



Cynulliad Cenedlaethol Cymru
The National Assembly for Wales

Parc Cathays/Cathays Park
Caerdydd/Cardiff
CF10 3NQ

Mr G Morgan
Nathaniel Lichfield & Partners
14 Regents Wharf
All Saints Street
LONDON
N1 9LR

Eich cyf/Your Ref: CL/4724/GM/bt/yh

Ein cyf/Our Ref: P171-98-004

Dyddiad/Date: August 2000

Dear Mr Morgan

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 78 BY EDGE DEVELOPMENTS LIMITED FOR RETAIL DEVELOPMENT, GARDEN CENTRE AND ANCILLARY CAR PARKING ON LAND IMMEDIATELY EAST OF CULVERHOUSE CROSS ROUNDABOUT BOUNDED BY COWBRIDGE ROAD WEST AND THE PERIPHERAL DISTRIBUTOR ROAD, CARDIFF

1. Further consideration has been given to the report of the Inspector Mr D Sheers BA, DipTP MRTPI, who held a public local inquiry into an appeal made under Section 78 of the Town and Country Planning Act 1990 by your clients Edge Developments Limited against the failure of Cardiff County Council to give within the prescribed period notice of their decision in respect of an application for retail warehouse (Class A1) development of approximately 9,197 sq. m (99,000 sq. ft) plus garden centre and ancillary car parking, landscaping and access arrangements on land immediately east of Culverhouse Cross Roundabout bounded by Cowbridge Road West and the Peripheral Distributor Road. Consideration has also been given to the certified copy of an Agreement between your clients and Cardiff City Council submitted with your letter of 3 September 1999 and to representations received in response to the National Assembly Planning Division's letters of 15 November 1999 and 10 May 2000.

2. On 12 July 2000 the Assembly resolved that a committee to be known as Planning Decision Committee 2000/2 be established, in accordance with Standing Order 27 to discharge the functions of the Assembly under Section 79 of the Town and Country Planning Act 1990 in respect of the appeal by Edge Developments Limited described above. Accordingly, the Planning Decision Committee has considered the appeal and has resolved under Standing Order 27.16 to adopt this letter.

3. *For the reasons set out below the Planning Decision Committee agrees with the Inspector's conclusions and accepts his recommendation that the appeal be allowed.*



BUDDSODDWR MEWN POBL
INVESTOR IN PEOPLE

Ffôn/Tel: 02920 825111
GTN: 1208
Llinell Union/Direct Line: 02920 82
Ffacs/Fax: 02920 82
Minicom: 02920 823280
E-bost/E-mail:

BACKGROUND

4. The Welsh Office letter sent to you on 9 December 1997, and copied to Cardiff County Council, sought further information on the sequential test, the application and associated plans and highways matters. A copy of that letter is at Annex A to this letter.
5. Following consideration of your response to that letter, and that of Cardiff County Council and the Vale of Glamorgan Borough Council, the Welsh Office sent a letter to you on 24 June 1998, enclosing a copy of the Inspector's report. In his report, a further copy of which is enclosed, the Inspector recommended that the appeal be allowed and that planning permission be granted subject to conditions. The Welsh Office letter of 24 June 1998, a copy of which is at Annex B to this letter, indicated that subject to the comments on the sequential test set out at paragraphs 4 to 8 of that letter, and those on the need for a condition to secure highway improvements at the Knightswell Road junction set out at paragraph 9 of that letter, the Secretary of State agreed with the Inspector's conclusions and was minded to grant planning permission for the development. The letter also stated that before the granting of planning permission could be considered the submission of an agreement with the highway authority would be required for the access works to the site, together with clarification of matters related to the revised application plan submitted with your letter to the Welsh Office of 26 January 1998 which submitted a further revised layout plan (drawing no.3955/06C). The Welsh Office letter of 24 June 1998 indicated agreement to your proposal that siting be fixed by reference to that plan so that siting was no longer a reserved matter but requested clarification as to whether the previously revised description of the development set out in your letter of 12 May to the planning Inspectorate should be amended to omit reference to the garden centre. Your letter of 17 July 1998 suggested that the description of the development, in your letter of 12 May 1997 to the Planning Inspectorate, be amended to omit the words "plus garden centre".
6. Your letter of 3 September 1999 enclosed a certified copy of an Agreement with Cardiff County Council dealing with access and highway arrangements.
7. On 15 November 1999 the National Assembly Planning Division wrote to you asking for evidence on the need for the additional facilities proposed to be located on the site, and comment on the relevance to the appeal of the revised Government guidance on retailing and town centres, as it applies in Wales, set out in Planning Guidance (Wales) Planning Policy (PG(W)) which was issued in April 1999 after the issue of the Welsh Office letter of 24 June 1998 stating that the Secretary of State was minded to allow the appeal. A copy of the letter of 15 November 1999 is at Annex C. Cardiff County Council were also invited to comment on the issues raised.
8. On the 10 May 2000 the National Assembly Planning Division wrote to you, in response to your letter of 11 April 2000 asking for the application to be amended to make it consistent with the description of development considered by the Inspector at the inquiry in summer 1997, seeking clarification of the revised proposal. A copy of the letter of 10 May is at Annex D. Cardiff County Council were also invited to comment on the issues raised.

CONCLUSIONS OF THE PLANNING DECISION COMMITTEE

9. The Welsh Office letter of 24 June 1998 indicated agreement with the Inspector's conclusions subject to comments on the sequential test and the need for a condition to secure highway improvements at the Knightswell Road junction.

The Sequential Test

10. As regards the sequential test the letter of 24 June 1998 set out the Secretary of State's view that there was a need for a flexible approach to the sequential test by both the developer and the decision maker, and his conclusion that the invitation to your clients, in the Welsh Office letter of 9 December 1997, to submit evidence which would demonstrate that the component elements of the proposed retail scheme could not be accommodated within the city centre, was appropriate having regard to such an approach. It was also stated that, when considering the information supplied in response to the letter of 9 December 1997, the Secretary of State had examined the viability of the identified sites, having regard to the likely business needs of potential occupiers, as well as the size and general suitability in planning terms of the those sites. The Secretary of State's conclusion was that the proposal met the criterion of the sequential test as set out in national and local policy guidance.

11. The Planning Decision Committee consider that there is nothing in the approach to the sequential test set out in the Welsh Office letter of 24 June 1998 which would be out of accord with the advice of PG(W) April 1999. Having regard to all the evidence before it, including that submitted since the close of the inquiry, the Planning Decision Committee conclude, on the basis of the approach adopted by the Secretary of State to the sequential test, that there are an insufficient number of suitable alternative sites available which broadly represent the net increase in floorspace to be provided by the proposed development. The Planning Decision Committee therefore conclude that the proposal would meet the criterion of the sequential test as set out in PG(W) April 1999.

12. In their response to the National Assembly Planning Division letter of 15 November 1999 Cardiff County Council raised issues previously considered at the inquiry. In particular they stated that even if a need for the development could be demonstrated it remained their position that there are more suitable sites within Cardiff City Centre and at other locations supported by the development plan where such facilities could be located. As indicated in paragraph 11 above the Planning Decision Committee, having had regard to all the evidence before them, are unable to conclude that there are sufficient suitable alternative sites available. The Council also referred to the Draft Strategic Planning Guidance for South East Wales (1999) with particular regard to the concern about the incremental growth of out-of-centre retail locations and the need to ensure that out-of-centre developments do not develop into regional centres having widespread impact on the existing retail hierarchy. On this issue the Planning Decision Committee see no reason to disagree with the Inspector's conclusion in paragraph 82 of his report that the scale of the proposal is modest and that as a whole the retail development at Culverhouse Cross could not be regarded as a regional centre. The Council also restated their argument that the proposal was contrary to the development plan. However, for the reasons given by the Inspector at paragraph 83 of his report, the Planning Decision Committee agree with him that the proposal is in accordance with the relevant provisions of the development plan.

13. The Planning Decision Committee has therefore gone on to consider the evidence submitted on the need for the additional facilities proposed to be located at the site, the Agreement with Cardiff County Council dealing with access and highway arrangements and your request that the application be amended to make it consistent with the description of the development considered by the Inspector at the inquiry in June 1997.

Need for the additional facilities proposed to be located at the site

14. The National Assembly for Wales letter of 15 November 1999 invited you and Cardiff County Council to submit evidence on the need for the additional facilities which it is proposed to locate at the site, and comment on the relevance to the appeal of the revised Government guidance on retailing and town centres as it applies in Wales (PG(W)) April 1999.

15. The responses to that letter have been considered. PG(W) April 1999 does not specify in detail how need is to be assessed. In relation to this case the Planning Decision Committee considers that the representations submitted by the parties on this issue provide an adequate basis for the assessment of need.

16. In terms of quantitative need you referred to population growth and a rapid rate of increase in retail expenditure within the catchment area indicating a need for additional floorspace for comparison goods. Cardiff County Council have relied on a retail capacity exercise undertaken in 1994 by South Glamorgan County Council, in connection with the preparation of the Replacement Structure Plan, to establish the need for new comparison goods floorspace in the county over the plan period (i.e. to 2001). The assessment took into account projected resident population change, increases in consumer expenditure, changes in floorspace, known commitments and the needs of existing traders. The Council state that the assessment showed that by 2006 the city centre would show a small surplus of expenditure over turnover while in the rest of the County, including existing district and local centres in Cardiff, Culverhouse Cross and all other retail warehouses, proposed developments at North Pentwyn, Western Avenue and within Cardiff Bay, there was insufficient expenditure to justify any further significant increase in floorspace in the immediate and medium term.

17. While the calculations referred to by Cardiff County Council are made on a different basis to those submitted by you, and indicate insufficient expenditure to justify additional expenditure at Culverhouse Cross, your figures are based on more up to date statistics and the Council do not detail reasons to cast doubt on them. Having regard to all the evidence before them the Planning Decision Committee conclude that a quantitative need for the additional level of retail space proposed has been established.

18. The further issue is therefore whether there is a qualitative need to accommodate the additional retail development at the appeal site. It has already been concluded that the proposal meets the criterion of the sequential test. Cardiff County Council argue that consents in other parts of Cardiff could meet the retail need but you have disputed this, and in the opinion of the Planning Decision Committee there is no clear evidence that sufficient units are available. In addition you have argued that the west of Cardiff is less well provided with the types of out of centre retail development proposed and you have provided information on a number of retailers seeking accommodation in the locality of the appeal site. On balance the Planning Decision Committee conclude that there is a qualitative need for proposed retailing at the appeal site.

Agreement with Cardiff County Council dealing with access and highways arrangements

19. The Welsh Office letter of 24 June 1998 set out the Secretary of State's conclusion that while it would be appropriate for the signalisation of Port Road to take place before the proposed scheme is brought into beneficial use the signalisation of Tumble Hilt should not similarly be required. The letter went on to state that in respect of the access works to the site shown on Savill Bird and Axon plan no. Figure 5/2 the final test of the acceptability of a condition preventing the

bringing into beneficial use of the premises before those works were completed would be the production of a formal agreement with Cardiff County Council as highway authority. As regards the works to the Port Road junction the Secretary of State, on the basis of the representations submitted by you and Cardiff County Council was satisfied that there was a reasonable prospect of those works being completed within a reasonable time.

20. The Planning Decision Committee has considered all the submitted evidence on access and highways arrangements. It concludes that the signalisation of Tumble Hill should not be required. As regards the signalisation of Port Road the supplementary information submitted under cover of your letter of 10 December 1999, which was copied to Cardiff County Council, indicated that since the completion of the inquiry into these proposals the Brooklands Terrace Retail Park has opened for trading and the associated highway works have been completed, and that with the completion of the Brooklands Terrace scheme alt of the gyratory had been signalised with the exception of Tumble Hill (A48 West).

21. The Planning Decision Committee consider that the access works to the site should be implemented before the premises are brought into beneficial use. The Planning Decision Committee has concluded that the production of the certified copy of an Agreement with Cardiff County Council dated 25 August 1999 dealing with access and highway arrangements enables a condition to be imposed requiring that the premises shall not be brought into beneficial use until the access and highway arrangements provided for in that agreement have been completed.

Request for further amendment of the application

22. In your letter of 11 April 2000 you asked that the application be amended to make it consistent with the description of development considered by the Inspector at the inquiry held in summer 1997. In your letter of 16 May 2000 you confirmed that your client's wished the description of the development to be amended to Retail Warehouse (Class 1) development of approximately 9,197 sq. m (99,000 sq.ft) plus garden centre and ancillary car parking, landscaping and access arrangements. You also confirmed that you were seeking all matters other than access to be reserved, Plans PL203,204 and Drawing 3955/21A to be the plans which accompany the application and Drawing No. 3955/06C to be treated as withdrawn and Drawing 3955/21A should be considered for illustrative purposes only. The National Assembly for Wales Planning Division's letter of 10 May 2000 asked for clarification of the size of the garden centre to be provided and in your letter of 16 May 2000 confirmed that the current proposal envisages retail warehouse floorspace of 9,197sq.m and external garden centre areas totaling 35,000 sq.ft).

23. In response to the National Assembly Planning Division's letter of 10 May 2000 you argued that this proposal did not represent a substantial amendment and that the Inspector had considered a development of similar description at the inquiry. Cardiff County Council in their response contended that the increase of the garden centre area from 10,000 sq.ft to 35,000 sq.ft. represented a substantial amendment and that the revised form of development necessitated the submission of a new planning application.

24. The Assembly does not have the power to substantially alter the proposal originally submitted by the appellant. The test used by the Courts is whether the amendment is so substantial as to amount in essence to a different application and whether interested parties would be prejudiced by being deprived of the opportunity of consultation. The Planning Decision Committee does not consider that any of the submitted evidence is sufficient for them to conclude that the amendment would have an impact on the planning issues relevant to the appeal, or that it would

change the original development so as to amount in essence to a different application. In reaching this conclusion the Planning Decision Committee has taken account of the fact that this is an outline application and that it is the principle of development being considered. The Planning Decision Committee have also taken into account the fact that the amendment proposed will not increase the size of the application site and the development still involves the provision of a retail unit plus garden centre which was the nature of the development considered by the Inspector at the inquiry. While it is proposed to increase the size of the garden centre the Inspector did not report on there being any opposition to the principle of a garden centre.

25. You indicated that if the Assembly decided that this was a substantial and unacceptable change the application should be considered on the basis that it was considered by the Inspector at the inquiry. However, for the reasons given above the Planning Decision Committee do not consider that there are grounds to justify the rejection of the latest proposed amendment to the application.

26. The Planning Decision Committee also consider, for the reasons given in the Welsh Office letters of 9 December 1997 and 24 June 1998 that there is no need for a condition to secure improvements to the Knightswelt Road junction.

Overall Conclusion

27. Subject to the comments at paragraphs 10 to 11 and paragraph 26 above the Planning Decision Committee agree with the Inspector's conclusions. Having had regard to the evidence submitted by you and Cardiff County Council on the need for the additional facilities proposed to be located at the site, they conclude that a need for the additional level of retailing has been established. As regards the proposed further amendment of the application, they do not consider that there is sufficient evidence for them to conclude that this would have an impact on the planning issues relevant to the appeal, or that it would change the original development so as to amount in essence to a new application. In these circumstances, and having regard to their conclusion that the production of the certified copy of an Agreement with Cardiff County Council dealing with highways and access arrangements would enable a negative condition to be imposed in respect of those works, the Planning Decision Committee accept the Inspector's recommendation that planning permission should be granted subject to conditions. They have reached this conclusion having regard to all correspondence received after the inquiry closed and therefore not taken into account by the Inspector in forming his conclusions and recommendation, and are satisfied that no new evidence or new matter of fact was raised which would dispose them to disagree with the Inspector's conclusion on the appeal.

Conditions

28. The Planning Decision Committee have carefully considered the question of conditions to be attached to the planning permission in the light of the Inspector's comments, the final list of agreed conditions with the Council's suggested alternatives submitted to the inquiry, and the advice of Welsh Office Circular 35/95. The Planning Decision Committee have accepted those they consider suitable and modified or adapted others where this has been necessary.

29. The purpose of condition 2 in the list submitted to the inquiry was queried in the Welsh Office letter of 9 December 1997. In your letter of 26 January 1998 you asked for siting to be fixed by drawing number 3955/06C and that siting no longer be treated as a reserved matter. Your current request, set out in your letter of 16 May 2000, that all matters other than access be

reserved and drawing number 3955/06C be treated as withdrawn and Drawing 3955/21A be considered for illustrative purpose only has been agreed. In your letter of 16 May 2000 you also stated that the current proposal envisages retail warehouse space of 9,197 sq. m and external garden centre areas totaling 35,000sq. ft). The Planning Decision Committee do not consider that this is a case in which the size and scale of the development are matters which can be reserved and have therefore attached a condition that the retail warehouse floorspace and the external garden centre areas should not exceed 9,197 sq. m and 3,252 sq.m respectively.

30. The Planning Decision Committee agree with the Inspector's conclusions on conditions 3, 4 and 5 in the list submitted to the inquiry and have applied the conditions in accordance with his recommendations. As regards condition 12 in the list the Planning Decision Committee, for the reasons given at paragraph 19 to 21 of this letter, have imposed a condition requiring that the premises shall not be brought into beneficial use until the access and highway arrangements provided for in that agreement have been completed. As indicated in paragraph 26 the Planning Decision Committee do not consider that there is a need for the condition, suggested by the Inspector, to secure improvements to the Knightswell Road junction. The documents submitted to the inquiry included third party representations which included reference to the privacy and security of residential properties backing onto the site. The Planning decision Committee consider that condition 14 in the list submitted to the inquiry, requiring details of the means of site enclosure to be submitted to and approved in writing by the local planning authority, is adequate to deal with these concerns.

Formal Decision

31. For the reasons set out above the Planning Decision Committee allows your client's appeal and hereby grants planning permission in respect of planning application Ref 95/01691 /R dated 30 October 1995 (as amended) for Retail Warehouse (Class A1) development of approximately 9,197 sq. m (99,000sq.ft) plus garden centre and ancillary car parking, landscaping and access arrangements on land immediately east of Culverhouse Cross Roundabout bounded by Cowbridge Road West and the Peripheral Distributor Road, Cardiff subject to the conditions at Annex E to this letter.

32. This letter, a copy of which has been sent to the Director of Legal and Administrative Services Cardiff County Council, does not convey any approval or consent which may be required under any enactment, bylaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours sincerely



RICHARD EDWARDS
Chair, Planning Decision Committee 2000/2
Enc: Leaflets "H" "HC" and "CSDPA"



Y Swyddfa Gymreig

Parc Cathays
Caerdydd CF1 3NQ

Welsh Office

Cathays Park
Cardiff CF1 3NQ

☎ 01222 825111 GTN: 1208
Llinell Union / Direct Line: 01222 82
Minicom: 823280; Telex / Telex: 498228
Ffacs / Fax: 01222 82

Mr G Morgan
Nathaniel Lichfield & Partners
14 Regents Wharf
All Saints Street
London
N1 9LR

Eich cyf / Your Ref CL/4724(t)/YB

Ein cyf / Our Ref PP171-98-004 (formerly
APP Z6815/A/97/510295)

Dyddiad / Date 9 December 1997

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 78
APPEAL BY EDGE DEVELOPMENTS LIMITED
FOR RETAIL WAREHOUSE DEVELOPMENT, GARDEN CENTRE AND ANCILLARY
CAR PARKING
LAND IMMEDIATELY EAST OF CULVERHOUSE CROSS ROUNDABOUT BOUNDED BY
COWBRIDGE ROAD WEST AND THE PERIPHERAL DISTRIBUTOR ROAD**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector Mr D Sheers BA DipTP MRTPI who held a local inquiry into your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of Cardiff County Council to give within the prescribed period notice of the decision in respect of an application for retail warehouse (Class 1) development of approximately 9,197 sq. m (99,000 sq. ft) plus garden centre and ancillary car parking, landscaping and access arrangements on land immediately east of Culverhouse Cross Roundabout bounded by Cowbridge Road West and the Peripheral Distributor Road (PDR). (It is noted that the location of the site is given in the application form as being to the south of the Culverhouse Cross Roundabout but it is clear from the remainder of the description in the application and the accompanying plans that it is to the east of the roundabout.)

2. The Secretary of State considers that before he can reach a decision on the appeal he should have before him further information and comments on the matters set out below. The purpose of this letter is, therefore, to seek additional information from your clients and it should not be construed as indicating that the Secretary of State has reached a conclusion on the appeal. An invitation is also being extended to the local planning authority to submit information and comment on the matters raised.

The sequential test

3. Submissions were made to the inquiry on behalf of your clients and the local planning authority about how the sequential test should be applied and the type of sites that should be looked for in town and district centres and, if not available, on the edge of centres, when applying the

**Annex A to National Assembly for Wales
letter dated 21 August 2000**

sequential test. Your clients argued that a retail park should be viewed as a specific form of retailing, as recognised in Planning Guidance (Wales) Technical Advice Note (Wales) 4 (TAN4), and have accordingly looked for sites of 5,000 sq.m and upwards, roughly in accordance with the net additional floorspace to be provided in the current application, which they say is the minimum size for a retail park of 3 units as defined in TAN 4. The local planning authority have had regard to the potential final occupiers of the units within the proposed retail park, and have looked for alternative sites suitable for them on the basis that they need not be adjacent or even in the same centres.

4. The Secretary of State has given careful consideration to the question of the way in which the sequential test should be applied when considering proposals for retail park developments.

5. Paragraph 176 of Planning Guidance (Wales) Planning Policy (PG(W)PP) says that town and district centres and, if not available, edge-of-centre sites will usually be the preferred location for new retail development. It also states that out-of-centre developments will be assessed against this strategy, their impact on existing centres, their accessibility by a choice of means of travel and their impact on overall car travel. Paragraph 177 says that local planning authorities and developers should adopt a sequential approach to retail development: first, looking for suitable town centre sites where sites or buildings for conversion are available; then edge of the town centre sites, district and local centres; and finally out of town centre sites in locations that are accessible by a choice of means of transport.

6. Paragraph 6 of TAN 4 states that all applications for retail development over 2,500 sq. m. should be supported by an impact assessment providing evidence on various matters including whether the applicant adopted a sequential approach to site selection. The Glossary of Terms at Annex A of Tan 4 describes various types of retail development, each with its own characteristics, including supermarkets, retail warehouses and retail parks. The Glossary identifies retail parks as an agglomeration of at least three retail warehouses and defines the latter as large single-level stores specialising in the sale of household goods and bulky DIY items, catering mainly for car-borne customers and often in out-of-centre locations.

7. As indicated in paragraph 5 above the aim of Government policy, as set out in PG(W)PP, is that town and district centres and, if not available, edge of centre sites, will usually be the preferred location for new retail development. The Secretary of State considers that this preference does not exclude any categories of shopping and that all retail development should be tested according to the sequential test in order to establish whether it can be accommodated in town or district centres, or failing that, edge of centre sites. The statement of policy in paragraphs 176 and 177 of PG(W)PP does not limit the range of retailing development appropriate to town and district centres, or edge-of-centres and does not limit the range of development which should be subject to the sequential test. Neither PG(W)PP or TAN 4 provide that the sequential approach to site selection should be applied to retail parks as developments where the constituent retail warehouses necessarily have to be accommodated on a single site. The Secretary of State considers that to do so would unacceptably restrict the scope for considering alternative town and district centre, or edge-of-centre, sites in accordance with the policy in paragraph 176 of PG(W)PP. He therefore considers that in the case of retail parks, such as in this appeal, the sequential test should be applied in a flexible way having regard to the availability of town and district centre, or edge of centre, sites which could accommodate the proposed retail uses separately with less on-site car parking.

8. In reaching his view on the application of the sequential test the Secretary of State has taken account of the Government's Response, published in July 1997, to the fourth report from the Commons Select Committee on the Environment on shopping centres which indicates that the sequential approach

should be applied in a flexible way. The Government Response states that "In applying the sequential approach, the Government expects that developers will be flexible about the scale, format, design and amount of car parking, and will try to fit into the local circumstances.. Rather than propose developments with a mixture of large scale leisure uses and a large amount of car parking which can only be accommodated in out-of-centre locations, the Government will expect developers to demonstrate why they could not develop elements of the larger scheme on sites in more central locations, with less on-site car parking." Although included in a section responding to a recommendation on leisure centres, the Secretary of State considers that this statement applies to the sequential test generally.

9. In view of his conclusion regarding the application of the sequential test, the Secretary of State considers that the question of the availability of centrally located sites, or buildings for conversion, capable of accommodating component elements of the proposed retail development is a major issue in the determination of this appeal.

10. The local planning authority submitted evidence to the inquiry of vacant retail units in Cardiff and the surrounding area as at March/April 1997 and argued that there was a wide range of alternative locations available for retailers seeking new floorspace. However, it was submitted on behalf of your clients that none were retail warehouse units and that generally they did not offer large floor areas on a single level with adjacent parking. It was also submitted that of the units identified only 2 were over 929 sq. m, one of which was under offer and the other subject of considerable retailer interest, and that all the others were either under offer or of modest size and in locations wholly inappropriate for the type of retailing proposed.

11. As the survey of vacant retail units submitted by the local planning authority relates to the position in March/April of this year he considers that your clients should have the opportunity to submit further evidence on the current availability of alternative retail sites before he reaches a decision on the appeal. He considers that it would be appropriate for consideration to be given to potential alternative sites or buildings suitable for conversion up to 5000 sq. m in aggregate, broadly representing the net increase in floorspace provided by the proposed development, capable of accommodating potential retailers of the type envisaged for the development.

The application and associated plans

12. The application was in outline but siting and means of access were not reserved. The application form described the development as one for 6 units and listed Plans 1368 PL 201, 203 and 204 as submitted with the application. The letter of 6 January 1997 from the Burgess Partnership accompanying the appeal form enclosed drawing 13868 PL 201 C which revised 1368 PI-201. There is no trace of drawing PL 204 in the documents submitted to the Inspector although there is a drawing no. PL 205.

13. In your letter of 8 April 1997 to the Planning Inspectorate you requested that the application the subject of the appeal be revised to reserve siting as a matter to be dealt with at the reserved matters stage. Your subsequent letter of 12 May to the Planning Inspectorate amended the description of the application to "Retail warehouse (Class 1) development of approximately 9,197 sq. m. (99,000 sq. ft.) plus garden centre and ancillary car parking, landscaping and access arrangements." The letter also stated that an illustrative revised layout plan drawing no. 3955/06A would form the basis of the evidence provided at the inquiry.

14. Suggested condition 2 of the final list of conditions submitted to the inquiry states that the development of the site shall be laid out in accordance with the principles of the submitted illustrative layout plan no. 3955/06A. The purpose of this condition is not clear as you have requested that siting be specifically reserved and there is no indication of an intention to treat the plan as detailed. Also, the amended description does not specify the number of units proposed.

15. In these circumstances the Department would be grateful if you could provide clarification of the purpose of suggested condition 2 and of the number of units proposed. It would also be appreciated if you could provide confirmation of the plans currently forming part of the application.

Highways

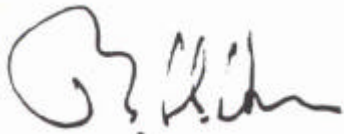
16. Your letter of 25 July 1997 submitted to the Planning Inspectorate after the close of the inquiry, and copied to Cardiff County Council, stated that on 10 July the Vale of Glamorgan gave approval of reserved matters for access in respect of application 95/00161 /OUT for retail warehouse development at Brooklands Terrace and had resolved to enter into a Section 278 agreement. In addition you state that Cardiff County Council have resolved to enter into a joint Section 278 Agreement with the Vale of Glamorgan for the required works to the Culverhouse interchange. The Department would be grateful for the submission of any further evidence you may have regarding progress towards the implementation of the Brooklands Terrace development.

17. The Inspector recommended that should planning permission be granted the conditions to be imposed should include a condition to the effect that the premises should not be brought into beneficial use until the highway works to the Knightswell Road junction detailed in Savell Bird and Axon plan no. Figure S9 have been implemented. Although these improvements may be desirable on grounds of highway safety the Secretary of State does not consider that there was sufficient evidence presented to the inquiry for him to conclude that the current difficulties at the junction would be materially increased as a result of the development. Nevertheless, he considers that your clients should have the opportunity to submit further evidence on this matter before he reaches a conclusion on the appeal.

18. Your response to the matters raised in this letter should be submitted to the Department within 21 days of the date of this letter and copied to the local planning authority.

19. A copy of this letter has been sent to the Director of Legal and Administrative Services, Cardiff County Council with a similar request for a response to the matters raised.

Yours faithfully



M H HARPER

Head of P1 Branch

Authorised by the Secretary of State to sign in that behalf



Y Swyddfa Gymreig

Parc Cathays
Caerdydd CF1 3NQ

Welsh Office

Cathays Park
Cardiff CF1 3NQ

☎ 01222 825111 GTN: 1208
Llinell Union / Direct Line: 01222 82
Minicom: 823280; Telex / Telex: 498228
Ffacs / Fax: 01222 82

Mr G Morgan
Nathaniel Lichfield & Partners
14 Regents Wharf
All Saints Street
London
N1 9LR

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Dyddiad / Date 9 December 1997

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 78
APPEAL BY EDGE DEVELOPMENTS LIMITED FOR RETAIL WAREHOUSE
DEVELOPMENT, GARDEN CENTRE AND ANCILLARY CAR PARKING
LAND IMMEDIATELY EAST OF CULVERHOUSE CROSS ROUNDABOUT BOUNDED BY
COWBRIDGE ROAD WEST AND THE PERIPHERAL DISTRIBUTOR ROAD**

SUMMARY

The Secretary of State is minded to allow your clients' appeal subject to the submission of an agreement with the highway authority in respect of the access arrangements to the site and clarification in respect of the site plans.

1. I am directed by the Secretary of State to say that further consideration has been given to the report of the Inspector Mr D Sheers BA DipTP MRTPI who held a local inquiry into your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of Cardiff County Council to give within the prescribed period notice of their decision in respect of an application for retail warehouse (Class A1) development of approximately 9,197 sq. m (99,000 sq.ft) plus garden centre and ancillary car parking, landscaping and access arrangements on land immediately east of Culverhouse Cross roundabout bounded by Cowbridge Road West and the Peripheral Distributor Road (PDR). (It is noted that the location of the site is given in the application form as being to the south of the Culverhouse Cross roundabout but it is clear from the remainder of the description in the application and the accompanying plans that it is to the east of the roundabout).

2. Following initial consideration of the Inspector's report a letter was sent to the parties to the appeal on 9 December 1997 stating that before the Secretary of State could reach a decision on the appeal he should have before him further information and comments on the sequential test, the application and associated plans, and highway matters. The Secretary of State has given careful consideration to your representations, made on behalf of your clients, and those of Cardiff County Council, the local planning authority (Ipa), and the Vale of Glamorgan Borough Council in response to that letter.

3. In his report, a copy of which is enclosed, the Inspector recommended that the appeal be allowed and that planning permission be granted subject to conditions. Subject to the comments on the sequential test set out at paragraphs 4 to 8 below, and those on the need for a condition to secure highway improvements at the Knightswell Road junction set out at paragraph 9 below, the Secretary of State agrees with the Inspector's conclusions and is minded to grant planning permission for the development. However, before he can consider granting planning permission, he will require the submission of a formal agreement with the highway authority for the access works to the site together with clarification of matters related to the revised application plan submitted with your letter of 26 January 1998. These matters are dealt with respectively in paragraphs 10 and 11, and 12 below.

The sequential test

4. Your argument on behalf of your clients is essentially that it is necessary to look at the whole proposal rather than its constituent elements when considering alternative town centre, district and local centre and edge of centre sites for the purpose of the sequential test.

5. The Secretary of State considers that the approach to the test set out in the Department's letter of 9 December 1997 is consistent with the guidance in Planning Guidance (Wales) Planning Policy (PPG(W)PP) and TAN(W)4. Paragraph 177 of PPG(W)PP describes the operation of the test and the Secretary of State considers that, in its reference to retail development, there is no attempt to limit the range of retail development which should be subject to that test. Paragraph 6 of TAN(W)4 requires all retail developments over 2,500 sq. m. gross floor space to be supported by an impact assessment providing evidence on various matters including whether the applicant adopted a sequential approach to site selection and the availability of alternative sites.

6. The Secretary of State considers it appropriate that a broad approach should be adopted to the impact assessment as is required by paragraph 7 of TAN(W)4. In considering the issues the Secretary of State has had regard to the comments of Sedley J in *R-v-Teeside Development Corporation ex parte William Morrison Supermarket plc and Redcar and Cleveland B.C.* [1998] J. P. L. p23. about the application of the sequential test. At page 42 Sedley J stated:

" the sequential test itself has an in built difficulty, since to refuse an out of centre planning consent on the grounds that an admittedly smaller site is available within the town centre may be to take an entirely inappropriate business decision on behalf of the developer. In other words, some regard has inevitably to be given to the developer's own estimate of needs in terms of space with the result that the sequential approach is as much a negotiation as a calculation of the point at which a halt has to be called to. the proposed exodus. For this reason I am not willing to accede to the submission that the admittedly bald and perhaps unconvincing assertion that development of this size will not fit into the town centre represents a misunderstanding of the policy of PPG6. It seems to me, rather, to represent one extreme -most favourable to the. development - one of the range of possible balances between size and distance. So, it is not legally objectionable in itself; but it too may have a bearing on the question of predisposition."

7. The Secretary of State considers that these comments point to the need for a flexible approach to the sequential test by both the decision maker and the developer. He concludes that the invitation to your clients, in the Department's letter of 9 December 1997, to submit evidence which would demonstrate that the component elements of the proposed retail development scheme could not be accommodated within the city centre, was appropriate having regard to the need for such an approach. Accordingly, when considering the information supplied by your clients in response to that letter, the Secretary of State has examined the viability of the identified sites, having regard to the likely business needs of potential occupiers, as well as the size and general suitability in planning terms of those sites.

8. The Secretary of State has carefully considered the representations submitted to him on the availability and suitability of centrally located sites and retail units. On the basis of the evidence before him he is unable to conclude, even if the development proposed was split up into individual components, that there are a sufficient number of suitable alternative sites or retail units available, capable of accommodating potential retailers of the type envisaged for the development, which would together provide the 5,000 sq. m of floorspace which broadly represents the net increase in floorspace to be provided by the proposed development. In doing so, the Secretary of State has had regard to the Ipa's parking guidelines and, consequently, in his opinion, the need for car parking space on site being rather less than your clients' considered necessary. The Secretary of State therefore concludes that the proposal meets the criterion of the sequential test, as set out in national and local policy guidance.

Highways

9. The Secretary of State agrees with the Inspector, for the reasons given by him, that, while it would be appropriate for the signalization of Port Road to take place before the proposed scheme is brought into beneficial use, the signalization of Tumble Hill should not be similarly required. The Secretary of State also considers that in order to provide a satisfactory access to the site the highway works as detailed in Savill Bird and Axon plan no. Figure 5/2 should be in place before the premises are brought into beneficial use. As regards the need for a condition to secure the improvements to the Knightswell Road junction, detailed in Savell Bird and Axon plan no. Figure S9, the Secretary of State concludes that no new evidence has been submitted which would cause him to alter his conclusion, set out in paragraph 17 of the Department's letter of 9 December 1997, that the current difficulties at the junction would not be materially increased as a result of the development.

10. The Secretary of State has gone on to consider whether the imposition of a condition alone, on the lines of suggested condition 12 amended to delete the reference to the Tumble Hill junction, could secure the implementation of the access works and the works to the Port Road junction. He considers that he would wish to be satisfied that there is at least a reasonable prospect of the works in question being completed within a reasonable time. The Secretary of State considers that, in respect of the access works to the site shown on Savill Bird and Axon plan no. Figure 5/2, the final test of the acceptability of the condition would be met by the production of a completed formal agreement with Cardiff County Council as highway authority. As regards the works to the Port Road junction the Secretary of State, on the basis of the representations submitted by you and the Ipa, is satisfied that there is a reasonable prospect of these works being completed within a reasonable time.

Application and plans

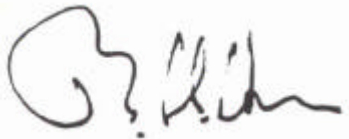
11. The supplementary information submitted to the Department under cover of your letter dated 26 January 1998 included a further revised layout plan (3955/06C) and you proposed that siting be fixed by reference to that plan so that is no longer a reserved matter. The Ipa have raised no objection to that suggestion and the Secretary of State proposes to deal with the appeal on that basis. However, the revised plan excludes the garden centre shown in the illustrative revised layout drawing no. 3955/06A which formed the basis of the evidence provided at the inquiry. In these circumstances would you provide clarification as to whether the previously revised description of the development, set out in your letter of 12 May 1997 to the Planning Inspectorate, should now be amended to omit reference to the garden centre.

CONCLUSION

12. Your clients are accordingly invited to conclude an agreement with the highway authority in respect of the matter referred to at paragraph 10 above and to submit it to the Department not later than 3 months from the date of this letter. Your clients' clarification of the matter referred to in paragraph 11 above should be submitted to the Department within 21 days of the date of this letter. On receipt of those particulars the Secretary of State will be able to reach a final decision on your clients' appeal.

13. A copy of this letter has been sent to the Director of Legal and Administrative Services, Cardiff County Council.

Yours faithfully

A handwritten signature in black ink, appearing to read 'M H Harper', is written over a light grey rectangular background.

M H HARPER

Head of P1 Branch

Authorised by the Secretary of State to sign in that behalf



Y Swyddfa Gymreig

Parc Cathays
Caerdydd CF1 3NQ

Welsh Office

Cathays Park
Cardiff CF1 3NQ

☎ 01222 825111 GTN: 1208
Llinell Union / Direct Line: 01222 82
Minicom: 823280; Telex / Telex: 498228
Ffacs / Fax: 01222 82

Mr G Morgan
Nathaniel Lichfield & Partners
14 Regents Wharf
All Saints Street
London
N1 9LR

Eich cyf / Your Ref CL/4724/GM/YH

Ein cyf / Our Ref PP171-98-004 (formerly
APP Z6815/A/97/510295)

Dyddiad / Date 15 November 2000

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 78
APPEAL BY EDGE DEVELOPMENTS LIMITED FOR RETAIL WAREHOUSE
DEVELOPMENT, GARDEN CENTRE AND ANCILLARY CAR PARKING
LAND IMMEDIATELY EAST OF CULVERHOUSE CROSS ROUNDABOUT BOUNDED BY
COWBRIDGE ROAD WEST AND THE PERIPHERAL DISTRIBUTOR ROAD**

SUMMARY

Before reaching a final decision on this appeal it is considered that the parties should be asked to submit evidence on the need for the additional facilities which it is proposed to locate at the site, and comment on the relevance to the appeal of the revised Government guidance on retailing and town centres, as it applies in Wales, which was issued in April 1999 after the issue of the Welsh Office letter of 24 June 1998 stating that the Secretary of State was minded to allow the appeal. The purpose of this letter is, therefore, to seek additional information from your clients and it should not be construed as indicating that a decision has been reached on the appeal.

1. Further consideration has been given to the report of the Inspector Mr D Sheers BA *Dip TP* MRTPI who held a local inquiry into your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against the failure of Cardiff County Council to give within the prescribed period notice of their decision on the application for the above development.

2. The First Secretary of the National Assembly for Wales has delegated the function of determining the appeal to the Environment and Local Government Secretary, Mr Peter Law. Accordingly, in exercise of the power delegated to him Mr Law has given further consideration to the appeal.

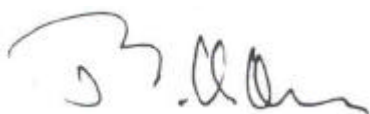
3. The Welsh Office issued a letter on 24 June 1998, stating that the Secretary of State was minded to allow your clients' appeal subject to the submission of an agreement with the highway authority in respect of the access arrangement to the site, and the clarification of the site plans. Your letter of 17 July 1998 dealt with the queries regarding the site plans and development description and subsequently, under cover of your letter of 3 September 1999, you submitted a certified copy of an Agreement with Cardiff County Council dealing with the access and highways arrangements.

4. Since the Welsh office letter of June 24 1998 was issued Government guidance on retailing and town centres, as it applies in Wales, has been revised by Planning Guidance (Wales) Planning Policy, First Revision April 1999. Paragraph 10.2.6 of that guidance states that, in addition to the sequential test, proposals for out-of-centre retail or leisure development which would be located at an edge-of-centre or out-of-centre location and which are not in accordance with an up to date development plan; or which accord with a development plan but where that plan is out of date, inconsistent with this planning policy guidance, or otherwise fails to establish the need for new retail or leisure users should be able to demonstrate need for the additional facilities. The additional requirement, in certain circumstances, to demonstrate the need for additional facilities represents a change from the policy set out in Planning Guidance (Wales) Planning Policy May 1996 which was applicable when the Welsh Office letter of 24 June 1998 was issued. It is considered that, before a final decision is taken on the appeal, the parties should be asked to submit evidence on the need for the additional facilities which it is proposed to locate at the site, and given the opportunity to comment on the relevance of the revised policy guidance to the appeal and on any other changes in planning circumstances which they consider material.

5. The response of your clients on the matters raised in paragraph 4 above should be submitted to the Planning Division, National Assembly for Wales within 21 days of the date of this letter and copied to the Director of Legal and Administrative Services, Cardiff County Council. The Environment and Local Government Secretary will then proceed to give further consideration to the appeal.

6. A copy of this letter has been sent to the Director of Legal and Administrative Services, Cardiff County Council with a similar request for a response to the matters raised, which they should copy to you.

Yours faithfully



M H HARPER

Head of Planning 1 Branch
National Assembly for Wales

**Annex D to National Assembly for Wales
letter dated 21 August 2000**



Y Swyddfa Gymreig

Parc Cathays
Caerdydd CF1 3NQ

Welsh Office

Cathays Park
Cardiff CF1 3NQ

☎ 01222 825111 GTN: 1208
Llinell Union / Direct Line: 01222 82
Minicom: 823280; Telex / Telex: 498228
Ffacs / Fax: 01222 82

Mr G Morgan
Nathaniel Lichfield & Partners
14 Regents Wharf
All Saints Street
London
N1 9LR

Eich cyf / Your Ref CL/4724/gm/lcj

Ein cyf / Our Ref PP171-98-004

Dyddiad / Date 10 May 2000

Dear Mr Morgan

**TOWN AND COUNTRY PLANNING ACT 1990: SECTION 78 APPEAL BY EDGE
DEVELOPMENTS LIMITED FOR RETAIL DEVELOPMENT. GARDEN CENTRE AND
ANCILLARY CAR PARKING LAND ON COWBRIDGE ROAD WEST, CARDIFF**

Thank you for your letter of 11 April 2000.

You ask that the application be amended to make it consistent with the description of development considered by the Inspector at the original inquiry in Summer 1997, and seek planning permission for the description of development considered by the Inspector with all matters other than access reserved. In order to reach a conclusion on this matter I would be grateful for clarification on certain matters relating to the garden centre, and the status of the new plan 3955 21A enclosed with your letter. Firstly it may be helpful if I summarise the history of the amendments of the application to date.

Background to current request for amendment

The original application dated 30 October 1995 was for 6 No. units approx. 104,000 sq. ft [9662 sq.m] retail warehouses, 1 unit DIY with garden centre. Units 2-5 A1 (not clothing or footwear) Unit 6 A3 use. Application was in outline but details of siting and access were not reserved and siting plan PL 201 (and its subsequently amended version PL201 C) show garden centre of 11,500 sq ft (1068 sq m), units 1-5 (retail) 98,640 sq ft (9164 sq m) and unit 6 (A3 food) 5,000 sq ft (465 sq m). Plan PL201 C was marked up with outline landscape details and showed car parking reduced to 545 spaces (plan 201 showed 580 spaces).

The application considered at the inquiry was further amended, by the deletion of the A3 use, making siting a reserved matter and revising the description of the development to **retail warehouse (Class A1) development of approximately 9,197 sq.m (99,000 sq.ft) plus garden centre and ancillary car parking, landscaping and access arrangements** with illustrative site layout plan 3955/06A (superseding PI-2010 forming the basis of evidence at the inquiry).

Following the submission of the Inspector's report to the Welsh Office our letter of 9 December 1997 sought clarification of draft condition 2 of the suggested conditions submitted to the inquiry which stated that the development should be carried out in accordance with the principles of plan 3955/06A in order to secure a satisfactory layout. You subsequently confirmed in your letter of 26 January 1998 that the following plans comprised the application:- PL203 - existing site layout, PL204 - site location and 3955/063C (superseding illustrative plan 3955/06A) and asked that siting be fixed by reference to plan 3955/06C. You also confirmed in your letter of 17 July 1998 that the words "plus garden centre" should be omitted from the description of the development.

Clarification required

For the sake of clarity it would be helpful if you could confirm that you now wish the planning application to be amended to the following :

Retail warehouse (Class A1) development of approximately 9,197 sq. m (99,000 sq.ft) plus garden centre and ancillary car parking, landscaping and access arrangements. All matters except access to be reserved and plans PL203, PL204 and Drawing no. 3955/21A to form part of the application.

As regards your request that siting be re-reserved I would be grateful for your confirmation that the particulars related to siting previously submitted (3955/06C) should be treated as withdrawn and plan 3955/221A considered for illustrative purposes only.

It is noted that Drawing no. 3955/21A shows that the garden centre has increased in size from 11,500 sq. ft in the original application to 35,000 sq.ft. I would be grateful if you would clarify the size of the garden centre and the retail floorspace to be provided. In this context I would remind you that the Assembly has to consider whether the proposed amendment substantially alters the proposal in the planning application. Once the size of the garden centre and the retail floorspace has been clarified a decision can be reached on whether the revised proposal represents a substantially different proposal to that in the planning application.

Your response should be submitted to National Assembly for Wales Planning Division within 7 days of the date of this letter and copied to Cardiff County Council.

A copy of this letter has been sent to Cardiff County Council inviting any comments they have on the matters raised here, or in your letter of 11 April to this office which was copied to the Council, to be submitted within the same timescale.

A copy of the letter to the Council is enclosed.

Yours sincerely

J E ELIOT

Planning 1 Branch

National Assembly for Wales

CONDITIONS FOR THE GRANT OF PLANNING PERMISSION

1. A. Approval of the details of the siting, design and external appearance of the building(s), and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.

B. Plans and particulars of the reserved matters referred to in condition 1A above, relating to the siting, design and external appearance of any buildings to be erected, and the landscaping of the site, shall be submitted in writing to the local planning authority and shall be carried out as approved.

C. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

D. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission or before the expiration of two years from the date of the last of the reserved matters to be approved, whichever is the later.
2. The retail warehouse floorspace hereby permitted shall not exceed 9,197 sq. m and the external garden centre areas shall not exceed 3,252 sq. m.
3. The floorspace hereby permitted shall be used only for the sale of DIY/ hardware, garden products, furniture, floor coverings, soft furnishings, electrical goods, pet products, motor accessories, and office equipment ;and for no other purpose including those set out in Class A1 to the Town and Country Planning (Use Classes Order) 1987.
4. None of the retail units in the development hereby approved shall be sub divided so as to result in a unit with a gross floorspace of less than 900 square metres.
5. The premises shall not be open to the public and there shall be no loading, unloading or movement of goods between the hours of 10.00 pm and 8.00 am.
6. Details of the design and siting of all external fans, refrigeration and air conditioning plant shall be submitted to and approved by the local planning authority prior to their being brought into use. Such plant shall be provided in full accordance with the approved details.
7. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping (which shall include details of paved areas, verges and other open spaces), which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development.
8. All planting, seeding, turfing or paved areas comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the building or

**Annex E to National Assembly for Wales
letter dated 21 August 2000**

completion of the development whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, or are removed or

become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

9. No part of the development hereby permitted shall be commenced until a scheme detailing the measures necessary for the purpose of monitoring gas generated on the site or land adjoining thereto and for any measures necessary to ensure its safe and inoffensive dispersal have been submitted to and approved in writing by the local planning authority. Any such scheme shall provide details of such steps as are required to prevent lateral migration of gas into or from land surrounding the application site. All measures specified in the above scheme shall (unless otherwise agreed in writing) be undertaken and completed prior to any development on any part of the application site affected by such gases or adjoining such part and shall be retained and maintained until such time as the local planning authority agree in writing.

10. No part of the development hereby permitted shall be commenced until a scheme detailing the measures necessary for the purposes of identifying chemical and other potential contaminants on the site and for any measures necessary to ensure for the safety of future occupiers/users of the land from contaminants has been submitted to and approved in writing by the local planning authority. All measures specified in the approved scheme shall be undertaken in accordance with the relevant code of Practice and guidance Notes, and completed prior to any development on any part of the application site affected by such contaminants (or such later date as may be agreed in writing by the local planning authority).

11. Any soils or similar material to be imported shall be assessed for chemical or other potential contaminants in accordance with a scheme of investigation to be submitted and approved in writing by the local planning authority in advance of its importation. Only material approved by the local planning authority shall be imported. All measures specified in the approved scheme shall be undertaken in accordance with the relevant Code of Practice and guidance notes.

12. The premises shall not be brought into beneficial use until access and highway arrangements provided for in the Agreement between The County Council of the City and County of Cardiff and Edge Developments (Culverhouse) Limited dated 25 August 1999 entered into pursuant to Section 38 and 278 of the Highways Act 1980 relating to the construction, dedication and adoption of highway works at Cowbridge Road West in the County of Cardiff, have been completed.

13. No development shall take place until details of car parking and manoeuvring areas have been submitted to and approved by the local planning authority. The car parking and manoeuvring areas shall be laid out in accordance with the approved details before the development is brought into beneficial use and be thereafter maintained and retained at all times for those purposes in association with the development.

14. No development shall take place until details of the means of site enclosure have been submitted to and approved in writing by the local planning authority. The means of enclosure shall be constructed in accordance with the approved details prior to the development being put into beneficial use.

15. No development shall take place until a scheme for the drainage of the site and any connection to the existing drainage system has been submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until the scheme is carried out and completed as approved.

16. No materials shall be stored within the garden centre to a height exceeding the approved means of enclosure within 5 metres of the external boundaries of the garden centre.

17. No development shall take place until details of facilities for the storage of refuse containers have been submitted to and approved in writing by the local planning authority. The facilities approved shall be provided before the development is brought into beneficial use.

18. Prior to the commencement of development, details of oil interceptors for the parking and service area drainage systems shall be submitted to and approved by the local planning authority. The approved details shall be implemented prior to beneficial use of the development.

19. No development shall take place until plans showing details of the proposed floor levels of any building in relation to the existing ground level and the finished levels of the site have been submitted to and approved in writing by the local planning authority. The development shall be constructed and completed in accordance with the approved details.

20. No development shall take place until details of the means for the protection of trees on the site which are subject to the (City of Cardiff (Culverhouse Cross) Tree Preservation Order 1973 and (Culverhouse Cross East) Tree Preservation order No. 1 1995) against damage or injury prior to, or during the development work have been submitted to and approved in writing by the local planning authority. No excavations, site works, trenches or channels shall be cut, or pipes or services laid in such a way as to cause damage or injury to the trees by reason of interference with their root structure; and that no soil or waste shall be deposited on the land in such a position as to cause damage or injury to the trees by affecting their root structure.

TOWN AND COUNTRY PLANNING ACT 1990

CARDIFF COUNTY COUNCIL APPEAL

By

EDGE DEVELOPMENTS LTD

Inspector: D Sheers BA DipTP MRTPI

Dates of Inquiry: 3 to 6 June 1997

File No: Z6815/Z/97/510295

Welsh Office
Cathays Park
Cardiff CF1 3NQ

August 1997

To the Right Honourable Ron Davies MP
Secretary of State for Wales

Sir

I have the honour to report that from 3 to 6 June 1997 I held an inquiry at County Hall, Cardiff into an appeal by Edge Developments Ltd under Section 78 of the Town and Country Planning Act against the failure of the Cardiff County Council to give within the prescribed period notice of their decision in respect of an application for retail warehouse (Class A1) development of approximately 9,197 sq.m (99,000 sq.ft) plus garden centre and ancillary car parking, landscaping and access arrangements on land immediately east of Culverhouse Cross Roundabout bounded by Cowbridge Road West and the PDR. I carried out an inspection of the site, its surroundings and other retail sites and centres in the area during the inquiry and on 9 June 1997.

1. The application was made on 30 October 1995 for "6 No. units approx. 104,000 sq.ft [9,662 sq.m] retail warehouses, 1 unit DIY with garden centre. Units 2 - 5 A1 (not clothing or footwear) Unit 6 A3 use." The application was in outline but details of siting and means of access were not reserved and supporting information was submitted (document 1.36). It was accompanied by layout drawing PL201 (document 1.36, page 253). The site layout plan was subsequently amended (Plan PL201C). The application was further amended by the deletion of the A3 use, making siting a reserved matter and revising the description of the development (as set out above) and illustrative layout (No. 3955/06A, document 2.29) to more accurately reflect the development proposed (letters of 8 April and 12 May 1997, document 1.40).

2. The Council acknowledged these amendments on 15 May 1997 (document 1.41) . As a result the Council resolved on 28 May 1997 that the reasons for refusal, had the appeal not been lodged, would have been:

1. *the proposal is contrary to the Development Plan including Policy R4 of the South Glamorgan (Cardiff Area) Replacement Structure Plan 1991-2011 and Policy 50 of the City of Cardiff Local Plan and also to Welsh Office Planning Guidance (Wales): Planning Policy and Technical Advice Note 4*

"Retailing and Town Centres" in the following respects:

- (1) there are alternative locations within and adjoining existing centres where the proposal could be accommodated.*
- (2) the proposal would threaten the retail strategies of the Development Plan aimed at sustaining and enhancing the City's existing shopping centres.*

2. *the proposal will result in increased traffic congestion on the adjoining and nearby highway network to the detriment of users of the public highway.*

3. This report includes a description of the site and the surrounding area, the gist of the representations made and my conclusions and recommendation.

THE SITE AND THE SURROUNDING AREA

4. The appeal site is triangular in shape extending to about 3.7 ha and is located on the east side of the Culverhouse Cross interchange about 7 kms from Cardiff city centre (document 1.16). The character and layout of the existing uses on the site and the surrounding area and road network can be appreciated from aerial photographs of the Culverhouse Cross area (documents 1.59a and 2.46). Plans of the site in relation to the Culverhouse cross interchange and adjoining uses are at documents 1.17 and 1.39.

5. Detailed descriptions of the site, its surroundings and the adjacent highway network are contained in documents 1.1 (paras 2.1 -2.9), 1.37 (section 3.0), 2.1 (section 3), and 2.28 (section 4). Briefly, the site fronts to the north the A48 (Cowbridge Road West) and is bordered to the south west by the slip road down to the A2323 (Ely Link or PDR) and, to the east, by residential property and caravan storage and sales. The site is currently developed in 4 parcels on 4 levels, generally sloping down from west to east, with two vehicle showroom and workshop complexes at the western and eastern ends (BMW and Rolls Royce), a lorry depot and road tanker washery (BRT), a recently vacated earth moving depot (Finnings) and a wholesale goods warehouse (Buck and Hickman).

6. The 4 parcels are shown on the plan at document 2.30 and aerial photographs illustrate the character of three of these; the BMW showroom at document 1.59d, the BTR yard at document 1.59c and the Finnings depot, which is now vacated, at document 1.59b. The easternmost parcel consists of three units with a Rolls Royce showroom to the north fronting Cowbridge Road West, the warehouse in the centre and a vehicle workshop to the south. Generally the site is characterised by older style industrial type of buildings, other than the BMW showroom, surrounded by considerable areas of vehicle parking and storage activities. Immediately to the east is the side of a terrace of 4 houses fronting Cowbridge Road West while adjoining the south-eastern boundary, and at a somewhat lower level, are the rear gardens of semi-detached houses fronting The Sanctuary.

7. Two vehicular access points serve the site; one, opposite Michaelston Road, serves the Finnings, BRT and BMW sites, and the other comprises a short cul-de-sac serving the other showroom and the warehouse. The residential development adjoining the eastern boundary of the site fronts The Sanctuary which leads off Knightswell Road which has an uncontrolled junction with Cowbridge Road West just to the east of the site. Trees adjoining the two car showrooms on the road frontage are the subject of preservation orders.

8. The Culverhouse Cross interchange is shown on the plan at document 1.8. It is a major road junction linking the A48 (Tumble Hill to the west and Cowbridge Road West to the east), the PDR, which consists of the Capel Link to the M4 and the Ely link to Cardiff Bay, and the A4050 to Barry and Cardiff (Wales) airport (Port Road). To the west of this interchange are a number of major developments constructed over the past 10 years including the HTV studios, a hotel, Vale Gate Retail Park which

contains 6 retail warehouse units, and large Tesco and Marks and Spencer stores all with adjacent parking and served off a separate roundabout on Tumble Hill.

9. Immediately to the north and south of the interchange are two undeveloped parcels of land, the H & W and Brooklands Terrace sites respectively, which have the benefit of planning permission for retail and other uses. Another roundabout on Port Road serves Brooklands Terrace and the television studios. The main interchange is partially signalized, with traffic signals on the Capel and Ely Links and pelican crossings on Tumble Hill and Cowbridge Road West. The remaining entries to the interchange are give-way as on a conventional roundabout. There is also a pedestrian island on the Capel Link northbound slip road. There are, therefore, pedestrian facilities around the north side of the interchange. There are bus stop laybys on both sides of Cowbridge Road West adjacent to the appeal site.

THE PROPOSED DEVELOPMENT

10. A history and description of the appeal proposals is provided at documents 1.37 (section 4) and 2.28 (section 3). In essence, the proposal, as amended, comprises the demolition of all existing buildings and structures on the site and the construction, as shown on the illustrative plan (document 2.29), of 7 retail units and garden centre in an 'L' shaped terrace in a mixture of sizes with a minimum of 929 sq.m. 482 customer car parking spaces are proposed, predominantly in front of the stores but also to the north-east of the site, with staff parking and servicing **areas** to the rear (southern end) of the site. Significant landscaping is proposed including the enhancement of existing site boundary planting.

11. As shown on the plan at document 1.14 and the illustrative layout, access would be from a traffic signal junction onto Cowbridge Road West towards the north-eastern end of the site, near the existing access adjacent to the Rolls Royce showroom. The other existing site access would be closed. The signalization of the Cowbridge Road West/Michaelston Road junction and of the Cowbridge Road West entry to the gyratory interchange and the provision of pedestrian facilities on the slip road to the Ely link are also proposed. The existing pelican crossing on Cowbridge Road West would not, as a result, be needed. Other highway improvements are proposed at the Culverhouse Cross interchange, but are dependant upon the timing of other permitted developments near the interchange (set out at table 5 of document 1.1). In addition, in order to improve safety at the Knightswell Road junction, to the east of the site, it is proposed to add traffic islands and a right turn lane to the existing yellow box marking, as shown on the plan at document 1.5.

PLANNING HISTORY OF THE SITE AND SURROUNDING AREA

12. There is a long planning history to the Culverhouse Cross area and a number of extant planning permissions exist for retail development. Full details are set out in documents 1.37 (section 5) and 1.1 (paras 2.10 to 2.21). In brief:

a) Full planning permission was granted in September 1993 for two retail units on the Finnings part of the site covering some 1.4 ha (document 1.43). This was for a total of 3,930 sq.m plus a garden centre and subject to a restriction for the sale of DIY goods, car accessories, household goods, furniture, soft furnishings, household textiles and sweets and confectionary but also subject to the entering into-of a S.278 agreement regarding highway works to signalise the Michaelstone Road/Cowbridge Road West/proposed new Finnings access junction. There is no agreement to date on the latter and it is the

subject of Judicial Review. A further application for retail development made in November 1996 remains undetermined.

b) In May 1986 permission was granted for the BMW showroom and garage (document 1.44). No conditions restrict the permitted development rights of this showroom, which occupies some 1,186 sq.m, and it, therefore, has permitted development rights to change to unrestricted A1 retail use.

c) In November 1994 permission was granted for the conversion of the existing warehouse into the Rolls Royce showroom. This is subject to a restrictive condition preventing it from being used for other retail purposes.

d) In 1985 and 1991 permissions were granted on appeal for the Tesco and Marks and Spencer retail development (documents 1.45 and 1.46) amounting to some 15,798 sq.m. The Vale Gate retail park was granted permission on appeal in December 1992 (document 1.47) which includes 7 units of 7,618 sq.m of retail warehousing, a garden centre and fast food outlet.

e) Opposite the appeal site on open land between Michaelstone Road and the interchange, known as the H and W site, outline permission was granted on appeal on 23 April 1996 (document 1.48) for retail development (A1 and A3), including 1 unit of 15,000 sq. ft and 2 of 10,000 sq. ft (a total of some 3,250 sq.m), and subject to a bulky goods type of restriction. A restaurant and about 75 dwellings were also approved. Development of this site includes the signalization of the Michaelston Road/Cowbridge Road junction and access from the former (shown on the plan at document 1.18). No improvements to the interchange were required. The Council has resolved to enter into a S.278 agreement under the Highways Act for these works.

f) In September 1996 outline planning permission was granted on appeal (document 1.49) for 5 retail warehouse units totalling 6,824 sq.m on land south of the appeal site situated between the Ely link, the interchange, Brooklands Terrace and Port Road. This was subject to a bulky goods type of condition. In association with the development there is a requirement to carry out significant highway improvements to Port Road, to its entry to the interchange and to signalise the Cowbridge Road West entry to the interchange (document 1.19). A S.278 agreement is currently under consideration.

PLANNING POLICY AND THE DEVELOPMENT PLAN

13. A full summary of the relevant planning policy guidance at national, strategic and local level is provided at document 1.50 and the relevant Development Plan policies are at document 2.28, section 7 and documents 2.35 and 2.36. In essence, national planning guidance on retailing is contained in Planning Guidance (Wales): Planning Policy (PG(W)) at paragraphs 173 to 186 and in TAN 4, Retailing and Town Centres. The former refers to the objectives of sustaining and enhancing the vitality, attractiveness and viability of town and district centres and states that out-of-centre development will be assessed against the strategy of preferring such centres for the location of new retail development, their impact on existing centres, their accessibility by choice of means of transport and their impact on overall car travel. A sequential approach to retail development should be adopted looking first for suitable town centre sites, then edge of centre sites, district and local sites, and finally out of centre locations that are accessible by a choice of means of transport.

14. TAN 4 recognises retail parks as a specific form of retailing; defining them as an agglomeration of at least three retail warehouses, the latter being described as large single level stores specialising in the sale of household goods and bulky DIY items catering mainly for car-borne customers and often in out-of-centre locations.

15. The Development Plan consists of the South Glamorgan (Cardiff Area) Replacement Structure Plan, adopted in April 1997 and the Cardiff Local Plan adopted in January 1996. Policy R4 of the former and Policy 50 of the latter both deal with out of centre retail development which will only be permitted subject to certain criteria including:

- whether it could be accommodated on suitable alternative sites within or adjoining existing or planned centres;
- harm to the viability, vitality and attractiveness of existing or planned centres and urban regeneration schemes;
- threat to strategies aimed at sustaining and enhancing such centres;
- accessibility by public and other forms of transport;
- to minimise traffic flows, travel patterns, energy use and other emissions;
- the proposal is not within the countryside or urban fringe;
- the need to preserve existing or allocated uses;
- that parking, servicing, scale, design and amenity considerations are acceptable.

Of these the Council make reference only to the matter of alternative locations and the threat to the retail strategy. The appeal site is shown on the Local Plan Proposals Map (document 2.50) as an existing business, industrial and warehousing area (all the site excluding the Finnings land) and as land with planning permission for retail development (the Finnings land).

THE CASE FOR EDGE DEVELOPMENTS Ltd

The material points are:

16. In general, the main question is whether this proposal accords with the Development Plan, especially Policy 50 of the Local Plan. The Structure Plan adds nothing to this policy. Very similar applications have been decided on appeal nearby: all of which were consistently opposed by the local planning authorities. The area has become a very popular and convenient retail location but is not a comprehensively planned centre. This proposal affords the possibility of a comprehensive development on this site. There are two main issues; whether the proposal would lead to unacceptable traffic problems, and whether it satisfies the sequential test without harming the viability and vitality of existing shopping centres. It is for the Council to demonstrate that it would have harmful effects.

17. With regard to highways, this proposal, while not providing a comprehensive solution to the whole interchange, would bring a net gain, which is accepted by the Council, and would remedy a disbenefit in highway terms resulting from the H & W development. There would be clear mid-week benefits but a localised Saturday shopping problem may remain in the form of queuing to get into the marks and Spencer car park. The proposed development would not make this situation worse and such queues are a fact of life in most shopping centres. In respect of retail impact, the Council adopt the wrong approach to the sequential test and make the mistake of not accepting retail parks as an accepted form of development.

Even if the retail park were to be broken up, there are not the sites to accommodate the proposed development. The city centre is vibrant in economic terms and the nearest district centre at Cowbridge Road East is thriving. Taking into account the extant planning permissions on the site, these proposals would represent a net addition of 4 to 5,000 sq.m.

Retail Impact

The appeal proposals

18. The appeal proposals have been modified since the original application was submitted in late 1995. The amendments include the reserving of siting for future approval and the removal of the A3 unit to address the concerns of the Council about its impact on nearby residential amenity. Also the original concern regarding the loss of a protected mature tree adjacent to the interchange is now met under current highway proposals. A condition is suggested restricting the range of goods to be sold (set out at para 4.5, document 1.37) and a limit on the minimum size of each unit of 700 sq.m (7,500 sq.ft) would also be acceptable.

19. Although the site has not been actively marketed at this stage, there is very considerable interest in West Cardiff generally and Culverhouse Cross in particular. This is shown in the information provided by commercial agents active in the retail warehouse market in South Wales (document 1.42). For the purposes of a retail impact study, a possible mix of tenants has been assumed (document 1.51, Table 5). However it is possible that a DIY warehouse (Homebase) would be included in the larger unit and from the information provided there are retailers who wish to trade in all the goods categories set out. A number of retailers have been contacted and have expressed interest (document 1.54). While the east side of Cardiff is well provided for in terms of retail parks and warehouse development, the west side is being improved. The appeal proposal will help to meet this demand by providing a form of shopping that is popular and recognised as a specific form of retailing, complementary in format to town centre retailing, combining large units and display areas and adjacent parking. In this location the presence of existing and committed retail warehousing will enable combined trips to be made.

Planning history

20. Part of the appeal site has full planning permission for two retail units of 3,930 sq.m and garden centre with a 'bulky goods' condition. The BMW garage, with a showroom of some 1,186 sq.m, has permitted development rights to change to unrestricted A1 retail use. All the existing and committed retail development in the vicinity of Culverhouse Cross have been the subject of objection which have been found by the Secretary of State or Inspectors to have been unfounded. More particularly, none, individually or cumulatively, have been considered to have a harmful impact on Cardiff, Barry or any other centre or to have an adverse effect on any urban regeneration scheme. The loss of employment sites has not been justified and the H & W and Brooklands Terrace sites are accessible by a choice of mode of transport.

21. The Councils' fears have not been realised and Cardiff city centre remains a viable and vital centre complemented by a range of local centres. The retail park at Ferry Road in Cardiff Bay is being developed with the ASDA store trading and phase. 1, 11,610 sq.m, fully let and to open late summer 1997 (document 2.42). Phase 2, at 5,570 sq.m, is partly pre-let. Although previous proposals have been

the subject of objection based on the loss of employment land, no such objection is made in this case. It is estimated (document 2.51) that, prior to the vacation of the Finnings site, there were 207 employees on the appeal site. Finnings have relocated elsewhere and all the other uses would relocate. Therefore the jobs are unlikely to be lost and the proposed development would create some 120 jobs.

Planning policy and issue

22. A number of criteria can be identified from the relevant planning policies against which the development should be considered. Many of these are not raised as objections by the Council and are commented on briefly:

- ***Access by choice of mode of transport***. The site is accessible by bus, bicycle and on foot and is somewhat better located than either of the H & W and Brooklands Terrace sites which were considered satisfactory in this respect in the appeal decisions.

- ***Effect on travel patterns***. There is likely to be a reduction in distance travelled to retail warehousing as a result of the proposal which offers the opportunity for combined trips.

- ***Impact on urban regeneration schemes***. The view of the Inspector at the Brooklands Terrace appeal was that there would be no adverse repercussions on Cardiff Bay or on Barry Docks.

- ***Protection of existing employment and allocated uses***. Over half the site has an extant retail permission, allocated as such on the Cardiff Local Plan (document 2.50) and contains one vehicle showroom with permitted development rights to change to unrestricted A1 use. Thus only part of the site could be utilised for industry or warehousing.

- ***Countryside /urban fringe***. The site is within the existing built-up area of Cardiff.

- ***Car parking. servicing facilities scale. design and amenity considerations***. The Council's only objection on amenity grounds relating to the siting of the A3 use has been met by its removal from the scheme. It is accepted that car parking and servicing are adequate. The proposal offers the opportunity for substantial visual improvement by the replacement of the older, unattractive industrial buildings with a purpose built retail park and associated landscaping.

Retail Impact

23. A retail impact assessment of the proposals has been carried out (document 1.51) in response to the Council and in accordance with advice in the TAN 4 on retailing. This is summarised in document 1.37, paragraphs 7.16 to 7.20. The Council have not carried out an impact analysis. It is concluded that the main source of trade diversion to the appeal site is likely to be from other existing and committed retail warehouses. The retail hierarchy of the area is dominated by Cardiff city centre and, apart from this, there is no particular centre on which the retail impact of the proposed development may be focused. The cumulative impact of all recently developed and committed retail warehouse floorspace on the city centre over a number of years is likely to be in the order of 7% of the centre's comparison goods turnover. This represents less than 2 years growth in trade and is of no concern for a strong, vibrant centre of the size and profile of Cardiff. The marginal impact of the appeal proposal on the city centre, over and above existing commitments, is about 0.4%. Thus the impact of the proposal, individually or cumulatively, will not be harmful.

24. There is only a single centre within the 5 minute drive time isochrone of the site (Grand Avenue) which is a local shopping centre serving the convenience shopping needs of local residents. Outside this isochrone there are a range of district and local centres (shown on the plans attached to documents 1.51 and 1.58). In none of these are bulky goods retailers a large proportion of the centre's overall retail and service offer. They generally serve the lower order shopper and all experience significant outflow of comparison goods expenditure from their catchment areas to Cardiff city centre and existing retail warehouses. It is this trade that is likely to be diverted to the appeal proposal. This means that the impact levels on these centres are likely to be very low.

The Sequential Approach

25. A report dealing with the sequential approach to site selection for retail development, as referred to in PG(W) and TAN 4, is at document 1.52. The conclusions of this are summarised in document 1.37, paragraphs 7.22 to 7.25. A broad approach has been adopted in identifying the centres within which to consider site availability; broadly within and just beyond the 10 minute drive time. While the current proposal is for 9,197,sq.m, a smaller retail park could provide some of the benefits of meeting the needs for bulky goods shopping and of linked trips. Therefore sites of 5,000 sq.m and upwards have been looked for, which roughly accords with the net additional floorspace arising from the proposed development and which is the minimum size for a retail park of 3 units (as defined in TAN 4). No opportunities have been identified for sites of this minimum size of development within or on the edge of any centre. This is consistent with the findings of the Inspector at the Brooklands Terrace appeal. The Council's list of sites do not provide 5,000 sq.m on one site

26. On the basis of the analyses undertaken it is concluded that this proposal is entirely in accord with the Development Plan and does not conflict with *national, strategic* or local policy. It will provide a planned retail park development that visually enhances the site and improves retail warehouse provision in a location where there are opportunities to combine shopping trips with other retail development as well as Tesco and Marks and Spencer. The Eastleigh decision (document 2.37) relates to a very different form of development; a multiplex cinema use which is the subject of less planning guidance, does not encourage linked trips and which is the subject of a High Court challenge.

The Council's Approach

27. Detailed comments on the Council's *concerns and* objections, related to the reasons for refusal recommended on 28 May 1997 (paragraph 2 above), are at document 1.38. In relation to the sequential approach, the Council make no suggestion that a development of the type and size proposed, or any retail park, could be accommodated within or on the edge of any existing centre. The case appears to be that there are vacant units of differing sizes in centres which could accommodate retailers seeking new floorspace. None are retail warehouse units and do not generally offer large floor areas on a single level with adjacent parking. Of the units identified, only 2 are over 929 sq.m. One is under offer and the other is the subject of considerable retailer interest. All the others are either under offer or of modest size and in locations wholly inappropriate for the type of retailing proposed.

28. Many operators (such as Halfords) trade both out of centre and within centres but in a different style and in a complementary fashion with different goods. In suggesting this approach, the Council fail to acknowledge the existence of retail warehousing as a specific form of retailing, as recognised in TAN 4. Nor did the Council suggest this approach at the H & W and Brooklands Terrace appeals when there was a similar policy background. This would seem, therefore, to be a change in the interpretation of development plan and national policy which is not justifiable. The logical extension of this approach is that no retail development should be permitted out of centre while there are vacant premises within existing ones. This takes no account of the different types and functions of retailing and is not a reasonable interpretation.

29. In respect of retail impact, no unacceptable harm is alleged to the vitality and viability of existing centres nor is the objection specific about which centres' retail strategies would be put at risk. However there is no strategy document other than the policies in the Development Plan which aim to sustain and enhance the city's shopping centres. This proposal is relatively modest in scale compared with existing commitments with a net addition of about 4,000 sq.m. Although the Council criticises the impact study for only examining those centres within the 10 minute isochrone, for centres outside this the impact is likely to be minimal.

30. In respect of vacancies, the table on page 12 of document 1.38 sets out the changes in actual numbers of vacancies between 1990 and 1997. This shows that, in comparison with a national trend of increases in vacancy rates from 10.8% to 14.4%, only 3 centres lie above this national average. Of these Tudor Street is in an inner city location some distance away and Penarth/Clare Road already competes with retail warehousing and the Ferry Road development and relies on walk-in trade. Cowbridge Road East is the major district centre in the area west of the city centre. This is healthy and has a vacancy rate significantly below the national average. In fact the appeal proposals will compete with a very limited proportion of retail units in any centre. Thus in Barry 96% of the units will be virtually unaffected and there can be no prospect of the centre's vitality and viability being undermined. To put the impact in context, the turnover of the proposal, over and above what could be developed lawfully, is about E6.7 million. This compares with a city centre turnover forecast at about £580 million in 2000, a core catchment area (of the appeal proposal) expenditure of about £564 million and a growth in that area of about £171 million between 1996 and 2004.

31. The Council comment that Culverhouse Cross is approaching the size level of a regional centre. However it would not become one even if existing commitments are implemented. It is not a centre, but a cluster of individual developments which offer the opportunity of linked trips, it would not meet the size

threshold of 50,000 sq.m, most of it will be prevented from selling a wide range of comparison goods and it does not have an enclosed shopping centre containing conventional shopping units.

Highway Impact

The Site and Surrounding Area

32. A detailed description of the site, the highways around Culverhouse Cross and the planning background is provided at document 1.1 (section 2). The total retail space at Culverhouse Cross is at present some 24,339 sq.m which, represents a very significant retail area and is probable the premier such area in Cardiff. The interchange is currently signalised on the two entries from the A4232 (Capel and Ely links). The remaining entries are give-way as on a conventional roundabout. It carries significant volumes of traffic during the week and on Saturdays but operates satisfactorily through most of the day. However it is at over-capacity at times and is subject to queuing, primarily in the morning and evening peak periods due to commuter traffic and at certain times on peak Saturdays, for about half an hour, because of slow moving traffic entering the Marks and Spencer car park.

33. A number of extant planning permissions exist for non-food retail development with highway implications amounting to some 14,004 sq. m and there is a proposal for an extension to Marks and Spencer which may include internal changes to the car park layout. Studies on this are being finalised and consultations taking place with the Vale of Glamorgan Council. The highway works proposed in connection with the H & W site are at document 1.18. There are problems with this arising from the 4 sets of signals and the junction opposite on the appeal site. However this is subject to a S.278 agreement and detailed design work is going ahead. The Brooklands Terrace works are shown on document 1.19 which includes signals on the gyratory and on Port Road. These are significant, were the subject of conditions in the planning permission and negotiations are underway with the local planning and highway authorities on a S.278 agreement. This is recommended for approval subject to design matters at the June Committee meeting. The proposed access arrangements for the approved Finnings site are shown on document 1.35, page I/1. This, in effect, creates a signalised cross-roads at the existing access. The highway authority have not agreed to this and the matter is to go to judicial review.

The Proposed Development

34. The planning permission would subsume the existing permission on the Finnings site and the BMW showroom floorspace and would represent just 10% of the total existing and permitted retail development at Culverhouse Cross of 39,529 sq.m. Access to the site would be from a new signalised junction in the location of the highway adjacent to the Rolls Royce showroom. The existing access point to the Finnings, Wyndhams and BRT sites would be closed and the junction of Cowbridge Road West and the gyratory would be signalised (document 1.20). A new split, signalised junction would be created which would be more efficient in highway terms and safety and capacity would be significantly improved along this section of Cowbridge Road West. This was accepted in the report to Committee of 11 March 1996 (document 1.1, para 3.4). The proposed tenant mix of the scheme would not affect this arrangement.

35. Various discussions have taken place with the Council on traffic matters (set out at section 5, document 1.1). At a meeting in November 1996 (document 1.26), the Council reiterated their desire for a comprehensive long term solution to the interchange, but accepted that a developer could only be required

to provide highway works necessitated by his development. It would also be unreasonable to expect any works to be undertaken on the Tesco/Marks and Spencer car park. Throughout the discussions the Council have confirmed (document 1.27) that the appellants' approach was the correct one and that the proposed highway works would bring significant benefits to the operation of the highway network in the area.

Policy Analysis

36. From the 4 main policy documents (set out at document 1.1, section 4), the two main criteria to emerge are that the site should be accessible by a choice of means of transport, and that it should have an acceptable impact on travel patterns. The site is well located for retail warehouse development and accords with the relevant policies. It is well served by public transport with 12 services visiting the area on Mondays to Saturdays, all stopping immediately outside the site entrance and with 9 buses per hour each way on week days (see document 1.23). The site is accessible by walk and cycle modes and the proposals include improvements to pedestrian and cycle crossings around the gyratory (document 1.12):

37. The site is in an existing retail location popular with the shopping public. In respect of travel patterns, the concentration of retail development in one location will allow people to combine trips, thus reducing the number of car journeys made. An analysis of the catchment area and existing retail warehouse provision is set out in document 1.1 (paras 4.14 4.30). It is concluded that any impact on travel distance will be positive and will lead to a reduction in travel distance.

Traffic Analysis

38. A technical analysis of traffic surveys carried out of the gyratory and surrounding junctions and of the effects of the appeal proposals is set out in Section 6 of document 1.1. The main elements of this analysis are an agreed base flow and traffic generation rates based on TRICS for non-food retail parks including DIY and providing for combined trips. This would give the greatest traffic flow, but is not the same as for individual units. Also pass by, combined and diverted trips (those which are on the network anyway) have been taken into account using a very conservative 20% reduction in total generated flows.

39. It is important to see the proposals in context. During the Thursday pm peak existing total flows through the gyratory would increase by 1.9% as a result of generated traffic. The Saturday peak would increase by 6.9%. These are very small and fall within the daily variations in flow in the area. Furthermore no allowance is made for the permitted development of the Finnings site and the use of the BMW showroom as a discount food store, which is the most likely use. If these were to be taken into account the effect of the additional retail development would be negligible (a decrease of 1.1% on Thursday and an increase of 1.5% on Saturday). Although the analysis has been undertaken using measured flows from 1996, a low growth to 2003, 5 years after opening, has also been tested.

40. Ten development scenarios have been analyzed, depending upon which retail development were to proceed and in what combination. The most likely one is that the appeal proposals will proceed after development of both H & W and Brooklands Terrace; scenario 3 (document 1.32a). Both have planning permission and are proceeding towards construction. Under this scheme the complete signalization of the gyratory is offered (document 1.33) including Tumble Hill if it is considered appropriate and necessary to impose such a condition. This is seen as a major benefit by the Council. The perceived problem of

queuing in the area due to slow moving traffic entering Tesco/Marks and Spencer only occurs for short periods on peak shopping days and should not be a reason for objection to these proposals.

41. The highway improvements being offered go beyond the requirements of development control. The situation if the appeal proposals were to proceed would be significantly better than that if the other permitted developments were to proceed on their own because it is the only proposal to include signalization of Cowbridge Road West and the introduction of the split signalised junction.

42. A further analysis of the traffic impact has been undertaken in response to the Council's evidence (documents 1.2 - 1.6a). It is considered that the data on queue lengths at Culverhouse Cross gives a very misleading impression. Most surveys quoted are for peaks which occur for only a brief period during Saturday afternoon. A separate survey in May 1997 showed that in general the interchange worked well with very little queuing and any problems could be overcome by sensible adjustment of signal timings. Thus some queuing does occur, but it tends to be a Saturday peak problem and for the rest of the time the gyratory works satisfactorily. Although the proposals will have no material impact on the operation of Knightswell Road junction, improvements to it are proposed which will lead to significant safety benefits (document 1.5).

43. During the inquiry an agreed analysis of the traffic impact of the proposals was carried out and presented at document 1.7. The main point at issue is over traffic generation rates and whether to use those for individual units or for the retail park as a whole. However using the Council's rates make little difference to the final analysis. In essence the agreed analysis shows the predicted traffic flows as a % of the road capacity and length of queue for the 5 links of the interchange for 4 development scenarios for the years 1996, 1998 and 2003. This demonstrates that on a Thursday pm peak the interchange works better with the proposed development than without and that with all the developments proceeding all the arms of the gyratory are under capacity. Significant benefits occur in the morning peak as well, with no disbenefits. For a Saturday pm peak, assuming no backing up from Marks and Spencer car park, there are no problems. If this does occur, additional vehicles queuing does take place, but this is split between lanes and would be over very short periods.

44. If Brooklands Terrace does not go ahead then Tumble Hill and Port Road would not be signalised which is of concern to the Council. If it is considered necessary by the Secretary of State for these works to be undertaken prior to the opening of the development then a suitable Grampian condition could be imposed. The works involved are shown at document 1.11 (figure S10) and the gyratory would operate within capacity under all situations analyzed.

Conditions

45. The matter of suggested conditions was discussed during the inquiry and an agreed list has been prepared with alternative wordings where there was disagreement between the parties in relation to 4 of these (document 1.63). The wording of the suggested 'bulky goods' condition is disputed for the reasons set out in document 1.38, pages 20 - 23. The condition put forward, which includes a wider range of goods than suggested by the Council, is broadly similar to that applied to most recent retail warehouse developments in Cardiff. The Council's alternative would be wholly inconsistent with those previously imposed by the Council or on appeal and it is not justified by any change in policy. It does not recognise that different styles of trading can take place to that in a town centre.

46. The specified minimum size of retail unit could be 900 sq.m or 700 sq.m, although there is a preference for the latter. In respect of hours of operation, a 7.00 am opening is considered more appropriate. The existing activities on the site are unrestricted, the Finnings planning permission does not restrict the timing of deliveries, and 7.00 am is generally accepted in national guidance on noise and is important for deliveries. Alternative wording is suggested in relation to required highway works depending upon whether full signalization of the gyratory (figure S10/2, document 1.13) is required and considered necessary or not (figure 5/2, document 1.14).

THE CASE FOR CARDIFF COUNTY COUNCIL

The material points are:

47. A full description of the proposal the subject of the appeal, its consideration by the Council, the site, the planning history of the area and the Development Plan provisions is contained in document 2.28, sections 1 - 7. In brief the Council has resolved that it would have refused the application if an appeal had not been lodged for reasons relating to retail policy and traffic congestion. The site extends to some 3.7 ha, is currently occupied by various commercial uses and borders residential properties to the east. Full planning permission was granted in September 1993 for the redevelopment of part of the appeal site occupied by the Finnings depot and yard for a DIY goods retail unit and garden centre and furniture/soft furnishings retail unit. Efforts have been made to implement this but there is a difficulty in the access provision. The site is allocated for retail in the Local Plan as a reflection of this planning permission. An undetermined planning application also exists for the Finnings site for a single retail unit and garden centre.

48. The development plan comprises the South Glamorgan (Cardiff Area) Replacement Structure Plan 1991 - 2011 and the City of Cardiff Local Plan. Policy R4 of the Structure Plan and Objective 5 and Policy 5 of the Local Plan are the most relevant in this case. Objective 5, one of 12, relates to retailing and seeks to sustain and enhance the vitality, viability and environment of the city centre and district and local centres. Whereas the 1989 Structure Plan policy (document 2.52) directed retail warehouses towards two main locations (Newport Road and Penarth Road), the present policy is not locationally based.

Retail Impact

49. The Council's retail strategy is contained in the Local Plan's explanatory memorandum, written statement and policies. It contains the following key objectives as set out in the Structure Plan (document 2.35):

- to continue to promote and enhance Cardiff city centre as a regional shopping centre.
- to maintain, improve and enhance the district and local centres.
- to recognise and encourage the role that retail uses play in urban regeneration.
- to control the development of out-of-centre retailing
- to encourage the availability of a wide range of shopping opportunities to which people have easy access.

50. The retail policies in the development plan have been formulated to contribute towards the implementation of the strategy. Policy 50 of the local plan seeks to resist inappropriate out-of-centre

development, makes no reference to retail parks but distinguishes between retail strategy and centres. Therefore each out-of-town proposal is assessed on its merits.

The Sequential Test Approach

51. The Council's approach to this test in relation to the appeal proposals is set out in detail in document 2.28, section 10. It is considered that this test should address the final occupiers of a proposal and not the development in purely physical terms of scale. It should focus on the potential for the alternative siting of these operators on suitable sites within or adjoining existing or planned centres and these locations need not be adjacent or even in the same centre. Support for this approach is provided in the Secretary of State's decision in the Eastleigh case regarding a multiplex cinema (document 2.37). The list of retailers seeking to locate in the area, produced by the appellants, contains only a few who would only be able to find accommodation in retail warehouses and the vast majority can and do trade effectively from units in high street locations (see document 2.38).

52. This proposal could provide accommodation for up to 7 units and there are a wide range of potential alternative locations available. These are made up of a number of existing vacant shop units at various levels of the retail hierarchy in the area (set out at document 2.39). This lists those in excess of 100 sq.m and most are in relatively modern premises and could house retailers again with little practical difficulty. The take up of these would represent a significant contribution to sustaining and enhancing the vitality, attractiveness and viability of these centres.

53. The trend towards bigger stores is retailer led and is not compatible with sustainable centres. If size were the only criterion then such developments would only be able to locate out-of-centre. In any built up urban area the availability of town centre or edge of centre sites that could accommodate retail park development will be limited. If this is enough to satisfy the test then the Welsh Office's and Council's strategy seems destined to achieve limited success. It is confirmed that the proposed development cannot be accommodated on any site within or on the edge of a centre and any redevelopment opportunities are likely to be limited and none are in hand. Part of the strategy is to retain the city centre within a fairly tight boundary and there are no major retail redevelopment proposals for the city centre. Such sites are unlikely to even come up because of the problems of land assembly.

The Threat to the Strategy

54. It is considered that the appeal proposal will exert an adverse impact on the retail strategy by affecting the attractiveness of existing centres, both from the perspective of the customer and retailer, which will in turn affect their vitality and viability. Although the appellants' impact assessment examines the health of shopping centres within 10 minutes, no assessment has been made over time. The Council has made a more detailed assessment of recent trends with particular reference to vacancy rates (document 2.28, paras 11.7 - 11.26). This also shows that many of the shoppers using them were concerned about the recent decline in the overall quality of shopping provision in these traditional high street centres.

55. The health of centres has been in decline in recent years and any impact assessment must be viewed in this context of diminishing vitality and viability. It is considered that the appellants' assumptions of the actual turnover of the proposal and the precise distribution of its impact are likely to be significantly different. This is because the existing catchment area of Culverhouse Cross extends far beyond the 15

minute one used; the notional tenant mix is unlikely to be achieved; average turnover densities applied to the development appear too low; and percentage trade diversion from existing retail facilities are at odds with similar studies.

56. The impact of the proposal on the city and other centres is examined in document 2.28 at para 11.40 - 11.59. In respect of the city centre, the impact of the proposal, assuming a 30% trade draw, would be a diversion of 0.7% of the estimated 2001 total turnover. However on the specific range of competing goods this would be in the order of 9%, using a figure of £45.3 million turnover for bulky goods. While the city centre as a whole is strong, vital and viable and few units that become vacant remain so for long, such a diversion would be unacceptable as the range of bulky goods has become very much reduced, with a decline of some 36% of this sort of floorspace. This would be further threatened, in direct conflict with the retail strategy which aims to preserve and enhance the range of shopping opportunities. In respect of district and local centres, a lot of people rely on such centres for local and household items and if these facilities left the centres would be harmed. Without knowing the proposed tenant mix it is difficult to assess its impact, but there is most concern about Penarth Road/Clare Road which high numbers of people say has declined over the last few years. However this has seen some adverse impact from the Ferry Road retail development.

57. The diversion of retailer and developer interest is also of concern and commented on at document 2.28, paras 11.60 - 11.68. Rental levels are much higher in the city and district centres than for retail warehouses. The traders currently involved in the retail warehouse market can and do trade effectively from traditional high street locations yet are attracted away from these by the lower rents and better car related access of out-of-centre facilities. However it is accepted that the proposed expansion of Marks and Spencer both out-of-town and in the city centre is evidence of confidence in the centre.

58. The cumulative impact of the proposal with recently completed and committed development is examined in document 2.28, paras 11.69 - 11.90. A conclusion drawn in the Structure Plan, which contained a retail capacity exercise, was that there was insufficient expenditure to justify further significant increases in floorspace in the immediate and medium term. Since then a range of new and committed development have come on stream giving a total of 57,777 sq.m in the County and surrounding area (see document 2.42). The cumulative impact of all out-of-centre developments on the city centre, assuming a trade draw of 40%, is £41 million, but it is estimated that the total turnover of such goods is currently only £31.99 million. The appeal proposal represents an incremental addition to the out-of-centre provision for which there is no justifiable capacity or need and serves to increase the threat to existing centres.

Other Retailing Considerations

59. There are a number of unimplemented schemes within the County and at Culverhouse Cross which all contain units which would be readily available for occupancy by a prospective tenant of this proposal. Culverhouse Cross has been a focus of retail development activity for some time. This and its role are examined at document 2.28, section 12. With the current appeal proposal it has the potential to house a total of 43,430 sq.m gross retail floorspace. This equates with the 50,000 sq.m associated with a regional shopping centre and it already has a catchment area extending throughout South Wales. The presence of Marks and Spencer and Tesco results in this being an attractive destination which is increased by the retail warehouses already there. Any increase in the number and range of units would make it more attractive,

improve the range of facilities and encourage linked trips. The principle of this level of retail development at this location is unacceptable in terms of its potential impact on the existing retail hierarchy of the region.

60. While access by public transport is not included as a reason for refusal, the proposed development is targeted at car borne shoppers, in contrast to the city and other centres (document 2.28, section 13). The resident population nearby was, in 1991, 10,470 in Caerau and 16,130 in the northern part of Ely. This area depends upon just one small centre which fulfils a local need. In respect of accessibility for walkers, the site is slightly better than others around the interchange, but this is busy and there are not good links to the other sites. In general, in drawing trade away from existing centres, in not meeting an expressed need and in relying predominantly on car users, this proposal would not meet the principle of sustainability. Without the development the site would continue to provide jobs (document 2.51).

Highway Considerations

61. Descriptions of the proposed development, its consideration by the highway authority, the highway network in the vicinity, existing traffic conditions and the highway works carried out at Culverhouse Cross and those not yet implemented but approved as planning conditions are set out in document 2.1, sections 1 - 5. The roads around the interchange carry a substantial volume of traffic with particularly high volumes during peak periods and during the Saturday afternoon peak. A 1996 survey showed a total vehicle flow entering the interchange of 5353, 6326 and 5145 over one hour during these periods. There has been a growth in traffic flows between 1993 and 1995 of 10% on Cowbridge Road West, 2% on Port Road and 7% on Tumble Hill. Queuing problems regularly occur on Port Road, Tumble Hill, Cowbridge Road West and the Ely Link.

62. The major consequences of the expanding retail development at the interchange are the regular long queues that block the interchange during the Saturday peak. Maximum queue lengths were recorded on Cowbridge Road West of 214 vehicles during a survey in February 1996 and 75 in November 1996 with significant queues occurring on the other arms. These emanate from congestion in the Marks and Spencer car park which blocks progress for all vehicles through the interchange. Prior to 1996 the highway authority expressed concern about the detrimental effects of all the retail development around the interchange. In all cases it was agreed that appropriate highway improvements would overcome these objections and as a result a number of improvements have taken place. In addition there are highway improvements which have not yet been implemented but were approved as planning conditions attached to the permissions for the Finnings, H & W and Brooklands Terrace sites. The Council have resolved not to enter into a S. 278 agreement in respect of the Finnings site and this is the subject of judicial review.

63. The applicant has accepted that highway improvements would be required to address existing traffic conditions as well as mitigating the effects of future developments. It is accepted that a comprehensive analysis of the traffic impact has been undertaken and that a signalization of the complete interchange, jointly funded by the individual developments, could achieve substantial improvements in capacity. Other benefits include full pedestrian facilities at the individual signals and at the two controlled crossings on the slip roads. The proposed improvements to the Knightswell road junction are necessary and would be a much safer option. Considerable discussions have taken place during the inquiry resulting in the offer of full signalization (plan S10 at document 1.13) by the appellants, although it is maintained that it would not be reasonable to impose it as a condition.

64. However full signalization does not resolve storage capacity problems around the gyratory. Although it would appear from the appellants' analysis that queues will in general not exceed the available storage space, recent survey data of May 1997 suggests that flows on some of the arms are higher. Initial tests suggest that some internal storage areas could exceed the available capacity if flows are higher than observed. This problem could be resolved by widening the critical sections of the circulating carriageway to 4 lanes or by modification of the central island (see document 2.27a). However it could be said that such works could not be reasonably required by way of condition.

65. The agreed analysis of the traffic impact (document 1.7) shows that these highway proposals would provide a considerable benefit for the morning peak and a net benefit at the evening peak. On a Saturday there would be a clear improvement on Cowbridge Road West but the queuing from the Marks and Spencer car park would remain with queuing back to the interchange on a very few occasions. In general the weekday benefits would outweigh any disbenefits on a Saturday.

66. If full signalization did not take place because Brooklands Terrace does not go ahead (plan 5/2, document 1.14), the analysis shows that queues on Port Road would increase because of the proposed development and, therefore, this should be signalized. Although signalization of Tumble Hill would not be necessary for capacity purposes, it has a high flow and operationally it would be necessary to give full control of the interchange. It is a major arm of the interchange carrying strategic levels of traffic merging with a much greater volume of traffic on the gyratory. Discussions are taking place with respect to the Marks and Spencer proposed extension and the internal traffic problems but no details are available as yet. In summary, the traffic effects of the development indicate that there would be morning and evening peak benefits. But there would be an adverse affect on traffic on Port Road, with the degree of saturation increasing from 102 to 105%, and queuing problems will result on a Saturday afternoon caused principally by the existing poor car parking arrangements at Marks and Spencer and Tesco sites. Full signalization of the interchange is, therefore, necessitated.

Conditions

67. Following discussion during the inquiry an agreed set of conditions was put forward (document 1.63) with four remaining in dispute. In respect of the restriction on the range of goods to be sold, this is discussed at document 2.28, section 14 which analyses the various categories suggested by the appellants. It is considered that this is based on the widest interpretation that exists in relation to out-of-centre consents. Many of the later additions are not bulky in nature, do not require large floor areas and are not exclusively dependent upon car borne shoppers. It is suggested that the trading condition should be restricted to a narrower range of goods that are bulky in nature and which do not have direct implications on comparative retail provision in shopping centres. It is considered that the larger minimum unit size of 900 sq.m would be appropriate. An 8.00 am opening hour is suggested by the Council's Environmental Health Department because the site directly adjoins residential properties and the timing of deliveries is of particular concern. With regard to highway works, the area of dispute centres around whether Port Road and Tumble Hill should be signalized.

Written Representations

68. Several written representations were received before and during the inquiry (document iii). Letters from local residents contain objections on traffic grounds, relating mainly to the junction of Knightswell

Road and Cowbridge Road West. Concern is also expressed with regard to screening and security along the rear of the properties.

69. A statement from the owners of the Finnings site states that the existing permission can be utilised and that it has full independent access to the highway. The Council has resolved to withhold entering into a highway agreement under S. 278 until an updated traffic impact analysis had been submitted, despite the Warwickshire/Powergen case (document 1.61). This resolution is the subject of judicial review. No land is required outside the control of either the owners of Finnings or the Council which would impede the implementation of the required works.

CONCLUSIONS

[The figures in brackets refer to preceeding paragraphs]

The Context

70. This proposal is for the redevelopment for retail purposes of a 3.7 ha site, currently in use as car showrooms, vehicle workshops, transport and heavy plant depots and warehousing and forming one of the 5 segments of land between the various arms of the major road interchange at Culverhouse Cross. This location is already a major retail destination, with a wide catchment area extending throughout south-east Wales, centred around large Marks and Spencer and Tesco stores and the 7 unit Vale Gate retail park. Further retail warehouse developments have been permitted, but not yet implemented, both on the appeal site and on two parcels of land between other arms of the interchange. Together, these existing and permitted retail developments would provide for nearly 37,500 sq.m of retail floorspace. [9, 12, 32, 34, 47, 55, 59]

71. A significant proportion of the appeal site, the Finnings depot covering 1.4 ha or 38%, is allocated in the 1996 adopted Cardiff Local Plan as land with planning permission for retail development. The owners of this site state that this permission can be utilized, although the matter of a S.278 highway agreement is the subject of judicial review. In addition one of the car showrooms (with 1,186 sq.m of floorspace) has the benefit of permitted development rights to an unrestricted A1 retail use. Taking these two areas together, the current proposals would represent a net addition of 4081 sq.m of retail floorspace; some 11% of the total existing and permitted at Culverhouse Cross. [12, 15, 47, 69]

72. The proper approach to this form of development is set out in the development plan (the 1996 Cardiff Local Plan and the 1997 (Cardiff Area) Replacement Structure Plan), Planning Guidance (Wales) [PG(W)] and TAN 4 on retailing and town centres. In essence these require a sequential approach to site selection, looking first for suitable town centre sites, then edge of centre sites and finally out of centre locations that are accessible by a choice of means of transport; the likely impact on retail centres; and the effect on travel patterns. [13, 15]

The Sequential Approach to Site Selection

73. The Council's approach to this matter is entirely different to that taken by the appellants. The former addresses the final occupiers of the proposal, although these are not known at present, and not the development in physical terms. It is maintained that it is the potential for alternative siting of these

operators on suitable sites within or adjoining existing centres that should form the basis of any sequential test. In support of this approach, in a recent appeal decision relating to a multiplex cinema development in Eastleigh, the Secretary of State concluded that the sequential test should initially have examined potential sites for cinema development of any size rather than concentrate on sites to accommodate development on the scale proposed. [25, 51]

74. I cannot accept the interpretation placed by the Council upon the proper approach to the sequential test. Policy 50 of the Local Plan refers only to 'proposals for retail development' and in neither the policy nor in the explanatory memorandum is there any reference to an approach that fails to acknowledge the existence of retail warehousing and retail parks as a particular form of development but which breaks up a proposal into its individual elements. National guidance, likewise, addresses new retail development in terms of the form in which it is proposed and not of its constituent parts. Thus reference is made to 'the scale, type and location of out-of-centre developments' (PG(W), para 179), and to the need to provide sites 'for different types of retail developments' (PG(W), para 181), while TAN 4 expressly recognises and defines a 'retail park' as an agglomeration of at least 3 retail warehouses. TAN 4 at paragraph 6 refers to impact assessments and makes no mention, in adopting the sequential approach, that the needs of individual retail operators should be the subject of assessment but expressly refers to 'retail developments over 2, 500 square metres'. [15, 28]

75. I do not consider the Eastleigh decision to be relevant to this case. This related to an entirely different form of development, a multiplex cinema, rather than to a retail park which is subject to specific national and local policy guidance. With these points in mind I consider that the appellants' approach is to be preferred. A report setting out a sequential approach to the availability of alternative sites has been prepared. This looked at sites to accommodate developments of the order of 5,000 sq.m or more; the minimum size for a retail park of up to 3 units which would meet potential occupier demands and would accord broadly with the net additional floorspace on the appeal site that this proposal would entail (excluding the car showroom). [25,26]

76. I would consider that this would seem reasonable as a basis for the assessment. It identified no opportunities for the, minimum size of development in the city, town, district and local centres within and just beyond the 10 minute drive time of the site or on the edge of any centre. In addition none of the vacant units identified by the Council would provide for a development approaching this size on one site. It was confirmed by the Council that this proposal could not be accommodated in or on the edge of any centre in Cardiff nor are there any redevelopment opportunities in hand or likely to arise that could provide an alternative site and such sites are unlikely to arise given the requirements of land assembly. Indeed, I note that part of the Local Plan's retail strategy is to retain the city centre within a fairly tight boundary. On this basis I consider that the appeal proposals meet the sequential test criterion contained in national and local guidance and policies. [25,53]

Retail Impact

77. An assessment of the retail impact of the proposed development has been carried out by the appellants. The Council have not carried out a similar exercise, although criticisms are made of certain of the assumptions. The advice is that a 'broad approach' should be taken (TAN 4, para 7) and I would doubt that, given the range of assumptions that have to be used in such studies, very different conclusions would have been reached if the Council's approach were to be adopted. As already mentioned, the proposed development would amount to a net addition of about 11% to the permitted and committed

retail floorspace at Culverhouse Cross; which I would regard as relatively modest in scale. This would have a marginal impact on the city centre as a whole of about 0.4% which would have a minimal effect on the centre which is agreed to be strong and viable with few units remaining vacant for long. (23, 56]

78. In terms of expenditure, the turnover of the proposed development is estimated at £13.9 million. This compares with a predicted growth in expenditure in comparison goods of £136 million between 1996 and 2000 in the 20 minute catchment area and a further growth of £156 million up to 2004. In this context I would consider that such a sum could be easily absorbed by the local economy without significant harm occurring to any centre. There is no particular centre on which the retail impact of these proposals would be likely to fall. The region is dominated by Cardiff city centre. Much of the trade diverted to the proposed development is assumed to come from other retail warehouses, of which there are a considerable number in Cardiff (52 in January 1997), with not more than 30%, and probably considerably less, coming from the city centre. In terms of bulky goods alone this would represent a diversion in the order of 9% from the city centre; an amount that I would not regard as significant given the uncertainties of the assumptions, the predicted growth in comparison goods expenditure and the strong and vibrant nature of this centre. [23, 56, docs 2.28, 2.42, 1.51 and 1.53]

79. The Council do not refer to any particular district or local centre likely to be harmed by the proposed development. A general point is made that the health and attractiveness of centres may be adversely affected, in terms of the range of bulky goods on offer and using vacancy rates as an indicator. The hierarchy of town, district and local centres within the catchment area generally serve the local shopper and all experience a significant outflow of comparison goods expenditure to Cardiff city centre and existing retail warehouses. It is this trade that is likely to be diverted to the appeal proposal with a consequence that any impact on these centres is likely to be very low. Furthermore many operators trade both within and in out-of-centre locations; adopting a different style, mode of operation and range of goods. As a result it cannot be axiomatic that because a trader chooses an out-of-centre location this inevitably results in within centre closures. (24, 28, 29, 30, 54, 56]

80. In respect of the general health of centres in Cardiff, it was agreed that the city centre is thriving. Cowbridge Road East, the main district centre on the west side of Cardiff, is also healthy. The use of vacancy rates by the Council has to be treated with caution. As advised in TAN 4, vacancies can arise in even the strongest town centre and this indicator must be used with care. There has been recent national trends towards increases in vacancy rates and, in this context, many centres in Cardiff show lower increases and some decreases. The Council express particular concern about the one centre at Penarth/Clare Road. This is a local, inner-city centre, some distance from the appeal site but which has seen some adverse impact from the developing and substantial Ferry Road retail development in Cardiff Bay. [30. 54, 56]

81. An important consideration in assessing any retail proposal, in the context of national and local policies, is the matter of accessibility by alternative means of transport. In this case the site is well served by a number of bus routes with set down and pick-up points immediately adjacent to the site. It is also accessible for pedestrians and cyclists and the proposed highway works would offer significant improvements in this respect. The site adjoins a residential area and there is a significant population of about 16,500 resident nearby. I consider that the site meets the criterion set out in the sequential approach in respect of accessibility. [36, 60]

82. The Council express concern as to cumulative effect of the proposed development and all the existing and committed development at Culverhouse Cross and the potential impact on the retail hierarchy. As already noted the scale of the proposal is relatively modest involving about 11% net additional floorspace. As a whole the retail development at Culverhouse Cross could not be regarded as a regional shopping centre; neither meeting the size threshold nor containing many of the characteristics of such centres. Retail warehousing has been developed throughout the Cardiff area and the Council confirm that Culverhouse Cross is already an attractive retail destination. I car" see advantages in siting this proposal close to such an established retail location especially as it would encourage linked trips and thus contribute towards a reduction in car journeys. On the basis of a study carried out by the appellants, this proposal would have a positive effect on travel patterns and lead to a reduction in travel distance; thus meeting one of the criteria in the national and local policy guidance. (31, 37, 58, 59]

83. I would conclude, bearing the above points in mind, that the appeal proposal accords with national guidance on retailing and the relevant provisions of the development plan in that it meets the sequential test, being in an out of centre location that is accessible by a choice of means of transport; is unlikely to adversely affect the viability or attractiveness of any retail centre and, in consequence, would not represent a threat to the Council's retail strategy as set out in the development plan; and would afford the possibility of linked trips to an established retail destination.

Highway Considerations

84. A wealth of detail was provided at the inquiry on matters connected with the local highway network, existing traffic conditions and the proposed highway improvements. The Culverhouse Cross interchange carries significant volumes of traffic. It is currently signalized on only 2 of the 5 arms and at times it operates at over capacity and is subject to queuing, mainly during the morning and evening peaks and at certain times on Saturdays. The latter would appear to be primarily due to slow moving traffic entering the Marks and Spencer car park. [32, 61, 62]

85. The proposed development, without taking into account the permitted retail development on the site, would increase existing flows around the interchange by comparatively small amounts (plus 1.9% at the Thursday evening peak and plus 6.9% on Saturday), all within the daily variations in flow. The highway works to Cowbridge Road West proposed as part of the scheme would, it is agreed, bring significant benefits to the operation of the highway network in the area. A comprehensive analysis of the traffic impact of the proposed development and other permitted schemes has been made and a substantial measure of agreement reached. A full signalization of the complete interchange, jointly funded by the various planned and proposed developments, would achieve a range of benefits; notably significant improvements in the capacity of the interchange and full pedestrian facilities at individual signals. In addition the proposed improvements to the Knightswell Road junction would meet the concerns of local residents and improve levels of highway safety. [39, 41, 63, 68]

86. The agreed traffic impact analysis shows that, with these highway proposals (resulting in an all signal interchange), the operation of the interchange is significantly improved at all times during every weekday and on Saturdays except for the occasional queuing from the Marks and Spencer car park. Most significantly it shows that at weekday peak times all the arms of the interchange would be brought to within capacity where otherwise they would be well above capacity even if no development took place at all. [43. 63. 6s, doc 1.7]

87. If the highway improvements to Port Road, associated with the Brooklands Terrace development, were not to take place, the analysis shows that queues on Port Road would occur because of the proposed scheme, with the degree of saturation at the evening peak increasing from 102% to 105%. The appellants' offer of signalization of Port Road, in this event, would therefore seem to be both appropriate and necessary. The main outstanding point at issue is whether or not the signalization of Tumble Hill should be part of the highway improvements required in connection with this proposal. The Council accept that signals on Tumble Hill would not be necessary for capacity purposes but they would be desirable for operational reasons and because of queuing problems caused by the poor car parking arrangements at Marks and Spencer and Tesco. While such measures may be desirable in the context of the ease of operation of this complex traffic interchange as a whole, the need for signals on Tumble Hill cannot be said to be derived from the traffic effects of the proposed development as such and it would not be reasonable to require the developer to undertake such measures. [44. 66, doc 1.7]

88. There would appear to be indications that some internal storage areas around the gyratory could exceed the available capacity if traffic flows are higher than observed. If this is so, then the widening of the circulatory carriageway may be required. However this is not borne out by the original agreed traffic analysis and, in any event, it has not been shown that such works would be necessary as a result of the proposed development.

Overall Conclusions

89. A significant proportion of the appeal site already has the benefit of a planning consent for retail purposes; a fact that is recognised in the recently adopted Local Plan. One of the two car showrooms on the site also has an unrestricted consent and could benefit from permitted development rights relating to retail uses. As a result the net additional retail floorspace that this proposal entails is relatively modest in extent in comparison with that already existing and permitted at Culverhouse Cross and is unlikely to have a harmful retail impact on any existing centre. Culverhouse Cross itself has now become an established retail destination within the region, with the Marks and Spencer store being a major attraction. Additional retail floorspace at this location therefore offers the possible advantage of linked trips. The appeal site itself is well served by conveniently located bus services and there is a fairly large residential population nearby. The proposed scheme includes significant highway works which would bring benefits to the current highway situation at this important interchange.

90. These factors, together with the lack of alternative sites either within or on the edge of existing centres, ensures that this proposal accords with the relevant development plan provisions. An important point to my mind is the fact that this scheme is not for the development of a greenfield site but for the comprehensive redevelopment of land already in use for warehouse, industrial and showroom purposes including large transport depots. These uses have been or could be relocated without the loss of jobs and the redevelopment of some of the buildings and depot areas, which are not especially attractive, could offer the opportunity to bring visual and environmental benefits to the area. For these reasons I consider that, with the imposition of appropriate conditions, the proposed development would be acceptable in this location. [6.21]

Conditions

91. A number of conditions which would be appropriately attached to any grant of planning permission were the subject of discussion and agreement during the inquiry. These relate to details of the siting, design, external appearance, and landscaping of the site, matters relating to the possible contamination of the soil on part of the site, details of car parking, external storage, floor levels and means of enclosure, and the protection of certain trees on the site. All these would seem to me to be appropriate, reasonable and necessary. [45, 67, doc 1.63]

92. There was disagreement on four matters. The Council suggest that a trading condition (number 3) be attached that would result in a more restrictive range of goods than that suggested by the appellants. I consider that there should be some measure of consistency with other recent consents for retail warehousing. Both the retail developments allowed on appeal on nearby sites (H & W and Brooklands Terrace) were restricted to a similar range of products; namely, DIY/hardware, garden products, furniture, floor coverings, soft furnishings, electrical goods, pet products, motor accessories, and office equipment. This list excludes certain items put forward by the appellants such as golfing equipment, homeware and computers, but to my mind does encompass all those goods that tend to be bulky in nature, require large floor and display areas or adjacent parking. For reasons of consistency I consider that a similar trading condition be applied in this case. (45, 67, docs 1.48 and 1.49]

93. In respect of the other conditions in dispute, the minimum size of unit is suggested (at condition 4) as either 700 sq.m or 900 sq.m. No justification is made for either size. A condition attached to the Brooklands Terrace planning consent specifies a floor area for retail units of not less than 929 sq.m. Bearing in mind the intentions of the appellant to provide for the display and sale of bulky goods and in the interests of consistency, I consider that the upper figure of 900 sq.m should apply in this case. The matter of opening times was also in dispute (condition 5), especially in respect of deliveries, with a time of 0700 hours being preferred by the appellants. I note that both the Brooklands Terrace and H & W appeal decisions specify a starting time of 0800 for deliveries, service vehicles and customers. The site immediately adjoins a number of residential properties and the illustrative layout show these to be adjacent to parking and rear service areas. Bearing this in mind and for reasons of consistency, I consider that the later time of 0800 hours would be appropriate in this case. (46. 67, doc 1.22 , 1.48 and 1.49]

94. The remaining condition in dispute relates to the necessary associated highway works, with the Council suggesting the full signalization of both Port Road and Tumble Hill in the event of the Brooklands Terrace development not being implemented. For the reasons already discussed, I consider that, while it would be appropriate for the signalization of Port Road to take place before the proposed scheme is brought into beneficial use, I do not consider that the same should apply to Tumble Hill and that reference to this latter junction should be deleted from the suggested condition 12. Not included in the list of suggested conditions is any reference to the Knightswell Road junction improvements which the parties agree would be of benefit to highway safety. For reasons already mentioned, I consider that this should be the subject of a condition to the effect that the premises shall not be brought into beneficial use until highway works as detailed in Savell Bird and Axon plan no. Figure S9 have been implemented. (42. 44. 46. 67, docs 1.5]

RECOMMENDATION

94. I recommend that the appeal be allowed and that planning permission be granted for the development the subject of the application, as amended, subject to the conditions set out at document 1.63 and in paragraphs 90 to 93 above.

I have the honour to be

Sir

Your obedient Servant

A handwritten signature in black ink, appearing to read "David Sheers", followed by a vertical line.

DAVID SHEERS

APPEARANCES

Ref. APP Z6815/A/97/510295

For the Appellants

Mr V Pugh

Queens Counsel, instructed by Nathaniel Lichfield & Ptns, 14 Regents Wharf, All Saints Street, London

He called:

Mr G Morgan BSc DipTP MRTPI

Director, Nathaniel Lichfield & Ptns

Mr D R Bird BSc CEng MICE

Director, Savell Bird & Axon, Transport Consultants.

For the Council

Miss H Murray

Of Counsel, instructed by the Solicitor to Cardiff County Council.

She called:

Mr G Harcombe BSc DipTP MRTPI

Senior Planning Officer (Policy).

Mr P Lacey BSc CEng MICE FIHT

Regional Associate, Rust Consulting, Transportation Planning Consultants, Cardiff.

DOCUMENTS, PLANS AND PHOTOGRAPHS

- i. List of persons present at the inquiry.
- ii Notice of the inquiry and list of those notified.
- iii Bundle of correspondence received in response to the notice:
 - Letters from occupiers of 6 and 9 Knightswell Close and 42 The Sanctuary, Culverhouse Cross.
 - Statements from Sears Group Properties Ltd of 30 May 1997 and 4 June 1997.

1.0 Put in by the Appellant

Highways

- 1.1 Proof of evidence of Mr D R Bird.
- 1.2 Supplementary proof of evidence of Mr D R Bird.
- 1.3 Figures 31 to 85, survey of queue lengths at Culverhouse Cross.
- 1.4 Bundle of photographs of Culverhouse Cross.
- 1.5 Figure S9, proposed Knightswell Road junction improvements.
- 1.6 Figure S10, proposed off-site highway works, full signalization, appeal site and H & W site only.
- 1.6a Letter of 22 May 1997 regarding Brooklands Terrace analysis.
- 1.7 Agreed note and tables on analysis of 4 options for highway works at Culverhouse Cross.
- 1.8 Figure 2, scale 1:1250 the site and surrounding area.
- 1.9 Figure 5, scale 1:1250 off-site highway works, H & W and appeals sites only.
- 1.10 Figure 6, scale 1:1250 off-site highway works, full signalization option.
- 1.11 Figure S10, scale 1:1250 full signalization option, appeal development only, H & W and appeal sites only.
- 1.12 Proposed pedestrian routes.

- 1.13 Figure 510/2 scale 1:1250, full signalization option, appeal development only.
- 1.14 Figure 5/2 scale 1:1250 off-site highway works, appeal development only.
- 1.15 Figure 6/2 scale 1:1250 off-site highway works, appeal development and Brooklands Terrace only.
- 1.16 Site location plan.
- 1.17 Site and surrounding area.
- 1.18 Highway layout, H & W only.
- 1.19 Highway layout, H & W and Brooklands.
- 1.20 Highway layout, H & W and appeal development.
- 1.21 Highway layout, H & W, Brooklands and appeal development.
- 1.22 Illustrative site layout.
- 1.23 Bus services.
- 1.24 Travel distance assessment.
- 1.25 Marks and Spencer trading profile.
- 1.26 Notes of meeting with Council 1/11/96.
- 1.27 Letter to Council of 28/4/97.
- 1.28 Existing flows and TRANSYT analysis.
- 1.29 Traffic generation rates.
- 1.30 Distribution of non-food retail traffic.
- 1.31 Generated traffic from application proposals.
- 1.32 Scenario 2.
- 1.32a Scenario 3, layout 1.
- 1.33 Scenario 3, layout 2 (with signals on Tumble Hill).
- 1.34 Scenario 5
- 1.35 Scenario 7
- 1.35a Note from Vale of Glamorgan Council concerning airport link road.

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- 1.36 Bundle of supporting information and statement relating to the application.
- 1.37 Proof of evidence of Mr G Morgan.
- 1.38 Supplementary proof of evidence.
- 1.39 Plan GM1, appeal site and surrounding area.
- 1.40 Letter and illustrative plan of amended application, 12 May 1997.
- 1.41 Letter from Council to NLP, 15 May 1997.
- 1.42 Letter from R J Hales concerning retail tenant demand in Cardiff.
- 1.43 Finnings planning permission, 16 Sept 1993.
- 1.44 Wyndhams planning permission, 15 may 1986
- 1.45 Tesco appeal decision, 28 June 1985.
- 1.46 Marks and Spencer appeal decision. 1 February 1991.
- 1.47 Atlantic Property appeal decision, 17 December 1992.
- 1.48 H & W appeal decision. 23 April 1996.
- 1.49 Brooklands Terrace appeal decision, 30 Sept 1996.
- 1.50 Extracts from national, Structure and Local Plans policies.
- 1.51 Retail impact statement.
- 1.52 Sequential approach statement.
- 1.53 Expenditure gap assumptions.
- 1.54 Bundle of letters from retailers.
- 1.55 Note on the use of the term 'attractiveness' in national guidance.
- 1.56 Revised Table 5 on turnover.
- 1.57 Cardiff expenditure gap.
- 1.58 Letter from Council with reference to local centres.

- 1.59 4 aerial photographs of the site and surrounding area.
- 1.60 Extract from Inspector's report on Cardiff Local Plan.
- 1.61 Draft judgement. R v Warwickshire CC and Powergen, QB 1996.
- 1.62 Appeal decision letter of 5 February 1997. retail development in Swansea.
- 1.63 Final agreed list of conditions with the Council's suggested alternatives.
- 2.0 Put in by Cardiff County Council

Highways

- 2.1 Proof of evidence of Mr P Lacey.
- 2.2 Site plan.
- 2.3 Traffic flows at Culverhouse Cross, am, 1996.
- 2.4 Traffic flows, pm
- 2.5 Traffic flows, Saturday
- 2.6 Maximum queue lengths. Saturday 10/2/96.
- 2.7 Proposed off-site highway works.
- 2.8 Traffic flows. 2003 (in PCUs), am peak.
- 2.9 Traffic flows, 2003, pm peak.
- 2.10 Traffic flows. 2003, Saturday peak.
- 2.11 Traffic flows, H & W, am peak.
- 2.12 Traffic flows, H & W. pm peak.
- 2.13 Traffic flows, H & W, Sat peak.
- 2.14 Traffic flows. H & W and appeal site, am peak.
- 2.15 Traffic flows. H & W and appeal site, pm peak.
- 2.16 Traffic flows. H & W and appeal site, Sat peak.
- 2.17 Traffic flows, all development, am peak.
- 2.18 Traffic flows, all development, pm peak.
- 2.19 Traffic flows, all development, Sat peak.
- 2.20 Council report of 11/1/97.
- 2.21 Council report of 22/5/97.
- 2.22 Council report of 5/2/97.
- 2.23 Bundle of 4 photographs showing traffic conditions at Culverhouse Cross.
- 2.24 Letter from appellants of 26/9/96.
- 2.25 Council report of 11/3/96.
- 2.26 Council report of 6/3/97.
- 2.27 DIY and non-food trip rates.
- 2.27a Note on interchange storage capacity.
- 2.27b Note on the Ely Spur.
- 2.27 ci-ix Figures showing numerical and % changes in traffic flows. CCC and SBA trip rates, Thursday and Saturday, appeal scheme and scenarios 3 and 9.
- 2.27d i-iv Bundle of photographs of Cowbridge Road West and the interchange, February 1996.

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- 2.28 Proof of evidence of Mr G Harcombe.
- 2.29 Plan of the proposed development.
- 2.30 Location of the site.
- 2.31 Report to committee of 5/3/97.
- 2.32 Report to committee of 6/3/97.
- 2.33 report to committee of 22/5/97.
- 2.34 report to committee of 28/5/97.

- 2.35 Extract from the Structure Plan, 1991-2011.
- 2.36 Extract from Cardiff Local Plan.
- 2.37 Eastleigh appeal.
- 2.38 Schedule of traders retail seeking space in Cardiff.
- 2.39 Available retail units in Cardiff.
- 2.40 Shopping centre survey 1993.
- 2.41 Retail floorspace survey 1990.
- 2.42 Out of centre stores. January 1997.
- 2.42a Extracts from retail rankings.
- 2.43 Distribution of trade diversion.
- 2.44 Retail rental levels in Cardiff.
- 2.45 Report to the Council on retail assessment, 1995.
- 2.46 Aerial photo of Culverhouse Cross.
- 2.47 Culverhouse Cross shoppers survey 1994.
- 2.48 Drivetime isochrone map from the site.
- 2.49 South Wales Regional retail survey.
- 2.50 Cardiff Local Plan proposals map.
- 2.51 Employees on the appeal site.
- 2.52 Extract from the Sough Glamorgan Structure Plan, 1989.
- 2.53 Extract from appellants' evidence to the H & W appeal. 1996.
- 2.54 Brooklands Terrace appeal decision letter. 24/5/89.
- 2.55 Vacant premises in Cardiff suitable for 'bulky goods' retailers.
- 2.56 Inspectors report, Brooklands Terrace appeal. July 1988.
- 2.57 PPG6 1988.
- 2.58 PPG6 1993.
- 2.59 Culverhouse Cross shoppers survey, residence of respondents.
- 2.60 Tudor Street commercial improvement area.