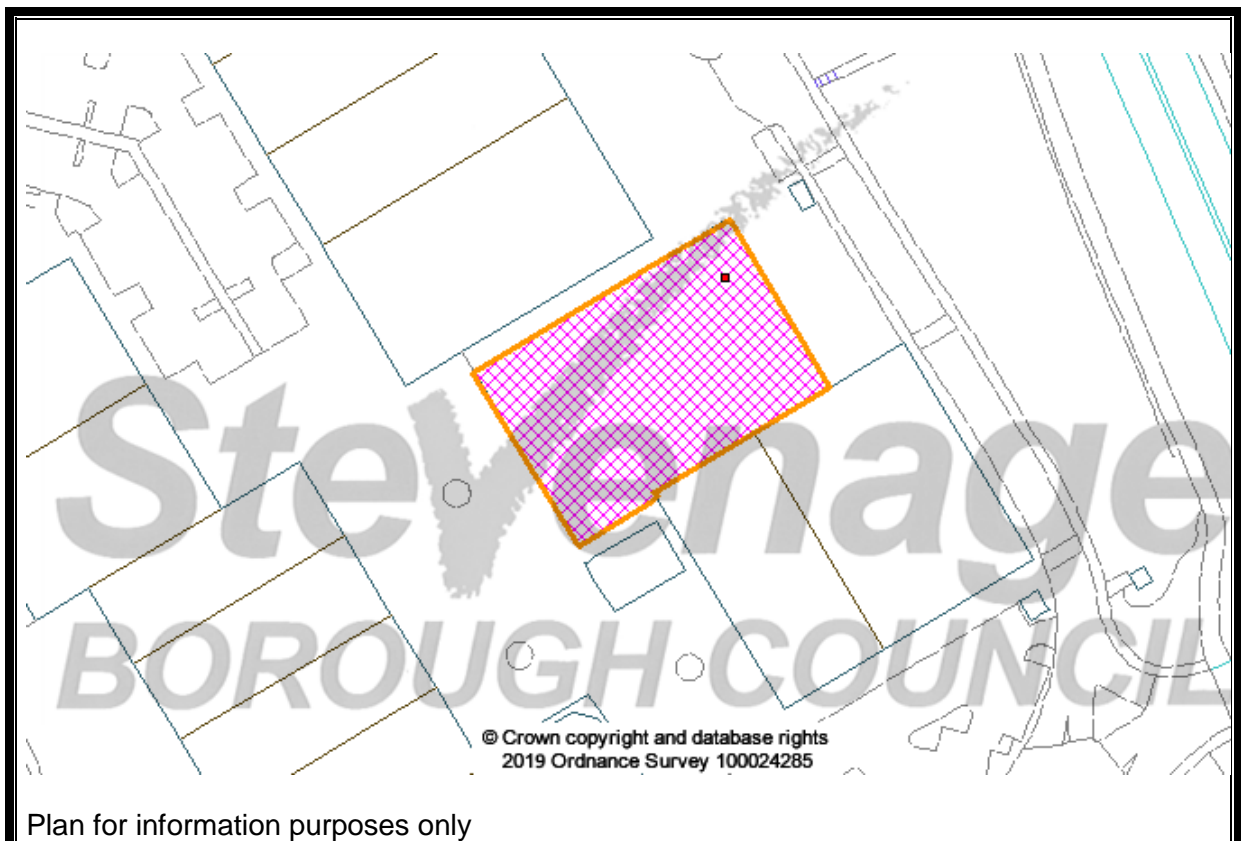


Meeting:	Planning and Development Committee	Agenda Item:
Date:	6 September 2022	
Author:	Ailsa Davis	07702 874529
Lead Officer:	Zayd Al-Jawad	01438 242257
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Application No:	22/00385/FPM
Location:	Unit 4A, Roaring Meg Retail Park, London Road, Stevenage
Proposal:	Variation of Condition 6 (range of goods restriction) attached to planning permission reference number 14/00680/FPM, external alterations to existing retail unit and ancillary works.
Drawing Nos.:	2264-U4A-L01; 2264-U4A-P01; 2264-U4A-P02; 2264-U4A-P03; 2264-U4A-X01; 2264-U4A-X02; 2264-U4A-X03
Applicant:	Stevenage Retail Ltd
Date Valid:	25 April 2022
Recommendation:	REFUSE PLANNING PERMISSION



1. SITE DESCRIPTION

- 1.1 The application site comprises Unit 4A, a 1914m² retail unit located within the southern half of Roaring Meg Retail Park, now known as 9 Yards Stevenage. Roaring Meg Retail Park (9

Yards Stevenage), is an established retail destination serving the wider Stevenage area. The Retail Park extends to some 33,000m² of retail floor space. It comprises a number of units including shops, restaurants, cafes and hot food takeaways. The retail park is located approximately 1km south of Stevenage Town Centre. As such, the application unit occupies an 'out-of centre' location in terms of planning policy. The unit is currently vacant.

- 1.2 The application site is bounded by Unit 3 and the service yard to the north, the internal service road to the east, the southern car park of the retail park to the south and the pedestrianised area of the retail park to the west. The retail park can be accessed both off of Monkswood Way to the east and London Road to the west. In terms of planning constraints, Unit 4A is located within part Flood Zone 1 and part Flood Zone 2. The proposals result in no change to the overall building footprint and therefore do not give rise to any flood related issues. The site is not located within a Conservation Area nor within close proximity to any listed buildings.

2. RELEVANT PLANNING HISTORY

- 2.1 Planning permission was granted under ref. 14/00680/FPM on 25 February 2015 for the demolition of the existing retail unit and its redevelopment to provide 5,688m² of retail warehouse (Use Class A1) within 3no. units. The application unit comprises Unit A of the three units which together are part of Unit 4 granted under this permission.
- 2.2 Condition 6 of the above planning permission states:

The range of goods to be sold from the development shall be confined to retail warehousing of comparison goods to exclude expressly the sale of all foodstuffs for consumption off the premises, clothes and footwear (other than specifically for the playing of sport), or other fashion goods.

REASON: - *The original retail park is subject to this restrictive condition and the justification for this retail development has been based upon the retailing of goods that are normally sold from retail warehouses.*

3. THE CURRENT APPLICATION

- 3.1 This application seeks planning permission to vary Condition 6 (range of goods restriction) attached to planning permission reference number 14/00680/FPM, external alterations to existing retail unit and ancillary works. The applicant seeks the wording of the condition to be amended as follows:

The range of goods to be sold from the development shall be confined to retail warehousing of comparison goods to exclude expressly the sale of all foodstuffs for consumption off the premises, clothes and footwear (other than specifically for the playing of sport), or other fashion goods, other than for the sale of clothing, footwear and fashion goods and the ancillary sale of foodstuffs from Unit 4A.

- 3.2 The supporting Planning and Retail Statement advises the variation would allow the occupation of the unit by a new flagship store, combining both TK Maxx and HomeSense brands within one unit. The TKMaxx and HomeSense brands operate under the TJX UK (TJX) parent company with the former focussing on clothing, footwear and fashion goods and the latter furniture, homewares and household goods. It is understood that the existing TKMaxx store at Unit 10, The Forum will close by Spring 2023 as the Landlord of the property has served notice confirming that they are opposing the request for a new lease on the grounds of redevelopment. TK Maxx's existing lease on The Forum store is due to expire in September 2022. External alterations are also proposed within this application

namely, alterations to the elevations including new glazing and entrance doors, and the introduction of new signage zones.

- 3.3 A separate application has been submitted under ref. 22/00389/FPM for the installation of a mezzanine floor to facilitate the occupation of the unit by both TKMaxx and HomeSense. The mezzanine would comprise 1,858m² of gross floor space, resulting in a total unit size of 3,718m² in area. Both applications are accompanied by a joint Planning and Retail Statement, which includes the results of the Sequential Test.
- 3.4 Given the proposed mezzanine and variation of condition (range of goods) have been submitted as two separate applications, the Planning Authority has a duty to assess each application on its own merits having regard to provisions of the Development Plan, so far as material to each application, unless material considerations indicate otherwise. This is irrespective of the fact the business model put forward combines the two.
- 3.5 This application comes before the Planning and Development Committee because it is a Major.

4. PUBLIC REPRESENTATIONS

- 4.1 This planning application has been publicised by way of two site notices and neighbouring properties have been notified about the application via a letter. The application was also published in the local press as it is a major application. At the time of drafting this report, 40 representations of support have been received, one general comment and two objections. The main theme for the support for the proposal is the view that allowing a change to the range of goods that can be sold from this unit would be good for the people of Stevenage in terms of access to new shopping opportunities, the local economy and jobs. People also do not want to lose TKMaxx from the town and view the addition of HomeSense as a positive benefit.
- 4.2 In terms of the objections, these are from the Managing Partner of the owners of the Westgate Shopping Centre in the Town Centre. The comments can be summarised as follows:
- TK Maxx is a principal retail occupier of the town centre and is vital to its ongoing prosperity. The loss of one retailer leads to further loss of customers to the remainder of the town, meaning that other shops become unviable and so on;
 - Stevenage Town Centre is currently suffering from the worst effects of the retail downturn;
 - We have put forward proposals to TK Maxx for their continued occupation of space in the town centre. Therefore, it cannot be proven or said that sequentially there is no available space within the town for TK Maxx. To aggregate TK Maxx and HomeSense as one requirement is wrong in terms of the sequential approach, they can and most of the time trade separately;
 - This proposal does not meet the sequential test and is harmful to the town centre and its vitality.

5. CONSULTATIONS

5.1 Hertfordshire County Council Highways

5.1.1 Notice is given under article 22 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 that Hertfordshire County Council as Highway Authority does not wish to restrict the grant of permission.

5.2 SBC Planning Policy

5.2.1 No comments to date.

5.3 SBC Environmental Health

5.3.1 Do not wish to comment.

6. RELEVANT PLANNING POLICIES

6.1 Background to the development plan

6.1.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that the decision on the planning application should be in accordance with the development plan unless material considerations indicate otherwise. For Stevenage the statutory development plan comprises:

- The Stevenage Borough Council Local Plan 2011-2031
- Hertfordshire Waste Development Framework 2012 and Hertfordshire Waste Site Allocations Development Plan Document (adopted 2012 and 2014); and
- Hertfordshire Minerals Local Plan 2002 – 2016 (adopted 2007).

6.2 Central Government Advice

6.2.1 A revised National Planning Policy Framework (NPPF) was published in July 2021. This largely reordered the policy substance of the earlier 2012 version of the NPPF albeit with some revisions to policy. The Council are content that the policies in the Local Plan are in conformity with the revised NPPF and that the Local Plan should be considered up to date for the purpose of determining planning applications. The NPPF provides that proposals which accord with an up to date development plan should be approved without delay (para.11) and that where a planning application conflicts with an up to date development plan, permission should not usually be granted (para.12). This indicates the weight which should be given to an up to date development plan, reflecting the requirements of section 38(6) of the 2004 Act.

6.3 Planning Practice Guidance

The PPG contains guidance supplementing the NPPF and with which Members are fully familiar. The PPG is a material consideration to be taken into account together with the National Design Guide (2019) which has the same status as the PPG.

6.4 Stevenage Borough Local Plan 2011-2031 (Adopted 2019)

Policy SP1: Presumption in favour of sustainable development;
Policy SP2: Sustainable development in Stevenage
Policy SP4: A Vital Town Centre;
Policy SP5: Infrastructure

Policy SP6: Sustainable Transport
Policy SP11: Climate change, flooding and pollution
Policy GD1: High quality design
Policy TC12: New Comparison retail provision
Policy TC13: Retail Impact Assessments
Policy FP1: Climate Change
Policy FP2: Flood risk in Flood Zone 1
Policy FP3: Flood risk in Flood
Policy IT4: Transport assessments and travel plans

6.5 Supplementary Planning Documents

6.5.1 Stevenage Design Guide SPD (2009)

6.6 Community Infrastructure Levy Charging Schedule

6.6.1 Stevenage Borough Council adopted a Community Infrastructure Levy Charging Schedule in 2020. This allows the Council to collect a levy to fund infrastructure projects based on the type, location and floor space of a development. This proposal would not be CIL liable as no additional floor space is proposed under this application

7. APPRAISAL

7.1.1 The main issues for consideration in the determination of this application are its acceptability in retail policy terms, the sequential test, its impact on the vitality and viability of the Town Centre, design and visual impact (external alterations), flood risk and drainage and highways and parking.

7.1.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise.

7.2 Retail Policy Considerations

7.2.1 The application site is located approximately 840 metres to the south of Stevenage Town Centre and is an out-of-centre location. For retail applications for town centre uses located outside of defined centres the NPPF states that:

- Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan (paragraph 87); and
- When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floor space threshold (if there is no locally set threshold, the default threshold is 2,500m² of gross floor space). This should include assessment of:
 - a) 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

- b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme) (paragraph 90).

7.2.2 Paragraph 91 of the NPPF confirms that where an application fails to satisfy the sequential test or is likely to have a significant adverse impact on one or more of these considerations it should be refused.

7.2.3 In the context of paragraph 90 of the NPPF, Policy TC13 of the Stevenage Local Plan (2019) provides locally set thresholds where impact assessments are required and confirms that impact assessments are required for any proposal in excess of 300m² for main town uses outside of the Town Centre. In this instance as the application proposes to expand the range of goods that can be sold within the existing 1,914m² unit, a retail impact assessment is required in support of the application. In addition, as the site is an out of centre location a sequential test is also required.

7.2.4 Local Plan Policies SP4 'A vital Town Centre' and TC12 'New comparison retail provision' state proposals to relax or remove conditions on the type of goods that can be sold from existing out of centre comparison retail units will be refused.

7.3 Retail Impact

7.3.1 The application site is in an out-of-centre location and the planning application proposal would extend the range of goods which can be sold in the existing floor space within Unit 4A, which is in excess of the 300m² retail impact threshold set by Policy TC13 of the Stevenage Local Plan. Therefore, a retail impact assessment is required.

7.3.2 A Planning and Retail Statement (PRS) has been submitted in support of the planning application. The PRS does not consider the retail impact separately for each planning application, but provides an impact assessment scenario in which both applications are permitted i.e. the removal of the range of goods restriction and mezzanine floor.

7.3.3 The Planning Authority has asked an independent retail consultant to review the submitted PRS impact assessment and also to give consideration to the retail impact arising from each application individually and cumulatively. It was concluded that the cumulative retail impact of both applications would not give rise to a significant adverse impact on defined centres in the context of paragraphs 90(b) (see para. 7.2.1 of this report) and 91 (see para 7.2.2 of this report) of the NPPF when taking account of the relative health of Stevenage and that comparison goods turnover is only one component of town centre turnover, alongside convenience goods and food/drink sales etc. Moreover, it was concluded that neither application in isolation would give rise to a significant adverse impact on defined centres.

7.3.4 Given the scale and nature of the existing, committed and planned public and private investment projects which are strategic in nature, it was confirmed by the independent review that the planning application(s) would not give rise to a significant adverse impact on existing, committed and planned public and private investment in Stevenage Town Centre, or indeed in any other centre in the catchment area of the proposals.

7.3.5 As such, it is considered that the applications, when considered individually and cumulatively, are not likely to have a significant adverse impact on one or more of the considerations of paragraph 90 of the NPPF. The retail impact analysis therefore does not give rise to a reason to refuse the application.

7.4 Sequential Test Policy and Relevant Appeals

- 7.4.1 The NPPF sets out the requirements of the sequential test and states that local planning authorities 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 (or expected to become available within a reasonable period) 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.
- 7.4.2 At paragraph 88 the NPPF advises that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.
- 7.4.3 Confirmation of how the sequential test should be used in decision making is set out in paragraph 011 of the Town Centres and Retail section of the PPG which provides a checklist of the considerations which should be taken into account in determining whether a proposal complies with the sequential test as follows:
- With due regard to the requirement to demonstrate flexibility, has the suitability of more central sites to accommodate the proposal been considered? Where the proposal would be located in an edge of centre or out of centre location, preference should be given to accessible sites that are well connected to the town centre. Any associated reasoning should be set out clearly.
 - Is there scope for flexibility in the format and/or scale of the proposal? It is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed, but rather to consider what contribution more central sites are able to make individually to accommodate the proposal.
 - If there are no suitable sequentially preferable locations, the sequential test is passed.

Flexibility in format and scale

- 7.4.4 National planning policy requires that applicants should demonstrate flexibility on issues such as format and scale. The Supreme Court in *Tesco Stores v Dundee City Council* (*Tesco Store Limited v Dundee City Council* (Scotland), 21 March 2012) confirmed that provided the applicant has demonstrated flexibility with regard to format and scale, the question is whether the alternative site is suitable for the proposed development, not whether the proposed development could be altered or reduced so that it can be made to fit the alternative site.
- 7.4.5 The High Court Judgement (*Threadneedle Property Investments and Simons Developments Ltd v North Lincolnshire Council* [CO/4764/2012]) further considered the Supreme Court interpretation and confirmed the need to take account of the operator's commercial requirements, and the need to work in the real world. In the case considered by the High Court, the Court came to the view that 'operator specifics' were indeed relevant in the application of the sequential test. It looked at the specifics of the proposals and the retailer's commercial needs.
- 7.4.6 At the appeal decision at Tollgate Village (APP/A1530/W/16/3147039) the Inspector concluded that whilst a sequentially preferable site need not be capable of accommodating exactly the same as what is proposed, it must be capable of accommodating development which is closely similar to what is proposed. In *Scotch Corner* (APP/V2723/V/15/3132873 & APP/V2723/V/16/3142678) the Inspector concluded that requirement to demonstrate flexibility does not require the applicant to disaggregate the scheme.

7.4.7 These rulings are clear that there must be realism applied to the sequential test, having regard to the business model of the applicant, commercial realities and business decisions. Whilst retailers are expected to demonstrate reasonable flexibility, these appeal decisions underline the need for decisions to be based in the real world.

7.4.8 The 'Mansfield Judgment' (Aldergate v Mansfield District Council & Anor [2016]) has further clarified that the sequential test should be considered on the basis of the broad type and format of the proposed land use, allowing for appropriate flexibility in respect of format and scale. At paragraph 35 of the Judgement states:

'In my judgment, "suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer. The area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content. Nothing in Tesco v Dundee City Council, properly understood, holds that the application of the sequential test depends on the individual corporate personality of the applicant or intended operator.'

7.4.9 The Mansfield Judgment affirms that, in applying the sequential test, the decision maker will generally be required to consider the type and format of the proposed development, rather than the requirements of any specific named operator. It identifies that the area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content. Against this background, the parameters of the sequential test should be established having regard to the broad type and format of the proposed land use, allowing for appropriate flexibility in respect of format and scale and taking into account the commercial realities of the business model.

7.5 The Planning Application and the Requirements of the Sequential Test

7.5.1 As two separate, but interrelated planning applications have been submitted, the Planning Authority has a duty to consider each application on its own merits and the sequential test should consider each application individually, as well as them cumulatively.

7.5.2 If planning application 22/00385/FPM were to be permitted in isolation, it would allow for a variation in the sale of goods on the existing floor space in the unit. The sequential test for this application must therefore consider whether there are any suitable or available sequentially preferable sites for the broad type and format of this proposed land use allowing for appropriate flexibility in respect of format and scale and taking into account the commercial realities of the business model. Principally, this sequential test should consider whether there are any sequentially preferable opportunities for an approximate 1,914m² unit (within agreed parameters) which could accommodate the broad type and format of retailing proposed in the application.

7.5.3 The sequential test must also consider the business model put forward in the planning application, which would be implemented should both the variation of condition (22/00385/FPM) and mezzanine (22/00389/FPM) applications be permitted. Therefore, the sequential test must also consider whether there are any sequentially preferable sites for a 3,718m² unit which could accommodate an operator trading under a sales of goods condition which states: 'The range of goods to be sold from the development shall be confined to retail warehousing of comparison goods to exclude expressly the sale of all foodstuffs for consumption off the premises, clothes and footwear (other than specifically for the playing of sport), or other fashion goods, other than for the sale of clothing, footwear and fashion goods and the ancillary sale of foodstuffs'. This would include unrestricted Class E units (business, commercial and service use) in the town centre.

7.5.4 Notwithstanding the above, the applicant has submitted a sequential test which only considers the proposed business model which would be implemented should both the variation of condition and mezzanine applications be permitted i.e. a 3,718m² unit. The applicant was advised to undertake a sequential test which also reflected the proposal subject to each individual application (in this case, the scenario set out in paragraph 7.5.2 above). It was also suggested that the scope and parameters of the separate sequential tests should be agreed with the Planning Authority prior to the submission of revised sequential tests, but unfortunately the applicant did not take this opportunity to do either.

7.6 Consideration of the Sequential Test

7.6.1 The applicant has submitted a Sequential Test as discussed above and supplementary information was also provided in a Planning Note dated 5 August 2022. Prior to the receipt of 5 August 2022 Planning Note, the applicant was advised by the Planning Authority that:

- The sequential test should consider both applications individually and cumulatively, as the LPA has a duty to determine each planning application on its own merits;
- The sequential test as originally submitted does not provide sufficient flexibility in format and we would expect to see greater flexibility in floorspace and gross/net floorspace ratios;
- 77-83 Queensway, Stevenage Town Centre and the Westgate Centre must also be included in the sequential test; and
- Insufficient information was submitted for Site 1 (Former BHS) and Site 2 (Former Factory Officer Outlet) and based on the original PRS these could not be discounted from the sequential test.

7.6.2 Following the receipt of the additional information dated August 2022, these issues are considered below.

Consideration of a Planning Application on its Own Merits

7.6.3 Each planning application must be considered on its own merits and the facts and circumstances of the case. Planning Practice Guidance (ID: 2b-011-20190722) confirms that it is for the applicant to demonstrate compliance with the sequential test (and failure to undertake a sequential assessment could in itself constitute a reason for refusing permission).

7.6.4 Whilst the application is submitted with a named operator, the Mansfield Judgment has clarified that the sequential test should be considered on the basis of the broad type and format of the proposed land use, allowing for appropriate flexibility in respect of format and scale.

7.6.5 The planning authority has two applications which are required to be considered on their own merits considering the proposed land use; however it is also a material consideration that there are two concurrent applications to be determined by the Planning Authority. This matter has been raised with applicant, but the further Planning Note dated 5 August 2022 does not address this matter of principle.

7.6.6 As the submitted sequential test does not consider the broad type and proposed land use as set out within the application, it is considered that this constitutes a reason for refusal as set out in Planning Practice Guidance.

Consideration of Additional Sites and Supplementary Information

Former Office Outlet Unit 11, Fairlands Way

- 7.6.7 This unit is subject to a recent positive resolution by Stevenage Council Planning Committee in March 2022 to permit the redevelopment of this site for residential use. It is understood that the applicant is progressing discussion with the Council to conclude the s106 Agreement.
- 7.6.8 Taking account of the fact that there has been a recent resolution to grant planning permission on the site for alternative uses, this indicates that the site is not available. It is therefore agreed that this site can be discounted on the grounds of availability.

Nos 77 – 83 Queensway

- 7.6.9 The unit is located in Stevenage Town Centre and is in a sequentially preferable location to the application site. The unit extends to circa 5,000m² split across ground floor (2,177m²), first floor (2,212m²) and second floor (923m²). It was formerly occupied by Littlewoods Department Store and the ground floor is currently occupied by Poundland and Pep&Co. It is understood that the ground floor occupiers are on a temporary lease and that both the leasehold and freehold of the building are up for sale.
- 7.6.10 This unit was not included in the sequential assessment in the PRS, and the Planning Authority requested that the applicant consider whether this unit provides a sequentially preferable alternative. In their Planning Note dated 5 August 2022, the applicant's agent advises that they consider the unit is not sequentially preferable for the following reasons:
1. The landlord is to extend the lease with Poundland and the site is not genuinely available.
 2. The unit is significantly above the maximum combined development threshold of 4,090m² and the ground and first floors extend to 4,389m². The building would therefore need to be re-configured and 'moth balled'.
 3. Major internal and external alterations would be required and asbestos removed from the building and it would not be commercially viable to operate.
 4. Notwithstanding these issues, the programme of works would not achieve the operator's timescales to relocate from The Forum.
 5. There is insufficient parking to meet the business model of the application.
- 7.6.11 Publicly available evidence from the market indicates that both the leasehold and freehold of the site are available at the current time i.e. at the time of decision of the planning application. It is understood that Poundland's lease has not currently been extended and it would be expected that whilst the site is being marketed that the existing landlord would seek to maintain as much flexibility as possible with existing occupiers so as not impede any re-use/redevelopment intentions of buyers. It is therefore considered that the unit is available.
- 7.6.12 It is understood that the ground and first floor extends to circa 300m² above the combined maximum floor space requirement of the applicant's stated business model. However, it is the case that the ground floor of the unit extends to 2,177m². Planning application 22/00385/FPM if permitted would establish a 1,914m² unit in which an extended range of goods could be sold. The ground floor of the unit is only 263m² or 13% larger than what is proposed under this application (22/00385/FPM). It is not considered that this is a disproportionate excess on floor space so as to make the occupation of the building unviable for the type and format of the proposed development. The fact that floor space is larger (rather than smaller) would not impede the operation of the business model proposed in this application and would allow for additional trading floor space, back of house space etc. The upper floors of the building are currently used for other commercial units and there

appears no reason why this situation couldn't be maintained and the upper floor space would not need to be 'mothballed'.

- 7.6.13 The applicant has advised that the unit would need to be reconfigured to meet the commercial requirements of the application, however it is not necessary to demonstrate that a potential town centre or edge of centre site can accommodate precisely the scale and form of development being proposed. Taking account of the floor space which is available, it is considered that the unit is capable of accommodating a form of development which is closely similar to what is proposed and if ultimately the operators had additional back of house space/trading floor space, the commercial realities of the application business model would not be undermined.
- 7.6.14 In regards to viability, Planning Practice Guidance (paragraph ID: 2b-013-20190722) states the sequential test supports the Government's 'town centre first' policy. However, as promoting new development on town centre locations can be more expensive and complicated than building elsewhere; Local Planning Authorities need to be realistic and flexible in applying the test. Whilst the concerns put forward regarding viability are noted, it is relevant to the consideration of this application that this is an existing unit, located in Stevenage Town Centre, which was formerly occupied by a department store and is currently occupied at ground floor level by a major multiple retailer. The unit is not subject to any planning constraints (such as it being a listed building) and there are no land ownership constraints which may impact on deliverability and viability.
- 7.6.15 Moreover, the applicant has not provided a detailed viability appraisal to demonstrate why the alterations to the building would make the scheme unviable to inform the decision making process. It is to be expected that when a major multiple retailer occupies a new building within a defined centre location that they will re-configure the unit to meet their commercial requirements, as is the case for the proposed elevational alterations under this current application for Unit 4A. Whilst it may well be the case that 77 – 83 Queensway would be more expensive and complicated to accommodate the business model put forward in the application, the evidence put forward by the applicant is not considered sufficient to discount this site from being sequentially preferable. When taking account of the historic use and current use of the building, and information put forward by the applicant, it is not considered that this site can be discounted from the sequential test on the grounds of viability when taking account of the broad type and format of the proposed land use.
- 7.6.16 In terms of timescale for the availability of the site, it is the case that the decision-maker should be considering whether planning permission should be granted for the proposed land use and not the corporate attitudes of the occupier, however commercial realities are also a material consideration. Importantly, No. 77 – 83 Queensway is available now and is being marketed. Whilst planning permission would likely be required for the external re-configuration of the unit, given the location of the development and that the works would likely be acceptable in principle, it would be expected that planning permission would be granted for the external re-configuration works in a timely manner. It is also the case that should planning permission be granted for this application, works would also be required at Unit 4A which would lengthen occupation timescales.
- 7.6.17 On the basis that No. 77 – 83 Queensway is available now and there are no clear constraints to its deliverability to the proposed uses (besides internal reconfiguration), it is not considered that the timescale for bringing the site forward is currently a constraint to discount the site from the sequential test.
- 7.6.18 The applicant's comments on proximate parking provision are noted. However, there will be 40 car parking spaces in the retained public carpark on Marshgate behind the units following completion of the Autolus development. There are also approximately 1,000 existing car parking spaces in the St George's Way multi-storey car park located 30 metres

from the building. It is therefore not considered that proximity of nearby car parking gives rise to a reason to discount this site from being a sequentially preferable location.

7.6.19 For the reasons set out above, it is considered that No.77 – 83 Queensway is a sequentially preferable location for the application proposal and is suitable and available for the broad type of development which is proposed in each individual application (and both applications combined) by approximate size, type, and range of goods.

Former BHS, The Forum

7.6.20 It is noted that this site benefits from extant planning permission (19/00647/FPM) for its redevelopment to residential use, and that the applicant advises that the applicant's business model cannot be accommodated in the configuration of the scheme which benefits from planning permission.

7.6.21 It was previously suggested to the applicant that this sequential opportunity should be explored further and additional information was requested, such as evidence of liaison with agents/site owners to establish whether this site is available for the application proposal, taking account of the likely timescales for any future redevelopment proposals. The applicant's agent has stated that there have been 'numerous attempts by the proposed operator' to engage with the landlord without success, which indicates the site is not available.

7.6.22 In the absence of any evidence to demonstrate otherwise, it is accepted that this site is not available and can therefore be discounted from the sequential test.

Westgate Shopping Centre

7.6.23 The Westgate Centre is located in Stevenage Town Centre and is in a sequentially preferable location. The Westgate Centre has extensive parking available to meet the commercial requirements of operators. The managing partners (the owners of the Westgate Centre) have submitted an objection to the planning application and have advised the Planning Authority that there are sufficient re-configurations in their offer to TK Maxx to provide the operator with floor space across multiple configurations within the shopping centre to enable them to stay within the town centre. This planning application when considered in isolation seeks permission for a 1,914m² unit, which the Westgate Centre has confirmed could be accommodated.

7.6.24 It is common place for multiple retailers (including TK Maxx) to be located adjacent to and within shopping centres. Whilst the floor space configurations which have been offered to TK Maxx are confidential and have not been shared with the Planning Authority, it appears that this proposal would represent a sequentially preferable opportunity to accommodate the broad type of development which is proposed under this application (ref. 22/00385/FPM). It is concluded therefore that the Westgate Centre represents a sequentially preferable opportunity within the Town Centre.

7.7 Highways and Parking

7.7.1 The application proposal seeks to vary the existing sale of goods condition on the application unit to enable the sale of clothing, footwear and fashion goods and the ancillary sale of foodstuffs. No increase in floor space is proposed under this application. This means there is no policy requirement to provide additional parking. In terms of likely impact on the surrounding highway network, Hertfordshire County Council as Highway Authority has confirmed that it does not wish to restrict the grant of permission.

7.8 Flood Risk and Drainage

7.8.1 Part of the Retail Park is located within Flood Zone 2 and Flood Zone 3. Unit 4A is located within part Flood Zone 1 and part Flood Zone 2 which means there is between less than 0.1% and 1% annual probability of flooding. The application proposes external alterations and the widening of the range of goods sold from the Unit only, with no increase in the building footprint proposed. As such, the proposal is not considered a vulnerable use and the development would not increase the likelihood of flooding at the site, or elsewhere.

7.9 External Alterations

7.9 This application proposal also includes external alterations to the front elevation to facilitate the occupation of the unit by the proposed operator. In summary, the proposed changes are minor and involve the existing entrance door replaced with glazing, with two new entrance doors in the existing glazed openings on the front elevation. There would also be four new signage zones. No changes are proposed to the existing metal cladding, composite cladding, glazing, frame and spandrels. It is considered the proposed elevational alterations are minor and would not have an adverse visual impact on the application unit or the wider retail park. This element of the scheme is therefore considered acceptable.

7.10 Climate Change Mitigation

7.10.1 Policy FP1 'Climate Change' states planning permission will be granted for developments that can incorporate measures to address adaptation to climate change. New development, including building extensions, refurbishments and conversions will be encouraged to include measures such as:

- Ways to ensure development is resilient to likely future variations in temperature;
- Reducing water consumption to no more than 110 litres per person per day including external water use;
- Improving energy performance of buildings;
- Reducing energy consumption through efficiency measures;
- Using or producing renewable or low carbon energy from a local source; and
- Contributing towards reducing flood risk through the use of SuDS or other appropriate measures.

7.10.2 Should planning permission be granted, climate change mitigation measures to be used in the external alterations and store refurbishment would be secured by planning condition.

7.11 Other Matters

Equality and Human Rights Considerations

7.11.1 Consideration has been given to Articles 1 and 8 of the First Protocol of the European Convention on Human Rights. It is not considered that the decision would result in a violation of any person's rights under the Convention. It is not considered that the decision would result in a violation of any person's rights under the Convention.

7.11.2 When considering proposals placed before the Council as Local Planning Authority, it is important that it is fully aware of and has themselves rigorously considered the equalities implications of the decision that they are taking. Therefore, rigorous consideration has been undertaken by the Council as the Local Planning Authority to ensure that proper appreciation of any potential impact of the proposed development on the Council's obligations under the Public Sector Equalities Duty. The approach adopted in response to inclusive design includes level access. The building complies with current approved document M under the Building Regulations.

7.11.3 The Equalities Act 2010 requires the Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share protected characteristics under the Equality Act and persons who do not share it. The protected characteristics under the Equality Act are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; sex and sexual orientation.

7.11.4 It is considered that the decision has had regard to this duty. The development would not conflict with either Stevenage Borough Council's Equality Policy or the commitments set out in our Equality Objectives, and would support the Council in meeting its statutory equality responsibilities.

8. CONCLUSIONS

8.1 In summary, the proposal to vary Condition 6 of planning permission 14/00680/FPM on the application unit to enable the sale of clothing, footwear and fashion goods and the ancillary sale of foodstuffs, external alterations and ancillary works is considered unacceptable on the basis that the submitted sequential test fails to consider the broad type and proposed land use subject to this application. In addition, the Planning Authority considers No. 77-83 Queensway and the Westgate Shopping Centre to be sequentially preferable sites which are available and suitable within the town centre, that could accommodate the broad type, format and scale of the proposed land use subject to this application.

8.2 Given the aforementioned, the application proposal is considered to be unacceptable contrary to Policies SP4, TC12 and TC13 of the Council's adopted Local Plan (2019), paragraphs 87 and 91 of the NPPF (2021) and NPPG (2014).

9. RECOMMENDATIONS

9.1 That planning permission be REFUSED for the following reasons:-

1 The applicant has failed to undertake a sequential test which is proportionate and appropriate for the given proposal as the submitted sequential test fails to consider the broad type and format of the proposed land use as set out in this application proposal, contrary to Paragraph 011 Reference ID: 2b-011-20190722 of the National Planning Practice Guidance (2014).

2. The proposal fails to satisfy the sequential test as there are sequentially preferable sites which are available and suitable within the town centre which could accommodate the broad type, format and scale of the proposed land use. The proposal is therefore contrary to Policies, SP4, TC12 and TC13 of the Council's adopted Local Plan (2019), paragraphs 87 and 91 of the NPPF (2021) and NPPG (2014).

10. BACKGROUND DOCUMENTS

1. The application file, forms, plans and supporting documents having the reference number relating to this item.

2. Stevenage Borough Local Plan (2019).

3. Responses to consultations with statutory undertakers and other interested parties referred to in this report.
4. Central Government advice contained in the National Planning Policy Framework (2021) and National Planning Policy Guidance (2014).