

adjacent to Aynam Road and a public link through the site from east to west towards the castle. This is explained in more detail in the masterplan document.

F. ECONOMIC VIABILITY

5.47 Whilst the details of the economics of the scheme are currently confidential, it is the case that in order to deliver the significant benefits to the area, these come at a cost. These include the following matters:

- The provision of the new canal line and canal head.
- The relocation and rebuilding of the new Gilkes' factory/headquarters.
- The provision of a new public park.
- The demolition of all existing buildings.
- Any relocation issues relating to the Council depot and civic amenity site.
- The provision of new public realm.

5.48 In order to cover these costs and provide for a viable development, this confirms why the co-operation with landowners and discussions with a retailer have resulted in the conclusion being reached that the only means of providing for the key objectives of the AAP is to include a retail and convenience goods store. It is though important to emphasise that aside from any PPS6 issues, there is considered to be by the retailer a demand for an additional convenience goods store to serve Kendal and its surrounding market. The existing two out of town stores (Asda and Morrisons) are regarded as over trading and therefore, in commercial terms, scope is seen for one new convenience goods store. Clearly, if planning permission is granted for such a store on the Shap Road site, the demand that exists would be taken up by that new store and there would not be seen to be market demand for an additional store to any granted on Shap Road.

5.49 Thus, in commercial terms, it is important that the Council be aware that the grant of planning permission for a new convenience goods store on the Shap Road site would result in the interest of

the national retailer on Canal Head Regeneration Quarter being withdrawn and therefore the regeneration proposals and benefits outlined above would not be delivered, as they would not be viable. The fact that therefore an out of town retail proposal would undermine the evolution of a deliverable regeneration proposal in an edge-of-centre location (which would provide for long-standing Council objectives) is suggested gives the Council significant grounds for opposition to the Shap Road proposal at the public inquiry into that scheme (see below).

G. TECHNICAL DELIVERABILITY

5.50 The masterplan that has been prepared has had the input from Messrs Mouchel on technical considerations, particularly highways. There are a number of options for serving the site and development through the highway network, which are being explored with the County Council and District Council. More details of the highway proposals will come forward in discussions with the Council in relation to the final AAP option and indeed a planning application for the development that will be submitted. At present, however, there are no insuperable constraints and a highway solution to the development can be found.

5.51 In addition, from earlier research done in relation to planning applications on the Gilkes' site (including the housing proposal and new factory in 2006/2007), whilst there are some issues relating to potential flooding, these can be resolved through the raising of levels on the site to the point where Gilkes and its advisors are confident there will be no overriding issues raised by the Environment Agency. It is interesting in this regard to note that the Agency has not objected to the principle of redevelopment of the Action Area Plan options, nor has there been any objection in principle from the County Council as highway authority.

5.52 There are thus no technical reasons why the development as shown on the masterplan in its final form via the planning application could not be delivered.

6.0 RELEVANCE OF REPRESENTATIONS TO THE PLANNING APPEAL FOR RETAIL DEVELOPMENT ON THE SITE AT SHAP ROAD

6.1 The current position in terms of the work that Gilbert Gilkes and Gordon, the adjacent landowners and their professional team have done over the past few months is of great relevance to the Council's position of opposition to the proposed retail development on the site at Shap Road in Kendal. The Council should be convinced that the recent agreements reached between Gilkes and its land owning partners, together with the interest in the site from a national retailer, have significantly changed the position relating to the deliverability of the regeneration benefits now proposed in Canal Head Regeneration Quarter compared to when the original planning application for the Shap Road site was submitted. It also changes the position reviewed by the Council's consultants, Arup, when they considered the various options for the Action Area Plan in 2008. The co-operation between landowners shows that Canal Head Regeneration Quarter can come forward for development – it is assumed that the Council and the County Council as the other landowners, albeit they have relatively minor areas they control, will not impede redevelopment in principle. The economics of the development are however critical. It is necessary, if the regeneration objectives of the area are to be achieved, for a convenience goods store to be the pump primer for the rest of the scheme. The position of the proposed retail store is, in terms of Government policy in PPS6, in an edge-of-centre location and its development will facilitate the regeneration of a wider area in accordance with the longstanding objectives of South Lakeland District Council and authorities at regional level.

6.2 In addition to Canal Head's edge-of-centre location, it is already accessible and well served by a choice of means of

transport; in particular, there are pedestrian routes from it to the town centre – indeed Gilkes' employees regularly walk into the town centre at lunchtime for food, drink and retail purposes, a clear indication of the strength of the linkage that the Canal Head Regeneration Quarter has with the town centre. Furthermore, the existing Gilkes' staff car park is used by shoppers at the weekend, given its convenient location.

6.3 In this context, therefore, it is important to apply Government policy in PPS6 to the planning application for the Shap Road site in the context of the regeneration proposals for Canal Head Regeneration Quarter. Aside from any consideration of need in quantitative terms, whether or not it is concluded there is a need for additional convenience goods floor space, Canal Head Regeneration Quarter is sequentially preferable to the Shap Road site. It is edge of centre compared to the Shap Road site, which is out of centre. Canal Head Regeneration Quarter benefits from being accessible to the town centre with the clear potential for linked trips, whereas the Shap Road site does not. In terms of Government policy in PPS6, paragraph 3.4 would require the applicant (or the appellant in terms of the Shap Road site) to demonstrate, inter alia, that "there are no more central sites for the development" with reference to paragraphs 3.13 to 3.19 of the PPS.

6.4 As far as the section of the PPS that applies the sequential approach to site selection is concerned, it is clear that the sequential approach should be applied to all development proposals for sites that are not in an existing centre or allocated in an up-to-date development plan document (reference paragraph 3.13 of PPS6).

In this case, there is no reason not to apply the sequential test to the Shap Road site and in the draft PPS4, Policy EC21 places more weight on the application of the sequential test which would again favour the Canal Head site over the Shap Road site.

6.5 From the case that was put forward on behalf of the developers of the Shap Road site as part of the planning application, it was concluded with reference to the earlier Arup report that there would be no reasonable prospect of retail development taking place within the Canal Head North area as –

“The Preferred Options report for this area [Canal Head Regeneration Quarter] clearly dismisses the opportunity to accommodate such a development in this location because of the overall impact on the local character, the impact on the urban design principles of the masterplan and the complications in relation to the transport network.”

6.6 However, as has been demonstrated, there have been considerable developments that have taken place since then, as outlined in this document, in terms of landowner co-operation, retailer interest, the masterplan option consideration, etc. It is therefore possible to conclude in considering the Shap Road site that it would fail to comply with paragraph 3.19 of the PPS that covers circumstances where it is argued that otherwise sequentially preferable sites are not appropriate for the particular development proposed. In the case of the planning application on Shap Road, it was clearly being argued that despite the Canal Head North area (now called “Canal Head Regeneration Quarter”) being edge of centre, it should not be given preference to Shap Road. It is



though the case that the applicants have to provide clear evidence to demonstrate why such sites are not practicable alternatives and to cover three issues:

a. Availability – it is the case, as demonstrated in this document, that Canal Head Regeneration Quarter is available for development and can be developed within a reasonable period of time. The intention is for these representations to allow the Council to identify the enclosed masterplan option as its preferred strategy in its Action Area Plan or indeed for a planning application to be submitted in the short term. This clearly means that an alternative site to Shap Road is available. Paragraph 3.19 suggests that

“Where such [alternative] sites become available unexpectedly after receipt of the application the local planning authority should take this into account in their assessment of the application.”

In this instance, whilst the Council was aware of the potential availability of Canal Head Regeneration Quarter, the submission of this document; the May 2008 letter and indeed the objections to the Shap Road application submitted on behalf of Gilkes now make that availability even more certain.

b. Suitability – the masterplan option set out in the accompanying document clearly demonstrates the suitability of part of Canal Head Regeneration Quarter for retail development as part of a mixed-use scheme.

c. Viability – it is considered that development for a mixed-use scheme would be viable.

6.7 In these terms, therefore, the Council should be aware that further work and landowner co-operation that has taken place on Canal Head Regeneration Quarter will clearly mean that there is a strong case to reject the Shap Road site based on the sequential test as applied by paragraphs 3.13 to 3.19 of PPS6. The land controlled by Gilkes and its land owning partners clearly is available, suitable

and viable for development and therefore the Shap Road proposal would fail on sequential grounds alone, aside from any discussions of need and other material considerations.

6.8 In this regard, it is important to note two recent planning appeal decisions for ‘out-of-centre’ retail development, both of which were dismissed on the grounds that (inter alia) sequentially preferable sites were available to accommodate the development proposed. Both decisions make important comments on site availability and suitability.

6.9 In Case 1, which related to the variation of a planning condition to allow unrestricted non-food sales from retail warehousing in an out-of-centre location (APP/W1850/A/07/2034856), the appellant argued that an edge-of-centre site promoted by the Council in the UDP was unsuitable for the appeal proposal as it could not be brought forward within a reasonable timeframe. Following detailed discussion on the issue, the Inspector concluded that -

“There is every prospect that retail units suitable to meet the space needs of the appeal proposal could be available on the [edge of centre site] by 2012.”

and that -

“I do not consider this [five-year] timeframe to be unreasonable.”

He added that -

“Even if there were to be some slippage, I do not consider this to be unreasonable ...”.

The appeal was dismissed.

6.10 In Case 2, relating to the erection of a food store in an out-of-centre location (APP/V/0510/A/08/2063373), the appellant argued that there were no suitable sequentially preferable sites available to

accommodate the development proposed. On this point, discussions centred on the suitability of two sites which, despite being more than 300 metres from the town centre of Ely, covered by an Employment/Business Use designation, and within a Conservation Area, were nevertheless considered to be sequentially preferable to the appeal proposal. Furthermore, planning permission had previously been refused for retail development on both sites. However, the Inspector commented that the reasons for refusal (relating to design, impact on character and appearance of the conservation area, employment designation) could potentially be addressed. The appellant also raised concerns over the scale of traffic generation at a particular priority junction if the two sequentially preferable sites were developed. However, the Inspector commented that -

“... there is nothing in the evidence to show that it would not be possible to make some adjustments to the geometry or form of this junction in order to improve the capacity ...”.

In dismissing the appeal, the Inspector concluded that -

“... other sequentially preferable alternative sites are available ...”

to accommodate the development proposed, and that -

“... the appeal proposal would fail to take advantage of opportunities to strengthen Ely’s town centre, but instead would consolidate convenience retailing in an out-of-centre location.”

6.11 In accordance with PPS6, both appeal decisions show clearly that all options for development should be thoroughly assessed before less central sites are considered and that to assist this process, a developer should be afforded sufficient time in which to resolve outstanding issues and progress an acceptable scheme. In the case of Canal Head Regeneration Quarter, which is in an edge-of-centre location that has strong and direct links with Kendal town centre, considerable work has been done by Gilkes and its land-owning

partners to ensure that the site is available, suitable and viable for the development proposed.

7.0 NEXT STEPS

7.1 As set out in the representations, the intention of Gilkes, its land owning partners and professional team, is to continue discussions with the Council in relation to this document and its accompanying masterplan submission with a view to the Council designating the northern part of what it calls Canal Head for a mixed-use development in accordance with the masterplan proposals for Canal Head Regeneration Quarter. Given the commercial interest in the retail element and the need for Gilkes to have a new factory built as soon as possible, is the intention of the company and its advisors to submit a planning application based on the masterplan (subject to any changes that the Council may wish to see) in addition to any discussions on the Action Area Plan.

7.2 The focus is therefore on the bringing forward of the development proposals that will deliver the regeneration benefits and will do so on the basis of a retail element in the north western part of Canal Head Regeneration Quarter. It is important for the scheme to be successful for the retail element to come forward. If planning permission is granted for the Shap Road site, therefore, the regeneration proposals on the site will be frustrated, hence the importance at the appeal of the Council’s position being accepted by the Inspectorate. In these terms, Gilkes and its partners would have no objection to the content of this statement being drawn to the Inspector’s attention at the public inquiry into the Shap Road site.