree with Chase and partners view that the Crane Mead site should be considered sequentially preferable to the Cintel site with a greater likelihood of generating linked trips.

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- 3.22 **Suitability** – A key consideration regarding suitability is to understand what needs or demands the applicant’s proposal is intended to meet. Then it must be considered what contribution other more central sites can make to meeting the same or similar needs or demands.
- 3.23 While there is no adopted local plan policy or strategy to assert that Ware needs to grow or expand in its role PPS4 sets out that it is the need which the applicant’s proposal is intended to meet which is relevant. This differs markedly from that of the local plan which currently identifies for the town of Ware a minor town centre role. The evidence of the 2008 Town Centre Study only identified a need for modest new floorspace based on a status quo position but did not allow for claw back or expansion. The applicant has identified that there is leakage of expenditure out of Ware and that there is dissatisfaction with the existing limited choice so indicating, the need for alternatives and growth. However Chase and Partners advise that these could equally be provided by a smaller store and a suitable sequentially preferable site is available at Crane Mead.
- 3.24 The Swains Mill site at Crane Mead is measured at 1.74 ha in comparison to the 2.15 ha site at Cintel. The Asda proposal allows for part of the Cintel site to be used for housing so the retail area is reduced. Asda state that the Cintel site is more able to provide for the identified needs as it is a larger site.
- 3.25 Martin Robeson Planning Practice have made submissions that the Swains Mills site can accommodate a larger store than the earlier Waitrose proposal and have provided plans to demonstrate this. Previously it was assumed that the site could only accommodate a physically smaller store although a store that nonetheless in Chase and Partners view could still provide enhanced consumer choice in the town. A smaller store would not generate as much “claw back” of trade to the town. A larger store has been designed and demonstrated in my view to be feasible at the Cintel site by the current Asda application.
- 3.26 While the timing of submissions of plans for a larger store (32,500 sq ft net) at Swains Mill by Martin Robeson Planning Practice is relatively recent and the plans are not the result of any detailed negotiation, and remain untested by the rigours of a planning application process, I have given further consideration as to whether they demonstrate the Crane Mead site is capable of accommodating a larger store.
- 3.27 My first concern would be whether the site itself can accommodate such a store in a satisfactory design. As the recently published guidance on “Supermarket led development” by the Commission for Architecture and the Built Environment, states the most important factor determining the scale of

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a store is the site itself. PPS4 requires that new stores enhance the character and diversity of towns and that operators show flexibility in their trading formats. The best design approach has to acknowledge the limitations of specific sites.

- 3.28 An initial assessment of the latest Crane Mead proposal (Appendix D) indicates a poor arrangement of spaces and routes; the dominance of parking areas, the unsatisfactory relationship of built form to the river frontage, to the surrounding townscape and to its neighbours and the minimal elements of landscaping within the proposal. The arrangement fails to design in the option for an attractive route, in this case along the riverside, an important consideration for edge of centre sites which need to be well connected. I am of the view that the Swains Mill site is unlikely to be able to accommodate a store of the proposed size (32,500 sq ft) in a well designed or satisfactory manner. I remain of the view, from previous draft submissions by Waitrose that the site will be suitable and can accommodate in a satisfactory design a smaller store of approximately 15,000 sq ft.
- 3.29 A second concern is that the Crane Mead site is not large enough to accommodate parking that will not only meet the needs of a larger store of 32,500 sq ft but also the needs for shoppers making linked trips to the town centre. The indicated MRPP plan includes parking provision for 180 spaces although as the Asda application demonstrates that store can provide a 283 space car park for a smaller store (28,000 sq ft). The parking ratio for the proposed larger store at Swains Mill would appear to be unsatisfactorily low.
- 3.30 Finally, a further concern is that the Swains Mill site is within a designated employment site. i.e. allocated for Class B1, B2 and B8 employment uses in the local plan and in Policy WA7 (I) primarily reserved for Class B1. This point has been argued by Asda previously that the Crane Mead site is consequently unsuitable. This is a factor in PPS4, although the “amber” assessment of Crane Mead in the 2008 Employment Land Study, means that the employment use is only viable with intervention. I have agreed with Chase and Partners that this study discounts a general employment objection to a foodstore as the pre application development options formerly presented by Waitrose site showed an improved employment offer at the site (with retention of Mill Studios) and indeed the Secretary of State had no employment objection to the Sainsbury’s application in Hertford on a designated employment site even though that site had a more favourable “green” rating in the 2008 Employment Land Study.
- 3.31 However in previous pre-application discussions for the site it was acknowledged and agreed with Waitrose that the Mill Studios provided valuable employment space for existing businesses. As a consequence the

proposed development retained this building and its employment, indeed the owner of the Mill Studio only appeared agreeable to releasing part of the Mill Studio site for development because of this. The latest MRPP plan would not retain the Mill Studio building and Officers have reservations about whether a larger store at Swains Mill would be acceptable on employment grounds with regards to the local plan policy.

- 3.32 Due to these above factors I am unconvinced that the Swains Mill site is suitable for a larger store comparable to that which can be demonstrated to be planned and designed satisfactorily at the Cintel site. Indeed the greater size of the Cintel site underestimates its relative advantage which is due to change of land levels which do not exist at Swains Mill. This provides opportunities for improving the design and layout of parking and the relationship of the development to the town in its design and to its neighbours as has been exploited in the Asda designs.
- 3.33 Asda have pointed to their own Competition and Choice Analysis assessment that if they operate from the Cintel site then a greater variety of provision is made in the Hertford and Ware area than if a Sainsbury's operates from Crane Mead. They also object that the Swains Mill site has not been offered to them.
- 3.34 The point about which operator is on which site is irrelevant to the application of the sequential test, which is concerned with sites and not retailer identities. Moreover, the fact that the more central site is not available to them is also irrelevant, as the guidance to PPS4 makes clear.
- 3.35 While I am of the view that the Swains Mill site can only satisfactorily accommodate a smaller store, this would still provide enhanced competition and choice similar to the identified need indicated by applicant submissions and including local opinion surveys. Of course some local support has been given to the extra growth offered by a larger Asda store although there is also opposition. In my view based on the retail advice given, the case has not been proven that the scale of a larger store at the Cintel site more appropriately meets the identified needs than a similar but smaller food store at the Swains Mill site.
- 3.36 Asda claims that their site will deliver conservation benefits greater than at Swains Mill, and while this may be quite true and is accepted, it is not relevant to the sequential assessment –and is not a reason to discount the Swains Mill site as unsuitable.
- 3.37 **Availability** - Although there has been some uncertainty about deliverability of the Swains Mill site and no planning application has been made, the previous involvement of Waitrose and now the active engagement of site

owners to market the site indicate in my view that the land is available for a store albeit the timescale will be some way off a detailed submission. I agree with Martin Robeson that a long lead- in time is inevitable for such development and is not a reason to say the site is unavailable and thereby fail it on the sequential test.

- 3.38 PPS4 practice guidance does not precisely specify what a reasonable time period may be for a food store development but does indicate depending on local circumstances this can be a matter of several years (paragraph 6.39 – 6.40). The fact that there is no imminent planning application or defined timescale would not be a reason to say that a site is unavailable.
- 3.39 Asda are concerned that the submissions on Swains Mill are just “spoiling tactics” but in my view the landowners have a legitimate and financial interest in promoting their land as a credible alternative site as its value for them will only be realised if it is eventually developed as a food store so I see no reason to believe that they are not seriously promoting the possibility of the Crane Mead site. Spoiling tactics would arise if an incumbent retailer in a town were seeking to protect market share and delay a competitor developing a site for instance by creating an artificial scheme on a sequentially preferable site when they have no intention of delivering it.
- 3.40 If the Council refuses planning permission on the failure to meet the sequential test and then the owners fail to progress a scheme for the site then this would suggest the site is not genuinely available and the presumption would move back in favour of the Asda scheme but this outcome seems most unlikely at the present time.
- 3.41 **Viability** – The doubts raised about the deliverability of the Crane Mead site by Asda amongst others are more to do with issues of availability and landowner constraints or intentions. The site at Crane Mead has been in employment use and may require some site preparation and clean up for new landscaping with a new store, but there is no reason to believe that there are hidden costs associated with a retail development that would be a barrier to bringing the site forward or that would make it unviable.
- 3.42 Equally the local market would be favourable in view of the interest expressed in the site so it is likely that a foodstore at the site would be profitable venture.
- 3.43 I am therefore satisfied that this aspect of the sequential test is met and the Crane Mead site offers a viable alternative site.

Impact Assessment.

- 3.44 Following further discussions and assessment of submissions Chase and Partners are now in agreement that the retail impact is acceptable and that there will be no material harm to the vitality and viability of the town centre or that the development would have “significant adverse impacts”. Accordingly, they do not consider it necessary to reject the proposal in accordance with PPS4 Policy EC17.1(b).
- 3.45 Chase and Partners have previously questioned the figures provided in the Planning and Retail Statement by Asda about estimated turnover at the store and which were also strongly challenged by the Co-op and Waitrose.
- 3.46 Following a recent meeting and exchange of correspondence, Chase and Partners have now indicated that they are comfortable with the figures produced for turnover at the store and the derivation of the company average turnover figures. The Co-op’s agents, NLP, objected that a large amount of turnover (20%) is unaccounted for and the combined effect with under-estimation of turnover is that the impact of the store on the town centre could be as high as 37% but the basis of this estimate is not clear or accepted by Chase.
- 3.47 Chase and Partners accept that the assumed linkage of 20% of shoppers visiting the town centre is reasonable. The figure is justified by Asda as it is below the range (22-53%) of linkage discussed for the Hertford Tesco Store (although that store is physically better linked to a town centre with a stronger pull factor) Only 30% of Ware Tesco shoppers by comparison visit the town centre, so for Asda, 20% linked trips from a store comprising both convenience and comparison goods over 500m from the primary shopping area may be an overestimate albeit a figure accepted by our retail advisers.
- 3.48 Overall, Chase have summarised their view that the proposal will not cause harm to the vitality and viability of Ware town centre as a whole and therefore meets the PPS4 policy test. In fact the test contained in Policy EC17.1(b) is, as Asda have pointed out, whether there is clear evidence that the proposed development would result in “significant adverse effects” to the town. Clearly it is not considered that this will occur.
- 3.49 However, while accepting the lack of harm by impact, Chase do believe that the benefits to the town centre may be overstated. The ability of a new Asda store to retain custom and trade within the town and provide a modest associated level of linked trips (20%) is judged to more than compensate for the draw of trade away from the town centre. Chase have accepted that there could therefore be an additional spin off trade to the town centre

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(estimated by Asda at least £336,000). If turnover at the store goes higher then this figure could increase.

- 3.50 The size of the proposed store is larger than the existing town centre Tesco store but overall the scale, following the reduction from the previous application is considered to be more appropriate to the minor service role of the town.
- 3.51 The Co-op has objected that it intends to develop a small convenience food store site in Star Street at its former dairy site and this would be jeopardised. This store would provide more of a “top up” shopping function rather than a comparable bulk food shopping offer as at Tesco or Asda. As such, even if the investment is threatened by the possibility of an Asda development it’s future importance to the vitality of the town centre is doubted by Chase who do not think this would constitute grounds for refusal.
- 3.52 There is therefore no retail impact objection to the application and the previous reason for refusal of the October report has been addressed and is withdrawn. Of course the impact tests of PPS4 are set out in Policy EC17.1 and wider than simply those of retail impact and these issues are addressed within the following section on other planning considerations. Most contentious of the other impacts are those related to highways impacts.

Other Planning Considerations

Design, Conservation and Landscaping Issues (including regeneration benefits)

- 3.53 The design of the scheme represents one of the most significant areas of change and development since the last planning application in 2008. An overall approach and design has been broadly agreed with your planning and conservation officers, and including input from English Heritage.
- 3.54 The changes have resulted in a tighter built form to Park Road; increased landscaping at the public boundaries of the site as well as the private internal site boundaries with neighbours. The retention and incorporation of both the hitch brick kiln and the maltings is now secured with the new store. The references to maltings buildings in the design and the use of materials suggest a more traditional approach although the main design objection previously was to the form and layout of the rather uninspired “box-like” form of the proposal rather than any architectural style issue. The prominence of parking previously was also a concern although the redesign

now achieves car parking in a manner which does not dominate the site and its surroundings. Although the style of architecture was not advocated by officers, the applicants have introduced a language of buildings that now have better reference to local context and distinctiveness.

- 3.55 The Conservation Officer and English Heritage have given their positive endorsement to the approach and the public exhibitions and correspondence indicate a wide agreement that the design of the scheme is a positive material consideration. Although a wider mix of uses was encouraged, to include other active uses along the main road frontages, the introducing of the café element to Park Road, the retention of openings and the strengthened landscaping as well as the active use of the Kiln building will result in a more active street frontage and an acceptable design. The opening up of the area in front of the Kiln will make this a much more positive feature in the street and in combination with the other changes, such as the nursery extensions I consider there will be a significant enhancement of this part of the Conservation Area.
- 3.56 The retention of the Kiln and Maltings secures a significant heritage asset in both this Council's view and that of English Heritage and the County Archaeologist. Although it was not listed, the building has in your officer's view an equivalent significance and new national guidance in PPS5 strengthens the weight to be given to non designated heritage assets where a case can be made. The repair and enhancement of this building represents a valuable benefit of the overall scheme. It is not immediately clear if an alternative development scheme for the Cintel site would be able to secure the repair of this building and certainly not within an early time frame.
- 3.57 To the north of the site is the only listed building adjacent to or within the site, the Rose and Crown Public House also constructed of the local hitch brick. The proposal will provide significant landscaped areas to Watton Road nearby and I consider the proposed development will consequently enhance the setting of this building.
- 3.58 As part of the design work, in accordance with the requirements of Policy ENV1, a lot of attention has been given in negotiations to how the store will connect with its surroundings and the town centre. A number of improvements to crossing points on Watton Road, Park Road, Fanshawe Crescent and walking and cycling routes will be included. The corner of Buryfields Park is to be opened up to view from Park Road to make the route more inviting as well as addressing a concern raised by Glaxo about poor visibility. The development will allow people to cross from Watton Road to Park Road via the store entrance during opening hours (a provision that can be secured by condition for additional hours on Sunday).

3.59 Overall the design and conservation aspects of the proposal are not only in my view acceptable in design terms but give a very positive weight to the application to which I shall return in my overall summary of the planning application.

Highways and parking

3.60 The application has been subject of lengthy and detailed work between the County Highways Officers and applicant. They have not been able to agree all figures, but sufficient agreement has been reached on the basis of modelling for them to conclude that the congestion, while increased as a result of the proposals, is acceptable and can be mitigated by the S106 contributions towards identified sustainable transport.

3.61 The County Council add however that the congestion could be deemed unacceptable if not outweighed by other planning benefits such as the retail need for the store. In making this point they are having regards to the Inspector's decision on the Sainsbury application, where an objection to traffic congestion was accepted by the Inspector but found to be outweighed by the wider planning benefits.

3.62 In the case of the Asda proposal I would take the view that it can potentially provide significant planning benefits by regeneration of a major brownfield site, by increased local retail choice and competition and by the repair and reuse of a significant historic asset (the kiln and maltings building). Without prejudice to the judgement made on compliance with the sequential test, I do think there are planning benefits to the proposal which would override the highways concern and in view of the highways comments I do not recommend refusal on highways grounds.

3.63 The overall level of parking provision has been accepted by your officers and highways officers. The 283 spaces provides a comparable level of parking in ratio to the net sales area as has been agreed at other store proposals (Tesco extension/Sainsbury's in Hertford) for edge of centre sites which have also allowed for town centre shoppers parking. A S106 provision to manage the parking to ensure short term parking charges but reasonable longer stay charges will also make the car park an option for shoppers using the town centre.

3.64 The guideline parking provision under the SPD, a maximum, is not considered so reliable in this case as this is based on gross floor area figures, rather than net, and the gross floor area of the Asda store is disproportionately high due to the retention of the kiln and maltings building.

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- 3.65 A S106 obligation will manage the car parking so that it is comparable to other town centre car parking regimes, in accordance with advice in PPS4, with a small charge for short stay, refundable on a minimum spend at the store and higher charges for longer stays. The local residents group has concerns that this will encourage people to park within the surrounding streets but the S106 already has provisions to look at residents parking controls.
- 3.66 Although the Green Travel Plan will be a means to discourage staff use of the private car, and in part addresses concerns about parking in neighbouring streets, there is a S106 provision to fund the implementation of a residents parking scheme as also recommended by highways. GSK have pointed to a conflict between the provisions of the S106 provision and the planning condition to retain parking for customers only but this will need to be addressed as the Travel Plan is reviewed.
- 3.67 Overall therefore I do not consider there is a planning objection to the application on highways or parking grounds.

Neighbour Amenity

- 3.68 The last retail led planning application on this site (3/08/1531/FP) was considered by officers to raise unacceptable neighbour amenity issues in particular with regard to the service yard location and the proximity of footpaths to adjoining private gardens. The proposals have been significantly amended in my view with regards to the relationships to surrounding dwellings. For a large food store operator there will inevitably be a level of disturbance. However the number of objections by neighbours has fallen and the residents group is not objecting subject to the control by planning condition. Environmental Health do not object to the development or the noise implications from the site.
- 3.69 The service yard area, a key objection of the last application, has been positioned more centrally and now further away from residents in Fanshawe Crescent. This was partly enabled by the revision of access arrangement with delivery vehicles entering from Park Road and exiting via Watton Road. The dwellings in Fanshawes Crescent will be separated by a 4m acoustic fence and a wide tree planted mound. The yard would be subject to a service yard management plan.
- 3.70 On the eastern side of the site the dwellings at 26 Park Road and 63 Watton Road are immediately adjacent and the most likely to be affected by the proposed development and its car park. The footpaths proposed along the east side boundary in the first application have been omitted and the decked car parking will now be separated from the adjacent houses by

intervening planted areas of over 5m width. The deck car park will have a boundary fence of sufficient height (1.6m to restrict overlooking) and in time planting will provide additional screening. The store will be open up until 10pm Monday to Saturday which will mean some level of evening disturbance although consideration must be given to the fact that the site is lawfully in employment use and favoured to remain so in policy terms. The current use of the site is not subject of any time restrictions.

- 3.71 The undercroft car parking should ensure that much of the car park activity does not raise any particular issues of noise to residents and the car park will be closed off when the store is closed. There will be some noise from the upper deck and the nearest properties affected are those on Watton Road and Park Road. In the previous scheme the car park was closer to them and the introduction of a pathway adjacent to their boundaries was likely to add to disturbance. Now as proposed with screen or acoustic fencing, new planting, a condition to control lighting and the restricted opening hours then these should all combine to keep the neighbour disturbance within reasonable limits.
- 3.72 There will be a general increase in activity and traffic that will be noticeable to residents, partly by comparison with the low level of activity as the employment uses have left the site. The traffic generated by the development will be a source of additional disturbance and loss of amenity to residents but there is already loss of amenity due to traffic in the locality and I do not think that the increased traffic levels would give rise to such a level of harm as to sustain an objection to the proposal.
- 3.73 The submission of Asda's Community Charter is encouraging as it shows that they are willing to work with residents over and above the provisions of planning conditions. It is also the case that planning conditions and compliance should be more effective when there is a positive dialogue in place between developer and residents. Overall I see no grounds for objection on neighbour amenity grounds subject to the recommended conditions.

Housing provision/affordable housing

- 3.74 The housing proposed to the western part of the site has been subject of considerable discussion with officers and with the local Cintel residents group. The 13 dwellings in this location substitute for an earlier proposal for a 70 bed care home in the previous withdrawn planning application (3/08/1531/FP).
- 3.75 The site is large enough to support a provision of dwellings that would warrant affordable housing in my view, having regards to the thresholds of

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local plan policy However the applicants have been keen to honour a commitment to residents that only the current proposed form of development would proceed as part of the overall scheme and have offered a planning condition to that effect. The Town Council have also asked for this condition.

- 3.76 Although the applicant's initial view was that the threshold did not apply in the approved Planning Performance Agreement they have signed up to the objectives of providing 5 of the 13 dwellings as an affordable provision. This enables local needs for affordable housing family to be met as part of the overall provision. The affordable provision could be secured as one of the obligations of a S106 agreement.
- 3.77 The layout of the housing is in 3 separate blocks in an L shape arrangement and at sufficient distance from neighbours to respect their amenity. There will be private garden space provision as part of the scheme and parking provision in front of the dwellings. It is reasonable to impose a condition for the completion of this part of the development as part of the overall scheme as this secures the regeneration of the housing area. A condition that only 13 dwellings has been offered by the applicant and sought by residents, however I do not think is sustainable and would not meet the tests of national planning guidance in Circular 11/95.
- 3.78 Overall the housing would provide a useful contribution to the private and affordable housing needs of the area although not perhaps securing the most efficient use of the land. There are no objections to the housing aspects of the application subject to securing the benefits as part of a comprehensive redevelopment of this brownfield site.

Miscellaneous / Public Opinion

- 3.79 The application has been prepared over a long period of time with public consultation and negotiation at several stages. The applicant was asked to conduct a revised survey of the town's residents and traders to clarify the public views on the store but did not do so, arguing that there is overwhelming support. The impression from all sources that I have gained is that there is a genuine divide of opinion, and that while the town is generally supportive of more choice and competition it is more balanced regarding the merits of the proposed scheme even though the greater number of written representations made are opposed. The main public concerns are the environmental impact on the immediate site and surroundings area, the impact on the town centre. Some seek the alternative provision of a Waitrose food store and a small Co-op convenience store to the larger Asda.

3.80 The fact that one brand may be more popular or seen as more price competitive is not a material planning consideration, and is also not relevant to the application of the sequential test which is about sites only, not operators. The decision of the council cannot therefore have regard to the reputation or image of the operators. Ultimately it is not the balance of support that a scheme may have in the town, but a planning decision which needs to be taken on its planning merits, having regard to national and local planning policies and all other relevant material planning considerations.

Planning Obligations

3.81 Although the application is recommended for refusal, a draft set of S106 planning obligations and conditions have been agreed in principle with the applicant. They provide a comprehensive package of contributions of almost £950,000 that are related to the store development and would be considered necessary for it to be acceptable in planning terms having regard to the tests set out S122 of the Community Infrastructure Levy 2010 and the tests of Circular 05/2005. The most significant element of the provisions relate to the need to promote sustainable transport modes for the development in accordance with PPG13 and PPS4. There would be provision of £365,000 to fund additional bus routes to the site for 5 years as part of the scheme and provision of £232,000 to meet pedestrian and cyclist schemes within the vicinity of the site.

3.82 Being in an out of centre location the store needs to strongly promote the pedestrian links into the town. The S106 provisions would include grants to repair the building facades in Baldock Street and the development of an Architectural Lighting Strategy. The improved lighting and encouragement to owners to invest in their buildings in Baldock Street would enable the route to be more attractive to pedestrians throughout the year but the lighting will be partially of benefit in the winter afternoons and evenings. The possible boost to Baldock Street has been used as part of the wider retail planning case for Asda. Other planning conditions secure pavement widening along the route to Baldock Street and a cyclist/pedestrian route across Buryfields.

3.83 Contributions are also agreed in principle in relation to the housing element of the scheme to meet increased impacts on open space (including a new toddler play facility in Buryfields), schools, library and childcare services.

3.84 A £30,000 contribution is made to the long term funding of a public realm scheme for Tudor Square, a key opportunity and public space within the Town Centre. This contribution will help to improve the attractiveness, vitality and viability of the town centre and counter concerns about the balance of impacts on the town centre.

- 3.85 The S106 would also fund a residents parking scheme (subject to due consultation) to address concerns about parking in the surrounding streets; the management of the car park as a comparable short stay car park to be priced favourably for journeys into the town centre; the securing of affordable housing provision at the site and a Green Travel Plan for employees and users of the store.
- 3.86 Greater detail and explanation of planning conditions and the S106 provisions are set out in the withdrawn report to the 17th November committee attached as Appendix B.

4.0 Conclusion

- 4.1 The proposed Asda development is a detailed and well developed set of proposals which would provide for the retail-led regeneration of a major brownfield site in the town on the edge of the Conservation Area. It can provide a new out-of-centre food store for the town and increased competition for the existing Tesco store, something which is desired by many residents in the town and broadly has the support of the Town Council. Equally there have been a large and significant numbers of objectors to the scheme.
- 4.2 In terms of the latest national planning guidance for economic/retail development, in PPS4, the proposed store is judged by our independent retail adviser to fail the critical sequential test, albeit it is a finely balanced judgement. This is due to the reasonable likelihood of an alternative and sequentially preferable site in an edge-of-centre location at Swains Mill Crane Mead being available, suitable and viable. The Co-op Star Street site is discounted as it is not capable of providing a main foodstore and increasing choice.
- 4.3 The judgement in relation to the Crane Mead site is not changed by the fact that since the 20th October Committee meeting other operators as well as Waitrose have shown an interest. The landowners have employed a different agent who is engaging different operators who are interested in the site in addition to Waitrose. The site is still available in terms of PPS4 although the change does suggest a longer period before development is likely to come forward.
- 4.4 The issue of whether there is a sequentially preferable site is a fundamental point as, whatever other planning merits an application may have, PPS4 expects the sequential test to be satisfied in its own right. The application should therefore normally only be approved if it can be shown that no other site capable of accommodating retail development, including the Swains

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Mill/Crane Mead site, is more central than the Cintel site, and also available; suitable; viable and, as such 'sequentially preferable' to the Cintel site. The nature, reputation and identity of the proposed operators of sites is not a relevant consideration.

- 4.5 Asda argue that the rival sites are more or less equivalent in distance to the town's secondary shopping frontages, but I agree with retail advisor Chase and Partners, that the Amwell End area is significantly busier than Baldock Street and whereas the former may be considered part of the core town centre, or Primary Shopping Area, Baldock Street would not.
- 4.6 I summarise below your Officers' assessment of the availability, suitability and viability of the Swains Mill/Crane Mead site. For reasons set out above, your Officers consider that site to be edge of centre, whereas the Cintel site is out of centre.

Available

- 4.7 In my view, although contested by Asda, I think there is a more than reasonable prospect of a development coming forward at the Crane Mead site. This is emphasised by the apparent determination of the landowners to act independently of Waitrose. There is understood to be a level of agreement reached by landowners although the owner of the Mill Studio when he previously wrote indicated that only that part of that site would be used due to its excessive parking.
- 4.8 There is evidence that the site would be of interest to other operators including Sainsbury's and Waitrose. While there is no timetable, and the period of time to secure a development will be some way away, this does not mean the site is unavailable, the development of sites for food stores inevitably takes time. Part of the site, the former Network Rail land, has a legal restriction over it, but it is believed that this was known at the time of the recent land sale and can be negotiated away. In any event, it is fair to say that a large part of the site has no such restriction and is certainly available. It maybe that this restriction on the land hampers the size of land available and the size of store possible, similarly uncertainties about the retention of Mill Studios may also do so. Whatever the uncertainties, much of the area is understood to be available and the three landowners appear able and willing to bring the site forward for development.

Suitability

- 4.9 Asda seem to concede that the Crane Mead/Swains Mill site may have physical proximity, but correctly say that sequential assessments are a

balanced judgement as advised by PPS4 practice guidance, and should be based on the specific circumstances of the case. The Crane Mead site they contend is not a suitable alternative due to the fact that the larger Asda store brings a new fascia into the area and would “clawback” more trade to the town than a smaller store at Crane Mead a point accepted by Chase and Partners, although not to the extent that the Crane Mead site should be discounted.

- 4.10 Asda believe, that their store provides the kind of new offer that the town needs and introduces a choice into the area that is absent. Alternatives such as Sainsbury’s or Waitrose would not introduce the same level of diversity. This is possibly the case as Asda are not represented in the area, but it is not relevant to the considerations of site suitability for the sequential test. It should be remembered that PPS4 advises that competition and choice are not just a product of having different operators.
- 4.11 There is no adopted local plan policy or strategy to assert that Ware needs to grow in its role and the Local Plan currently identifies for the town of Ware a minor town centre role. It would be for future local plan policy to amend this. The evidence of the 2008 Town Centre Study only identified a need for modest new floorspace (albeit not allowing for claw back or expansion). That there is leakage of expenditure out of Ware is acknowledged and has been identified by the application submissions; that there is also some strong local support indicates a need for alternatives and growth, and certainly a desire for competition and choice but Chase and Partners advise that these could equally be provided by a smaller store and a suitable sequentially preferable site is available at Crane Mead. The overall level of support for the larger Asda provision, rather than a choice *per se*, is not proven.
- 4.12 In view of the advice received that a smaller store will also provide the competition needed and clawback trade to the town, as identified by the Asda application, then the Crane Mead site is deemed to be suitable to meet similar needs to those identified and provide an appropriate enhanced choice.

Viability

- 4.13 The issue of viability is whether there are identified impediments or financial or other constraints that would make a site unviable for retail development. The fact that the site has been seriously looked at by Waitrose and now by Sainsbury’s, and that the value of the land would be greatly lifted by a retail foodstore permission means that I see no reasonable grounds to consider the Crane Mead site to not be viable for a foodstore development that can meet the needs of the town.

- 4.14 Asda point out that Sainsbury's would not develop the Crane Mead site but concentrate on the new Hertford store but this seems improbable, is not supported by evidence, and is not a reason why the site is unviable.
- 4.15 Overall, as the Crane Mead site appears to be more central, available, suitable and viable for a foodstore development that can meet similar needs and demands to those that would be met by the development proposed for the Asda site, it is my judgement that the application by Asda for the Cintel site fails the sequential test.
- 4.16 PPS4 is clear that planning applications are to be refused where the applicant has not demonstrated compliance with the sequential test; while other planning considerations may be favourable, your officers do not consider that any of these are sufficiently strong to justify overriding this policy. The application should therefore be refused due to the failure to satisfy the sequential test.

Retail Impact

- 4.17 As the sequential test fails then the question of impact becomes less critical. although impact is equally a significant test of PPS4. Following further discussions and assessment of submissions Chase and Partners are now in agreement that the retail impact is acceptable and that there will be no serious harm to the vitality and viability of the town centre or the "significant adverse impacts" needed to reject a proposal in accordance with PPS4 Policy EC17.1 .
- 4.18 The independent expert advice received is that the retail impact of a foodstore at Swains Mill on the town centre is not anticipated to be any more beneficial than the proposed Asda store at Cintel. While, there are many objections from third parties that the town centre will be damaged. Impact therefore no longer forms part of the refusal recommendation.

Highways Matters

- 4.19 From the highways submissions, assessments and modelling enough progress has been made to be satisfy officers that the proposal will not raise safety concerns or introduce highway hazards. The Asda scheme will generate additional traffic congestion in the area although the traffic models anticipate this even without a foodstore, this congestion is proposed to be mitigated by the measures and funding of the S106 Sustainable Transport Contributions and on this basis the County Highways engineers have now withdrawn their objection to the proposal although they accept there will be increased congestion. They do however advise that in their view the

highways objection stands unless there is a retail need or planning benefits to override it. In my view, notwithstanding the retail objection on sequential grounds (which in this case overrides the wider planning benefits), because of those wider planning benefits, I do not believe it is appropriate to also recommend refusal of the application on highways grounds.

Miscellaneous

- 4.20 A S106 package of obligations has been negotiated with planning conditions in the event of planning permission being granted. These would provide for sustainable transport contributions; secure the enhanced pedestrian and cyclist links between the store and the town centre; including elements to support recovery in Baldock Street, a more peripheral area of the town centre that suffers from less activity, investment and higher levels of vacancy.
- 4.21 In terms of heritage assets; the Cintel site contains a building of significant heritage interest, the hitch brick Kiln and Maltings which will be repaired and brought into use as part of the development and this is a benefit and consideration I give significant weight. The refurbishment would be to the benefit of the wider surroundings as the frontage views of the building will be opened up to street view along Park Road. The re-establishment of a more attractive frontage to Park Road and attractive links into Buryfields will be to the enhancement of the pedestrian links and to the Conservation Area.
- 4.22 The development has been redesigned to modify and in my view address the previous objections to neighbour impacts and raises no grounds for objection on this point. Significant landscaping around the site will be to the benefit of both public and private viewpoints of the site and Asda have committed to its long term maintainence.
- 4.23 All the identified benefits of heritage, site regeneration, new employment, provision of retail competition and a potential boost to the vitality of Baldock Street by associated S106 obligations may outweigh the disbenefits of increased traffic congestion, but they are not relevant to the key sequential test of PPS4.
- 4.24 I therefore recommend that planning permission be refused for the proposed store for the reason as set out at the head of the report. Given the length of time taken to get to the stage of a finalized, detailed scheme for Asda, I appreciate some may feel frustrated by this recommendation. However, the fact remains that there is a sequentially preferable site, which is considered to be available, suitable and viable and current national policy position is that this means that Asda's application must be refused. I do not

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consider there to be any other material considerations which are so strong to justify overriding the clear policy of PPS4.