

Application No: 2007/630

Application Type: Full Application

Proposal: Full application for erection of building to form leisure & restaurant units & a food retail unit & outline application for the erection of drive thru restaurant & one restaurant (amendment to 2005/617 (1656 sq m A1 retail & 1,766 sq m A3 retail))

Location: Land at New Hall Hey, Rawtenstall

Report of: Planning Manager

Status: For Publication

Report to: Development Control Committee

Date: 1st July 2008

Applicant: The Hurstwood Group

Determination Expiry Date: 5th January 2008

REASON FOR REPORTING	Tick Box
Outside Officer Scheme of Delegation	X <input type="checkbox"/>
Member Call-In	<input type="checkbox"/>
Name of Member:	
Reason for Call-In:	
More than 3 objections received	<input type="checkbox"/>

Other (please state)

Human Rights

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights: -

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

1 SITE AND PROPOSAL

1.1 Background

1.1.1 The application relates to part of the New Hall Hey site in Rawtenstall.

1.2 The Site

1.2.1 The proposal is situated on part of the New Hall Hey site in Rawtenstall. New Hall Hey is located to the south of the A682 Rawtenstall Bypass. It is an irregular shape and occupies a prominent position on the approach into Rawtenstall. The site is currently under construction with a new roundabout recently completed by Lancashire County Council. The current development on the site is implementing planning permission 2007/030. The surrounding uses comprise office provision, a public house with a mix of uses including a number of residential properties New Hall Hey Road.

1.2.2 Vehicular access to the site is currently provided from New Hall Hey Road. Vehicles can also exit directly onto the bypass in a westerly direction. However, upon completion of the current phase of development the roundabout will provide the main access into the site. The East Lancashire Railway terminus is located at its eastern end of the site.

1.3 Relevant Planning History

1.3.1 Members will be aware that this proposal has been considered previously by this Committee. Whilst the relevant planning history is outlined below, the application seeks consent to vary elements of the wider approved scheme for New Hall Hey by effectively swapping retail provision from the site of the former Kwik Save on New Hall Hey Road with leisure provision from the original approval for the redevelopment of the whole of New Hall Hey. The original report of the 11th March 2008 to this committee is appended to this report together with the update report regarding minor amendments and related Section 106 matters that have been considered by the committee on the 15th April 2008. Section 2 and 3 of that report, dated 15th April, relate to minor amendments to this application, application 2008/0032 and 2008/0118 and remain unchanged from the resolution of the 15th April to accept the elevational and dimensional alterations. These are all attached Appendix 1.

1.3.2 The recorded minute from the 15th April 2008 states:

“In response to queries from Members of the Committee the Executive Director of Regulatory Services confirmed that if the Section 106 Agreement was not completed by the date of the next Development Control Meeting, the whole application 2007/630 would be brought back before the Committee for re determination. The reason for being that if the Section 106 could not be resolved

or the conditions, then the Executive Director of Regulatory Services had no delegated power to refuse the application. A refusal on this basis would need to be made by the Committee”

- 1.3.3 The relevant site specific planning application history is outlined in paragraph 2.1-2.11 of the Committee report attached and considered by the Committee on the 11th March 2008.
- 1.3.4 Members will also recall that planning permission has been granted a change of use of the former Kwik Save Store from (A1) Retail to D2 Health and Fitness Club “the leisure scheme” and the erection of a Mezzanine Floor totalling 2,900sq m, with associated external alteration at the former Kwik Save building on New Hall Hey Road (2007/629).
- 1.3.5 Members will also recall that planning permission has been granted for a discount food retailer (Lidl) on the site of the bus depot in Rawtenstall town centre (2007/665). In considering that proposal it was accepted that the location was sequentially preferable location to meet the need for a discount convenience retailer and that there was not the need for two discount retailers in the Borough.

2.0 PURPOSE OF THIS REPORT

- 2.1 Since the first committee meeting (11th March 2008) officers of the Council and the applicant have negotiated on the provisions of the required S106 agreement. The applicant has agreed to all the covenants outlined in the 2007/030 (Homebase) S106 and offers (additionally) to the surrender of the A1 consent at Kwik Save, if an A1 consent is granted for this application. The applicant have now indicated that rather than the 30,000 sq ft of leisure being provided at the Kwik Save site they would provide 16,000 sq ft although the details of the scheme are unknown at this stage other than it would be provided 18 months following occupation of the Aldi unit.
- 2.2 Effectively, this would ensure that previous S106 monies relating to sustainable transport and public art would continue to be secured and would also ensure that the proposal does not result in two food retailing uses.
- 2.3 It should be noted that the supporting information for both application 2007/629 and 2007/630 details a link between the proposals. However, there is no agreement on the delivery and/or timing of leisure provision on the Kwik Save site. Furthermore, planning permission has been granted for 2007/629 (“the leisure scheme”). The applicant is proposing no link between the delivery of the leisure scheme and the implementation of this planning permission. Therefore, it is not considered that a link exists between this application and the leisure scheme approved by application

2007/629 (save that the proposed S106 means that retail will not occur on the 2 sites at the same time). The application should be determined on this basis.

2.4 Therefore, the purpose of this report is to:

- (i) reappraise the planning merits of the scheme, without the link to the delivery of the leisure scheme;
- (ii) reappraise the application in the light of any material changes to the development plan or material considerations;

3. POLICY CONTEXT

3.1 Since members considered the scheme on the 11th March 2008 proposed changes to RSS have been published. However, the proposed changes do not relate to the provision of retailing. As such, whilst changes have been published it is not considered that the policy position in Rossendale is materially different to that set out in section 5 of the main report considered by the Committee on the 11th March 2008 with regard to this application.

4. INTERNAL CONSULTATIONS

4.1 No further responses have been received since members considered the item previously.

5. EXTERNAL CONSULTATIONS

5.1 No further responses have been received since members considered the item previously.

6. REPRESENTATIONS

6.1 No further representations have been received since members considered the item previously. However, the applicant has submitted a detailed letter to members of this committee. The main points of the letter are summarised below:

- Members were clear about bringing forward development sooner rather than later

- Applicant is not asking that the matter be brought back to the Committee for consideration rather than clarification on the legal agreement
- Members resolved to grant permission contrary to officers recommendation without the need **to deliver** a health and fitness centre
- Agreement would be unduly onerous and stymie development
- If Kwik Save scheme has to be implemented it will not be possibly to comply with contract for Aldi (does not state why)
- The 'swap' will effectively deliver the health and fitness centre
- The applicant is still in discussions with a health and fitness operator
- Additional clause will mean that the applicant will have to rely on third parties to deliver the leisure use
- The minutes make the resolution clear
- Unreasonable for officers to be liasing with third party
- Planning process overlapping with commercial issues
- Applicant is committed to providing this facility – therefore no change in circumstances
- Existing draft agreement is sufficient to safeguard against two retail units
- This issues should have been raised at the previous meeting of the Committee
- Clause is unreasonable

6.2 The applicant does not wish for members to reconsider the whole application afresh but seeks only clarification of the legal agreement. However, it is not for the Applicant to limit the nature of the decision. It is appropriate for members to consider the whole proposal again in light of the position on the S106 and any material changes in planning policy or material planning considerations. As such it would be appropriate for members (if they wished) to change the previous recommendation on the basis of the current position.

6.3 Further, the Committee do not have to determine whether proposed covenants in the draft S106 were or were not reasonable. Rather, the Committee must determine whether the application (as submitted) with the s.106 covenants proposed (see paragraph 2.1) should be granted or refused planning permission (in accordance with the statutory test).

7 **APPRAISAL**

7.1 Given that agreement has not been reached on the final S106, this section of the report considers the *'finely balanced'* nature of the proposal, the applicants supporting information, the reasons members resolved to grant

permission and mechanisms (S106 agreement) deemed necessary to achieve and realise the reasons to grant planning permission.

7.2 In order to assess the requirements of the S106 agreement it is necessary to summarise the reasons why this Committee resolved to grant planning permission in March of this year.

7.3 In the 11th March Committee Report (see attached) the Case Officer considered that:

- (i) there was no retail need for the development;
- (ii) there was a suitable, viable and available, sequentially preferable site (the Lidl site);
- (iii) there was non-compliance with PPS 6 – Retail;
- (iv) the delivery of leisure uses on the Kwik Save site was a material consideration in favour of the grant of planning permission;
- (v) the judgement was “finely balanced”; but
- (vi) planning permission should be refused.

7.3 So whilst the officers report to the 11th March Committee was ‘*finely balanced*’ there were a number of considerations which resulted in this assessment including the reasons to grant the original New Hall Hey proposals (2005/617). Of particular relevance to the development of New Hall Hay was the significant benefit of securing leisure provision within the Borough. Whilst finely balanced members accepted that this scheme (2007/630) would result in a loss of 751 sq m of leisure provision across the New Hall Hey element of the site. However, given that the ‘swap’ of uses was a key element of the applicant’s case, members accepted that the ‘swap’ would effectively result in an increase of 2,149 sq m (2,900 sq m total floorspace of the Kwik Save building including mezzanine floor minus 751 sq m reduction).

7.4 Members afforded greater weight to the other material considerations than the provisions of Planning Policy Statement 6: Town Centres. Of particular relevance, therefore, are the minutes stating the reason to grant permission (11th March 2008):

*“A proposal was moved and seconded to approve the application with additional conditions that the car parking proposals would remain the same as agreed in the previous application, and that landscaping decisions would be delegated to the Executive Director of Regulatory Services. The reasons for approval were visible regeneration, economic regeneration, job creation, sustainability of the site, materials and **leisure provision.**”*

“Resolved...(second part) That the application be approved against the officer recommendation for the following reasons:

Visible regeneration

Economic Growth

Sustainability of site

Leisure benefits

Improvements in materials being used (as per the report 9.34)

Job Creation

*The regeneration, **leisure** and economic benefits”*

- 7.5 It is worth noting that ‘leisure benefits’ are recorded twice in the final element of the resolution acknowledging the weight afforded to the provision of leisure, in weighing the overall planning balance.
- 7.6 A draft agreement was prepared prior to the first meeting of the committee at the applicant’s request given that the proposal was recommended for refusal. That version of the legal agreement did not include a requirement for the leisure element to be provided as the Council were assured that Louise Brookes had an interest in the Kwik Save building. The draft agreement included the name of Louise Brookes and requested clarification of her legal interest. Following confirmation of the fact that she had no interest the agreement required further amendment.
- 7.7 Following the committee meeting and on being updated that Louise Brookes had no interest in the land (and it seemed unlikely that she would have such an interest leasehold or otherwise) and having regard to the minutes together with the reasons to grant, the agreement was amended to include a clause to implement the leisure use prior to occupation of the Aldi. As leisure provision was a reason for outweighing non-compliance with PPS 6, it was correct that the delivery of the leisure use on the Kwik Save site was secured, prior to the delivery of the retail use at New Hall Hey.
- 7.8 Moreover, the applicant stated clearly within the submitted information that the former Kwik Save building would be occupied by Louise Brookes. Members will recall press articles, adverts and signage to this effect. Furthermore, the supporting information (including the leisure impact assessment submitted with application 2007/629) on both applications related directly to Louise Brookes. In fact, the viability appraisal submitted by the applicant ‘Development of former Kwik Save for Brookes Health and Leisure Club’ states (page 2 paragraph 3) *‘It has been agreed to lease the completed property to Brookes at [financial figure not included] per annum. A valuation has been undertaken by Knight Frank on behalf of the funding bank.’*

- 7.9 It is as a result of the supporting information that the Council's solicitor has advised that, whilst the permission at the former Kwik Save building (2007/629) was not personal to Louise Brookes Leisure, it was fundamental in the evidence put forward by the applicant that the leisure provision would be delivered (by whoever that may be) and it being provided within the Borough was part of the argument put forward to justify the provision of retailing (Aldi) at New Hall Hey. Particularly when the Council's retail experts advise that there is no need for additional retailing provision within the Borough.
- 7.10 Therefore, the Council's solicitor has advised that there is no agreed S106 agreement and therefore no link between the scheme already approved on the site of the former Kwik Save and this current proposal.
- 7.11 The applicant considers that the first draft agreement without the above clause to be sufficient to realise the aspirations of the Committee regarding the swapping of land uses. However, having regard to all the submitted information at the time of the application / statements made throughout the course of the application and the discussions at the Committee meeting and minutes, officers having been seeking to ensure that the leisure benefits to the Borough are achieved and delivered. A key component of the agreement therefore has been to secure the implementation of the leisure facilities at the former Kwik Save site as well as to surrender the retail use (retail neutral position). Clearly, the surrender element is necessary given the advice of NLP (Section 9.2 of main report). However, it is considered that the need to secure leisure is necessary given that there is no need for further convenience retailing and having regard to the applicants own planning statement and the reason to grant planning permission for a mixed use scheme at New Hall Hey.
- 7.12 **The Council's solicitor advises that the applicant is unwilling to enter into a legal agreement to implement the leisure consent granted for the former Kwik Save building in December 2008 (application 2008/629),** prior to the delivery of the retail (Aldi) use at New Hall Hey. This means: if planning permission is granted for this application, the LPA cannot secure the re-use of the Kwik Save site. It would be entirely up to the developer, whether the planning permission was implemented and leisure use delivered. Members will recall that whilst that application was acceptable on its own merits (due to the lack of leisure facilities in the Borough) the applicant requested that both applications be considered together as the leisure scheme is fundamental to the reason to grant this additional retail scheme. Therefore, the original report to this Committee (attached) draws upon the relationship of both schemes and the case set out by the applicant regarding the swap.

- 7.13 Having regard to paragraphs 4.1 of the update report dated 15th April 2008 and repeated in main report paragraph 9.7.7, the report and draft legal agreement were compiled prior to the first Committee meeting. This paragraph refers to a 'swap' of uses and does not detail the need to secure leisure provision. However, the relevant paragraph states:

"In approving 2007/630 Committee approved the decision subject to a further s106 agreement to deal with the exchanging (or Swapping) of land uses from one site to another. In order to effectively 'swap' the uses it was necessary for a legal agreement to be entered into to discontinue the lawful retail permission at the former Kwik Save building (given that the leisure use approved by application 2007/629 has not been implemented to date) to avoid a position where two permissions exist for food retailing out of the town centre"

- 7.14 It is considered **that without a clause to secure the implementation of the leisure facility within the agreement there could be no guarantee that any leisure facilities would be delivered**. This being due to the fact that following the Committee decision in March 2008, it has been confirmed that Louise Brookes has no agreement / interest in the site . It should be noted that the Council is not in its proposed covenant ensuring that only Louise Brookes can deliver the leisure use. This would be unreasonable. Given that the previous resolutions by this Committee regarding the reason to grant permission related to leisure benefits and given that the information provided by the applicant states that there has been no interest from any leisure operator at New Hall Hey and the only interest have been in the former Kwik Save building it is considered necessary to include a clause to ensure that the applicant implements the leisure use at the former Kwik Save prior to first occupation of Aldi to actually realise the leisure benefits and therefore the 'other material planning considerations' which were considered to outweigh the provisions of PPS6 in allowing Aldi to locate at New Hall Hey.

- 7.15 Moreover, it has been a fundamental element of the applicants' case that the benefit of the 'swap' would secure both uses. In fact, the applicant stated in the financial supporting appraisal that [the swap] *"...would **provide** a health and fitness club. It has long been recognised that there is a great need for such a club in Rossendale. In the absence of interest from any other operator, this was viewed as the only means of securing a much needed facility."*

- 7.16 In response to the current position the applicant has set out a number of considerations. The applicant have also requested that members have regard to a number of points which have been summarised in this report at paragraph 6.1. The applicant has raised third party issues, which would preclude the clause from being included in this particular case. However,

it is worthy of note that both applications are within the control of the applicant and that third party interests would be at the applicants' discretion. As such, it is not considered that inclusion of a requirement to implement the leisure benefits for the Borough would be unduly onerous on the applicant. Regardless, such a provision does not form any part of the application which falls to be determined.

- 7.17 Whilst there are a number of paragraphs relevant to the 'finely balanced' nature of the previous report (those being paragraphs 4.2, 9.1.1, 9.8.6, 9.8.10 and 9.8.12 of the first report to this committee), without a link (and the delivery of leisure use on the Kwik Save site) it not considered to be finely balanced.
- 7.18 It is necessary, therefore, to reassess the position in relation to PPS6. Chapter 3 of PPS6 is concerned with development control and provides advice on dealing with specific proposals for development. Paragraph 3.4 indicates that local planning authorities should require applicants to demonstrate the following:
- a) The need for the development;
 - b) That the development is of an appropriate scale
 - c) That there is no, more central sites for the development;
 - d) There are no unacceptable impacts on existing centres; and
 - e) That the locations are accessible.
- 7.19 The Councils retail consultants (NLP) have advised (full advice contained in first report to committee 11th March), that the proposal to be of an appropriate scale (b) therefore no unacceptable impacts upon existing centres (d) and that the site (due to S106 contributions) is accessible (e).
- 7.20 However, they advise that there is **no quantitative need** for further convenience retailing until 2012 and that there is **no qualitative need** for two discount retailers (a). Moreover, in terms of more central sites, members will recall that at the same committee (11th March 2008) a scheme for Lidl on the bus depot site was 'minded to approve'. Having regard to (a) and given that clearly there is a suitable, viable and available alternative, more central site, which is available NLP have advised that this scheme does not satisfy point (c).
- 7.21 As such, NLP have advised that the scheme does not satisfy the relevant tests set out in paragraph 3.4 and is therefore contrary to PPS6. Paragraphs 9.8.1. – 9.8.4 of the 11th March Committee detail the other material planning considerations which were considered when the first scheme for the whole of New Hall Hey was considered to be appropriate.

- 7.22 It is not considered that the provision of retailing on New Hall Hey would be 'finely balanced' without an agreement to secure the implementation of the leisure use at the site of the former Kwik Save building and that **permission should be refused as the scheme does not accord with the provisions of PPS6**. Without such a clause within a S106 agreement it would be considered unrealistic for the committee to take a view that any leisure provision would be provided to the benefit of the people of Rossendale. In essence, without such a clause there would be a reduction in leisure provision across the two sites of 3,651 sq m.

8 UPDATE ON S106 AGREEMENT

- 8.1 Notwithstanding the revised appraisal set out above officers have liaised with the applicant on an updated S106 agreement following previous committee meetings. It is considered that an updated S106 agreement which delivers the leisure provision at the site of the former Kwik Save would effectively link to the two proposals together and provide the certainty to the 'other material considerations' which members considered to outweigh elements of the test set out in PPS6 in that there is current no 'need' for food retailing on this site.
- 8.2 References within the previous report clearly confirm that officers of the Council were informed that the proposals would **"deliver"** leisure provision in the Borough. Committee was informed that no other leisure operators were interested in New Hall Hey. Paragraphs 9.1.1 and 9.8.10 refer to delivery of the leisure use by Louise Brookes. Paragraph 9.8.12 reference is made to the applicant *"allowing Louise Brookes to occupy."*
- 8.3 The applicant requested that the application for the leisure permission was attached to the report for application 2007/ 630.
- 8.4 It is primarily this issue that has changed since the Committee decision was taken. The certainty of delivery / occupation of the Leisure use are far from certain.
- 8.5 The Council has requested clarification that a health and fitness operator has an interest in the Kwik Save Land and no legal agreements have been signed at the time of writing this report. Therefore the delivery of the Leisure use at the Kwik Save building are not certain at the time of writing this report.
- 8.6 Therefore, the leisure provision proposed at the former Kwik Save building will either come forward or not but it is not linked to this current application at New Hall Hey.

9 Conclusion

- 9.1 Without the linkage to the leisure scheme at the former Kwik Save building it is **not** considered that the scheme is '*finely balanced.*'
- 9.2 Therefore, whilst the changes to the design, the increase in height, the general landscaping proposals, the types of materials, the principle of a drive thru restaurant and restaurant raise no issues of concern relative to what has already been granted on this site it is clear that the proposal, when considered in isolation and on its own merits, does not satisfy the provisions of PPS6 in that there is a sequentially preferable site within the town centre and that no need currently exists for further convenience retail provision

10 Recommendation

- 10.1 That planning permission be refused for the following reasons:
1. The proposal is contrary to the advice contained in PPS6 : Planning for Town Centres, RSS and Policy 16 (Retail, Entertainment and Leisure Development) of the Joint Lancashire Structure Plan 2001-2016 as there is currently no need for a discount retailer on the out of centre site of New Hall Hey
 2. The proposal fails the sequential approach to site selection in that there exist better located town centre and edge of centre opportunities for convenience shopping development that would better support the existing town centre shopping function and is therefore contrary to PPS6: Planning for Town Centres and Policy 16 (Retail, Entertainment and Leisure Development) of the Joint Lancashire Structure Plan 2001-2016.

Application No: 2007/630

Application Type: Full Application

Proposal: Full application for erection of building to form leisure & restaurant units & a food retail unit & outline application for the erection of drive thru restaurant & one restaurant (amendment to 2005/617 (1656 sq m A1 retail & 1,766 sq m A3 retail))

Location: Land at New Hall Hey, Rawtenstall

Report of: Executive Director of Regulatory Services

Status: For Publication

Report to: Development Control Committee

Date: 11th March 2008

Applicant: The Hurstwood Group

Determination Expiry Date: 5th January 2008

REASON FOR REPORTING	Tick Box
Outside Officer Scheme of Delegation	X <input type="checkbox"/>
Member Call-In	<input type="checkbox"/>
Name of Member:	
Reason for Call-In:	
More than 3 objections received	<input type="checkbox"/>
Other (please state)	

1 The Site

1.1 This application relates to part of the New Hall Hey site in Rawtenstall and is located to the south of the A682 Rawtenstall Bypass. It is an irregular shape and occupies a prominent position on the approach into Rawtenstall. The site is mainly vacant although construction work is currently underway with the implementation of application 2007/030 for Homebase, Argos and Pets at Home. The surrounding uses comprise office provision and a public house. New Hall Hey Road comprises a mix of uses including a number of residential properties.

1.2 Vehicular access to the site is currently provided from New Hall Hey Road. Vehicles can also exit directly onto the bypass in a westerly direction. However, the new roundabout (part of the previous approvals) has now been completed although due to construction access into the site remains from

New Hall Hey Road. There are a number of public footpaths which cross the site enabling pedestrian access from the north. The East Lancashire Railway terminus is located to the eastern end of the site.

2 Relevant Planning History

- 2.1 There is a detailed planning history in relation to retail provision on this site.
- 2.2 1996/362 Proposed Retail store, petrol station, two no fast food units with associated parking and servicing, landscaping and park and ride facility Land adj. Rawtenstall/Edenfield Bypass, Rawtenstall. Withdrawn 20 February 1998.
- 2.3 1996/504 Proposed Retail Food Store (65,000sq ft) petrol filling station, three no. non food retail units totalling 25,000sq ft. Construction of two no. fast food units together with associated parking and servicing, landscaping and park and ride facility. Land adj to Rawtenstall/edenfield Bypass, Rawtenstall. Refused 28th September 1998.
- 2.4 2005/109 Erection of four no. non. food retail, eight no.B1 and B8 business, four no. B1 Office, two no. Leisure and four no. Restaurant units, land adjoining New Hall Hey, Rawtenstall; Conversion of Heritage Arcade Bacup Road, Rawtenstall. Refused 12th July 2005 The reasons for refusal are stated below.
1. *The applicant has failed to demonstrate that a need presently exists for the proposed development of a non-food retail park at this out of centre site of New Hall Hey which is contrary to PPS6: Planning for Town Centres*
 2. *The proposal fails the sequential approach to site selection in that there exist better located town centre and edge of centre opportunities for comparison shopping development that would better support the existing town centre shopping function and is therefore contrary to PPS6: Planning for Town Centres and Policy 16 (Retail, Entertainment and Leisure Development) of the Joint Lancashire Structure Plan 2001-2016.*
 3. *The applicant has failed to demonstrate that the proposals would not adversely affect the vitality and viability of Rawtenstall town centre which is contrary to PPS6: Planning for Town Centres.*
- 2.5 However, application **2005/617** for a mixed use scheme at New Hall Hey and two further units within the town centre has been approved and is relevant to the consideration of this current proposal. That scheme covered the whole of the New Hall Hey site, the Heritage Arcade and the former Soldiers and Sailors Club. At New Hall Hey the proposal sought to erect 3995 sq m non food retail (Homebase), 7665 sq.m of leisure (including covered pavilions) 5133 sq.m B1 Office floorspace, 1997 sq.m of B1 Business (Industrial) floorspace and 1935 sq.m of B8 Storage and Distribution floorspace. Vehicular access would be provided via a newly configured roundabout junction to the A682.

- 2.6 The retail and leisure elements identified at New Hall Hey break down into a 3,066 sq. m gross Class A1 retail unit for Homebase (including a mezzanine floor of 743 sq. m). In addition, this unit also has a 929 sq. m garden centre (Unit A1); Two single storey leisure units, each of 697 sq. m gross (Units A2 and A3); A two storey ten pin bowling alley of 2,044 sq. m gross (Unit B1); A two storey health and fitness club of 2,415 sq. m gross (Unit B2); and two no. two-storey restaurant units, each of 651 sq. m gross (Units B3 and B4); Two freestanding single storey restaurant units of 232 sq. m and 279 sq. m gross (Units C1 and C2).
- 2.7 The office and workshop element would be provided to the west of the site and would comprise two and three storey accommodation. A total of 263 car parking spaces (24 of which would be marked for disabled provision) would be provided within the vicinity of the office and workshop units.
- 2.8 The retail element (Homebase) would be provided within the centre of the site adjacent to the proposed new roundabout. The remainder of the leisure provision would be provided adjacent to the Homebase store and to the east of the site. A total of 427 car parking spaces would be provided in this area and would include a total of 11 disabled car parking spaces. The appearance of these buildings would be two and three storey.
- 2.9 The Heads of Terms for the S106 agreement attached to 2005/617 are set out below:
1. The developer will provide a management plan for the New Hall Hey car parks which allows for visiting members of the public to Rawtenstall town centre to park free of charge (short term only). This will strengthen the linkages between this out of centre site and the town centre. [the legal agreement requires the whole car park area to be available for use prior to first occupation of any unit]
 2. The Developer shall be responsible for the production of a Travel Plan to ensure that all future occupiers of the New Hall Hey units (existing and proposed) take all reasonable steps to use alternative methods of travel to and from the centre other than by car. The scope of the Travel Plan shall be agreed with the Local Planning Authority and shall include as a minimum the following measures; where possible local recruitment; encouragement of the use of public transport; car sharing and parking restraint. The Travel Plan shall be reviewed annually against the aims and objectives of the Travel Plan to ensure its effective implementation. The developer shall appoint a travel coordinator to deliver the Travel Plan and undertake annual reviews and reporting and make appropriate adjustments in consultation with the Local Planning Authority.
 3. The Developer shall provide a financial contribution of:
 - £300,000 towards sustainable transport initiatives connected with the site. Initially these initiatives will be identified through the formulation of a comprehensive Travel Plan for the site.
 - £50,00 to fund the upgrading and provision of pedestrian/cycle routes to the site

- 2.10 In granting permission for application 2005/617 members of this committee placed considerable weight on the regenerative benefit of the scheme to the wider Borough by way of economic benefit, job creation and leisure provision.
- 2.11 A further application (**2007/030**) has also been approved which effectively granted consent for minor amendments to Unit A1 (Homebase) and to provide non food retailing within Units A2 and A3 (Pets at Home and Argos) which were originally approved for leisure uses. An amended version of the legal agreement has also been secured in relation to approval 2007/030 which increased the financial contribution towards transport by £25k and £50k towards public art. The remainder of the previous agreement was unchanged.
- 2.12 It is application 2007/030 which is currently under construction. However, upon completion of the Homebase unit adjacent to the newly created roundabout, an element of application 2005/617 will be commence in order to satisfy planning conditions and to realise opportunities of job creation in the Borough to accord with the recorded reasons for granting application 2005/617. In essence the condition requires one of the commercial units to be constructed following completion of the Homebase.
- 2.13 Also of relevance to this proposal is application 2007/629 which relates to the former Kwik Save building on New Hall Hey Road. Members will recall that this committee approved a change of use proposal from class A1 (retail) to D1 (leisure) in December 2007. The applicant has indicated that both schemes should be considered together as the proposals are to effectively swap the lawful retail use from the Kwik Save building to New Hall Hey and part of the extant permission relating to leisure provision from New Hall to the Kwik Save building. The rationale of the proposed swap is detailed later in this report.

3 The Current Proposal

- 3.1 This current application is a hybrid application in that it seeks full consent for part of the scheme and outline consent for a drive thru restaurant and restaurant. As stated earlier this proposal seeks to vary elements of the wider approved scheme for New Hall Hey 2005/617 and to effectively swap land uses between the former Kwik Save building and the ground floor of unit B1 consented by 2005/617. Construction has not commenced on this part of the wider scheme to date.
- 3.2 The detailed aspect of the application relates to the 'B' units which would be located parallel to the neighbouring East Lancashire Railway. It is part of the ground floor of this element which is proposal for Aldi and the part to which the land use swap relates.
- 3.3 The outline element of the scheme seeks consent for the principle of a drive thru and restaurant in a similar position to what has already been approved by application 2005/617.
- 3.4 The applicant has indicated that the ground floor of unit B1 would be occupied by Aldi and that discussions are currently underway to secure KFC and Frankie and Benny's in units C1 and C2.

3.5 I have provided a breakdown of the proposed units below:

- **Unit B1:** A 3,312 sq.m unit, comprising 1,656 sq.m of food retail at ground floor and 1,656 sq.m of leisure at first floor level. The ground floor is to be occupied by Aldi.
- **Unit B3a:** A 1,018 sq.m unit at ground floor level for leisure use (bowling alley or bingo club).
- **Unit B3c:** A 1,034 sq.m unit at first floor level for leisure use.
- **Unit B3d:** A 913 sq.m unit, comprising 311 sq.m restaurant use at ground floor level and 602 sq.m at first floor level for restaurant use.
- **Unit B4a & B4b:** A 317 sq.m unit comprising a 147 sq.m and 170 sq.m restaurant at ground floor level.
- **Units C1 and C2:** No details are sought at this stage for these units other than the use as a drive thru restaurant and restaurant

3.6 One of the main differences is that the current proposal introduces convenience floorspace of 1,665 sq.m gross into the New Hall Hey site, whereas there is none at present. There is a reduction in leisure floorspace of 751 sq.m gross and a small reduction in restaurant floorspace. This results in a total net increase in floorspace proposed by the current application of 950 sq.m compared with the most recent permission.

3.7 Externally, the design of the building is very similar to what has already been approved although the use of natural stone at ground level and cladding (including colours) have been incorporated into this scheme to match those currently under construction to provide a consistent appearance across the whole development. The details are discussed later in this report.

3.8 The remaining units of the wider consent are unchanged by this proposal in that the commercial element would be provided as part of 2005/617 and the elements which are currently under construction are those amended by 2007/030 to provide Homebase, Pets at Home and Argos.

3.9 The applicant has indicated his willingness to enter into a legal agreement to formally surrender the lawful A1 use of the Kwik Save building and amend the S106 agreement to reflect the current scheme should members be minded to approve this proposal.

3.10 The current proposals have also been amended to include a footpath link from the north east corner of the site (closest to the town centre and adjacent to the proposed Aldi store) to the existing footpath.

4 Cumulative Changes

- 4.1 In summary the original approval (2005/617) increased the amount of leisure provision and reduced the amount of retail provision from that refused by application 2005/109. In granting permission for application 2007/030 the mix of uses resulted (compared to 2005/617) in an:
- overall loss of 1,394 sq.m of leisure provision from the wider scheme; and

- overall increase of 2,785 sq.m of retail provision 2,785 sq.m from wider scheme.
- 4.2 The current proposal would further change the mix of provision by introducing convenience retailing onto the New Hall Hey site and reducing the amount of leisure provision from that approved by 2005/617. The details of which are highlighted in paragraph 3.6 of this report. However, if the swap was implemented the changes to both retail and leisure provision would be limited across the two sites.
- 4.3 However, specific to this site, it can be observed that the current scheme will further introduce elements of the refused scheme (2005/109) which were removed from the approved scheme 2005/617. However, it is necessary to assess the proposal since that decision was made, whether there have been any material change in circumstances and against all other material planning considerations.

5 Development Plan Policies

- 5.1 The Development Plan within Rossendale comprises the Local Plan (adopted 12th April 1995), the Joint Lancashire Structure Plan 2001-2016 (adopted 31st March 2005) and Regional Planning Guidance (RPG) 13 (which became Regional Spatial Strategy (RSS) and part of the development plan from 28th September 2004).

Regional Spatial Strategy

- 5.2 Regional Planning Guidance was adopted in March 2003 and following the commencement of the new Planning and Compulsory Purchase Act is now the Regional Spatial Strategy for the North West (RSS).
- 5.3 The key objectives of relevance to this proposal in RSS include:
- achieving greater economic competition and growth with associated social progression;
 - to secure an urban renaissance in the cities and towns of the north west;
 - to ensure active management of the Region's environmental and cultural assets;
 - to secure a better image for the Region and high environmental and design quality; and
 - to create an accessible Region with an efficient and fully integrated transport system
- 5.4 Policy DP1 requires that development plans adopt the following sequential approach to meet development needs, taking into account local circumstances: the characteristics of particular land uses, and the spatial development framework; the effective use of existing buildings and infrastructure within urban areas particularly those which are accessible by public transport, walking or cycling; the use of previously developed land particularly that which is accessible by public transport walking or cycling; and thirdly development of previously undeveloped land that is well related to houses, jobs and so on and can be made accessible by public transport, walking or cycling.

- 5.5 Policy EC8 states that development plans should recognise the continued need to protect, sustain and improve all the town and city centres in the region including the role of the Regional Poles (Liverpool and Manchester/Salford) as regional shopping centres, by encouraging new retail, leisure, and/or mixed use development within existing defined town and city centres boundaries. Moreover it requires that a sequential approach to such development be adopted in accordance with national planning policy and the core development principles. Where a need is established and where application of the sequential approach has indicated that no suitable town centre sites are available new or expanded developments in urban areas will be considered where their function forms the core of a mix of uses including housing and only then when public transport is accessible.
- 5.6 Policy EC9 states that development should facilitate the provision of employment opportunities by encouraging the growth of investment in tourism within the North West. New locations should build on areas with existing major tourism and leisure attractions or where development will contribute to regeneration.

Draft Regional Spatial Strategy (RSS)

- 5.7 The panel report on the draft RSS is currently out and the changes proposed are expected shortly. The Draft RSS ('The North West Plan') was published for its first formal public consultation exercise in January 2006 and will cover the period from 2003 to 2021.
- 5.8 Draft RSS focuses on the needs of the region as a whole but highlights those area that need more specific guidance or a different approach. This intended to improve the coordinated and delivery of regional policy and sustainable development
- 5.9 Draft RSS is a material consideration however it should not be afforded significant weight at this stage

Joint Lancashire Structure Plan 2001-2016

- 5.10 **Policy 1b** (General Policy) requires development to contribute to achieving high accessibility for all by walking, cycling and public transport.
- 5.11 **Policy 2** (Main Development Locations) states that most development should be located within identified principal urban areas, which include Rawtenstall.
- 5.12 **Policy 16** (Retail, Entertainment and Leisure Development) states, in part, that retail development should reflect the scale and function of the town centre in which it is to be located. It should also be located in accordance with the sequential approach and should satisfy certain other specified criteria.
- 5.13 **Policy 21** states "*Lancashire's natural and manmade heritage will be protected from loss or damage according to the hierarchy of designations of international, national, regional, county and local importance.*"
- 5.14 Listed buildings 1, 2* and 2 are identified in the policy as of national importance. The site is adjacent to Hardmans Mill a grade II listed building whereas the main B units would be to the north of the Cobblers Inn.

Rossendale District Local Plan (Adopted 1995) (Saved Policies only)

- 5.15 **Policy DS.1** (Urban Boundary) states that *“the Council will seek to locate most new development within a defined boundary – the Urban Boundary – and will resist development beyond it unless it complies with policies DS3 and DS5. The urban boundary is indicated on the proposals map”*
- 5.16 **Policy DC.1** (Development Criteria) states that all applications for planning permission will be considered on the basis of a) location and nature of proposed development, b) size and intensity of proposed development; c) relationship to existing services and community facilities, d) relationship to road and public transport network, e) likely scale and type of traffic generation, f) pollution, g) impact upon trees and other natural features, h) arrangements for servicing and access, i) car parking provision j) sun lighting, and day lighting and privacy provided k) density layout and relationship between buildings and l) visual appearance and relation to surroundings ,m) landscaping and open space provision, n) watercourses and o) impact upon man-made or other features of local importance.
- 5.17 **Policy DC.4** (Materials) Places an emphasis on local natural stone and Welsh blue slate to match the texture, general appearance and weathering characteristics of the surrounding area
- 5.18 **Policy HP.2** of the adopted local plan seeks to safeguard listed buildings.

6 Other Material Planning Considerations

PPS1: Delivering Sustainable Development

- 6.1 PPS1 states that sustainable development is the core principle underpinning planning. Planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by: making suitable land available for development in line with economic, social and environmental objectives to improve people's quality of life; contributing to sustainable economic development; protecting and enhancing the natural and historic environment, the quality of the countryside and existing communities; ensuring high quality development; and supporting existing communities and contributing to the creation of safe, liveable and mixed communities with good access to jobs and key services for all. On sustainable economic development, local authorities should recognise that economic development can deliver environmental and social benefits; that they should also recognise the wider sub regional and regional economic benefits and that these should be considered alongside any adverse local impacts.
- 6.2 Para 28 of PPS1 advises that planning decisions should be taken in accordance with the development plan unless other material considerations indicate otherwise.
- 6.3 Para. 29 of PPS1 acknowledges that in some circumstances, a planning authority may decide in reaching a decision to give different weight to social, environmental, resource or economic considerations. Where this is the case the reasons for doing so should be explicit and the consequences considered.

Adverse environmental, social and economic impacts should be avoided, mitigated or compensated for.

PPS6: Planning for Town Centres

- 6.4 The Government published PPS6 in March 2005. It replaces PPG6 and subsequent ministerial statements of clarification. The key objective of retail policy is to promote vital and viable town centres and to “*put town centres first*”. Para 3.4 of PPS6 states that local planning authorities should require applicants to demonstrate:
- a) **“the need for development”**
In relation to need full account should be taken of qualitative and quantitative considerations. Greater weight should be placed on quantitative considerations, based on data and other objective evidence except where socially excluded communities are currently denied access to a range of services and facilities.
 - b) **“that the development is of an appropriate scale”**
That the scale of the development is appropriate relative to the role and function of the centre and the catchment area that it seeks to serve.
 - c) **“that there are no more central sites for the development”**
That there are no more central sites for the development. In this respect the PPS identifies the first choice as being town centre sites followed by edge of centre sites and lastly out of centre sites.
 - d) **“that there are no unacceptable impacts on existing centres”**
That there are no unacceptable impacts on existing centres. In this respect Local Authorities should make an explicit assessment of the likely impact of a proposed development upon existing centres.
 - e) **“that locations are accessible”**
That the proposed location is accessible by a choice of means of transport including public transport, walking, cycling and by car, together with the impact on car use, traffic and congestion levels.
- 6.5 Paragraph 3.4 states that, as a general rule developments should satisfy all these considerations.

PPG13: Transport

- 6.6 The main objective of PPG13 is to promote more sustainable transport choices for both people and moving freight. It aims to promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling and reduce the need to travel, particularly by car. For retail and leisure developments policies should seek to promote the vitality and viability of town centres, which should be the preferred locations for new retail and leisure development. Preference should be given first to town centres then edge of centre and then on out of centre sites in locations which are (or will be) well served by public transport.

Area Action Plan

- 6.7 In May 2006 a revised Preferred Options Report was published for consultation; since that time, and following the advice of Government Officer North West, the progress of the AAP has been delayed to facilitate the progress of the Core Strategy. As such, **only limited weight can be afforded to the AAP at this time**. In relation to the New Hall Hey site the Preferred Options Report identifies the site for mixed use redevelopment with the majority of the site developed for a mixture of office and industrial premises, with potential retail and leisure development to the east. The report notes that the Retail Capacity Report undertaken by Nathaniel Litchfield and Partners (NLP) for the Council suggests that there will not be sufficient retail capacity up to 2011 to support retail development of the site. A recommendation is made that the future release of the New Hall Hey site for retail purposes *“should be phased to ensure that it is not developed in advance of sequentially preferable sites such as the Valley Centre, Bocholt Way and other small scale retail developments within the town centre.”* .

Changes to Rawtenstall Town Centre

- 6.8 Since members considered the original application for the whole of the site there have been a number of relevant changes to retailing within the Town Centre of Rawtenstall and Rossendale.

- 6.9 They include:

- The Asda food store on the former Lower Mill on St. Mary’s Way, Rawtenstall has been implemented and is now trading. The Asda store on Bocholt Way has closed.
- The former Asda store at Bocholt Way obtained planning permission for six non-food retail units in March 2006 (6,782 sq m). Tesco acquired the site and opened a new food store in December 2006.
- A food store proposal has emerged in Bacup.

- 6.10 Moreover, since members considered that previous amendment to the scheme (2007/030), the Valley Centre redevelopment proposals have progressed and have been ‘minded to approve’ subject to referral to the Secretary of State.

7. CONSULTATIONS

7.1 INTERNAL CONSULTATIONS

RBC Environmental Health - RBC Environmental Health advises that conditions be attached in relation to hours of construction, construction methods, implementation of acoustic assessment, fume extraction details, air quality, contaminated land and opening hours.

RBC Forward Planning – Retail policy advice provided by Nathaniel Litchfield and Partners (NLP). The advice is discussed in detail below but consider that there is a sequentially preferable site which should be developed prior to this site and that there is no quantitative need for further convenience retailing in the Borough and that in qualitative terms the Borough can accommodate one discount retailer and that discount retailer should be located within the most sequential preferable location to the town centre.

RBC Estates Department - No response

Street Scene & Liveability - No response

7.2 **EXTERNAL CONSULTATIONS**

County Planning Officer - No objection. It is also considered that the changes to the scheme would not require a further financial contribution from those already secured by the wider development approvals.

County Highways – No objection

Natural England – No response although they have no objection previously.

United Utilities - No objection

Environment Agency - No objection subject to conditions relating to surface water regulation and contaminant interception.

Crime Prevention Officer - No response.

Rossendale Civic Trust - No response.

Rawtenstall Chamber of Commerce - No response

Rossendale Transport Ltd - No response

East Lancashire Railway - No response

8 **Notification Responses**

8.1 I have not received any representations in response to the application publicity.

9 **Planning Issues**

9.1 Given the planning history for this site I consider that the main issues for consideration are whether the proposed changes to the scheme would accord with the provisions of Planning Policy Statement 6 for Town Centres and in this particular case whether there any other material planning considerations which would outweigh this view; whether the changes provide for adequate parking and servicing appropriate for the proposed use; whether the proposed changes would result in an adverse impact upon the surrounding road network; whether the proposed amendments to the external appearance of the units provide an appropriate design; whether the proposal would result in an unacceptable loss of trees; whether the proposed siting would affect the setting of a listed building and whether the proposed development would accord with the Council's planning obligations paper. These issues will be discussed in turn below.

9.1 Principle

9.1.1 Members will recall that this committee has approved a change of use application for the former Kwik Save building on New Hall Hey Road for

leisure provision (2007/629). Members will also recall that the applicant (the Hurstwood Group) requested both applications to be considered together on the basis that they were (in their opinion) swapping land uses between a use that is lawful (Kwik Save) and a use which has planning permission (an element on the New Hall Hey site. I have attached a copy of application (2007/629 for information within the appendices). The applicant has requested that in considering both applications members have regard to the viability of the Kwik Save proposals and that the 'swap' arrangement would deliver leisure provision into the Borough. The applicant has provided information which indicates that no other leisure operators are interested in taking up the consent on New Hall Hey following a marketing exercise. All of the issues are discussed in detail below.

- 9.1.2 However, whilst a 'swap' of uses forms the basis of the applicants supporting information it is appropriate that the Local Planning Authority assess the re-location of retail use against the relevant aspects of the Development Plan. Since members considered the original proposals for New Hall Hey policies S1 and S2 of the Rossendale District Local Plan have not been saved. Therefore, the principle of introducing retail provision (Class A1) onto New Hall Hey must be considered against Policy 16 of the Joint Lancashire Structure Plan, RSS and the advice contained within PPS6.
- 9.1.3 In accordance with the above policies the applicant has submitted a Retail Impact Assessment (RIA) prepared by Savills. A review of the retail impact assessment has been provided by the Council's retail consultants Nathaniel Lichfield and Partners (NLP) who have consistently provided retail advice in Rossendale on behalf of the Local Planning Authority.
- 9.1.4 Notwithstanding the 'swap of uses', any new proposals for development for retail provision should be considered against the provisions of PPS6 in order to establish the principle of development. The following section of this report considers retail need, impact and the sequential assessment in relation to the submitted retail impact assessment.

9.2 Retail Provision

- 9.2.1 NLP's assessment of the submitted retail assessment comprises a review of:
- the data sources used;
 - the methodology and key assumptions;
 - the assessment of need;
 - the application of the sequential approach; and
 - the validity of the interpretation of the retail capacity and impact assessment results.

- 9.2.3 For members convenience I have inserted the final comments of NLP in relation all submitted information:

"Our letter of 26 November considered all the relevant retail issues relating to this application and the connected Kwiksaver application. Although we had concerns regarding the quantitative need analysis submitted by Savills we accepted that if, as part of any permission for the New Hall Hey site, Class A1 consent on the Kwiksaver building is revoked, then in overall terms this results in a very minor increase in convenience floorspace of just 32 sq.m. As such,

the fact that the two applications effectively result in no significant increase in convenience retail floorspace, is a factor that weighs in favour of the proposals, despite the clear lack of quantitative need. It should be clarified, however, that the greater the chance of an A1 retailer operating from the Kwiksave unit, the greater the weight in planning terms that can be given to this swap. In this respect, we understand from Hurstwood that it is extremely unlikely that any Class A1 retailer would take up the current retail consent and in fact planning permission has now been granted for the health and fitness club.

We also accepted that the scale of the proposals was appropriate in accord with PPS6 and that an Aldi store on New Hall Hey site was unlikely to adversely affect the vitality and viability of any nearby centre, including Rawtenstall Town Centre.

Given the above, our main concern with the application related to the sequential approach. We noted in our original advice that an application had recently been submitted by Lidl on the Bus Depot site and that an application was outstanding for the redevelopment of the Valley Centre. We also noted that the "swap" involves the relocation of the food store use from the Kwiksave site to a location which is further from the town centre. Although both sites are out of centre, we advised that the Kwiksave site has the greater potential to generate linked trips since, based on the submitted application plans, as no direct pedestrian route towards the town centre from the eastern edge of the application site was shown. This issue is dealt with in more detail below. Based on the information submitted with the application at that time we advised that in our view the Aldi application fails the sequential approach.

As noted above, Savills have responded to our original advice and we deal with both letters below.

Capacity Issues

In the Savills letter of 29 November 2007, they note that our reworking of their capacity figures confirms that the market share would reach nearly 84% of convenience goods spending generated in the study area at 2012. On this basis, Savills consider that most, if not all of the Borough's convenience needs, should be met within the study area and therefore it would not be inappropriate for the Borough to seek to achieve a higher market share or retention rate. In this respect, it should be remembered that the study area includes spending from the Ramsbottom sector which will use up a significant proportion of this capacity. The NLP Study considered the potential for the Borough to meet the needs within a wider study area. Despite the comments made by Savills it is our clear view that there is no quantitative need for additional retail floorspace within the study area at 2012. Although there is a qualitative need for a discount retailer in the town, this would not justify, in our view granting planning permission for both stores ie. Lidl and Aldi.

The Sequential Approach

We deal with the sequential approach in terms of the information submitted in both the November and January letters. Although, Savills

consider that the “swap” between town centre uses is neutral and therefore uncontentious, it is our view that in the absence of a quantitative need, the weight that can be given to the fallback and in view of potentially available sites within the town centre, then the sequential approach still needs to be satisfied.

In terms of the New Hall Hey site, Savills argue that it is close to the Primary Shopping Area and well placed to integrate with the rest of the town centre. In terms of pedestrian access from the New Hall Hey site to the town centre which was raised in our original advice (as referred to above), Savills confirmed the following in their letter dated 29 November 2007:

“A frequent bus link to the town centre will be provided as part of the New Hall Hey development to help encourage linked shopping trips. There is already a footpath in the town centre to the site, which is currently shown gated. Hurstwood propose to ensure that the gate is opened daily to encourage convenient pedestrian access. It is also envisaged that some of the Section 106 funding associated with the development will be used by the County Council to improve this link”

“The New Hall Hey site offers the opportunity for linked shopping trips via the Section 106 Agreement which will include £350,000 towards accessibility improvements to the town centre, plus a bus service taking customers to the town centre. Furthermore, free parking would be provided thereby encouraging individuals to park at New Hall Hey and visit the town centre”.

In their subsequent letter dated 24 January 2008, the “accessibility improvement benefits” are described as follows:

1. New on site bus stop and lay-by.
2. Section 106 funding for £375,000 towards sustainable transport initiatives, including direct funding of bus link with the rest of the town centre for a period of five years.
3. Footpath improvements to the east of the site.
4. Opportunities for links to the proposed new business park.
5. Free parking for town centre shoppers for up to three hours.

We accept that if the above improvements to the pedestrian accessibility of the New Hall Hey site were secured as part of any permission then this improves the potential for the site to generate linked trips with the town centre.

These improvements are important when consideration is given to the difference between the existing Kwiksave site and the proposed New Hall Hey site. We previously advised in our letter dated 26 November 2007 that without any direct pedestrian link to the east of the New Hall Hey site towards the town centre, the Kwiksave site is a preferable site in sequential terms. The information referred to above, which will improve the accessibility of the New Hall Hey site, is of relevance and the difference between the two sites is now less clear cut in terms of sequential advantage. Although we consider that the Kwiksave is still nearer to the town centre, there is an argument that the advantage is fairly limited and in the Council’s view may not,

when consideration is given to this site alone, warrant refusal of planning permission.

Before dealing with the Savills response on the sequential sites, it is worth confirming that the Council recently resolved to grant planning permission for the Valley Centre scheme, subject to referral to the Government Office. In terms of this site, Savills state in their letter dated 24 January 2008, that the largest unit in the proposed redeveloped Valley Centre is too small for Aldi and around 29% smaller than the unit proposed at New Hall Hey. They argue that the minimum format size for an Aldi store is 1,315 sq.m. Among other concerns, they also consider that the site may not be deliverable, although there is no firm evidence provided to corroborate this view.

In this respect and as previously confirmed in our letter dated 26 November 2007, Savills in their Retail Assessment refer to a High Court decision which determined that "a reasonable timescale for availability is three to five years" and that if need is not pressing (which is not in this instance) then a longer period of time may be appropriate. Based on the above, we have concerns about Savills arguments regarding the availability of this site.

Despite the above, we understand from the Council that discussions have taken place with the new owners of the Valley Centre. They have confirmed that the Valley Centre scheme would not be appropriate, in their view, for a discount retailer. What weight is given to this statement is really a matter for Council Officers. If it is correct that the owners of the Valley Centre would not offer a unit to a discount retailer then there are clear question marks over the availability of this site for Aldi or any other discount retailer, which on the face of it could dismiss the site as sequentially preferable.

However, the main concern regarding compliance with the sequential approach for the Aldi application is the Bus Depot site. It is clear that this site is sequentially preferable to New Hall Hey and is currently subject of an application for a Lidl food store. NLP has provided advice on the retail implications of this proposal, and we note that the application will be considered at the same Committee as the Aldi application with a recommendation for approval. We have not been party to the discussions between the applicants and the Council on the Lidl site and although the proposal raises non retail matters which, in part at least, have been highlighted by Savills we understand that these have been resolved.

Assuming that the Council Members support the Officers' recommendation and confirm that the bus depot site is suitable for a discount retailer then, in our view, this on its own could warrant refusal of the Aldi application as there would be a sequentially preferable site for a discount food store and no need for two stores within the town. Conversely, if Members decide that this is not a suitable retail site, that the Valley Centre is not available for a discount retailer and that there is no material difference in terms of linkages with the town centre between the New Hall Hey and Kwiksave sites then the Council may take the view that the Aldi proposals accord with the sequential approach.

As previously noted, the sequential approach is only one issue against which the application should be considered. Savills have outlined in their

most recent letter a number of the benefits of the Aldi proposal. It is clearly up to the Council to determine what weight should be attributed to the conflict with the sequential approach (assuming the Lidl application is approved) compared with the perceived benefits of the Aldi scheme.”

9.2.4 Therefore, it is the advice of the Council’s retail consultants that the proposal does not accord with the provisions of PPS6 in that there is a sequentially preferable site closer to the town centre. Moreover, it is the advice of NLP that, if application 2007/655 which appears on this agenda is approved, there is no need further retail provision.

9.2.5 However, it is necessary to fully appraise all material considerations to consider if any would outweigh the advice of PPS6. Given the recent history on the site of New Hall Hey and the application on the site of the former Kwik Save site (application 2007/629) there are a number of issues which require consideration and an appropriate proportion of weight to be afforded. Those include the ‘swap’ of land uses, the reasons for granting consent for the whole of New Hall Hey, a reuse of a vacant building (Kwik Save), the marketing exercise undertaken at New Hall Hey and the provision of leisure facilities in the Borough as a whole. These issues are considered later in this report in section 9.8 ‘Other Material Considerations.’

9.3 Design and Layout

9.3.1 The design of the proposal is similar to that of the previous scheme. Members will be aware that, during negotiations on the use of materials for the part of the site that is currently under construction, the use of natural stone was secured along the bottom of the building. The current proposal includes the same materials as those formally agreed for phase 1 which would provide consistency in the design of the whole scheme once completed. Further to the introduction of stone to the bottom of the building, additional proportions of stone have been introduced into the current scheme.

9.3.2 In comparison to what has already been approved, the maximum height of the B units approved by the previous application (2005/617) are 10.4m. The end units step down in height to 8.6m. The internal floor heights for the ground floor were shown as 3.65m and 2.9m for the upper floor.

9.3.3 The current scheme is generally more consistent in terms of height across the whole elevation of the B units. It does not include a stepping in the height of the lower end units. The overall height would increase to 14.5m. The north eastern corner (closest to the town centre) would be articulated by a stone section to a height of 15.6m. The increase in height is as a result of the increase in internal floor heights. The floor to ceiling height of the ground floor would be 6m and the floor to ceiling height of the upper floor would be 4m.

9.3.4 The elevation facing Hardmans Mill would include the natural stone around the bottom of the proposed restaurant. The two units closest to Hardmans Mill would occupy a smaller footprint than the adjoining units. As such, they would not extend towards the railway in comparison to the neighbouring unit. This is similar to the consented scheme and would allow for a servicing area and turning facilities. The fire escape to the rear of the building would be constructed of stone and would be 11m in height.

- 9.3.5 Unit B1 would be occupied by Aldi and would include internal servicing from the rear service yard. This would result in the external rear elevation 1m from the applicants boundary and 7m from the position of the existing footpath. Due to the shape of the site the distance to the applicants boundary of this elevation increases to 4m at the opposite end of the internal service area.
- 9.3.6 The applicant has amended the scheme to include a footpath link from the site adjacent to Unit B1 (Aldi) to the existing footpath. Members will recall that section 106 monies to the value of £50,000 will be spent on the upgrading of the footpath adjacent to the site. As discussed earlier in this report the relationship of the site to the town centre is considered comparable to the former Kwik Save building once S106 monies are spent on upgrading this footpath. The footpath runs from Hardmans Mill alongside the site and East Lancashire Railway to the gyratory. Details of the total planning obligations secured as a result of the two previous approvals are detailed later in this report.
- 9.3.7 Moreover, in general design terms, the landscaping (both hard and soft) around the building is an important consideration and it should also be noted that in formally discharging the landscaping conditions in relation to application 2007/030, a strategy has been set and the landscaping details for the current scheme reflect the agreed strategy. It is considered that this will help soften the building and was a requirement to mitigate the impact of the development and the lost of trees previously. Both landscaping and trees are discussed later in this report.
- 9.3.8 Given that the design was acceptable previously I am satisfied that the design is appropriate and an improvement in this instance and consider that if members were minded to approve the proposal then appropriate conditions could be attached to the proposal to ensure that the materials reflect those which are being used in the construction of the elements of the scheme currently on site.
- 9.3.9 The implications of the changes to the design and scale of the proposal in relation to the neighbouring listed building are discussed in the next section of this report.

9.4 Listed Building

- 9.4.1 It is clear that the scale of the building has increased by 3.9m generally across the entire elevation and 5.9m closest to the listed mill. There are some changes to the positioning of emergency existing for each unit. However, the design is similar to what has already been approved and the and proposed materials reflect the benefits secured by way of condition on the scheme which is under construction. The original application indicated that the bottom section of the building would be a buff coloured brick. Stone is currently being erected as agreed by condition. Moreover, the fire escape and section on the rear as well as corners of the B1 unit include additional stone to match.
- 9.4.2 However, the proposal would be no closer to Hardmans Mill, a grade II listed building, and the changes to the design include the provision of natural stone. Therefore, I am satisfied that this proposal would not have any detrimental

impact upon the setting of this listed building when compared to the extant permission.

9.5 Landscaping and Trees

- 9.5.1 Members will recall that a number of trees were lost to facilitate the development of the whole site. As a result of the lost of trees, conditions were attached to both previous consents requiring a comprehensive landscaping scheme to be provided. The applicant has provided details in terms of landscaping to formally discharge the requirements of conditions attached to 2007/030. Moreover, those details have included additional tree planting within the car parking area between parking spaces.
- 9.5.2 The current proposal includes a revision to the car parking area in the furthest north east corner of the site which would result in the lost of additional trees. The trees are self seeded and flank the public footpath which, at this point, meanders around the site. Car parking is considered later in this report. The applicant has submitted a detailed landscaping scheme which incorporates the strategy agreed on the earlier scheme (2007/030). In accordance with those details tree planting would also be secured within the car parking area and would continue the tree planting alongside the A682. Moreover, along the boundary with the A682 the boundary treatment would also continue that of the agreed scheme in that it would be stone wall and fencing.
- 9.5.3 The rear of the site would introduce tree planting within the applicants site and would retain those trees alongside the footpath. The mix, planting density and species are consistence with the approved details.
- 9.5.4 Whilst some additional trees would be lost of the end of the site I am satisfied that none of these trees would individually warrant a Tree Preservation Order (TPO) and the landscaping measures proposed would provide a consist landscape across the whole of the site.
- 9.5.5 However, the landscaping proposals indicate that paladin fencing would included to the rear of the site. There are no further details provided and that whilst paladin may offer a security solution and a degree of transparency to the rear service yard, without the details (including the density / gauge of the mesh) I do not consider that it would be appropriate to agree the whole of the landscaping details. Therefore, should members be minded to approve the scheme, details of the boundary treatments should be agreed in writing and the landscaping should reflect the amendments that include a pedestrian route to the neighbouring footpath.

9.6 Highway Implications

- 9.6.1 The proposal would utilise the same access as the previous approvals and members will be aware that the roundabout has now been constructed by Lancashire County Council and funded by the applicant. Conditions attached to the previous permissions are such that Swanney Lodge Road will be formally closed.
- 9.6.2 The parking standards require that in towns such as Rawtenstall, car parking be provided for food retail development at the rate of one space per 15 square metres gross floor area with one in every ten spaces being a mobility

space. They also require that provision be made for bicycles and motorcycles at the respective rates of one space per ten and one space per twenty five of the car parking spaces provided. This provision is reflected in the advice from LCC Planning.

- 9.6.3 Given that the development on New Hall Hey, is in essence, being constructed in a phased manner it is appropriate to consider the total provision of car parking across the whole of the site having regard to application 2007/030 and this proposal and comparing the provision to that which would have been provided if 2005/617 would have been implemented as approved.
- 9.6.4 The retail and leisure element of the whole scheme (2005/617) would provide for significant proportion of car parking spaces. The accompanying legal agreement ensures that they be provided free of charge for 3 hours upon first occupation of the first unit.
- 9.6.5 The total car parking provision which would be secured if this scheme were to be implemented along with the full implementation of application 2007/030 would be 393, a loss of 34 spaces. (157 spaces as part of phase 1 and 236 as part of phase 2) It should be noted that some spaces may have been lost to accommodate additional landscaping provision. The applicant is also seeking to vary the terms of the agreement in that the car parking provision would be constructed in a phased manner to reflect the development of the site.
- 9.6.6 Given the improvements to the landscaping generally and the significant contributions towards sustainable means of transport including a shuttle bus service and improvements to the adjoining public footpath, I do not consider that the reduction in car parking provision to warrant refusal in this instance. However, if members were minded to approve the legal agreement would have to be altered to reflect the change but to retain the 'free parking' element.
- 9.6.7 The applicant has provided a Transport Assessment (TA) in accordance with the requirements of the development plan. The County Highway engineers have considered the information, the proposed changes to the scheme from that already granted and the S106 contributions already agreed as part of the whole site. Having regard to this information LCC Highway's have no objection to the proposals.
- 9.6.8 In terms of Planning Obligations (S106) and the closing of Swanney Lodge Road the existing legal agreement and planning conditions are effective to deliver the resolution of this committee. The phased payment of monies is triggered by the opening of Homebase and the closing of Swanney Lodge Road is now with LCC following the completion of the construction of the roundabout.
- 9.6.9 Therefore, in highway terms, it is considered that the proposal accords with the requirements of the Highway Authority and the development plan in this instance.

9.7 Planning Obligations

- 9.7.1 During consideration of the previous applications for the whole of the New Hall Hey site the heads of terms as outlined above were advised by Lancashire County Council (LCC) and agreed by the LCC solicitor.
- 9.7.2 Since members considered that the previous application, LCC and Rossendale Borough Council have approved a Planning Obligations Policy Paper. The document was in draft format during consideration of the previous scheme and did not influence the obligation of £350,000 towards sustainable transport initiatives and for the upgrading and provision of pedestrian/cycle route to the site on the original application 2005/617.
- 9.7.3 Whilst the document is not a formal supplementary planning document (SPD) under the Planning and Compulsory Purchase Act 2004, it is still a material consideration as the policy has been approved by this Council.
- 9.7.4 The whole of the original application includes a section 106 agreement to secure a contribution of £350,000.
- 9.7.5 Further to the original application the Council continued to negotiate the Heads of Terms on the wider application having regard to the application for 2007/030. Those negotiations resulted in further benefits to Rawtenstall including free car parking spaces for a period of 3 hours associated to the retail and leisure facility in addition to the financial contribution of £350,000. In addition, further monies were agreed as part of the approval of application 2007/030 and secured an additional £25,000 to sustainable transport initiatives and £50,000 to public art.
- 9.7.6 The current changes have been considered against the provisions of the adopted Obligation Policy and section 106 monies already secured as a result of the previous permission. Paragraph 9.6.8 of this report highlights that the triggers for payment relate to the provision of Homebase and that payments will follow completion. However, it is not considered necessary for this proposal to contribute further by way of financial mitigation measures from those already agreed. Lancashire County Council supports this view.

Legal Agreement relating to this Scheme and the former Kwik Save building

- 9.7.7 As discussed earlier in this report the applicant has referred to the exchanging (or swapping) of land uses from one site to another. In order to effectively 'swap' the uses it would be necessary for a legal agreement to be entered into to discontinue the lawful retail permission at the former Kwik Save building (given that the leisure use approved by application 2007/629 has not been implemented to date) to avoid a position where two permissions exist for food retailing out of the town centre.
- 9.7.8 The applicant has agreed to such an agreement if members were minded to approve the scheme.

9.8 Other Material Considerations

- 9.8.1 In this section I have summarised all material planning considerations relevant to the wider context. It is appropriate to consider all material planning consideration in the assessment of the current proposal. Consideration is given to the weight which may be afforded to other material

considerations and in essence whether they would weigh in favour to grant planning notwithstanding the fact that the scheme does not accord with the advice of PPS6. This approach is consistent with the advice in PPS1 and the advice summarised in paragraphs 6.2 and 6.3 of this report.

9.8.2 In considering the previous application for the whole of the site (application 2005/617), the applicant set out a number of benefits that the development of this site would secure. Moreover, whilst it was considered that the scheme did not fully satisfy the advice set out in PPS6 at that time, members had regard to, and proportioned significant weight to, the regenerative, economic and job creation benefits that the development would provide. For clarity I have listed the material planning considerations as set out for the whole of the development of New Hall Hey in the previous report to this committee first and then the recent issues raised in relation to the current proposal. Analysis is provided in relation to the recent issues raised. The previous material considerations included:

- a) Physical Regeneration;
- b) Employment and Economic Growth;
- c) Social Inclusion; and
- d) Sustainable Patterns of Development

9.8.3 These issues were afforded more weight than the advice of PPS6 to warrant the approval of development on the New Hall Hey site (application 2005/617).

9.8.4 The applicant has indicated that the consented scheme does not include a footpath link to the existing footpath (paragraph 9.3.6) and without such a link it is unlikely that visitors to New Hall Hey would 'walk around' in the direction off Hardmans Mill to utilise the footpath and therefore make linked trips to the Town Centre. The applicant wishes to remind members that the existing S106 agreement includes free car parking for 3 hours and the 'new footpath link' to the existing footpath is of benefit to the site and users of the town centre and considers that it is a significant material planning consideration to weigh in favour to grant planning permission.

Historic Overview Position

9.8.5 Clearly, the weight which members of this committee afforded the scheme as a whole in considering application 2005/617 is a material consideration in the assessment of this current proposal. I am also mindful of members previous decision to grant permission for the development of New Hall Hey and the weight which was afforded to the provision of new leisure facilities within the Borough. This is further acknowledged by the granted consent for leisure in the former Kwik Save building.

Proposed use Swap

9.8.6 The applicant has asked that consideration be given to this application and the application considered in December 2007 for the site of the former Kwik Save. The applicant considers that the two proposals effectively swap an existing lawful use with part of the extant permission from New Hall Hey. The applicant has also indicated that this could not be achieved within such a swap as a leisure use in the Kwik Save building would not be viable on its own. The viability of the proposed swap arrangements are discussed later in

this report. However, as stated earlier the swap arrangement does allow for the local planning authority to consider all aspects of the proposal on its merits. The starting point for considering proposals for development is the Development Plan.

- 9.8.7 The proposal to swap both uses would result in a use within the former Kwik Save building which has remained vacant for a number of years. It would also enable the commencement of development on the second phase of New Hall Hey without the applicant having to rely on a completely speculative development.

Valuation and Viability

- 9.8.8 The applicant has provided information regarding the viability of the leisure facilities at the former Kwik Save. It is clear that the amount paid for the site exceeds the value of a leisure use. However, the applicant did purchase the site without benefit of planning permission and, on its own, is not sufficient to justify the approval of planning permission in another location on the basis that the proposed end use (a health and fitness centre) would be unviable.
- 9.8.9 The Council has sought the initial independent advice of DTZ in relation to the viability appraisal that has been submitted. They advise that there is insufficient information to demonstrate that the provision of Aldi would subsidise the provision of a leisure use in the former Kwik Save building. Moreover, they advise that the appraisals should be based on a residual basis and the value paid for an A1 consent (retail) is irrelevant if the end use is proposing leisure provision. In essence they advised that the information provided did not demonstrate that Aldi would subsidise the leisure use.
- 9.8.10 However, it could be accepted that this demonstrate the applicants willingness to deliver the commitment made to providing a number of benefits to the Borough as outlined in their original submission and ones which members considered to have significant weight to grant planning permission in the first instance for the whole site.

Marketing Exercise

- 9.8.11 To accompany the viability exercise the applicant has also provided information in relation to the marketing exercise which the applicant has been pursuing, both prior to the granting of planning permission 2005/617 and post planning permission. It includes a number of responses which have declined the offer to occupy the consented leisure facilities within the B units.
- 9.8.12 The applicant has also indicated that as a result of the marketing exercise it is only Louise Brookes (Louise Brookes Leisure) who has been interested in leisure facilities within the Borough and that she is unwilling to locate on New Hall Hey. It is the applicant who, with a view to secure leisure provision within the Borough, who have bought the former Kwik Save building and would allow Louise Brookes to occupy the former Kwik Save building in accordance with planning approval 2007/629.

Conclusion on Materials Planning Considerations

- 9.8.13 Whilst the fall back position is that Aldi (or any other A1 shop) could go into the former Kwik Save building without any further planning consent, I am conscious of the length of time that the store has been vacant and the likelihood therefore of any other retailer taking up the use. I am also mindful of the weight afforded by members to the material planning considerations highlighted above in paragraph 9.8.2 when granting permission for the original scheme. It is also apparent that desire to provide leisure facilities in the Borough was also afforded greater weight by this committee in granting permission previously.
- 9.8.14 In carefully balancing all the material planning considerations, both relevant to the original scheme and those put forward specific to this application, I consider that the proposal is finely balanced. Whilst, I do not consider there to be any other similar circumstances which would warrant future A1 retailing on the site of New Hall Hey in the considerable future the advice from NLP is clear that the scheme fails the sequential test and that those tests seek to protect the vitality and viability of town centres by focusing development in town centres first.
- 9.8.15 Therefore, whilst finely balanced, I consider that the weight which should be afforded to all other material planning considerations does not outweigh the provisions of PPS6 in this particular case.

10 Human Rights

- 10.1 The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights: -

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

11 CONCLUSION

- 11.1 It is clear that the merits of the scheme are finely balanced against a number other material planning considerations. However, whilst the changes to the design, the increase in height, the general landscaping proposals, the types of materials, the principle of a drive thru restaurant and restaurant raise no issues of concern relative to what has already been granted on this site it is clear that the proposal does not satisfy the provisions of PPS6 in that there is a sequentially preferable site within the town centre and that no need currently exists for further convenience retail provision.

12 Recommendation

- 12.1 That planning permission be refused for the following reasons:

1) The proposal is contrary to the advice contained PPS6 : Planning for Town Centres, RSS and Policy 16 (Retail, Entertainment and Leisure Development)

of the Joint Lancashire Structure Plan 2001-2016 as there is currently no need for a discount retailer on the out of centre site of New Hall Hey

2) The proposal fails the sequential approach to site selection in that there exists a better located town centre opportunity for convenience shopping development that would better support the existing town centre shopping function and are therefore contrary to PPS6: Planning for Town Centres, RSS and Policy 16 (Retail, Entertainment and Leisure Development) of the Joint Lancashire Structure Plan 2001-2016.

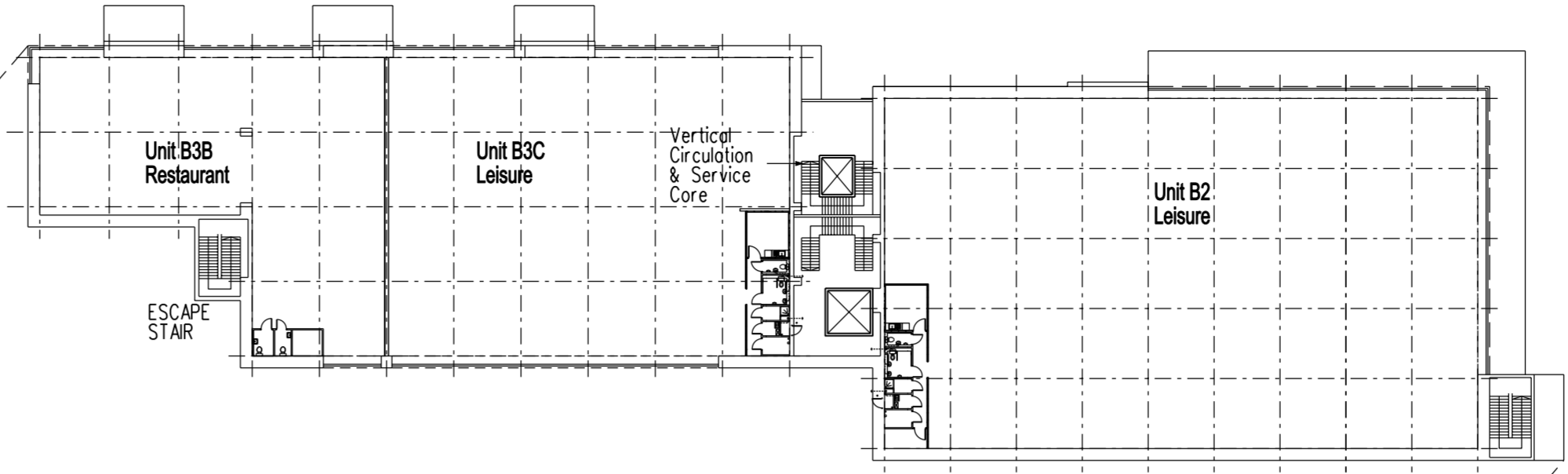
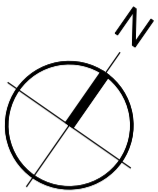
APPENDICES

- 1. Extract from the Minutes of 11.12.07**
- 2. 2007/629 Report**

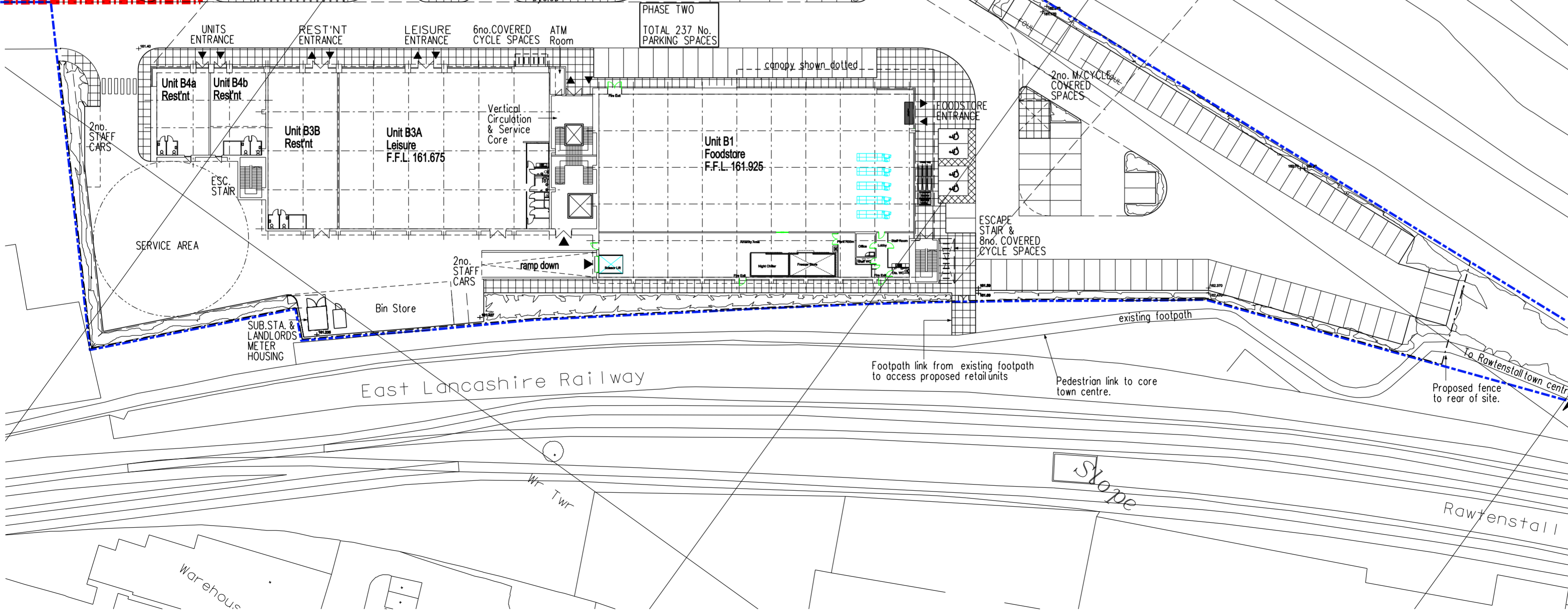
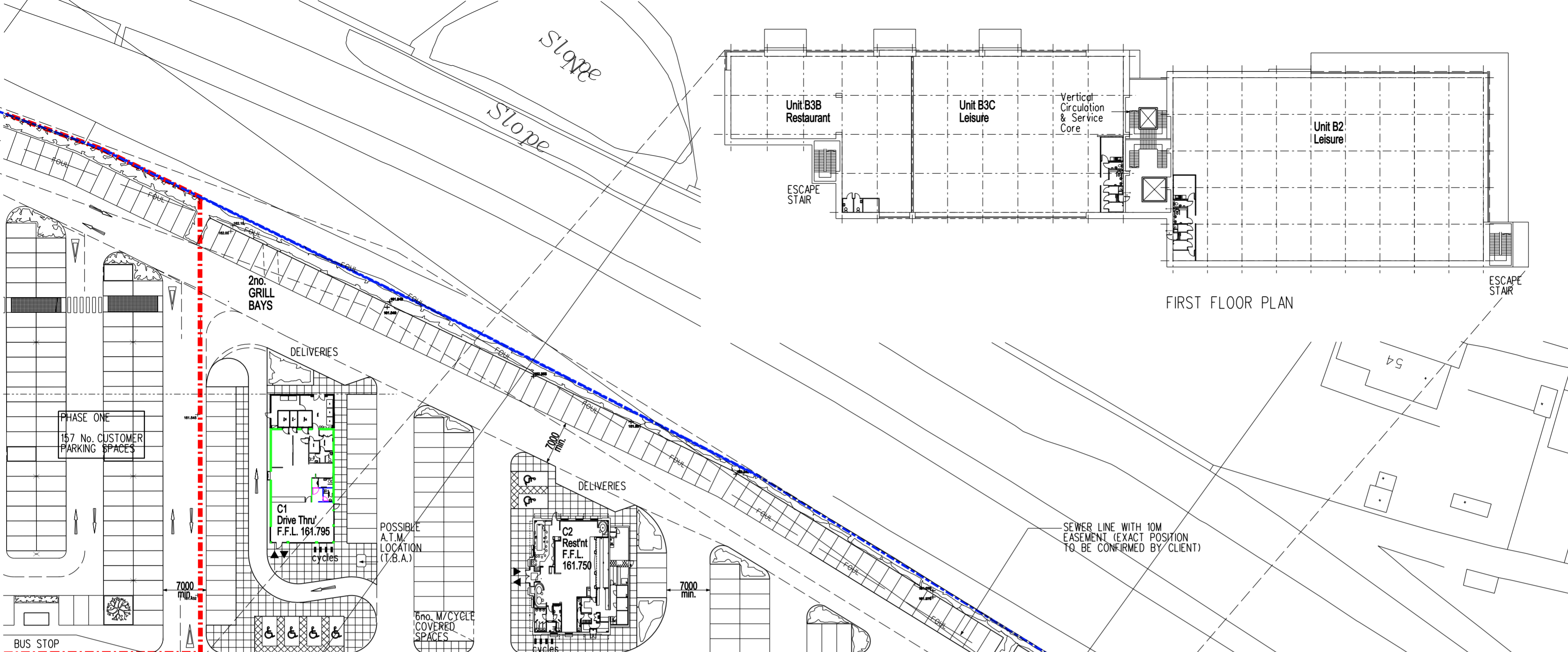
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SITE SPECIFIC HAZARDS

IN ACCORDANCE WITH THE REQUIREMENTS OF THE CDM REGULATIONS 2007 THE FOLLOWING SIGNIFICANT RESIDUAL HAZARDS HAVE NOT BEEN DESIGNED OUT OF THIS PROJECT AND MUST BE TAKEN INTO CONSIDERATION BY CONTRACTORS PLANNING TO UNDERTAKE THE WORKS SHOWN ON THIS DRAWING:



FIRST FLOOR PLAN



REV	DATE	NOTES	INIT.
J	06.12.07	FOOTPATH LINK & PARKING No's UPDATED	PW
I	28.11.07	FOOTPATH LINK ADDED-EAST SIDE	DD
H	05.11.07	SEWER LINE AMD FROM CLIENT INFO	DD
G	05.10.07	NOTIONAL EXTERNAL LEVELS ADDED	CBW
F	03.10.07	STAFF PARKING AMENDED / BIN STORE ADDED	ATT
E	01.10.07	NOTIONAL FLOOR LEVELS ADDED	PO'S
D	25.09.07	UNITC SUBDIVIDED & RENUMBERED	PO'S
C	14.09.07	UNIT B1 TYPICAL INTERNAL LAYOUT ADDED	FRJ
B	06.09.07	AMENITY BLOCKS ADDED	ATT
A	30.08.07	ATM ROOM ADDED TO LEISURE UNIT	FRJ

REV DATE NOTES INIT.
 CLIENT / PROJECT
**NEW HALL HEY
 RAWTENSTALL
 PHASE 2**
 DRAWING TITLE



**PHASE 2
 PROPOSED SITE LAYOUT**

STATUS **PLANNING**

DATE	DRAWN	CHECK	SCALE @ A2
JUL.07	PW/PO		1:500

PROJECT NUMBER	UNIT / BLOCK	CI / SFB CODE	TYPE & NUMBER	REVISION LETTER
7515	X	02	J	

Site Location Plans	L	GA Plans	P	Elevations	E
Sections	S	Details	D	Profile	C

MANCHESTER LONDON GLASGOW LUTON

105 MANCHESTER ROAD
 BURY
 LANCASHIRE
 BL9 0TD

T. 0161 797 6000
 F. 0161 797 6255
 W. www.rgp.uk.com
 E. first.lastname@rgp.uk.com



09/12/2007 14:18:02 P:\p\1700\7500\1515\02\new\PHASE 2\RAWTENSTALL\02.dwg
 User: Pw/PO, Name: Pw/PO
 Plot: 09/12/2007 14:18:02

EXTRACT OF DEVELOPMENT CONTROL COMMITTEE MINUTES OF 11TH DECEMBER 2007

APPLICATION NUMBER 2007/629

**FULL APPLICATION FOR THE CHANGE OF USE OF THE FORMER KWIK SAVE STORE FROM (A1) RETAIL TO (D2) HEALTH AND FITNESS CLUB AND THE ERECTION OF A MEZZANINE FLOOR TOTALLING 2,900SQ M, WITH ASSOCIATED EXTERNAL ALTERATION
AT: FORMER KWIK SAVE, NEW HALL HEY ROAD, RAWTENSTALL**

The Executive Director of Regulatory Services outlined the report and noted the main issues for consideration were whether the proposed uses would have a detrimental impact upon the vitality and viability of Rawtenstall and whether the proposals were in accordance with local, regional and national planning policy. Independent consultants had reported that there would be no impact on other local leisure facilities. The application was also in compliance with the Development Plan for Rossendale.

In accordance with the procedure for public speaking Mr D. Hartley spoke in favour of the application.

In response to questions from the Committee, the Executive Director of Regulatory Services reported that the applicant had requested a deferral until it could be considered alongside another application at the same site. In response the Executive Director of Regulatory Services requested that the Committee consider each application on its own merits. If application 2007/629 was approved the report would be attached to the other application and would form part of the planning history.

A proposal was moved and seconded to approve the application.

Voting took place on the amendment, the result of which was as follows:

FOR	AGAINST	ABSTENTION
9	0	0

Resolved:

That the application be approved subject to the conditions as set out in the report.

- 2.1 In 1990, planning permission was granted for the erection of a food retail store, offices, shops and a kindergarten together with associated car parking. Planning application 14/90/387.

3. The Current Proposal

- 3.1 The proposal is in the main a change of use application from A1 retailing to a Health and Fitness Leisure Club (Class D2). In conjunction with the change of use the proposal includes a number of internal and external alterations including the provision of a mezzanine floor level (an increase of 1,267 square metres), additional windows, a spiral staircase on the western elevation and an external staircase on the northern elevation to the rear of the building. The external alterations are discussed in more detail within the appraisal aspect of the report.
- 3.2 Car parking and access would remain unchanged from that of the former Kwik Save use. First Business Support uses the adjoining building for office purposes. A total of 111 car parking spaces are available.

4. Policy Context

- 4.1 The Development Plan within Rossendale comprises the Local Plan (adopted 12th April 1995), the Joint Lancashire Structure Plan 2001-2016 (adopted 31st March 2005) and Regional Planning Guidance (RPG) 13 (which became Regional Spatial Strategy (RSS) and part of the development plan from 28th September 2004).

Rossendale District Local Plan (Adopted 1995) (Saved Policies only)

- 4.2 Policy DS.1 (Urban Boundary) states that *“the Council will seek to locate most new development within a defined boundary – the Urban Boundary – and will resist development beyond it unless it complies with policies DS3 and DS5. The urban boundary is indicated on the proposals map”*
- 4.3 Policy DC.1 (Development Criteria) states that all applications for planning permission will be considered on the basis of a) location and nature of proposed development, b) size and intensity of proposed development; c) relationship to existing services and community facilities, d) relationship to road and public transport network, e) likely scale and type of traffic generation, f) pollution, g) impact upon trees and other natural features, h) arrangements for servicing and access, i) car parking provision j) sun lighting, and day lighting and privacy provided k) density layout and relationship between buildings and l) visual appearance and relation to surroundings ,m) landscaping and open space provision, n) watercourses and o) impact upon man-made or other features of local importance.
- 4.4 Policy DC.4 (Materials) Places an emphasis on local natural stone and Welsh blue slate to match the texture, general appearance and weathering characteristics for surrounding area.

Joint Lancashire Structure Plan 2001-2016

- 4.5 Policy 1b (General Policy) requires development to contribute to achieving high accessibility for all by walking, cycling and public transport.
- 4.6 Policy 2 (Main Development Locations) states that most development should be located within identified principal urban areas, which include Rawtenstall.
- 4.7 Policy 16 (Retail, Entertainment and Leisure Development) states, in part, that retail development should reflect the scale and function of the town centre in which it is to be located. It should also be located in accordance with the sequential approach and should satisfy certain other specified criteria.
- 4.8 The parking standards require that in towns such as Rawtenstall, car parking be provided for leisure development at the rate of one space per 23 square metres gross floor area with one in every ten spaces being a mobility space. They also require that provision be made for bicycles and motorcycles at the respective rates of one space per ten and one space per twenty five of the car parking spaces provided. This provision is reflected in the advice from LCC Planning.

Regional Spatial Strategy

- 4.9 Regional Planning Guidance was adopted in March 2003 and following the commencement of the new Planning and Compulsory Purchase Act is now the Regional Spatial Strategy for the North West (RSS).
- 4.10 The key objectives of relevance to this proposal in RSS include:
- achieving greater economic competition and growth with associated social progression;
 - to secure an urban renaissance in the cities and towns of the north west;
 - to ensure active management of the Region's environmental and cultural assets;
 - to secure a better image for the Region and high environmental and design quality; and
 - to create an accessible Region with an efficient and fully integrated transport system
- 4.11 Policy DP1 requires that development plans adopt the following sequential approach to meet development needs, taking into account local circumstances: the characteristics of particular land uses, and the spatial development framework; the effective use of existing buildings and infrastructure within urban areas particularly those which are accessible by public transport, walking or cycling; the use of previously developed land particularly that which is accessible by public transport walking or cycling; and thirdly development of previously undeveloped land that is well related to houses, jobs and so on and can be made accessible by public transport, walking or cycling.
- 4.12 Policy EC8 states that development plans should recognise the continued need to protect, sustain and improve all the town and city centres in the region

including the role of the Regional Poles (Liverpool and Manchester/Salford) as regional shopping centres, by encouraging new retail, leisure, and/or mixed use development within existing defined town and city centres boundaries. Moreover it requires that a sequential approach to such development be adopted in accordance with national planning policy and the core development principles. Where a need is established and where application of the sequential approach has indicated that no suitable town centre sites are available new or expanded developments in urban areas will be considered where their function forms the core of a mix of uses including housing and only then when public transport is accessible.

- 4.13 Policy EC9 states that development should facilitate the provision of employment opportunities by encouraging the growth of investment in tourism within the North West. New locations should build on areas with existing major tourism and leisure attractions or where development will contribute to regeneration.

Draft Regional Spatial Strategy (Draft RSS)

- 4.14 The panel report on draft RSS is currently out and the changes proposed are expected shortly. The Draft RSS ('The North West Plan') was published for its first formal public consultation exercise in January 2006 and will cover the period from 2003 to 2021.
- 4.15 Draft RSS focuses on the needs of the region as a whole but highlights those areas that need more specific guidance or a different approach. This intended to improved the coordinated and delivery of regional policy and sustainable development.
- 4.16 Draft RSS should be considered as a material planning consideration in the determination of this application .

5 Other Material Planning Considerations

PPS1: Delivering Sustainable Development

- 5.1 PPS1 states that sustainable development is the core principle underpinning planning. Planning should facilitate and promote sustainable and inclusive patterns of urban and rural development by: making suitable land available for development in line with economic, social and environmental objectives to improve people's quality of life; contributing to sustainable economic development; protecting and enhancing the natural and historic environment, the quality of the countryside and existing communities; ensuring high quality development; and supporting existing communities and contributing to the creation of safe, liveable and mixed communities with good access to jobs and key services for all. On sustainable economic development, local authorities should recognise that economic development can deliver environmental and social benefits; that they should also recognise the wider sub regional and regional economic benefits and that these should be considered alongside any adverse local impacts.

- 5.2 Para 28 of PPS1 advises that planning decisions should be taken in accordance with the development plan unless other material considerations indicate otherwise.
- 5.3 Para. 29 of PPS1 acknowledges that in some circumstances, a planning authority may decide in reaching a decision to give different weight to social, environmental, resource or economic considerations. Where this is the case the reasons for doing so should be explicit and the consequences considered. Adverse environmental, social and economic impacts should be avoided, mitigated or compensated for.

PPS6: Planning for Town Centres

- 5.4 The Government published PPS6 in March 2005. It replaces PPG6 and subsequent ministerial statements of clarification. Leisure provision is defined as a Town Centre uses in PPS6 and therefore relevant in the assessment of this proposal. The key objective of this policy is to promote vital and viable town centres and to “*put town centres first*”. Para 3.4 of PPS6 states that local planning authorities should require applicants to demonstrate:

a) “the need for development”

In relation to need full account should be taken of qualitative and quantitative considerations. Greater weight should be placed on quantitative considerations, based on data and other objective evidence except where socially excluded communities are currently denied access to a range of services and facilities.

b) “that the development is of an appropriate scale”

That the scale of the development is appropriate relative to the role and function of the centre and the catchment area that it seeks to serve.

c) “that there are no more central sites for the development”

That there are no more central sites for the development. In this respect the PPS identifies the first choice as being town centre sites followed by edge of centre sites and lastly out of centre sites.

d) “that there are no unacceptable impacts on existing centres”

That there are no unacceptable impacts on existing centres. In this respect Local Authorities should make an explicit assessment of the likely impact of a proposed development upon existing centres.

e) “that locations are accessible”

That the proposed location is accessible by a choice of means of transport including public transport, walking, cycling and by car, together with the impact on car use, traffic and congestion levels.

- 5.5 Paragraph 3.4 states that, as a general rule developments should satisfy all these considerations.

PPG13: Transport

- 5.6 The main objective of PPG13 is to promote more sustainable transport choices for both people and moving freight. It aims to promote accessibility to jobs, shopping, leisure facilities and services by public transport, walking and cycling and reduce the need to travel, particularly by car. For retail and leisure developments policies should seek to promote the vitality and viability of town centres, which should be the preferred locations for new retail and leisure development. Preference should be given first to town centres then edge of centre and then on out of centre sites in locations which are (or will be) well served by public transport.

Rawtenstall Area Action Plan – Revised Preferred Options

- 5.7 The latest Area Action Plan for Rawtenstall Town Centre (AAP) which has been through a number of rounds of public consultation earmarks the Kwik Save site as being edge of centre. The AAP states that *“within these areas a mix of uses will be encouraged which may include leisure and office development”*.
- 5.8 The AAP also states that *“in terms of spatial strategy, the revised preferred option proposes that appropriate locations for new leisure development include Bacup Road, Queen’s Street and the area around the East Lancs Railway Station.”*

6. CONSULTATIONS

6.1 INTERNAL CONSULTATIONS

Environmental Health – No objection subject to the provision of conditions requiring noise mitigation measures and hours of use.

6.2 EXTERNAL CONSULTATIONS

Environment Agency – No objection

Lancashire Constabulary – No response

Lancashire County Council

Highways – Do not object on traffic or highways grounds although may have further comments to make on the layout and car parking.

Strategic Planning – Consider that the application conforms with the requirements of the Structure Plan. Their comments are to be read in conjunction with comments made in relation to 2007/630

Further advice is given regarding accessibilities and planning obligations. The detail of which is discussed later in this report.

Planning Contributions – Response expected Monday

Rossendale Civic Trust – No response

United Utilities – No objection subject to a condition regarding drainage. I have attached a condition to this end and an informative drawing the applicants attention to the complete advice.

East Lancashire Railway – Awaiting response

7. REPRESENTATIONS

- 7.1 A press advertisement was placed in the 18th October 2007 edition of the Rossendale Free Press; site notices were posted 18/10/07. Neighbour letters were sent to neighbours 30/11/07 to go above and beyond statutory consultation requirements.
- 7.2 No representations have been received in response to the application publicity.

8. REPORT

- 8.1 Given the relationship of this current proposal to the approved scheme for the whole of New Hall Hey, I consider that the main issues for consideration are whether the proposed uses would have a detrimental impact upon the vitality and viability of Rawtenstall; whether the proposal accords with local, regional and national planning policy; whether the changes provide for adequate parking and servicing appropriate for the proposed use; whether the proposed changes would result in an adverse impact upon the surrounding road network; whether the proposed amendments to the external appearance of the units provide an appropriate design, whether residential amenity would be safeguarded, and any other relevant material considerations.

Principle

- 8.2 In order to ascertain whether or not this proposal is acceptable in principle it needs to be considered against Policy 16 of the Joint Lancashire Structure Plan (RSS) and the advice contained within PPS6 given that policies S1 and S2 of the Rossendale District Local Plan have not been saved. In accordance with the above policies the applicant has submitted a leisure impact assessment prepared by their agents, Savills.
- 8.3 Given the approval of the wider scheme at New Hall Hey and the applicants request to link the proposal and application 2007/630 the following section of this report considers need, impact and the sequential assessment in relation to the submitted impact assessment. Advice on the leisure impact assessment has been provided by the Council's consultants Nathaniel Lichfield and Partners (NLP) who have consistently provided retail / town centre advice in Rossendale.
- 8.4 NLP's assessment of the submitted retail assessment comprises a review of:
- the data sources used;
 - the methodology and key assumptions;

- the assessment of need;
 - the application of the sequential approach; and
 - the validity of the interpretation of the retail capacity and impact assessment results.
- 8.5 The Kwiksave proposals involve a change of use to Class D2 and an increase in floorspace of 1,267 sq.m. The statement submitted with the application deals with the need for the proposed health and fitness club in both quantitative and qualitative terms. It concludes that membership capacity that exists today within Rawtenstall is sufficient to support the proposed health and fitness club and two additional facilities.
- 8.6 In terms of the NLP Retail and Town Centre Study 2005, NLP have already confirmed at para. 13.34 that the potential catchment population used within the Study is sufficient to support new commercial leisure uses including small/medium sized private health clubs. At para. 11.24 NLP confirmed that Rossendale's catchment population is theoretically capable of supporting large private health clubs.
- 8.7 Given the above, and based on previous work prepared by NLP, I am advised by NLP that there is a quantitative and qualitative need for a health and fitness club in Rawtenstall. In terms of scale, the fact that the scheme utilises an existing building (despite the addition of a mezzanine floor) it is considered that the proposals are appropriate in scale terms.
- 8.8 The applicants deal with impact of the health and fitness proposals in Section 9 of their Statement. The applicants state at para. 9.2:
- “The provision of the Brooks Health and Fitness Club will have no impact on existing local authority leisure centres as it serves a different market to that proposed. The closest competing facility is the Village Hotel Health and Fitness club in Bury which is approximately 12.2 kms from the site and is located within the Village Hotel. This facility is therefore not located in a town centre which is afforded protection under PPS6. It is therefore concluded that the leisure element of the Hotel proposal would have no unacceptable impact on Rawtenstall Town Centre. It is believed that the proposal will add to and enhance the existing facilities.”*
- 8.9 I accept this point and given the lack of competing facilities that the proposals will have no adverse impact upon the vitality and viability of Rawtenstall town centre.
- 8.9 Based on the above and subject to NLP's comments on the sequential approach, I consider that the Kwiksave proposals on their own comply with the PPS6 policy tests of need, scale and impact. This view is supported by the Council's own retail consultants.
- 8.10 The other relevant material considerations are discussed later in this report.

9 Design and Layout

- 9.1 Given that the application is in essence a change of use application the main external appearance of the building will remain mainly unchanged by the implementation of the scheme. As stated earlier the proposal would include a mezzanine floor. Externally the alterations are quite minor. The proposed external alterations to the building are as follows:

Elevation No.1 – Looking North East (left hand elevation)

- This elevation will face the proposed garden / patio area (newly created)
- The alterations include new windows at first floor level in matching window frames. These additional windows would provide natural light to the proposed dance studio and spinning area.
- Windows and double doors are also proposed at ground floor level leading to the play and patio areas for the proposed crèche and café element
- A stainless steel spiral staircase is proposed from the first floor mezzanine area

Elevation No.2 – Looking North West (main elevation facing New Hall Hey Road)

- A glazed entrance leading to an internal lobby area
- Double doors are proposed to the health and beauty zone

Elevation No.3 – Looking South East (rear elevation)

- External staircase to the rear (also stainless steel)

- 9.2 There are no proposed changes to the existing landscaping that surrounds the perimeter of the site. However, the applicant has indicated that the garden area to the west of the site is likely to include timber decking and stone flags and a rubberised surface for the outside play. Both areas would be bounded by a 2m high stone wall to match the existing building. I have attached a condition to this end. This area was previously used as the servicing area for the retail use and has a total area of approximately 1250 square metres.

- 9.2 I am satisfied that the alterations are minimal and would retain the existing appearance of this building. Therefore, I consider that the proposal accords with the development with regard to design and layout.

10 Residential Amenity

- 10.1 The applicant has indicated in the accompanying Design and Access Statement that *“It is not intended that this will be a noisy gym but nonetheless it is considered important to take noise into account when designing this scheme with particular consideration given to the neighbouring office building.”* The applicant has therefore provided a separate noise assessment.

- 10.2 The applicant has indicated that the proposal seeks consent for a 24 hour operation to allow for flexibility, although it is indicated that the likely hours of operation would be from 6.30am to 11.00pm Monday to Friday and 8.00am to 7.00pm Saturday and Sunday albeit as the business grows the hours of use may increase. Environmental Health consider that a condition restricting the

hours of operation to the following would safeguard residential amenity and allow for future expansion of the business:

- 6.30am to 11.00pm Monday to Friday and 8.00am to 9.00pm Saturday and Sunday

10.3 The assessment sets out a number of criterion necessary to protect residential amenity. They are as follows (summarised):

- All windows in the dance studio and fitness suite must be fitted with glazing of the following specification:
 - 8mm glass – nominal (6-16mm) cavity – 6mm glass; or
 - 6mm glass – nominal (6-16mm) cavity – 6.4mm acoustic laminate glass
- The windows must be unopenable and there must be no ‘straight through’ type ventilation
- Ceilings within the fitness suite and dance studios must be sound insulated
- There should be no music played in the café bar when the garden area is in use
 - No external loudspeakers
 - Inter loud speakers should be angled away from windows.

10.4 Paragraph 5.3 of the noise assessment concludes... *“subject to the implementation of our recommendations, the proposed health & fitness club will have no unacceptable impact on the adjoining offices or the nearest dwellings by way of internal noise break-out or building service noise”*. I have attached a condition requiring the recommendations of the submitted noise assessment to be implemented in full prior to first use of the use.

10.5 Moreover, the siting of the dance element has been located to the rear of the building. The closest residential use is approximately 55m from the building. The existing boundary treatment would be retained between the entrance to the new facility and New Hall Hey Road.

10.6 I have no objection from the Environmental Health. Therefore, subject to conditions, I am satisfied that the scheme would not unduly affect residential amenity.

11 Car Parking and Access

11.1 It is clear that the building is located within the context of a mixed use area (given that the original planning consent included retail, office and a kindergarten) and that the car park is currently used by the adjoining businesses. However, the car parking provision does not exceed the maximum levels as set out in the Joint Lancashire Structure Plan and includes the required number of mobility/motor cycle and cycle spaces. This view is

confirmed by County's planning team. However, LCC Planning do not consider that the draft travel plan fully accords with the guidance set out in the SPD. Therefore, I have attached a condition requiring a travel plan to be agreed.

- 11.2 Moreover, whilst the mixed use nature of uses in this area, it is unlikely that the greatest demand would be at a period when the existing office uses would be in conflict. Moreover, given the previous use I am satisfied that the proposal has sufficient car parking provision.
- 11.3 I have not received any comments from LCC Highways. I will report their comments prior to the meeting of the committee.
- 11.4 However, with regard access LCC Planning state "It is noted that the site is over 400 metres from the primary shopping core and involves crossing two major roads. The Rawtenstall Town Centre AAP Preferred Options Addendum document (Options 3 and 4) identifies the importance of improving pedestrian and public transport links to this part of the town centre. The scheme as submitted does nothing to address this". Notwithstanding the AAP in this instance and the requirements of the Planning Obligation Paper, the proposal seeks to change the use of an existing building. On this basis I do not consider it appropriate to secure planning obligations. I am satisfied that this is a constant approach taken by this committee.
- 11.5 However, I am mindful that the obligations secured already in relation to the wider New Hall Hey site towards sustainable transport initiatives is also likely to directly improve accessibility to this part of the Borough. Therefore, I do not consider that additional planning obligations should be sought in this instance.
- 11.6 In conclusion, I am satisfied that the scheme accords with the requirements of the development plan in this particular case.

12 Other Material Considerations

- 12.1 Paragraph 28 of PPS1 advises that planning decisions should be taken in accordance with the development plan unless other material considerations indicate otherwise.
- 12.2 The applicant has indicated that the re-use of the building for a Health and Fitness centre should be seen in the context of the wider regenerative benefits given that the application for the Aldi application seeks permission on the basis that the existing retail consent for Kwik Save will be surrendered if the Aldi application obtains planning permission. That is a matter for the separate application for the Aldi 2007/630. It is accepted that the use of this building as a fitness centre is acceptable in town centre policy terms. Moreover, I have no reason to doubt that 52 jobs would be created once the consent is operational.

13 Other Issues

- 13.1 The applicant has indicated that the ancillary café would be serving predominately cold food and limited hot food. Therefore, the applicant has

indicated that no fume extraction system is required. Should a fume extraction system be required in the future this would require a further planning permission.

14. HUMAN RIGHTS

- 14.1 The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights: -

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

15 CONCLUSION

- 15.1 I am satisfied that the proposed use accords with the development plan would have not detrimental impact upon the vitality and viability of town centre. I consider that the external alterations would maintain the appearance of this natural stone building. Subject to conditions I am satisfied that the scheme would have no detrimental impact upon residential amenity. I am also satisfied that the level of on site parking is acceptable. I am satisfied that the application complies with policies of the development plan as a whole. I do not consider that there are any other material considerations which outweigh this view.

16. RECOMMENDATION(S)

- 16.1 That members approve this scheme subject to the conditions set out below

17. REASONS FOR APPROVAL

The decision to grant planning permission has been taken having regard to the policies and proposals in the Development Plan for Rossendale set out below, and to all relevant material considerations, including Supplementary Planning Guidance. There are no other material planning considerations that outweigh this finding:

REGIONAL SPATIAL STRATEGY

DP1 - Economy in the Use of Land and Buildings
EC8 – Town Centres – Retail, Leisure and Office Development
EC9 – Tourism and Recreation

JOINT LANCASHIRE STRUCTURE PLAN

Policy 1 General Policy
Policy 2 Main Development Locations
Policy 7 Parking
Policy 16 Retail, Entertainment and Leisure Development

ROSSENDALE LOCAL PAN

DS.1 Urban Boundary
DC.1 Development Criteria
DC.4 Materials

18. CONDITIONS

- 1 The development permitted shall be begun before the expiration of three years from the date of this consent.
Reason: The condition is required by virtue of Section 91 of the Town and Country Planning Act 1990 (as amended).
- 2 The use hereby permitted shall ONLY be operated between the hours of 6.30am to 11.00pm Monday to Friday and 8.00am to 9.00pm Saturday and Sunday
Reason: To safeguard the amenity of the neighbouring residents in accordance with policy DC1 of the Rossendale District Local Plan.
- 3 The development shall be carried out in accordance with the following plans unless otherwise agreed in writing by the Local Planning Authority:
E011 – 001
E011 – 002-A
E011 – 003-A
E011 – 004
E011 – 005-A
E011 – 006
E011 – 007
Reason: For the avoidance of doubt
- 4 Prior to first use of the scheme hereby approved the recommendations set out in section 4 of Hepworth Acoustic report (Report No.4849.1v1 September 2007) shall be implemented in full and a validation certificate to verify the mitigation measures provided to the Local Planning Authority.
Reason: To safeguard the amenity of the neighbouring residents in accordance with policy DC1 of the Rossendale District Local Plan.
- 5 Notwithstanding the requirements of condition 4 the design of the new windows should match the design and colour of the existing windows unless otherwise agreed in writing by the Local Planning Authority.
Reason: To safeguard the amenity of the area in accordance with policy DC1 of the Rossendale District Local Plan.
- 6 Prior to first use of the use hereby approved a scheme detailing the provision and position of disabled car parking spaces, cycle stores and motorcycle stores shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented prior to first use of the scheme.
Reason: In the interests of highway safety in accordance with policy DC1 of the Rossendale Local Plan.

- 7 Car park provision shall be made available at all times in conjunction with the use hereby approved.
Reason: In the interests of highway safety in accordance with policy DC1 of the Rossendale Local Plan.
- 8 Notwithstanding the information shown on the approved plans a scheme detailing the design and construction method for the external staircases shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be carried out in accordance with the approved details prior to first use.
Reason: To safeguard the amenity of the area in accordance with policy DC1 of the Rossendale District Local Plan.
- 9 Prior to first use of the development hereby approved a travel shall be submitted to and approved in writing by the Local Planning Authority. The travel plan shall accord with the advice and best practice provided in Lancashire County Council's Supplementary Planning Guidance 'Access and Parking.' The initiatives contained within the approved plan shall be implemented and shall be in place prior to the first use unless otherwise agreed in writing by the Local Planning Authority.
Reason: In accordance with Policy 7 of the Joint Lancashire Structure Plan 2001-2016
- 10 The boundary wall to the garden area and play zone shall be constructed of materials to match the size, colour and texture of the existing building and shall not exceed 2m in height and shall thereafter be maintained as such.
Reason: To safeguard the amenity of the area in accordance with policy DC1 of the Rossendale District Local Plan.
- 11 Notwithstanding the requirements of condition 6 a scheme detailing the design and position of the bin and cycle store shall be submitted and approved by the Local Planning Authority prior to first use. The scheme shall be carried out in accordance with the approved details prior to first occupation.
Reason: To safeguard the amenity of the area in accordance with policy DC1 of the Rossendale District Local Plan.
- 12 Prior to the commencement of development a scheme for the provision of drainage and surface water shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to first use.
Reason: To prevent pollution of the water environment, in accordance with policy DC1 of the Rossendale Local Plan.
- 13 This permission shall not relate to the advert details shown on the submitted plan, nor does it imply that permission is likely to be forthcoming for such details.
Reason: For the avoidance of doubt.
- 14 Any construction works associated with the development hereby approved shall not take place except between the hours of 8:00 am and 7:00 pm Monday to

Friday and 8:00 am and 1:00 pm on Saturdays. No construction works shall take place on Sundays, Good Friday, Christmas Day or Bank Holidays.
Reason: To safeguard the amenities of nearby residential properties, in accordance with the criteria of Policy DC1 of the adopted Rossendale District Local Plan.

Informative

1. The applicant is advised that the requirements of all the conditions precedent must be satisfied prior to the commencement of the development. Failure to satisfy the conditions precedent renders all development unauthorised and unlawful and appropriate action may be taken by the Council.
2. Further to the requirements of condition 12 the applicants attention is drawn to the advice of United Utilities dated 2 November 2007 which provides detailed advice on issues of drainage
3. Further to the requirements of condition 9 the applicants attention is drawn to the response of LCC Planning dated 29th October 2007

Contact Officer	
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Service / Team	Development Control
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*LOCATION PLAN TO BE PROVIDED
ATTACH ALL APPENDICES*

Application No: 2007/630 (amended Plan) 2008 /0118 Frankie and Bennys 2008/0032 KFC Related Section 106 matters

Application Type: Full Application

Proposal: 2007/630 Amended Plan received in relation to recently approved
Full application for erection of building to form leisure & restaurant units & a food retail unit & outline application for the erection of drive thru restaurant & one restaurant (amendment to 2005/617 (1656 sqm A1 retail & 1,766 sqm A3 retail)
2008/0018 Full application for one restaurant(Class A3 and alterations to approved parking layout for mixed use retail and leisure development under approval references 2005/617 and 2007/030
2008/0032 Erection of a single storey drive thru restaurant and alterations to approved car parking layout for mixed use retail and leisure development approved under approval references 2005/617 and 2007/030
Section 106 matters

Location: Land at New Hall Hey, Rawtenstall

Report of: Executive Director of Regulatory Services

Status: For Publication

Report to: Development Control Committee

Date: 15th April 2008

Applicant: The Hurstwood Group

Determination Expiry Date: 5th January 2008

Agent:

REASON FOR REPORTING **Tick Box**

Outside Officer Scheme of Delegation

Member Call-In

Name of Member:
Reason for Call-In:

More than 3 objections received

Other (please state)

HUMAN RIGHTS

The relevant provisions of the Human Rights Act 1998 and the European Convention on Human Rights have been taken into account in the preparation of this report, particularly the implications arising from the following rights:-

Article 8

The right to respect for private and family life, home and correspondence.

Article 1 of Protocol 1

The right of peaceful enjoyment of possessions and protection of property.

APPLICATION DETAILS

1. SITE AND PROPOSAL

1.1 This application relates to part of the New Hall Hey site in Rawtenstall and is located to the south of the A682 Rawtenstall Bypass. It is an irregular shape and occupies a prominent position on the approach into Rawtenstall. The site is mainly vacant although construction work is currently underway with the implementation of application 2007/030 for Homebase, Argos and Pets at Home. The surrounding uses comprise office provision and a public house. New Hall Hey Road comprises a mix of uses including a number of residential properties.

1.2 Vehicular access to the site is currently provided from New Hall Hey Road. Vehicles can also exit directly onto the bypass in a westerly direction. However, the new roundabout (part of the previous approvals) has now been completed although due to construction access into the site remains from New Hall Hey Road. There are a number of public footpaths which cross the site enabling pedestrian access from the north. The East Lancashire Railway terminus is located to the eastern end of the site.

1.3 Relevant Planning History

The relevant planning history is outlined in paragraph 2.1-2.11 of the Committee report attached and considered by Committee on the 11th March 2008.

2. Committee decision on the 11th March 2008 - 2007/630

2.1 Members approved application 2007/630 on the 11th March 2008 the application was a hybrid application in that it obtained **full consent** for part of the scheme and **outline consent** for a drive thru restaurant and restaurant.

2.2 The detailed aspect of application 2007/630 relates to the 'B' units which would be located parallel to the neighbouring East Lancashire Railway. It is part of the ground floor of this element which is proposal for **Aldi** and the part to which the land use swap relates.

- 2.3 The outline element of the scheme received consent for the principle of a drive thru and restaurant in a similar position to what has already been approved by application 2005/617.
- 2.4 The applicant indicated that the ground floor of unit B1 would be occupied by Aldi and that discussions are currently underway to secure **KFC** and **Frankie and Benny's** in units C1 and C2.
- 2.5 I have provided a breakdown of the approved units below approved by Committee on the 11th March 2008:
- **Unit B1:** A 3,312 sqm unit, comprising 1,656 sqm of food retail at ground floor and 1,656 sqm of leisure at first floor level. The ground floor is to be occupied by Aldi.
 - **Unit B3a:** A 1,018 sqm unit at ground floor level for leisure use (bowling alley or bingo club).
 - **Unit B3c:** A1,034 sqm unit at first floor level for leisure use.
 - **Unit B3d:** A 913 sqm unit, comprising 311 sqm restaurant use at ground floor level and 602 sqm at first floor level for restaurant use.
 - **Unit B4a & B4b:** A 317 sqm unit comprising a 147 sqm and 170 sqm restaurant at ground floor level.
 - **Units C1 and C2:** No details are sought at this stage for these units other than the use as a drive thru restaurant and restaurant

3. Recently submitted amendments to the scheme

- 3.1 The Council has recently received an amended plan to the approved scheme 2007/630. This Plan is attached at Appendix 1 .

Unit **B1** – remains the same

Unit **B3a** : same use but with a 118.12sqm reduction in floor area

Unit **B3c:** same use but with a 118.12sqm reduction in floor area

Unit **B3d:** same use but ground floor reduction of 39.43 sqm/first floor reduction of 101.88sq.m in floor area

Unit **B4a** : same use but with a 31.04sq.m reduction in floor area

Unit **B4b** :same use but with a 31.41sq.m reduction in floor area

- 3.2 The proposed amendments are to incorporate required amendments to the approved scheme to allow the marketing of the units to be as effective as possible and to allow for front door car parking to be provided outside the B units .

- 3.3 **Units C1 and C2:** Outline approval was obtained for the use as a drive thru restaurant and restaurant under 2007/630 .
- 3.4 Full planning applications have now been received for these units **(Applications 2008/0032 and 2008/0118)**. Both would normally be dealt with for decision by the Executive Director of Regulatory Services (no objections have been received and they are not major applications). However there are slight changes to the car parking layout and it was felt appropriate that members of the Committee approve the submitted plans which will form the basis of a s106 legal agreement. The decision relating to the merits of both schemes will be dealt with by way of delegation to the Executive Director of Regulatory Services.
- 3.5 The applicant has recently submitted amended plans for the proposals to include a substantial element of natural stone. Something the Committee and officers have been requesting on the site. This amendment will be the subject of a further consultation and is supported by officers.
- 3.6 These plans are attached at Appendix 2

4. **SECTION 106 AGREEMENTS ON THE SITE**

Application 2007/030 has now been implemented and the Section 106 requirements apply to the site these are:-

- **One month** prior to occupation of the first unit to pay the County Council £100,000 (then a further £75,000 on the first, second and third anniversaries of that date) with a £50,000 contribution payable on the fourth anniversary.
 - **Six months** prior to occupation of the first unit to pay £50,000 to upgrade pedestrian and cycle routes. The Council has received notification that the Homebase store will be occupied by August this sum is therefore now payable.
 - **Prior to occupation** of each unit to agree a Travel Plan in relation to each unit/with implementation dates and review dates.
 - **Prior to occupation of any unit** to layout/include the marking out the Public car park area. The Plan which was agreed in two section 106s for this area is attached at Appendix 3. The owner is then to make the area available at all times as free public car parking for members of the public for up to 3 hours (to encourage linked trips between the site and the town centre).
 - **Four months prior** to the let of the first units to agree a Car Park Management Plan.
- 4.1 The legal agreement for 2005/617 was identical but for the sums of the contribution required.

Application 2007/630

In approving 2007/630 Committee approved the decision subject to a further s106 agreement to deal with the exchanging (or swapping) of land uses from one site to another. In order to effectively 'swap' the uses it was necessary for a legal agreement to be entered into to discontinue the lawful retail permission at the former Kwik Save building (given that the leisure use approved by application 2007/629 has not been implemented to date) to avoid a position where two permissions exist for food retailing out of the town centre.

Members did not agree any further amendments to the original S106s for the site as they related to car parking (only to reflect approved layout). This had been requested by the applicant.

The terms of the s106 agreement for 2007/630 were delegated to the Executive Director of Regulatory Services.

The proposed plan to show the Public Car Park Area will be as attached at Appendix 4 to reflect the amended car park layouts.

5. RECOMMENDATION

- 5.1 That Committee agree that the minor amendment is acceptable this plan to supersede previous plans relating to 2007/630 and delegate the entering into of the Section 106 agreement as outlined above to the Executive Director of Regulatory Services. (The plan to be the subject of a 14 day reconsultation exercise).
- 5.2 That the Committee agree the materials relating to application 2008/0032 and 2008/0118 and delegate the determination of both schemes to the Director of Regulatory Services and the entering into of the Section 106 agreement as outlined above to the Executive Director of Regulatory Services. (The plan for 2008/0032 to be the subject of a 14 day reconsultation exercise).

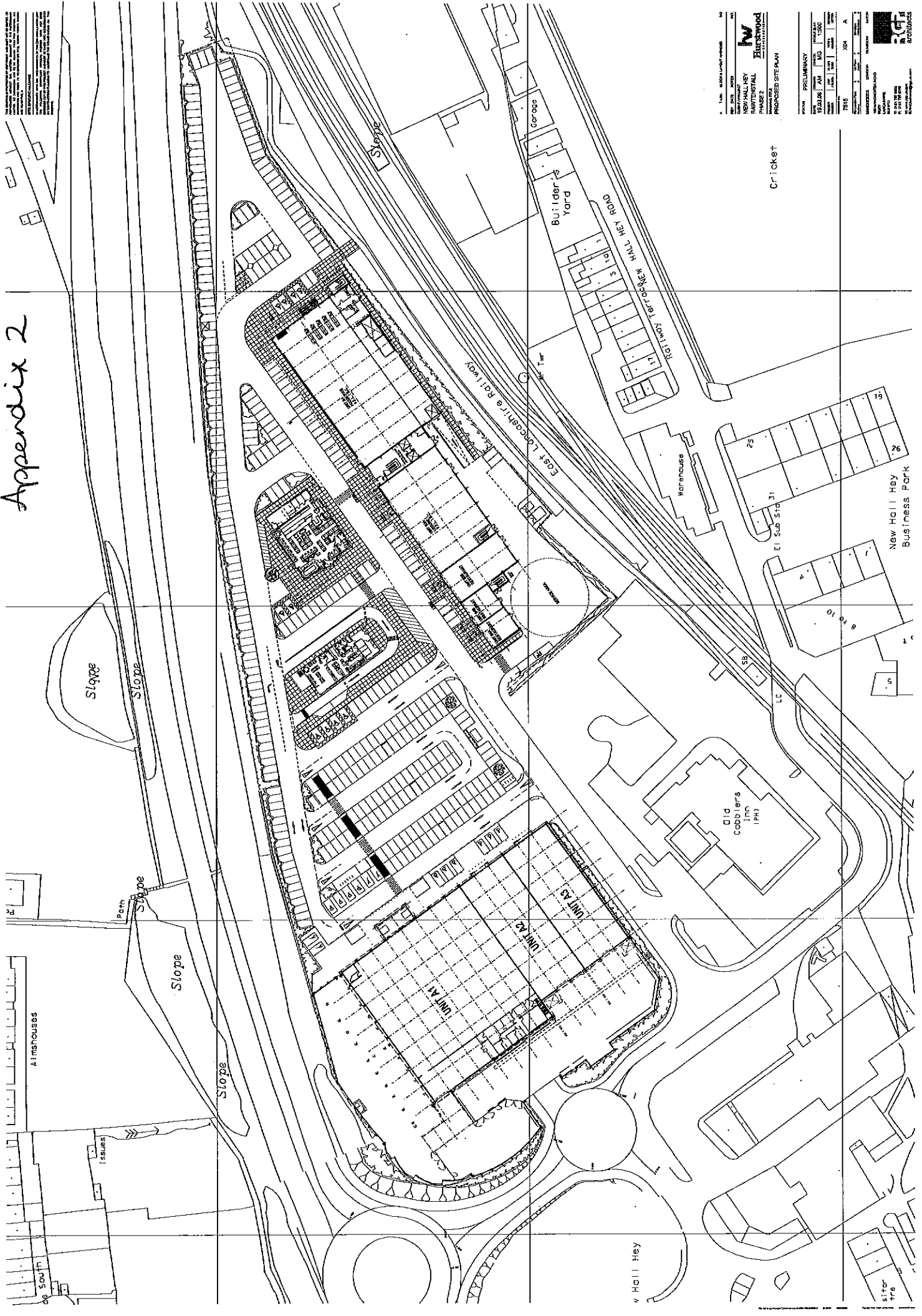
Contact Officer	
Name	
Position	
Service / Team	Development Control
Telephone	
Email address	

*LOCATION PLAN TO BE PROVIDED
ATTACH ALL APPENDICES AND LIST AS NECESSARY, FOR EXAMPLE*

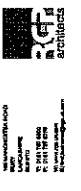
Document Details	Appendix Number
Committee Report dated 1 st January 2007	Appendix A

Etc	
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Appendix 2



DATE	NO.	DESCRIPTION
15/03/08	001	PRELIMINARY
15/03/08	002	REVISED
15/03/08	003	REVISED
15/03/08	004	REVISED
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Cricket

New Hall Hey Business Park

New Hall Hey

Site 176

