

# HEARING STATEMENT

PEEL HOLDINGS (LAND AND PROPERTY) LTD

EXAMINATION OF HYNDBURN DEVELOPMENT MANAGEMENT DPD

2014-128

MARCH 2017

## Signing off Sheet

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**Authorised for and on behalf NJL Consulting**



Nick Lee  
Managing Director

**NJL**Consulting  
Planning+Development

8 Ashbrook Office Park  
Longstone Road  
Manchester  
M22 5LB

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## **1.0 Introduction**

- 1.1 This Hearing Statement has been prepared by NJL Consulting (NJL) on behalf of Peel Holdings (Land and Property) Ltd (Peel) in relation to the Examination of Hyndburn's Development Management Development Plan Document – Matter 3.
- 1.2 This Hearing Statement only covers those issues which we wish to comment further on at this stage, in direct response to the Main Issues and Questions (MIQs) document issued by the Inspector. However, we reserve the right to provide additional comments on any matter should the Council submit additional evidence or information.
- 1.3 Peel own and manage the Whitebirk Retail Park, on Whitebirk Drive which lies within the administrative boundary of Hyndburn Borough Council. Considering their interest in the Borough, NJL have previously submitted representations on behalf of Peel, to both the Development Management Consultation Draft (dated 24<sup>th</sup> March 2016) and the Publication Draft (dated 10<sup>th</sup> November 2016).
- 1.4 Nick Lee, Managing Director at NJL Consulting, and Gareth Finch of Peel will be appearing at the relevant hearing sessions.

## 2.0 Hearing Statement

### **Issue 3d: Does policy DM3 set out an effective framework for the determination of applications in out of town centre locations? Is the approach justified and effective?**

***Policy DM3 titled 'Town centre development' deals with proposals for both town centre and out of centre locations. Is the approach of setting out the policy based on main town centre uses rather than geographical locations effective and justified?***

2.1 Policy DM3 sets out the retail thresholds for Hyndburn above which an impact assessment must be carried out based on the type of retail floorspace proposed, convenience or comparison, and then by area. The policy as currently worded is a composite of a goods based and a geography based approach.

2.2 Paragraph 26 of NPPF states:

*"When assessing applications for retail leisure and office development outside of town centres, which are not in accordance with an up-to-date Local Plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500sqm)."*

2.3 Comparing proposed policy DM3 with NPPF raises three key points:

1. NPPF talks about assessing impact on all types of town centre uses, not just 'convenience and comparison floorspace' as suggested by the draft policy.
2. There is no mention within NPPF of setting thresholds based on geographical areas.
3. NPPF specifically says that local thresholds should be 'proportionate' but it does not say whether it should be proportionate to designated centres in the retail hierarchy or proportionate to the type of development proposed. i.e. a higher threshold for larger floorplate development so that an assessment is based on 'like-impacting-like'.

2.4 Our reading of NPPF on the above basis leads us to conclude that the approach taken by Hyndburn is not in line with NPPF and that NPPF requires a goods based assessment rather than geographical area. In turn this leads us to conclude that the approach by Hyndburn is not justified by NPPF. We highlight this as well as how the policy is not effective under the three points listed above.

1. *Type of development that triggers the impact assessment*

2.5 As quoted above, NPPF requires an impact assessment for more than just convenience and comparison goods floorspace. This requirement is clarified by National Planning Policy Guidance which states at paragraph 013 (Reference ID 2b-013-20140306):

*"The test relates to retail, office and leisure development (not all main town centre uses) which are not in accordance with an up to date Local Plan and outside of existing town centres."*

2.6 The impact test clearly crosses a number of different types of development, therefore, it would be a logical approach to base the imposition of thresholds on the different types of development as they all have different characteristics.

2. There is no mention of setting thresholds based on geographical area.

2.7 Following the text quoted above NPPG continues to say at paragraph 013:

*"It is important that the impact is assessed in relation to all town centres that may be affected, which are not necessarily just those closest to the proposal and may be in neighbouring authority areas."*

2.8 This statement from NPPG directly contradicts the approach taken by Hyndburn. As previously asserted within our representations, the closest centre is not necessarily the centre upon which a proposed development will levy the greatest impact. Within Peel's representations submitted to the Publication Draft version of the Development Management DPD, dated 10<sup>th</sup> November 2016 we made the following case:

*"We have also presented commentary on the issue of 'like impacting like' and how measuring the requirements for a retail assessment for development at the Peel Centre against a small scale local centre such as Rishton is arbitrary and counter-productive."*

2.9 There is no justification for imposing impact assessment thresholds on a geographical basis because the impact arising from retail development does not work in such a simplistic fashion.

3. What is meant by the term 'proportionate' within NPPF and what does it mean for imposition of local policy

2.10 As pointed out above, NPPF does not specify whether the term 'proportionate' relates to a need to be proportionate to the centres within an area or proportionate to the development proposed.

2.11 In support of Policy DM3 Hyndburn Borough Council prepared a 'Retail Thresholds Note' in June 2016. It was subsequently amended in August 2016 following comments from Peel that highlighted errors in the document. Whilst there are no longer flaws within the document, it does not take proper account of how like-impacts -like and what is meant by the need for assessments to be 'proportionate'.

2.12 Section 1 of Hyndburn's Retail Impact Thresholds Note indicates that they have taken paragraph 016 (Reference ID: 2b-016-20140306) literally when it says:

*"In setting a locally appropriate threshold it will be important to consider the:*

- *Scale of proposals relative to town centres...*

2.13 Paragraph 1.5 of Hyndburn's Retail Impact Threshold Note only quotes a small section of paragraph 016, it omits the part which follows the above bullet points that continues to explain that:

*"As a guiding principle impact should be assessed on a like-for-like basis in respect of that particular sector (eg it may not be appropriate to compare the impact of an out of centre DIY store with small scale town-centre stores as they would normally not compete directly). Retail uses tend to compete with their most comparable competitive facilities."*

- 2.14 This point of like-impacting-like means that imposing thresholds on the basis of geographical area is not effective.

**Are the local retail impact thresholds set out within the policy justified?**

- 2.15 As part of the representations submitted to the previous iterations of the Draft Hyndburn Development Management DPD, NJL carried out significant analysis of the make-up of the local retail centres and how they have changed over time compared to the national average position. The findings were presented within a Briefing Note dated 11<sup>th</sup> August 2016 which was submitted with the representations to the Publication Draft Development Management DPD in November. The research was carried out to ascertain whether the health of the centres has declined in a disproportionate manner to the national picture. NJL's assessment on the health of centres concluded:

Accrington Paragraphs 2.14 and 2.15:

*"It is in the level of vacant units that we see the real change in Accrington and an indication of potential decline. The percentage of vacant units in the centre has increased 9.4% since 2000, whereas the UK average level has reduced by 1.3%. In 2000 Accrington had a below average level of vacancies, now the level is 10.3% above the national average level. Such a large change in the number of vacant units indicates that further analysis needs to be undertaken. Is the change because the centre has constricted, i.e. are the units on the edge of the town centre and/or in locations which have become marginalised and off-pitch? Is it because of changing retail models, i.e. there is a trend in terms of the scale of units which are vacant? Or a different factor altogether. This analysis is important so that positive action can be taken by the LPA.*

*With regard to the makeup of the centre it should be noted that there are a significant number of small units. The Council's Retail Thresholds note tells us that of 518 units, only 8 are over 1,000sqm and only 4 are between 750-1,000sqm. 62% of the retail units in Accrington Town Centre are below 100sqm and a further 27% are between 100 and 250sqm. Whilst there is a national trend for retailers to be requiring smaller footprints than previously out of centre, that is not the case in town centre locations. If 89% of units in the Town Centre are less than 250sqm, and only 2% are over 750sqm, it will struggle to attract national multiple retailers."*

Great Harwood Paragraphs 2.25:

*Whilst the vacancy rate in Great Harwood remains above the national average level, overall it has seen a very marginal decrease whereas the national average has actually increased. This tells us that overall, despite the introduction of largescale retailers on the edge of the centre overall the health of Great Harwood remains stable.*

Rishton Paragraphs 2.31 and 2.32

*The picture presented by the above figures for Rishton is of a centre which is vital and viable and who's fortunes have broadly followed the national trends. It is of particular note that the vacancy rate for Rishton remains below the national average, and whilst the % of vacancies has increased in Rishton it has done so at a slower rate than the national average meaning the vacancy rate is now further below the national average than it was in 2005.*

*The results for Rishton show us that the centre has been unaffected by developments at Whitebirk such as the introduction of Smyths and B&M. Therefore, it could be argued that it would continue to be unaffected by further changes at the Retail Park going forward.*

- 2.16 Given the information provided by NJL's Briefing Note submitted in support of the November 2016 representations it can be concluded that the thresholds imposed are not currently justified.

***Does the policy take sufficient account of established commercial sites in out of centre locations? Would proposals to extend or alter existing floorspace be dealt with in the same way in terms of the application of the local retail impact thresholds? Would this be effective and justified?***

- 2.17 This question has several components to it so we address them in turn. First, we have already touched upon how the policy as worded does not take sufficient account of how like-impacts like. This principle has an effect on the way that policy addresses 'commercial centres' as well as town centres.

- 2.18 All of the retail units present at The Peel Centre, Whitebirk are above 500sqm. Conversely, we know from the Council's Retail Thresholds Note that only 4% of units within Accrington Town Centre are 500sqm or above, Great Harwood and Oswaldtwistle only have 2% of units above 500sqm and Rishton and Clayton-le-Moor have no retail units of that scale. This tells us that the The Peel Centre, which is an established commercial centre has a very different make up and therefore, retail offer, to the existing centres in Hyndburn.

- 2.19 Commercial centres such as The Peel Centre perform a very distinct function that is different to the designated town, district and local centres. Paragraph 23 Of NPPF says local authorities should:

- *Allocate a range of suitable sites to meet the scale and type of retail, leisure, commercial, office, tourism, community and residential development needed in town centre. It is important that needs for retail leisure, office, and other main town centre uses are met in full and are not compromised by limited site availability.*

- 2.20 Through not recognising the specific role that commercial centres play and making sure that policies fully address how they operate alongside the established retail hierarchy is to not plan for needs in full. It is for this reason that NJL recommended within the November 2016 representations that the national threshold be used and failing that, Policy DM3 should include a specific line within the thresholds table for The Peel Centre

- 2.21 In conclusion on this point, the policy as it is worded does not take proper account of commercial centres. Therefore, by virtue of the reason above the way that proposals to extend or alter existing floorspace at such centres should not be dealt with in the same manner as other 'out of centre' development.

- 2.22 The original representations submitted by NJL on behalf of Peel, dated 24<sup>th</sup> March 2016 highlighted that grouping retail facilities together is more sustainable than providing standalone facilities and that should be recognised by the Local Plan. It was said in the representation that:

*"In a similar vein, it should also be recognised that providing an extension to an existing retail unit would not have the same scale of impact as providing a new*

*standalone retail unit. This is the case for a number of reasons including that the extension might be provided to provide more circulation space to existing customers rather than to facilitate providing more stock. Therefore, extending existing facilities should not be subject to the same thresholds as wholly new retail facilities."*

- 2.23 As well as the reason given within the representation, alterations within existing commercial centres may simply be a reorganisation of existing floorspace. For commercial centres to be viable over a long term they have to be able to evolve in line with the requirements of retailers. Effective asset management of commercial centres, such as The Peel Centre, is reliant often upon being able to relocate occupiers internally. Unless Policy DM3 is specifically worded to have effect on net increases in floorspace it will not take account of how commercial centres work and it will disadvantage their ongoing management and prevent them from being able to compete with other less sustainable locations.
- 2.24 We conclude that Policy DM3 does not allow for needs to be met in full and does not promote sustainable development. Therefore, as it is currently worded it is not effective nor justified.

***Is the reference within DM3 1b (page 25) to some circumstances where the Council may require an assessment where a proposal falls beneath the thresholds set justified and consistent with national policy? What is the purpose of doing this? How will the Council decide which proposals would require this assessment? Is the policy sufficiently clear to applicants and decision makers?***

- 2.25 Within paragraph 26 of NPPF there is no mention of applying a degree of flexibility to the national threshold or any locally set thresholds. There is also no such mention within any part of NPPG. However, Section 38(6) of the Planning and Compulsory Purchase Act 2004 says that determination must be made in accordance with the [development] plan unless material considerations indicate otherwise. NPPF and NPPG are both material considerations, they are not part of the development plan. It is up to the Local Authority to determine what constitutes a material consideration and what weight they should attach to them. This means that although NPPF and NPPG do not make an allowance for flexibility in the application of impact thresholds, the Local Authority are within their right to do so if they consider it to be material.
- 2.26 It is common practice for Local Authorities to include a caveat within their Development Management Policies in the manner advocated by Hyndburn and we understand that it is done so that they can adapt to site / development specific circumstances and the way that centres and the retail market changes over time. It is for this reason that Peel also do not have issue with that element of Policy DM3. The reason given by Hyndburn for including a degree of flexibility is stated at paragraph 3.26 of the Publication Draft Development Management DPD that:
- "The specification of retail impact thresholds by centre and type of retail in Policy DM3 is intended to provide a clear upfront message to applicants of the circumstances under which the Council will seek to assess the likely impact of proposals on the vitality and viability of centres in more detail."*
- 2.27 However, the bullet points that follow the above statement which set out the possible exceptions to the imposition of the thresholds render them ineffective and prevents them from serving their intended purpose.
- 2.28 It appears to be that the only way that an applicant can gain clarity on whether or not they should prepare and submit an impact assessment is to engage in pre-application

discussions with the Local Authority and as part of that process carry out an impact assessment. Therefore, a rewording of the policy to adopt the national threshold as previously recommended by Peel would be more easily interpreted by applicants. This is because it would be evident up front that the Local Authority should be engaged in discussion before submission. Under the current wording an applicant may not think that they need to submit and impact assessment but post submission be faced with a request for one to be carried out.

### **Issue 3e: Proposed Modification to Policy DM3**

***The Council has proposed modifications to Policy DM3. Specifically, changing the title of the policy to 'Development of main town centre uses'; the removal of 'viability' from DM3 1a; the insertion of additional text in to paragraph 3.21 relating to other established commercial locations; and the insertion of text into paragraph 3.26 relating to specialist or niche retailing. Would the modifications affect the soundness of the plan?***

- 2.29 All of the above alterations are intended to provide clarity on specific elements of the policy apart from the removal of the word 'viability' from DM3 1a which is proposed because viability no longer forms part of the sequential test however, viability is integral to the consideration of whether sites can be suitable or not and this cannot be ignored. We do not feel that the proposed alterations would affect the soundness of the plan but we also do not feel that they would overcome all of the issues previously identified within the representations and accompanying research submitted by NJL on behalf of Peel.

### 3.0 Conclusion

3.1 It is concluded that the Policy as currently worded by Hyndburn is not effective, it does not achieve what it sets out to do, nor is it justified, the policy is more prescriptive than the available evidence suggests it should be.

3.2 It was and remains our recommendation within our representations that Policy DM3 should be worded as follows:

1. *"The Council will support proposals for main town centre uses where they are located within defined town centre, district centre and commercial centre boundaries and accord with other policies in the Local Plan, including Policy DM4: Retail Frontages and policies regarding high quality urban design and safety and amenity considerations.*
2. *Proposals for residential development above ground floor level in the Primary Shopping Area (PSA) (where defined) and elsewhere within the Town or District Centre boundary will be considered favourably.*
3. *Retail development proposed between the PSA (where defined) and the Town or District Centre boundary will also be supported where it is demonstrated that there are no sequentially preferable sites particularly when it will bring positive economic regeneration benefits.*
4. *In accordance with the sequential approach to site selection main town centre uses should be located within:*
  - a. *Defined town and district centres*
  - b. *Sites on the edge of defined town and district centres*
  - c. *Sites in established commercial locations (as defined within the Site Allocations DPD)*
  - d. *Out of Centre locations*

*When assessing sites in any locations outside the defined town and district centres it should be demonstrated that no more central sites are suitable and available while demonstrating flexibility in terms of scale and format.*
5. *Proposals for new additional retail floorspace that are not in accordance with specific policies in the Site Allocations DPD, and are 2,500sqm gross or more must submit a retail impact assessment. The Council will assess the proposal against the likelihood of any significant adverse' impacts on designated town and district centres. An assessment of any predicted impacts on local markets should be made (where they are in operation within the catchment area of a proposal) as part of any retail impact assessment.*
6. *On occasion the Council may require an impact assessment for retail proposals (or other main town centre uses) to be submitted for proposals below the thresholds stated above, where particular concerns arise due to the size and nature of a proposal or where local circumstances relating to the health of centre may have changed. The Council will justify any such request carefully and, in line with the current national guidance and best practice, request a proportionate approach to any impact assessment to be adopted.*
7. *The provision of service uses including hairdressers, banks, dry cleaners and Post Offices will not be supported within designated commercial centres nor in out of centre locations unless they form part of a local parade or centre.*
8. *The development of small scale (below 250sqm) shops and other local services will be permitted within local parades or centres; or*
  - a. *The applicant has satisfied the sequential test (set out in paragraph 4);*

- b. *It is suitably located in terms of access on foot from the surrounding area; and*
  - c. *There is adequate servicing, car parking and bin storage space.*
9. *The development of ancillary retail facilities to support the continued use of existing non-retail premises will normally be supported provided that:*
- a. *The products are manufactured and sold from the same premises;*
  - b. *The retail element can be accommodated without an adverse effect on existing servicing and car parking arrangements or that additional appropriate requirements can be provided; and*
  - c. *The proposal is unlikely to lead to significant loss of amenity to residents. “*

3.3 Failing acceptance of the above approach we recommended that the following thresholds would be more justified than those currently proposed by Hyndburn:

<b>Location</b>	<b>Convenience (sqm)</b>	<b>Comparison (sqm)</b>
Accrington	1000	1000
Great Harwood	500	500
Rishton	250	250
Oswaldtwistle	250	500
Clayton-le-Moors	250	250
At Peel Centre, Whitebirk	1000	1000