

Policy 13 – Main Town Centre Uses in edge-of-centre and out-of-centre Locations:

ID	Organisation
Duty to Co-operate / Interest Groups	
6053	The British Land Company Plc (Represented by WYG)
6901	Henderson UK Retail Warehouse Fund (Represented by Burnett Planning)

Policy 14 Centre of Neighbourhood Importance – No representations received

Broxtowe Part 2 Local Plan



Broxtowe
Borough
COUNCIL

Agent

Miss

Please provide your client's name	The British Land Company Plc
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Your Details

Title	■ ■ () ■ ■
Name	■■■■■■■■■■
Organisation (if responding on behalf of the organisation)	WYG
Address	■■■■■■■■■■ ■■■■■■■■■■ ■■■■■■■■■■
Postcode	■■■■■■
Tel. Number	■■■■■■■■■■
E-mail address	■■■■■■■■■■

Comments should be received by 5.00pm on Friday 3rd November 2017

If you wish to comment on several policies, paragraphs, or sites, please use a separate form for each representation.

If you would like to be contacted by the Planning Policy Team regarding future consultations.

Please tick here

Please help us save money and the environment by providing an e-mail address that correspondence can be sent to: ■■■■■■■■■■

For more information including an **online response** form please visit:

www.broxtowe.gov.uk/part2localplan

Data Protection - The comment(s) you submit on the Local Development Framework (LDF) will be used in the plan process and may be in use for the lifetime of the LDF in accordance with the Data Protection Act 1998. The information will be analysed and the Council will consider issues raised. Please note that comments cannot be treated as confidential and will be made available for public inspection. All representations can be viewed at the Council Offices.

Please return completed forms to:

Planning Policy, Legal and Planning Services, Foster Avenue, Beeston, Nottingham NG9 1AB

For more information: Tel: 0115 917 3452, 3448, 3468 or 3015 E-mail: policy@broxtowe.gov.uk

Question 1: What does your comment relate to? Please specify exactly

Document	Policy number	Page number	Policy text/ Paragraph number	
Part 2 Local Plan	Policy 1: Flood Risk			
	Policy 2: Site Allocations			
	Policy 3: Main Built up Area Site Allocations			
	Policy 4: Awwsworth Site Allocation			
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	Policy 8: Development in the Green Belt			
	Policy 9: Retention of good quality existing employment sites			
	Policy 10: Town Centre and District Centre Uses			
	Policy 11: The Square, Beeston			
	Policy 12: Edge-of-Centre A1 Retail in Eastwood			
	Policy 13: Proposals for main town centre uses in edge-of-centre and out-of-centre locations			✓
	Policy 14: Centre of Neighbourhood Importance (Chilwell Road / High Road)			
	Policy 15: Housing size, mix and choice			
	Policy 16: Gypsies and Travellers			
	Policy 17: Place-making, design and amenity			
	Policy 18: Shopfronts, signage and security measures			
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	Policy 29: Cemetery Extensions			
	Policy 30: Landscape			
	Policy 31: Biodiversity Assets			
	Policy 32: Developer Contributions			
Policies Map	✓			
Sustainability Appraisal				
Other (e.g. omission, evidence document etc.)	Broxtowe, Gedling, Nottingham & Rushcliffe Retail Study 2015 - Carter Jonas (Sept 2015)			

Question 2: What is the issue with the Local Plan?

Do you consider this paragraph or policy of the Local Plan to be: <i>(please refer to the guidance note at for an explanation of these terms)</i>		Yes	No
2.1	Legally compliant		
2.2	Compliant with the duty to co-operate		
2.3	Sound		X

Question 3: Why is the Local Plan unsound? Please only answer this question if you answered 'No' to 2.3 above

If you think this paragraph or policy of the Plan is not sound, is this because:	
It is not justified	✓
It is not effective	✓
It is not positively prepared	✓
It is not consistent with national policy	✓

Your comments

Please give details of why you consider this part of the Local Plan is not legally compliant, is unsound or does not comply with the duty to co operate. Alternatively, if you wish to support any of these aspects please provide details. Please be as precise as possible. Continue on an extra sheet if necessary.

Policy 13 (proposals for main town centre uses in edge-of-centre and out-of-centre locations)

Giltbrook Shopping Park Retail Status

Recognition of the role of Giltbrook Shopping Park

Giltbrook Shopping Park (GSP) forms an established retail destination within the Broxtowe authority area comprising of a terrace of 11 newer retail units, 5 refreshment food and drink units and 3 larger footprint retail units occupied by Ikea, Next and Decathlon. National multiples occupying the newer terrace comprise; SoFabb, Barker and Stonehouse, Laura Ashley, Harveys, Sofaworks, Mamas and Papas, Boots, SCS, TK Maxx, Wilko and Pets at Home. The park is identified in the Definitive Guide to Retail and Leisure Parks 2016 (Trevor Wood Associates) as being within the top ten ranked retail parks in the UK.

The shopping park forms a vital part of the local economy for Broxtowe and contributes favourably to the provision of jobs in the local area, employing approximately 800 people. Our client's long term vision is to ensure that the retail park remains able to respond promptly and competitively to changes in the retail market to ensure its future prosperity and economic value is maintained.

Furthermore, the NPPG (paragraph 003 Reference ID: 2b-003-20140306) requires LPAs to consider "what is the appropriate and realistic role, function and hierarchy of town centres in the area over the plan period? This will involve auditing existing centres to assess their role, vitality, viability and potential to accommodate new development and different types of development." There is no evidence of such an assessment having been carried out and we consider it is unrealistic to expect the designated centres in Broxtowe to be able to accommodate all the different types of retail development, including the requirement of certain retailers for modern larger footprint units. Furthermore, NPPG (paragraph 006 Reference ID: 2b-006-20140306) recognises that it may not be possible to accommodate all development in town centre locations and states "planning authorities should plan positively to identify the most appropriate alternative strategy for meeting the need for these main town centre uses, having

regard to the sequential and impact tests. This should ensure that any proposed main town centre uses which are not in an existing town centre are in the best locations to support the vitality and vibrancy of town centres..."

Finally, the NPPG (paragraph 011 Reference ID: 2b-011-20140306) states that "Use of the sequential test should recognise that certain main town centre uses have particular market and locational requirements which mean that they may only be accommodated in specific locations."

It is considered that the Part 2 Local Plan (and Policy 13 in particular) fails to recognise this policy position. We consider that the GSP should be recognised within Policy 13 as the most appropriate location for retail development which cannot be accommodated within or on the edge of designated centres in order to address the above policy guidance.

Notwithstanding the importance of GSP to the local economy and the provision of retail services to the local area, including the need to travel to other retail destinations further afield, the strategy being pursued by the Council in the Part 2 Local Plan demonstrates a clear bias against future development at GSP due to the unsubstantiated assumption that development at GSP has/will result in significant adverse impact on the established town centres. No evidence of this is provided in the Part 2 Local Plan or the retail evidence base. The surrounding district centres (i.e. Eastwood and Kimberley) provide an entirely different function to the shopping park, servicing the day to day needs of the local communities and providing no opportunities for large footplate national multiple requirements.

The current form of the local plan is therefore deemed to be 'unsound' based in its failure to recognise the shopping park as an established retail destination and to provide a clear direction for existing and prospective occupiers. To overlook the need for the retail park to continue to grow and prosper is likely to have significant negative implications on the local economy and future employment opportunities in the local area.

The Assessment of Impact

Policy 13 relates to the development of edge/out of centre sites. It is considered that the current wording is unsuitable and places unreasonable barriers on future development opportunities. Policy 13 indicates; "1. Permission will be granted for retail, leisure, office or food and drink uses in edge of centre and out of centre locations providing; (a) It does not result in a unit of 500 square metres gross floorspace or more...". It continues to state that; "2. Impact assessments will be required for all edge of centre and out of centre retail, leisure, office or food and drink uses proposals of 500 square metres gross or more". In addition, Paragraph 13.7 indicates; "...that this threshold should apply to changes of use and variations of conditions".

The NPPF requires Local Plan strategies, which must include the setting of local impact thresholds, are suitably justified by proportionate evidence base (paragraph 182). This is fundamentally not the case in this instance. The given justification within the 2015 Carter Jonas Retail Study for the imposition of the 500 sqm gross impact assessment threshold, as set out at paragraph 16.33 merely states; "While the health check assessment confirms that the Borough's main centres are performing well, a restricted floorspace threshold can help to direct future retail investment to the town, district and local centres". In the absence of any substantive justification and in accordance with paragraph 26 of the NPPF, it is considered that impact assessments for main town centre uses should be required only for proposals 2,500 sqm and above.

Furthermore, we reiterate our position previously made on behalf of our client that the Council's continued suggestion that Eastwood is "underperforming" is unsubstantiated (LDP para 13.2). Our view is that the district centre remains vital and viable when compared against key performance indicators (i.e. those listed at NPPG paragraph 005 Reference ID: 2b-005-20140306), as demonstrated by recent town centre survey findings and a thorough analysis of the town's operations over the period since the opening of the GSP. The Council's Retail Study provides a distinct lack of evidence to counter our findings to legitimise this claim and to demonstrate that the district centre is not vital and viable. Furthermore, the Council's own Town Centre Occupancy Rates published for Eastwood clearly supports our position highlighting occupancy rates for ground floor and leisure units stood at 92% (Sept 2017) when compared against a national vacancy rate of 88.8%. Furthermore, this occupancy rate has seen a steady increase since 2014(1) rising from 89% for that year.

In view of the above, it is considered that the plan is not currently 'sound' on the basis of its unjustified impact threshold and continued assertions about the health of Eastwood. As such, it is suggested that any future policy wording should be altered to ensure the threshold is in line with national policy i.e. 2,500 sqm and that reasoned justification (and any future policies) provide an accurate reflection of the health of Eastwood.

The Assessment of Need

As drafted, Policy 13 indicates that planning permission will be granted for retail, leisure, office or food and drink uses providing that, amongst other things; "...b) It is in an area of deficiency and meets local needs...". The reference to 'need' in Policy 13 is not compliant with the NPPF as this particular retail test no longer forms a requirement for new floorspace. The inclusion of this test fails to accord with national policy, whilst furthermore it is unjustified and does not reflect a positive approach to preparation of the plan. In view of this the reference to local 'need' within Policy 13 should be removed.

The Sequential Test

Paragraph 24 of the NPPF indicates that LPAs should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. Although there is no need to restate the NPPF, it is considered local policy should at the very least refer to the requirement to satisfy the sequential test. Our client objects to the current failure to identify the requirement for application of the sequential test in Policy 13 in line with paragraph 24 of the NPPF and various NPPG paras including paragraph 009 Reference ID: 2b-009-20140306: "Local Plans should contain policies to apply the sequential test to proposals for main town centre uses that may come forward outside the sites or locations allocated in the Local Plan."

Other points

Finally, it is considered worthwhile flagging the point that reasoned justification paragraph 13.9 states; "At the 'Topics Workshops' there was general support for a policy restricting out-of-centre development". We are not aware of any attempt to involve our client within these topic workshops, which is considered to be a significant oversight given the substantial contribution GSP provides to the local economy. It is not considered such workshops provide a balanced and fair reflection of all views relating to the retail sector in Broxtowe and further consultation with key owner/operations should take place going forward.

Question 4: Modifications sought

Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound. You will need to say why this modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible. Continue on an extra sheet if necessary.

Question 4 Modifications Sought

Policy 13 (Proposals for main town centre uses in edge-of-centre and out-of-centre locations)

"1. Permission will be granted for retail, leisure, office or food and drink uses in edge-of-centre and out-of-centre locations providing;

a) ~~it does not result in a unit of 500 square metres gross floorspace or more;~~ the location is acceptable in sequential terms in line with national planning policy and provides suitable consideration of whether the proposals could be accommodated within Giltbrook Retail Park as an identified key retail park.

b) ~~It is in an area of deficiency and meets local needs, including that generated by major new housing development;~~ and

c) ~~b) Such a use does not result in a significant adverse impact on the vitality and viability of any nearby centre taking account of both extant permissions and the cumulative effect of previous increases in floorspace in edge-of-centre and out-of-centre locations;~~ and

2. Impact assessments will be required for all edge-of-centre and out-of-centre retail, leisure, office or food and drink uses proposals of 500 2,500 square metres gross or more".

Secondly, we request that Giltbrook Retail Park is identified on the future policies map as a 'key retail park' in line with the changes to Policy 13.

Please note your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested modification, as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage. **After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he/she identifies for examination.**

Question 5: Public Examination Attendance

If your representation is seeking a modification, do you consider it necessary to participate at the public examination?

Yes, I wish to participate at the public examination

X

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

If you wish to participate at the public examination, please outline why you consider this to be necessary

It is considered the retail and related matters in respect of Giltbrook Retail Park requires our attendance at the Part 2 Local Plan Examination in person.

Please note the Inspector will determine the most appropriate procedure to adopt to hear those who have indicated that they wish to participate at the public examination.

Guidance Note:

Please complete a **separate form** for **each representation** you wish to make.

'Legally Compliant':

If your response relates to **the way in which the plan has been prepared**, then this is likely to relate to whether it or not it is '**Legally Compliant**'. To be 'Legally Compliant', the Local Plan has to be prepared in accordance within the 'Duty to Cooperate' and legal and procedural requirements. These are set out by legislation in the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). If you think that we have not met the legal requirement in the preparation of the Local Plan, please use the response form to tell us what we have not done or what we have done incorrectly.

'Compliant with the Duty to Co-operate':

If your response relates to **the way in which we have worked with other authorities** then this is likely to relate to the '**Duty to Co-operate**'.

The 'Duty to Co-operate' places a legal duty on Local Planning Authorities, County Councils and certain public bodies to engage constructively, actively, and on an on-going basis, to maximise the effectiveness of Local Plan preparation in the context of strategic cross-boundary matters. The 'Duty to Co-operate' is not a duty to agree. However, Local Planning Authorities should make every effort to secure the necessary co-operation on strategic cross-boundary matters before they submit their Local Plan for examination.

'Sound'

If your response is about the **content** of the Local Plan and the strategy it adopts, then it is likely to relate to whether or not the Local Plan is '**Sound**'.

To meet the 'Test of Soundness', the independent Planning Inspector is required to consider whether or not our Local Plan is '**justified**', '**effective**', has been '**positively prepared**', and is '**consistent with national policy**'. You may wish to consider the following before making a representation on the 'Soundness' of our Local Plan:

- '**Justified**': This means that the Local Plan is based upon a robust and credible evidence base. If you think that the evidence doesn't support the choice made in our Local Plan, or there are realistic alternatives, then your comments may relate to whether or not it is 'justified'.
- '**Effective**': This means that the Local Plan will deliver what it sets out to. If you think that what we are proposing in the Local Plan is not deliverable, then your comments may relate to whether or not our Local Plan is 'effective'.
- '**Positively Prepared**': This means the Local Plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.
- '**Consistent with National Policy**': Do you consider that our Local Plan accords with the National Planning Policy Framework (NPPF) and other policies, or includes clear and convincing reasons for doing something different?

For further guidance or assistance, please contact the **Planning Policy Team** on **0115 917 3452** or by emailing **policy@broxtowe.gov.uk**.

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	Policy 12: Edge-of-Centre A1 Retail in Eastwood		
	Policy 13: Proposals for main town centre uses in edge-of-centre and out-of-centre locations	102 - 103	Paras 13.5 - 13.6
	Policy 14: Centre of Neighbourhood Importance (Chilwell Road / High Road)		
	Policy 15: Housing size, mix and choice		
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2.3	Sound		X

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It is not justified	X
It is not effective	X
It is not positively prepared	X
It is not consistent with national policy	X

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Please give details of why you consider this part of the Local Plan is not legally compliant, is unsound or does not comply with the duty to co operate. Alternatively, if you wish to support any of these aspects please provide details. Please be as precise as possible. Continue on an extra sheet if necessary.

see attached sheet

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Delete Para 13.5 and 13.6. See Comments for why this is necessary to make the Plan sound

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

X

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Comments on Paragraph 13.5 and 13.6

Paragraph 13.5 is not positively prepared because contrary to what is stated, the 2015 Retail Study does not clearly indicate that growth of out of centre retailing has limited the potential for Broxtowe's centres to grow and improve.

The 2015 Study attributes some identified comparison goods capacity to three "*commitments*" at Giltbrook Retail Park (paras 10.48 – 10.50 of the 2015 Study refer) as part of a basic quantitative modelling exercise. This does not justify the negative, inaccurate and generalised comment in paragraph 13.5 which implies that "*growth*" in "*out-of-centre retailing*" generally has reduced the potential for Broxtowe's centres to grow and improve.

As evidenced by the assessment of Beeston town centre's health at paragraphs 7.8 – 7.12 of the 2015 Study that town centre is vital and viable and is continuing to grow and improve in tandem with existing out of centre provision at Chilwell Retail Park for example which has also experienced qualitative improvements in recent years, has helped to meet retail needs in accordance with retail impact and sequential tests and has supported new investment and job creation in the Borough.

Paragraph 13.6 is unjustified. The 2015 Study does no more than reflect the NPPF policy and Aligned Core Strategy Policy 6 that town centres should be the first preference for accommodating retail development subject to suitable sites being available.

There is no need for the Plan to reference the 2015 Study in paragraphs 13.5 and 13.6 as Aligned Core Strategy Policy 6 sets out the town centres policy approach, and paragraph 13.7 alone provides sufficient reference to the evidence base that the LPA is relying on to justify the proposed locally set floorspace threshold [see our separate representations on this under Policy 13]. If additional commentary is to be retained relating to the 2015 Study it should be redrafted to accurately reflect what the Study actually says and means, including recognition of the positive health of Beeston town centre for example.

Retaining the current wording at paragraphs 13.5 and 13.6 would imply an unjustified negative policy approach to out of centre retailing generally which is not consistent with the NPPF or the Aligned Core Strategy.

Burnett Planning
3 November 2017

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It is not effective	X
It is not positively prepared	X
It is not consistent with national policy	X

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Question 4: Modifications sought

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Policy 13, Part 1 - delete. See Comments for why this is necessary to make the Plan sound

Policy 13, Part 2 - reword - "*Impact assessments will be required for all edge of centre and out of centre Class A1 retail proposals of 500sqm gross or more except for Class A1 proposals that are on the edge of or outside Beeston town centre where a 1,000sqm gross floorspace threshold will apply*". See Comments for why this is necessary to make the Plan sound

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'Legally Compliant':

If your response relates to **the way in which the plan has been prepared**, then this is likely to relate to whether it or not it is '**Legally Compliant**'. To be 'Legally Compliant', the Local Plan has to be prepared in accordance within the 'Duty to Cooperate' and legal and procedural requirements. These are set out by legislation in the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). If you think that we have not met the legal requirement in the preparation of the Local Plan, please use the response form to tell us what we have not done or what we have done incorrectly.

'Compliant with the Duty to Co-operate':

If your response relates to **the way in which we have worked with other authorities** then this is likely to relate to the '**Duty to Co-operate**'.

The 'Duty to Co-operate' places a legal duty on Local Planning Authorities, County Councils and certain public bodies to engage constructively, actively, and on an on-going basis, to maximise the effectiveness of Local Plan preparation in the context of strategic cross-boundary matters. The 'Duty to Co-operate' is not a duty to agree. However, Local Planning Authorities should make every effort to secure the necessary co-operation on strategic cross-boundary matters before they submit their Local Plan for examination.

'Sound'

If your response is about the **content** of the Local Plan and the strategy it adopts, then it is likely to relate to whether or not the Local Plan is '**Sound**'.

To meet the 'Test of Soundness', the independent Planning Inspector is required to consider whether or not our Local Plan is '**justified**', '**effective**', has been '**positively prepared**', and is '**consistent with national policy**'. You may wish to consider the following before making a representation on the 'Soundness' of our Local Plan:

- '**Justified**': This means that the Local Plan is based upon a robust and credible evidence base. If you think that the evidence doesn't support the choice made in our Local Plan, or there are realistic alternatives, then your comments may relate to whether or not it is 'justified'.
- '**Effective**': This means that the Local Plan will deliver what it sets out to. If you think that what we are proposing in the Local Plan is not deliverable, then your comments may relate to whether or not our Local Plan is 'effective'.
- '**Positively Prepared**': This means the Local Plan should be prepared based on a strategy which seeks to meet objectively assessed development and infrastructure requirements, including unmet requirements from neighbouring authorities where it is reasonable to do so and consistent with achieving sustainable development.
- '**Consistent with National Policy**': Do you consider that our Local Plan accords with the National Planning Policy Framework (NPPF) and other policies, or includes clear and convincing reasons for doing something different?

For further guidance or assistance, please contact the **Planning Policy Team** on **0115 917 3452** or by emailing **policy@broxtowe.gov.uk**.

Comments on Policy 13

The stated purpose of Policy 13 is to set the local floorspace threshold where impact assessments will be required. Part 2 of the Policy addresses this requirement. Part 1 of the Policy is therefore unnecessary.

The inclusion of Part 1 of the Policy is also unsound because: -

Part 1(b) requires proposals under 500sqm gross to be "*in an area of deficiency and meet local needs*". This introduces a test of "*need*" that proposals under 500sqm gross floorspace outside town centres would have to satisfy [as well as a vague geographical limitation on where such proposals would be supported, i.e. in "*areas of deficiency*"].

This is inconsistent with the NPPF (and Aligned Core Strategy Policy 6). The NPPF (Paragraph 27) is clear that the relevant tests when assessing applications for main town centre uses outside town centres are a retail impact test and a sequential test; and these tests should only apply to proposals that are over a locally set floorspace threshold or the default threshold of 2,500sqm.

The former PPS6 test of "*need*" was abandoned when PPS4 was published in 2009 and has not been re-introduced in the NPPF. Policy 13 Part 1(b) is therefore inconsistent with the NPPF and the Policy is unsound in subjecting proposals under 500sqm to a test of need.

Part 1(c) would subject proposals under 500sqm to a retail impact test, i.e. it requires assessment of whether a proposal would have a "*significant adverse impact*". The point of setting a local floorspace threshold for impact assessments is that proposals that fall under that threshold are too small to have a significant adverse impact and therefore no impact assessment is required. Part 1(c) would render the locally set floorspace threshold in the Policy ineffective because it would make every proposal subject to an impact assessment. As such the Policy would be unsound.

Part 2 of the Policy 13 is unsound because: -

The 500sqm threshold is not justified in respect of proposals on the edge of or out of centre relative to Beeston town centre. The 2015 Retail Study provides no robust analysis or justification for such a low threshold being applied to retail proposals outside Beeston town centre. The 2015 Retail Study (e.g. para 7.8 – 7.12) clearly identifies that Beeston town centre is a vital and viable centre and therefore retail proposals outside this centre should not be subject to the same impact floorspace threshold as the other smaller centres in Broxtowe.

An impact floorspace threshold of 1,000sqm gross applied to retail proposals on the edge of or out of centre relative to Beeston town centre would be more effective and justified.

The 2015 Retail Study presents no evidence at all to justify an impact floorspace threshold being applied to "*food and drink*" proposals outside town centres, or to "*leisure*" and "*office*" uses. These elements should be deleted from the Policy.