

Proposed Submission Version Local Plan

PART A - About You

1. Please complete the following:

Please note the email address (if provided below) will be sent a full copy of the submitted response and a unique reference number.

Name of person completing the form: Mark Aylward

Email address: [REDACTED]

2. What type of respondent are you? Please select one option only.
If you are an agent please select the type of client you are representing.

A Developer / Landowner

3. Please provide your contact details:

	Contact details
Organisation name (if applicable)	ATP
Agent name (if applicable)	Mark Aylward
Address 1	[REDACTED]
Address 2	[REDACTED]
Postal Town	[REDACTED]
Postcode	[REDACTED]
Telephone number	[REDACTED]

PART B - Representation Form 1

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

DEV4 Economic Growth and Development

2. What does your comment relate to? Please select one option.

A specific policy sub-number (s)

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Policy DEV4 part 6

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant	X	
Sound	X	
Compliant with the Duty to Co-operate	X	

5. If you answered 'Yes' to any of the options in question 3 then please give details in the box below the reasons why you support the legal compliance or soundness of the Draft Local Plan or its compliance with the duty to co-operate.

Please be as precise as possible.

We welcome the designation of the entirety of Junction Nine Retail Park (land west of Winwick Road, bounded to the north by Cromwell Avenue and Hawleys Lane to the south) as being outside any employment allocation. This is a change from the former designation on the Policies Map but is appropriate because it reflects the approved use for retailing. As part of the decision-making process for the extant consent it was agreed that the land did not justify retention for employment use.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

No, I do not wish to participate at the oral examination

You have just completed a Representation Form for DEV4 Economic Growth and Development.

Please select what you would like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

PART B - Representation Form 2

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

DEV5 Retail and Leisure Needs

2. What does your comment relate to? Please select one option.

A specific policy sub-number (s)

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Policy DEV5 part 5

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant		X
Sound		X
Compliant with the Duty to Co-operate	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

The NPPF provides a clear framework for the application of the sequential approach to site selection at paragraphs 87-89, with a summary mechanism provided at paragraph 91.

The approach laid out at Policy DEV5 part 5 is inconsistent with the advice provided by the NPPF and it would be better if the policy simply replicated the advice of the NPPF or cross-referred to it.

5. If you answered 'Yes' to any of the options in question 3 then please give details in the box below the reasons why you support the legal compliance or soundness of the Draft Local Plan or its compliance with the duty to co-operate.

Please be as precise as possible.

We raise no issues with the DTC considerations.

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

To replace the wording of DEV5 part 5 (and part 6) to replicate the NPPF framework.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

No, I do not wish to participate at the oral examination

You have just completed a Representation Form for DEV5 Retail and Leisure Needs.

Please select what you would you like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

DEV5 Retail and Leisure Needs

2. What does your comment relate to? Please select one option.

A specific policy sub-number (s)

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Policy DEV5 part 6

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant		X
Sound		X
Compliant with the Duty to Co-operate	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

The NPPF provides a clear framework in terms of impact and sequential considerations for DM matters through paragraphs 87-91. Impact is largely dealt with at paragraph 90 and sets out where impact assessment is required and also the key areas which should be covered. Additional guidance is provided by the NPPG and typically practitioners also refer to leading cases by way of precedent.

Policy DEV5 part 6 appears to provide an uncomfortable hybrid of sequential and impact considerations by conflating the need to identify more central sites with the prospect of adverse harm upon the vitality of centres. These are separate tests and their conflation is unhelpful and inconsistent with the NPPF.

5. If you answered 'Yes' to any of the options in question 3 then please give details in the box below the reasons why you support the legal compliance or soundness of the Draft Local Plan or its compliance with the duty to co-operate.

Please be as precise as possible.

We raise no issues with the DTC framework.

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

Policy DEV5 part 6 (and part 5) should be fundamentally reconsidered to ensure that it is consistent with the NPPF. The most straightforward approach may be to simply replicate the phrasing from the NPPF because the current paraphrasing is not fit for purpose and fails the test of soundness.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

Yes, I wish to participate at the oral examination

If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

In the event that the Council do not accept our proposed changes, it may assist the Inspector for us to attend the Examination to seek to draw out evidence from the Council to allow the Inspector to reach their view on the matter (i.e. whether the conflict with the NPPF is material and whether it can be shown to be justified).

You have just completed a Representation Form for DEV5 Retail and Leisure Needs

Please select what you would you like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

PART B - Representation Form 4

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

DEV5 Retail and Leisure Needs

2. What does your comment relate to? Please select one option.

A specific policy sub-number (s)

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Policy DEV5 part 7

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant		X
Sound		X
Compliant with the Duty to Co-operate	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

The NPPF sets out that the default threshold for impact assessment should be 2500 sq m unless a lower locally set standard can be justifiably imposed. Policy PV5 from the adopted Plan (2014 Core Strategy) set that threshold at 500 sq m in the prism of impact on Warrington Town Centre. In addition, Policy SN5 adopts the same threshold in the context of other defined centres.

Whilst these thresholds were adopted as part of the 2014 Core Strategy they were subject to unresolved objections. We see no evidence within the 2021 Retail Study or other evidence base material to sustain why this policy is necessary and justified.

By way of context, it is worth remembering that the derivation of the 2500m sq m floorspace threshold in the NPPF (which arrived with PPG6) was a response to the growth of larger stores that could genuinely impact shopping patterns. In the context of food shopping, the 2500 sq m threshold triggered the definition of food superstore and in terms of scale these would typically be directed towards higher-tier centres.

Put simply, the threshold was not geared to the typical size of the existing units in a centre, but rather to the scale of the retail offer that would be necessary to genuinely impact upon the ongoing vitality of those centres.

Through revisions to national policy and changes in shopping offer, it has been noted that in some instances that retail units that would fall below that 2500 sq m threshold could genuinely impact shopping patterns especially if the centre demonstrated signs of vulnerability. However, these locally based thresholds must be properly justified. Our view remains that this was never achieved in 2014 and no effort has been made to substantiate it now, let alone to evaluate whether that policy has been effective.

By way of summary, the impact thresholds that have been arrived at essentially rely upon the premise that there is an inherent vulnerability in terms of centre vitality which justifies the use of lower thresholds. The threshold which has been arrived at (500 sq m) was a compromise because the Council originally sought to utilise a threshold of 200 sq m aligned to the average size of shop units in the smaller centres.

We fundamentally disagree with the intellectual basis for arriving at these thresholds. The thread of the Council's argument is that health checks clarify that most units in the lower order centres are relatively small and that by consequence of the mantra of "like competes with like" then it would be reasonable to impose controls such that any proposals for units which could "compete" should be required to provide retail impact assessments. This is completely absent of the logic which is that floorspace thresholds are needed to consistently apply a requirement for analysis where a development proposal could support a format that provides a shopping offer that could genuinely impact shopping patterns.

We do not seek to argue that there is no case for a lower locally set threshold and can see that popular formats including the food discounters (such as LIDL and Aldi) can provide a compelling food shopping offer in units which fall below the NPPF threshold. As such, evidence could be compiled to underpin a locally set threshold but it would need to be aligned to a consideration of a format that would genuinely impact vitality.

Regarding convenience retailing, it does not appear realistic that a unit of 501m² (which would only just accommodate a Tesco Express format) would create a material extent of impact to a town centre which would typically have a food retail offer anchored by a food superstore and/or a food discounter.

Certainly in that context, there is no reasonable basis to impose a threshold of 500 sq m for proposals for retail development outside defined town centres. It could be the case that an argument can be created to identify a locally imposed threshold but at this point there is no credible evidence-based argument to do so. It is not for the Representor to demonstrate what should be an alternative threshold, but rather it is the duty of the LPA and if unable to do so then the Plan should revert to the thresholds set out within the NPPF.

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

If a floorspace threshold is to be inserted into DEV5 part 7 then it needs to be properly justified. If the Council is unable to do so, then part 7 should be deleted.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

Yes, I wish to participate at the oral examination

If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

To assist the Inspector to draw out the Council's case and to ensure that Policy DEV5 is properly justified.

You have just completed a Representation Form for DEV5 Retail and Leisure Needs.

Please select what you would you like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

PART B - Representation Form 5

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

DEV5 Retail and Leisure Needs

2. What does your comment relate to? Please select one option.

A specific policy sub-number (s)

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Policy DEV5 part 8 sub-section A

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant		X
Sound		X
Compliant with the Duty to Co-operate	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

Part 8 of Policy DEV5 adds a further layer of policy requirement which would appear to impede the types of change that might well be provided through the changes to the Use Classes Order or to other secondary legislation and guidance that provides the opportunity for flexibility to support the vitality of town centres.

It is unclear from review of Policy DEV5 part 8 whether this is to be applied without geographic discretion or whether it would form part of an impact assessment that would be otherwise sought through part 7. As written, the policy is imprecise and appears inconsistent with the direction of travel of Government planning policy and related legislation. This fails the test of soundness and legal compliance.

5. If you answered 'Yes' to any of the options in question 3 then please give details in the box below the reasons why you support the legal compliance or soundness of the Draft Local Plan or its compliance with the duty to co-operate.

Please be as precise as possible.

We make no comments re DTC

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

We would encourage a fundamental reconsideration of Policy DEV5 part 8 sub-section A, and we feel that the best resolution is for it to be deleted.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

No, I do not wish to participate at the oral examination

You have just completed a Representation Form for DEV5 Retail and Leisure Needs.

Please select what you would you like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

PART B - Representation Form 6

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

DEV5 Retail and Leisure Needs

2. What does your comment relate to? Please select one option.

A specific paragraph number (s)

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Paragraph 4.3.9 and its cross-reference to the Retail and Leisure Study Update 2021

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant	X	
Sound		X
Compliant with the Duty to Co-operate	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

The supporting text to Policy DEV5 refers to its evidence base material, and we particularly cite the cross-reference to the 2021 Retail and Leisure Study Update at paragraph 4.3.9.

It identifies that the Update has sought to assess the extent of future need for additional retail and leisure floorspace up to the end of the Plan period and that in terms of comparison goods expenditure that:

"With regard to comparison floorspace, the Assessment concludes that existing stores in the Borough provide an oversupply and therefore have the capacity to absorb needs over the plan period."

Whilst we do not make comment on that conclusion, it is important to flag that one specific assumption that underpins the capacity analysis within the 2021 Retail and Leisure Study Update (2021 RLSU) is flawed and makes a substantive difference to how these tables should be presented.

Paragraph 4.30 of the 2021 RLSU highlights that retail commitment schemes at Junction 9 Retail Park have been omitted, stating:

"Furthermore, we have not accounted for the retail units at Junction 9 Retail Park (planning permission references 2016/29425, 2016/28791 and 2016/27464) as this too has now been implemented."

The above statement is correct in part, insofar that the floorspace approved under 2016/28791 and 2016/27464 has been built and utilised. It is also correct to say that the 2016/29425 approval is extant but this is simply by virtue of constructing the site access and none of those units have been completed or occupied. As such, these should remain as commitments and by use of the same trading density utilised for the other schemes that equates to a commitment turnover of £37.6m at 2021. This is important because the text within paragraph 4.31 identifies that (by ignoring the J9 commitment) that the need position would be marginal.

5. If you answered 'Yes' to any of the options in question 3 then please give details in the box below the reasons why you support the legal compliance or soundness of the Draft Local Plan or its compliance with the duty to co-operate.

Please be as precise as possible.

We raise no comments re DTC

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

The evidence base material should be corrected and the Local Plan text at paragraph 4.3.9 should be adjusted to more clearly set out that the need position is a consequence of approved and incomplete schemes, rather than existing trading floorspace.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

Yes, I wish to participate at the oral examination

If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

To assist the Inspector to draw out this evidence from the Council and to correct any oversights. This is important because evidence base material has not been subject of scrutiny until this point, but will be material to DM decision-making.

You have just completed a Representation Form for DEV5 Retail and Leisure Needs.

Please select what you would you like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

PART B - Representation Form 7

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

INF1 Sustainable Travel and Transport

2. What does your comment relate to? Please select one option.

Both of the above

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Policy INF1 parts 1-3 inclusive

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant	X	
Sound		X
Compliant with the Duty to Co-operate	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

The obligations laid out within Policy INF1 will inevitably provide the opportunity to mitigate transport effects consequent from new development but it will have viability implications.

The Council has published a Viability report in its evidence base which highlights that INF1 is recognised as being one that could impact on viability (paragraph 6.1 and then paragraphs 6.14-6.16). Whilst the analysis does appear to have tested 25 different typologies and sought to provide a "policy on" approach in the context of those typologies, none of this is relevant to the application of these requirements as they would be applied to a major DM application on an out-of-centre but established retail park.

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

The Viability Assessment has tested numerous typologies and these illustrate that for some uses the composite suite of obligations sought by the Plan render the development unviable. The policy should be reworded to clarify that it is only applicable in the context of typologies which have been assessed and it is demonstrated that the obligations sought do not adversely impact on deliverability.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

No, I do not wish to participate at the oral examination

You have just completed a Representation Form for INF1 Sustainable Travel and Transport.

Please select what you would you like to do now?

Complete another Representation Form on a different policy or part of the plan (**Part B**)

1. To which part of the Local Plan does this representation relate?

From the drop down list please select one option.

ENV7 Renewable and Low Carbon Energy Development

2. What does your comment relate to? Please select one option.

A specific policy sub-number (s)

If a paragraph or policy sub-number then please use the box below to list. (For example - Policy MD2.1 part 3 or paragraph 10.2.13 etc as applicable).

Policy ENV7 part 4

3. Do you consider the Draft Local Plan to be: Please select one option in each row.

	Yes	No
Legally Compliant	X	
Sound		X
Compliant with the Duty to Co-operate	X	

4. If you have answered 'No' to any of the options in the above question then please give details in the box below of why you consider the Draft Local Plan is not legally compliant or is unsound or fails to comply with the duty to co-operate.

Please be as precise as possible.

Policy ENV7 part 4 places an obligation on all major development to deliver either 10% of its energy requirement from zero/low carbon sources or to reduce carbon emissions from 10% as measured under Part L. This evidently exceeds national requirements and needs to be justified in terms of its impact upon deliverability.

The Council has published a Viability report in its evidence base which highlights that ENV7 is recognised as being one that could impact on viability (paragraph 6.1 and then paragraphs 6.35-6.39). Whilst the analysis does appear to have tested 25 different typologies and sought to provide a "policy on" approach in the context of those typologies, none of this is relevant to the application of these requirements as they would be applied to a major DM application on an out-of-centre but established retail park.

5. If you answered 'Yes' to any of the options in question 3 then please give details in the box below the reasons why you support the legal compliance or soundness of the Draft Local Plan or its compliance with the duty to co-operate.

Please be as precise as possible.

We make no comments re DTC and legal compliance.

6. Please set out what modification(s) you consider necessary to make the Draft Local Plan legally compliant or sound, having regard to the test you have identified above where this relates to soundness. (NB please note that any non-compliance with the duty to co-operate is incapable of modification at examination).

You will need to say why this modification will make the Local Plan legally compliant or sound. It would be helpful if you are able to put forward your suggested revised wording of any policy or text.

Please be as precise as possible.

The Viability Assessment has tested numerous typologies and these illustrate that for some uses the composite suite of obligations sought by the Plan render the development unviable.

The policy should be reworded to clarify that it is only applicable in the context of typologies which have been assessed and it is demonstrated that the obligations sought do not adversely impact on deliverability.

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination? Please select one option.

No, I do not wish to participate at the oral examination

You have just completed a Representation Form for ENV7 Renewable and Low Carbon Energy Development.

Please select what you would you like to do now?

Complete the final part of the form, Customer 'About You' questions and submit response **(Part C)**