

Application Number	16/00887/AS	
Location	Eureka Leisure Park, Rutherford Road, Ashford, TN25 4BN	
Grid Reference	00922/44093	
Parish Council	None	
Ward	Bockhanger (Ashford)	
Application Description	Construction of an extension to the existing cinema, construction of two new restaurants and associated works.	
Applicant	Mr M Lomax, Leisure II (Ashford) Limited	
Agent	Mr B Frodsham, Indigo Planning, Swan Court, Worple Road, London, SW19 4JS	
Site Area	2.2 Hectares	
(a) 30/3R, 1S	(b) -	(c) EHM - X, SW - X, SGN - X, KHS - X, ABC (drainage) - X, KCC (heritage) - X, EA - X, ES (refuse) - X, KCOC - X, KCF - X, PBA - X, Stagecoach - X

Introduction

1. This application is reported to the Planning Committee because the application is a major development and, as such, is required under the Council's scheme of delegation to be determined by the Planning Committee.

Site and Surroundings

2. The application site is 2.2 hectares in area covering part of the Eureka Leisure Park located to the north-east of Junction 9 of the M20. Access is from the Rutherford Road roundabout where it joins Trinity Road. The site contains an existing 12 screen cinema building, a detached restaurant building currently occupied by Pizza Hut and a large amount of associated car parking. The access into the site is traffic calmed. A location plan of the site is shown in figure 1 below.

3. The remainder of the Eureka Leisure Park includes the following commercial and leisure facilities:
 - Bannatynes Health Club/Gym
 - Burger King
 - Busy Bees Nursery
 - Chiquito
 - Frankie and Benny's
 - KFC
 - Nandos
 - Travelodge
 - Subway
 - Beefeater
 - Premier inn
 - McDonalds
 - Dobbies garden centre
4. The leisure park is currently served by a total of 901 parking spaces, together with a number of cycle spaces.
5. The eastern boundary of the site (to the rear of the cinema) is demarcated by a steep embankment beyond which is the residential area of Bybrook. The south western part of the site abuts the M20 motorway and contains an open landscaped area including rough ground and a balancing pond.
6. Around half of the northern boundary is defined by the remains of an existing naturally vegetated bund and a small area of semi-natural woodland. To the north is the remainder of the Eureka Leisure Park area.
7. A footway/cycleway runs through the site and connects to Canterbury Road to the south-east and Trinity Road to the north-west. The new pedestrian footbridge across the M20 ('Eureka Skyway') now connects the site with the Warren Retail Park to the south.
8. A regular (hourly) bus service operates between Little Burton and Ashford Town Centre stopping just outside of the cinema (Stagecoach Bus E). There are also a number of frequent services that operate within a few minutes' walk of the site.



Figure 1: Site location plan

Proposal

9. Full planning permission is sought for the erection of an extension to the existing cinema, the construction of two new restaurants together with associated works including additional parking provision and a replacement bus stop and bus turning area.
10. The cinema extension would accommodate an IMAX screen with two additional auditoria. The increase in additional floor area (set out over 4 floors) would equate to 1465 square metres. The new entrance lobby would increase

the floor area by an additional 104 square metres. The proposal would increase the overall height of one end of the building by 12 metres above that of the existing cinema.

11. The smallest of the proposed new A3 restaurants (unit 13) would be in the form of an extension to the cinema building (to its south western (front) elevation) and would have a floor area of approximately 353 square metres.
12. The other proposed new A3 restaurant unit (unit 12) would take the form of a new standalone building located to the west of Pizza Hut and would be single storey in height with a floor area of approximately 495 square metres. A small outside seating/dining area is also proposed similar to others in the immediate vicinity.
13. In terms of the technical differences required for an IMAX theatre compared to a conventional movie theatre the applicant advises that the construction is significantly different. The increased resolution of an IMAX allows the audience to be much closer to the screen; typically all rows are within one screen height; conventional theatre seating runs eight to 12-screen heights. Also, the rows of seats are set at a steep angle so that the audience is facing the screen directly. A standard IMAX screen is 22 metres in width and 16.1 metres in height but can be significantly larger. The actual building size required to accommodate the screen is therefore much larger to ensure that the appropriate environment for the high quality cinema experience is created.
14. The planning application states that the extension to provide the IMAX cannot go ahead without the additional A3 restaurants as they are required to make the scheme viable with the restaurants generating revenue to offset the significant investment required for the IMAX. The applicant consequently considers that the two restaurants therefore form an 'indivisible' package with the proposed extension to the cinema.
15. The application also states that the proposed A3 floorspace would serve existing visitors to the leisure park and meet the additional localised demand generated by the IMAX development. As such the applicant states that the restaurants would therefore not compete directly with the town centre or that proposed as part of the recently approved Elwick Place cinema scheme. Further details relating to this can be found in later sections of this report (see paragraphs PR1-PR15 & SQ1-SQ12)
16. The proposals would see an additional 29 parking spaces being provided to serve the development. These would be spread throughout the existing leisure park. The additional car parking would result in the loss of some soft landscaping areas: however the trees within the site which are protected by a TPO would not be affected which is suggested to be an improvement upon previously approved schemes. The extension to the cinema would also

necessitate the existing bus stop to be moved. It is proposed that the bus stop and shelter will be relocated to the North West of the cinema and a new turning area would be provided to ensure that the bus can adequately manoeuvre.

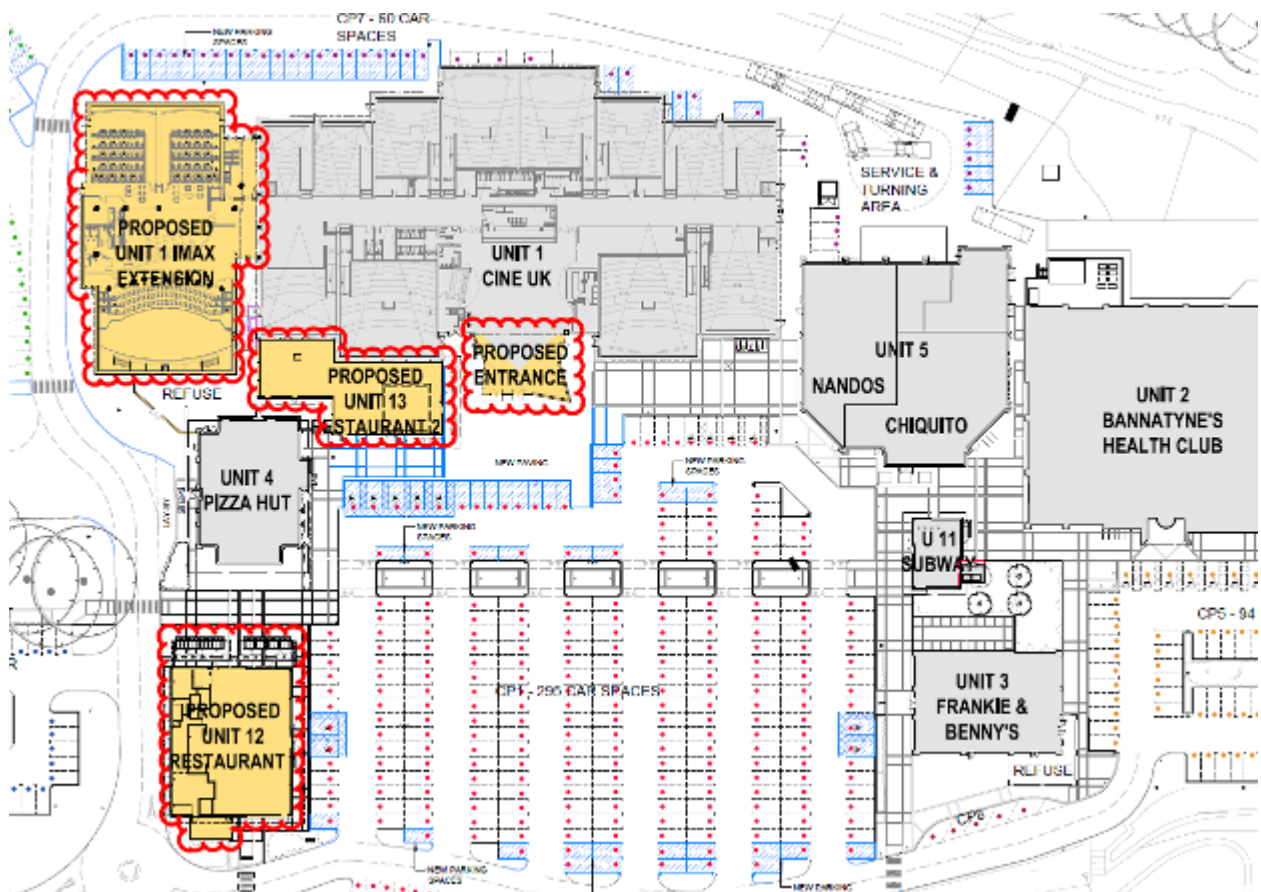


Figure 2: Proposed site plan





VIEW 01



VIEW 02



VIEW 03



VIEW 04

Supporting Documents

Design and Access Statement:

D&A1. The report states that the D&A has been prepared in relation to the proposed construction of an IMAX with 2 further auditoria extension and new front entrance to the existing multiplex cinema, two new A3 Retail Units, and related external works.

D&A2. The D&A states that the design objective is to enable the cinema extension and new front entrance plus 2 new A3 restaurant units to be accommodated on the site, in the optimum location, having regard to the overall functioning of the leisure park, vehicular and pedestrian activities, together with safety and servicing.

D&A3. The D&A states that the intention is to convey a contemporary design form using both modern materials of coated metal and curtain wall glazing together with rendered masonry and natural timber cladding.

D&A4. The D&A asserts that the development is able to achieve an overall BREEAM 'Very Good' rating.

D&A5. The D&A concludes that proposals have been carefully developed following detailed site analysis and consideration of the project specific design criteria from the client, their agents and advisors, the consultant team and statutory authorities. The proposed development will be an appropriate addition to Eureka Leisure in a location accessible for all.

Planning and Retail Statement:

PR1. The extension to provide the IMAX cannot go ahead without the restaurants as they are required to make the scheme viable with the restaurants required to generate revenue to offset the significant investment required for the IMAX. The two A3 restaurants therefore form an 'indivisible' package with the proposed IMAX extension.

PR2. In terms of impact assessment, the proposal needs to be viewed in the context of the previously approved development (10/01456/AS – for a 3 screen cinema extension and two ancillary restaurants). The extant permission could still be implemented and the proposed development would not result in a significant increase in floor area from that already approved.

PR3. The importance the Council attaches to the Elwick Place regeneration scheme that was approved on 22 December 2015 is recognised. That scheme would include a new 6 screen cinema along with a range of restaurant and café uses and a hotel but it would not include IMAX facilities. Due to the nature of an

IMAX and the specific requirements such as a large screen size and layout, the Elwick Place scheme would need to be significantly revised in order to accommodate an IMAX screen. On this basis the IMAX proposed at Eureka Leisure Park would not compete directly with the approved development at Elwick Place as it would comprise a materially different offer and would complement rather than compete with Ashford's existing and planned leisure offer.

- PR4. In terms of the proposed restaurant uses, any assessment of impact needs to be viewed in the context of the approved scheme at Eureka Leisure Park which can still be implemented. The proposed development would not result in a significant amount of additional floor area over the extant permission. As such the development would not have an adverse impact on the planned investment in Ashford Town Centre.
- PR5. Eureka Leisure Park is already an established leisure destination and the restaurant uses on the site are complimentary to the cinema offer. There is a clear demand for new A3 floorspace at the leisure park as demonstrated by the interest that the applicant has received from A3 operators. The proposed A3 floorspace would serve existing visitors to the leisure park and would meet the additional localised demand generated by the IMAX development. The restaurants would therefore not compete directly with the town centre or that proposed as part of the Elwick Place scheme.
- PR6. The Elwick Place scheme is approved and is fully expected to be delivered by Stanhope. Once a cinema operator has been secured it is considered that there will be sufficient interest from A3 operators to occupy the A3 restaurant space due to the interest and footfall that the cinema would generate in this part of the town centre. The additional floorspace at Eureka Leisure Park would therefore have no impact on the success of the Elwick Park scheme.
- PR7. It is noted that the Council has resolved to grant planning permission for the extension to the Ashford Designer Outlet Centre. The Council accepted that there would be no adverse impacts on the town centre and at Elwick Place and County Square. Given the scale of the DOC scheme and its proximity to the town centre compared to the small increase in floor area proposed at Eureka Leisure Park it is not considered that the development would impact on committed and planning investment in the town centre.
- PR8. Eureka Leisure Park is an important destination for local people and visitors. It is also an important source of employment. It functions as a separate leisure destination and does not draw people from the town centre. The development will result in substantial investment in Eureka Leisure Park and result in further job opportunities consistent with the towns economic and tourism objectives. It follows that, restaurants in leisure parks do not act as destinations in their own right with the majority of customers combining a visit as part of a trip to the

leisure elements of the park. Therefore, the need cannot logically be met elsewhere.

PR9. The proposed extension to the cinema seeks to redesign the (previously approved) 3 screen extension to form a large IMAX theatre screen. Given that this is would be provided by Cineworld and would form part of the existing cinema, it is inappropriate to consider any other locations other than the Eureka Leisure Park for this component of the scheme.

PR10. The proposed restaurants would be complimentary to the function of the leisure park operating in an ancillary manner and would draw the majority of trade from existing customers at the leisure park. The ancillary principle (i.e. linked trips rather than restaurants in leisure parks being destinations in their own right) has been accepted by the Secretary of State in a number of appeal decisions.

PR11. The proposals would satisfy relevant planning policy considerations and no other material considerations arise that would weigh against the presumption in favour of the proposed sustainable development.

PR12. The report states that the proposed development accords with the aims and objectives of relevant national and local planning policies. It would deliver sustainable economic development through the proposed investment at the Eureka Leisure Park, provide suitably designed units, and improve upon diversity and choice as well as providing more capacity to deal with demand for restaurants at the site. It will also contribute to the car parking capacity and secure positive social and economic outcomes for the local area.

PR13. The report asserts that as there are no material considerations to suggest otherwise, the presumption in favour of sustainable development should apply to this application.

PR14. The report concludes that the proposals comprise an exciting opportunity for Ashford to further enhance its leisure offer and attraction by building upon the recent planned investment at Elwick Place and Ashford DOC through the provision of a new IMAX and additional A3 uses.

Sequential & Impact Test

SQ1. The NPPF requires that local planning authorities apply a sequential test when considering planning applications for main town centre uses which are not in an existing centre and are not in accordance with an up to date development plan.

SQ2. The NPPF requires sequential sites be assessed for their availability and suitability, subject to flexibility and with regard to the nature of the need to be

addressed. Paragraph 11 of the PPG reiterates this and paragraph 12 introduces a further requirement, that the sequential test should recognise that certain town centre uses have particular market or locational requirements which mean that they may only be located in specific locations.

- SQ3. In relation to suitability, the scope of locations that should be assessed has been clarified through recent appeal cases. In *Tesco Stores v Dundee City Council* (2012), it was held that the definition of 'suitable' refers to a location being suitable for the development proposed by the applicant rather than suitable to accommodate the perceived need or demand the proposal is intending to meet. The legal interpretation is therefore as Lord Hope observed "the criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest in doing so". Therefore whilst viability remains an important consideration, if a site is not viable for development it follows that it cannot be considered suitable.
- SQ4. The NPPF also requires applicants and local planning authorities to demonstrate flexibility on issues such as format and scale. When considering flexibility it is important to emphasise the purpose and the context of the application. The purpose of this proposal is to provide an extension to an existing cinema along with two new restaurants to support its development. In relation to flexibility and disaggregation the Secretary of State's decision on *Rushden Lakes* (APP/G2815/V/12/2190175) confirms that the position on disaggregation stands in light of the NPPF, agreeing with the inspector's views that there is no requirement to disaggregate.
- SQ5. The meaning of 'available' (sites) has also been the subject of recent appeal decisions. The relevant guidance as to the application of this test has changed, such that the reference to 'available' including that which might become available in a reasonable timeframe no longer appears. Having regard to the fact that the thrust of the NPPF is to bring forward development without delay, so as to achieve the Government's ambitions regarding economic growth, the omission is considered to be a deliberate one. As such decision makers having regard to current policy context have concluded that sites will only be considered 'available' for the purposes of a sequential test where it is available to the applicant now.
- SQ6. The extension to the cinema is to be entirely funded by the applicant (Leisure II (Ashford) Limited). The provision of an IMAX cinema brings additional costs which are not matched by an uplift in rental or capital value from the cinema transaction alone. To enable a viable development to be delivered the additional A3 units are required as part of the scheme.
- SQ7. The IMAX would be an extension to the existing Cineworld offer. Cineworld do not operate stand-alone IMAX facilities (due to the limited IMAX product available and the need to ensure there is critical mass through additional

screens). The only suitable location for the IMAX extension is the existing Cineworld at Eureka Leisure Park. The only alternative would be to relocate the entire Cinema complex to another location, likely to be outside of the Borough as there are no other sequentially preferable sites to accommodate such a development including Elwick Place. Furthermore because the A3 units are required to pay for the significant investment on the site, it is unrealistic to consider alternative locations for these units on a completely different site as they would not serve the required purpose of generating the value needed to complete the development. In addition, given the extant demand for additional A3 floorspace at the leisure park, which would increase following the delivery of the IMAX extension, there is a need for additional A3 floorspace in this location. It is therefore considered that the only suitable site for the development is as proposed.

SQ8. The site must be able to accommodate a building approximately 20-24 metres in height with a footprint of approximately 1,200 – 1,500sqm in order to house the IMAX facility. This does not include the additional screens required to generate the critical mass and visitor numbers to ensure that the development is viable.

SQ9. The Council recently considered and approved an application (June 2016) that allows Smyths Toys to occupy a site at Ashford Retail Park. Elwick Place and ten other town centre sites capable of accommodating the floorspace required were considered in the sequential assessment submitted with that application and it was considered that none of these sites were available, suitable or viable. There have been no changes since this decision and it is therefore difficult to see how the Council could reach a different conclusion in respect of the current application.

SQ10. Elwick Place – The height of the cinema approved at Elwick Place is not large enough to accommodate an IMAX screen. Moving the IMAX to Elwick Place would also result in the loss of the approved additional screens which would fundamentally alter the offer in the town centre. Elwick Place is under the control of the developer Stanhope. It is unrealistic to conclude that Leisure II (Ashford) could amend the Elwick Place scheme and pay for the construction of an IMAX for Cineworld. Furthermore, the provision of a standalone IMAX in this location would not be consistent with Cineworld's business model and would not deliver the required IMAX at Eureka Leisure Park, supported by its successful multiplex cinema offer at that site. As there is no current scheme that could accommodate the specific requirements of the IMAX at Elwick Place, the site cannot be considered to be available, suitable or viable and is therefore not sequentially preferable to the application site at Eureka Leisure Park.

SQ11. Restaurants – The seven A3 units approved at Elwick Place are not currently available. As such they are not sequentially preferable. In Savills' response to

the current application (18 July 2016) it is stated that Elwick Place phase 1 is a leisure led scheme and would be anchored by the cinema. As such it is unrealistic to assume that the development would commence without a cinema operator being on board. Therefore until a cinema operator is signed up in relation to that site the A3 units forming part of the development of that site cannot be considered deliverable or sequentially preferable.

SQ12. The proposed development at Eureka Leisure Park is just below the NPPF threshold for a retail impact assessment. The Council's latest Retail Needs and Leisure Assessment (June 2015) has been assessed and the Assessment's household survey identifies that approximately 63% of the population visit the cinema and of this the majority (89%) visit the Cineworld at Eureka Leisure Park. The analysis demonstrates the popularity of Cineworld at Eureka Leisure Park in Ashford. The results indicate that there is quantitative capacity for new cinema screens in the borough. The report concludes that the amount of additional screens that could be supported over the plan period is equivalent to one new multiplex cinema (i.e. 3 screens) and assumes that the Elwick Place cinema is implemented. Therefore based on the Council's own evidence, there is capacity to provide additional cinema screens in the borough in addition to the three screens at Eureka Leisure that have already been approved by the Council (which this scheme, if permitted, would replace). It is not considered that the proposed development at Eureka Leisure Park poses any threat to the delivery of the Elwick Place scheme. Both opportunities would enhance the leisure offer and would be key assets to Ashford and should therefore be supported by the Council.

Transport Statement:

TA1. The Transport and Access Statement states that the site is highly accessible by car given its location just off the M20 Junction 9. The site is also accessible by walking and cycling which is facilitated by a footbridge over the M20 and a cycle route that runs through the site to the east past Bybrook.

TA2. The TA states that the traffic impact of a larger scheme, (10/01456/AS for two restaurants and a three screen cinema extension), has been accepted by both ABC and the HA; therefore, the less onerous development now proposed (two restaurants and IMAX screen), by default, should also be acceptable.

TA3. The report states that the proposed development seeks to implement an additional 23 car parking spaces (29 are actually proposed) bringing the total car parking provision to 930 spaces. This level of parking is considered to represent an appropriate balance between meeting the additional demands of the proposed development and maintaining a quality environment.

TA4. The TA states that reference has been made to a parking needs survey at the existing site and the impact of the proposed development. This survey found

that when parking demand at the existing site is at a maximum, there is still capacity for a further 295 vehicles. The additional spaces means that there would be a total of 318 spaces available at peak times, which would ensure that the proposed development has sufficient capacity to meet additional parking demand associated with the proposed restaurants and IMAX cinema.

TA5. The report states that the proposed development is consistent with government principles and aspirations set out in local policy documents and the National Planning Policy Framework, which states that:

- June 2016: '*development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe*' (2012, para. 32).

TA6. The TA concludes that it has demonstrated that the proposed development would have sufficient parking provision to accommodate the anticipated demand. Therefore, there is no reason why it should be refused on transport grounds.

Flood Risk and Drainage Strategy

FRA1. The report states that in addition to the betterment provided by the sub-base replacement system within the car parks, it is understood that the areas of soft landscaping at the Eureka Leisure Park development were not considered in the original design for the pond serving the whole development. Therefore, the original attenuation pond is most probably designed to attenuate the surface water run-off for 100% of the development area.

FRA2. The report concludes that by providing attenuation designed to accommodate flows generated up to the 1 in 100 year event with a 40% allowance for climate change the strategy is considered to represent a robust design against flooding.

Planning History

The most recent and relevant planning history is detailed below:

- | | |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 98/00309/AS | Full planning permission granted for the erection of a multiplex cinema, bowling alley/nightclub, 2 drive-thru restaurants, 3 restaurants and a public house, together with associated car parking, servicing, landscaping and access (application b). |
| 06/02242/AS | Full planning permission granted for the provision of a 3 screen cinema extension and 2 ancillary restaurants. |
| 08/00343/AS | Application to remove condition 03 of 06/02242/AS relating to new highway works. This application was allowed on appeal. |

- 10/01456/AS** Full planning permission granted to replace the extant planning permission (06/02242/AS) in order to extend the time limit for implementation for the provision of a three screen cinema extension and two ancillary restaurants.
- 14/01495/AS** Full planning permission refused for the construction of a new restaurant (Unit 12) together with 16 parking spaces [Phase 1], and construction of a further restaurant (Unit 13) with 29 parking spaces [Phase 2] and associated works. Unit 12 is a relocated unit (Unit 14) approved under 10/01456/AS. An appeal was submitted against this decision but subsequently withdrawn.

Consultations

Ward Member: No comments received. The Ward Member, Councillor Powell, is a member of the Planning Committee

Environmental Health Manager - No objection.

Southern Water - No objections confirming that SW can provide Foul Sewage Disposal to service the proposed development and requires a formal application for a connection to the public sewer to be made. Southern Water further comment as follows:

"...the property is already built over an existing public sewer. If the works to be carried out will alter the existing foundation line or depth it will be necessary for the applicant to contact Southern Water.

Furthermore, due to changes in legislation that came in to force on 1st October 2011 regarding the future ownership of sewers it is possible that a sewer now deemed to be public could be crossing the above property. Therefore, should any sewer be found during construction works, an investigation of the sewer will be required to ascertain its condition, the number of properties served, and potential means of access before any further works commence on site"

The applicant is therefore advised to discuss the matter further with Southern Water. *"The planning application form makes reference to drainage using Sustainable Urban Drainage Systems (SUDS). Under current legislation and guidance SUDS rely upon facilities which are not adoptable by sewerage undertakers. Therefore, the applicant will need to ensure that arrangements exist for the long term maintenance of the SUDS facilities. It is critical that the effectiveness of these systems is maintained in perpetuity. Good management will avoid flooding from the proposed surface water system, which may result in the inundation of the foul sewerage system. Thus, where a SUDS scheme is to be implemented, the drainage details submitted to the Local Planning Authority should:*

- *Specify the responsibilities of each party for the implementation of the SUDS scheme*
- *Specify a timetable for implementation*
- *Provide a management and maintenance plan for the lifetime of the development.*

This should include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime”

Southern Water request that the applicant is advised of the following:

- A wastewater grease trap should be provided on the kitchen waste pipe or drain installed and maintained by the owner or operator of the premises.
- Land uses such as general hardstanding that may be subject to oil/petrol spillages should be drained by means of oil trap gullies or petrol/oil interceptors.

Southern Gas Networks (Scotia Gas) – No objections. SGN confirms that there is a gas main near to the application site and that appropriate precautions should be taken during construction works.

[HDSS&D Manager Comment: An informative has been suggested in line with the advice of SGN]

Kent Highways and Transportation – No objections subject to a condition/ obligation requiring the parking to be retained. Comments on the application as follows:

- Subject to the provision and permanent retention of the vehicle parking spaces shown on the submitted plans prior to the opening of the new additions – to be secured by condition.
- The comments submitted by Stagecoach in relation to the proposals layout being detrimental to their access to the site are noted. Although the roads within the site east of Trinity Road are private, it is hoped that any permission granted would not be detrimental to access to the site by sustainable means.

Ashford Borough Council Project Office (Drainage) – Initially raised an objection due to the drainage proposal being put forward being unclear / potentially unfeasible for this site.

Following the receipt of additional drainage information the objection is removed subject to a condition requiring full details of the sustainable drainage system being provided.

Highways England – No comments received.

Stagecoach – Consulted three times following receipt of comments and amended plans. Initially objected to the scheme but following the receipt of amended plans detailing a proposed replacement bus stop and suitable bus turning area these objections have been withdrawn. Request that additional signage directing customers to the bus stop would be beneficial.

[HDSS&D Manager Comment: A condition has been suggested to incorporate additional signage at the leisure park in line with these comments]

Kent County Council (Archaeology) – No comments received

Environment Agency – No comments received.

Environmental Services (Refuse) – No comments received.

Kent Invicta Chamber of Commerce – No comments received.

Kennington Community Forum – No comments received.

Peter Brett Associates (Commissioned by the Council to provide expert advice on the sequential test and impact assessment elements of the proposal) – Comment as follows:

“PBA have carefully reviewed the case put forward by the applicant in respect of the principle of the cinema and restaurant uses proposed at ELP, particularly with reference to Elwick Place as a potentially competing development in a sequentially preferable site. Without any planning obligations that make the development acceptable, PBA’s advice is that the sequential test is failed due to the presence of Elwick Place as a suitable and available alternative site and therefore the application should be refused unless any other material considerations outweigh the failure of this test. Furthermore, there is a concern over an impact on planned and committed private and public sector investment, which weighs against the scheme in the planning balance.

However, PBA recognise that the scheme is an extension to an existing leisure park and it appears would bring the added benefit of an IMAX screen to Ashford for the first time. Furthermore, there are potential planning obligations, which could make the development acceptable. If these planning obligations are accepted by the applicant, alongside a condition to ensure the IMAX screen remains as an IMAX

quality or greater, then PBA consider that the application can be approved (by the Council)."

[HDSS&D Manager Comment: My analysis on these matters and the use of planning conditions and s.106 obligations is set out in the Assessment section of this report]

Neighbours - 30 neighbours consulted: **3** letters of objection and **1** letter of support received. Comments are summarised below:

Objection comments:

- Visual impact would ruin the view from nearby residential properties.
- The cinema extension would be too high.
- Eureka Leisure Park does not need two new restaurants.
- Eureka Leisure Park is currently served by the Stagecoach 'E' bus service, which uses the bus stop and shelter at the western end of the cinema building. Buses turn in the turning circle at the north-west corner of the existing building. The future location of the bus shelter is not clear on the new plans, and the turning circle is not evident. The bus operator, Stagecoach, is not listed as a consultee. The site should continue to be served by public transport.

[HDSS&D Manager Comment: Stagecoach has subsequently been consulted on the application and their comments are detailed in the section above. The proposal is now acceptable to Stagecoach.]

Support comments:

- The development would be a welcome addition to the boutique cinema being proposed within the town centre and would give a full choice to all of the Ashford and the surrounding towns/villages residents.
- Parking will need to be considered as the current development already fills the car park to maximum on some days.

Other representations:

Savills on behalf of Stanhope PLC (developers of Elwick Place) – Comment as follows:

“The proposals for ELP will increase the size of the existing cinema and additional Class A3 (restaurants and cafes) floorspace. There is potential for the proposals to prejudice the successful delivery of Elwick Place which is a suitable, viable and available sequentially preferable site. On that basis, it is Stanhope’s contention that the proposed ELP scheme is only acceptable if it is predicated upon the occupation of Elwick Place i.e. the Council must impose a delivery mechanism which ensures that commencement (excluding enabling works) of Elwick Place Phase 1 has started before commencement of the ELP scheme. If this cannot be achieved, the proposals at ELP could have a negative impact on the planned investment at Elwick Place and would in any event fail the sequential test.”

“...There appear to be some inaccuracies in the proposed floorspace areas quotes throughout the application package and, therefore, the Council should satisfy itself of the correct figures”.

[HDSS&D Manager Comment: The increase in floor area for each part of the proposed development has been checked and the amended figures set out in the proposal section of this report agreed with the applicant].

Planning Policy

17. The Development Plan comprises the saved policies in the adopted Ashford Borough Local Plan 2000, the adopted LDF Core Strategy 2008, the adopted Ashford Town Centre Action Area Plan 2010, the Tenterden & Rural Sites DPD 2010, the Urban Sites and Infrastructure DPD 2012 and the Chilmington Green AAP 2013. On 9 June 2016 the Council approved a consultation version of the Local Plan to 2030. Consultation commenced on 15 June 2016. At present the policies in this emerging plan can be accorded little or no weight.
18. The relevant policies from the Development Plan relating to this application are as follows:-

Ashford Borough Local Plan 2000

TP6 - Cycle parking.

Local Development Framework Core Strategy 2008

CS1 – Guiding principles.

CS2 – The borough wide strategy.

CS3 – Ashford town centre.

CS10 – Sustainable design and construction.

CS19 – Development and flood risk.

CS20 - Sustainable drainage.

Ashford Town Centre Area Action Plan 2010

TC3 – Elwick Place.

Local Plan to 2030

SP1 – Strategic objectives.

SP3 – The strategic approach to economic development.

SP6 – Promoting high quality design.

EMP1 – New Employment uses.

EMP9 – Sequential assessment and impact test.

TRA3b – Parking standard for non- residential development

ENV6 – Flood risk.

ENV8 – Water quality, supply and treatment

ENV9 – Sustainable drainage

ENV11 – Sustainable design and construction – non-residential.

ENV12 – Air quality

19. The following are also material to the determination of this application:-

Supplementary Planning Guidance/Documents

Dark Skies SPD

Sustainable Design and Construction SPD

Sustainable Drainage SPD

Government Advice

National Planning Policy Framework 2012

20. Members should note that the determination must be made in accordance with the Development Plan unless material considerations indicate otherwise. A significant material consideration is the National Planning Policy Framework (NPPF). The NPPF says that less weight should be given to the policies above if they are in conflict with the NPPF.
21. The NPPF is designed to facilitate positive growth – making economic, environmental and social progress for this and future generations and delivering sustainable development without delay. The policy document holds a ‘pro-growth’ agenda. Paragraph 21 highlights some crucial points in this respect, including:
 - Investment in business should not be over-burdened by the combined requirements of planning policy expectations
 - Policies should be flexible enough to accommodate needs not anticipated in the plan and allow a rapid response to changes in economic circumstances
 - Local plans should identify priority area for economic regeneration, infrastructure provision and environmental enhancement.
22. Paragraph 23 requires that planning policies should be positive and promote competitive town centre environments. It continues that town centres are at the heart of their communities and that they should provide customer choice and a diverse retail offer and which reflect the individuality of town centres. Paragraph 24 sets out the town centre first approach which is crucial in achieving these aspirations.

National Planning Practice Guidance (NPPG)

23. The guidance contained within the NPPG states that local planning authorities should assess and plan to meet the needs of main town centre uses in full, in broadly the same way as for their housing and economic needs, adopting a ‘town centre first’ approach and taking account of specific town centre policy. In doing so, local planning authorities need to be mindful of the different rates of development in town centres compared with out of centre.
24. It sets out two key tests that should be applied when planning for town centre uses which are not in an existing town centre and which are not in accord with an up to date Local Plan – the sequential test and the impact test. These are relevant in determining individual decisions and may be useful in informing the preparation of Local Plans.

25. It may not be possible to accommodate all forecast needs in a town centre as there may be physical or other constraints which make it inappropriate to do so. In those circumstances, 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, and that no likely significant adverse impacts on existing town centres arise, as set out in paragraph 26 of the National Planning Policy Framework.
26. 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. Robust justification must be provided where this is the case, and land ownership does not provide such a justification.

Assessment

27. The main issues for consideration are:
- The principle of the development i.e. how the development fits within existing local and national planning policies in terms of use and location.
 - Visual impact and design quality
 - Impact upon residential amenity
 - Impact upon highway safety/ car parking/bus routes
 - Other issues – e.g. sustainable design and construction, flooding, SUD's.
 - Whether planning obligations are necessary
 - Appropriate conditions

The principle of the proposals i.e. how the redevelopment of the site fits within the existing local and national planning polices in terms of use and location

Context

28. The key consideration is whether the proposals are acceptable under current development plan policies and central government planning guidance in particular the justification and impact for the cinema and restaurant uses to be

located at Eureka Leisure Park rather than the town centre and the potential impact on town centre's vitality and viability. In determining the application due regard should be made to development plan policies and other material considerations which may have changed significantly since the original grant of planning permission in 2006 and 2010 and the refusal of planning permission in 2014.

29. Fallback position - Eureka Leisure Park is an existing leisure facility incorporating a 12 screen cinema together with 8 restaurant uses and other commercial outlets. The Council recognises and accepts that there is an extant permission for a cinema extension and two new additional restaurant uses (10/01456/AS). The extant permission expires on the 01 October 2016 and no pre-commencement planning conditions have been discharged. Given this, the prospect of this permission being implemented would appear unlikely and therefore whilst the extant permission remains relevant, I consider that significant weight cannot reasonably be given to it. Notwithstanding this should planning permission be granted it is recommended that a condition is used to remove the right for the applicant to implement both the extant and the current permission.
30. A further material consideration is the previously refused application for the two new restaurants at Eureka Leisure Park (14/01495/AS). This scheme, although materially different in that it did not include a cinema element, was considered to be unacceptable because the proposals failed to meet the sequential test by not being able to demonstrate that they could not be located within Ashford Town Centre. As a result there would have been a negative effect on investment in the town centre and consequently its viability and vitality where the provision of such uses would promote and contribute to its regeneration. The applicants did initially appeal against this refusal but subsequently withdrew the appeal.

Sequential Test

31. The application site is an out of centre location and therefore the sequential test must be applied in accordance with the requirements of paragraph 24 of the NPPF.
32. The Council has sought the independent advice of Peter Brett Associates (PBA) to interrogate the sequential test submitted with this application in order to determine if there are sequentially preferable sites available within the town centre.
33. PBA has advised the Council that the extent to which the current planning application satisfies the sequential test turns on two (albeit linked) issues. That being, it is necessary to consider (a) if there is sufficient robust evidence to demonstrate that the uses applied for have market and locational

requirements that they can only be reasonably located at Eureka Leisure Park and (b) if there are defensible reasons why the Elwick Place site is not available or other suitable alternatives for the uses sought within the application.

34. The applicant considers that because the cinema would be occupied by Cineworld forming part of their existing leisure offer at Eureka Leisure Park it would be inappropriate to consider any locations other than the existing site for this additional development. In relation to the Class A3 elements of the scheme the applicant similarly contends that the restaurants are ancillary to the cinema offer rather than representing destinations in their own right. PBA considers this to be an un-evidenced assertion and conclude that the restaurants would not act in an ancillary manner given that they would occupy two separate units. Whilst they appreciate that they will have a strong relationship to the existing park and the commercial reasons for bringing forward the cinema and leisure uses together is understood it is not agreed that they are strictly ancillary to the main use. As such for the locational specific argument to be accepted, the evidence needs to be robust. PBA consider that the arguments submitted by the applicant are weak suggesting that there is not a strong locational specific argument for the uses proposed. Therefore it cannot be reasonably accepted that Eureka Leisure Park is the only suitable and available location for the uses proposed and therefore the suitability and availability of Elwick Place as a sequentially superior site has to be considered.
35. Elwick Place is an allocated site within the town centre and, as such, is clearly sequentially preferable to Eureka Leisure Park. Therefore the key consideration is whether Elwick Place is suitable and available for the uses proposed in the application taking into account reasonable consideration of flexibility.
36. PBA do not agree with the applicant's approach to dismissing Elwick Place as being neither available nor suitable. Whilst the Elwick Place scheme may not meet the precise requirements for an IMAX screen, the site should not be dismissed because there is already a scheme that allows for a cinema and restaurant uses and a developer willing to bring the site forward.
37. In light of the above, the locationally specific arguments that have been made by the applicant have been carefully considered and PBA are of the view that the applicant has not made a sufficiently strong location specific argument that the only location for the proposed uses would be Eureka Leisure Park. PBA do not agree with the reasons cited by the applicant for dismissing Elwick Place as a sequentially preferable site that is available and suitable for the uses proposed. Therefore, they advise that unless the Council can be satisfied that mechanisms can be put in place that would ensure that Elwick

Place is delivered before an extension to Eureka Leisure Park then it is considered that the sequential test has failed.

Impact Test

38. Whilst there is no strict requirement under the NPPF to carry out an impact test, the floorspace proposed is very close to the NPPF floorspace threshold for an impact assessment and would be within the threshold of policy EMP9 of the draft Local Plan. Also, investment in Elwick Place as a key regeneration project for the Council is an important material consideration to consider as part of the planning balance. Therefore it is considered appropriate for the applicant to consider the impact of the proposed scheme on the town centre.
39. The key issue concerns 'the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal' as per the advice in the NPPF. PBA consider this should apply primarily to Ashford town centre and therefore the focus is the investment at Elwick Place, which incorporates both committed and planned private and public investment in the town centre.
40. The applicant's evidence is that the IMAX at Eureka Leisure Park would not compete directly with Elwick Place as it would comprise a materially different offer and that the restaurants would meet the localised demand generated by the IMAX development. Elwick Place is approved and is expected to be delivered by Stanhope and once a cinema operator is secured there will be sufficient interest to deliver the A3 uses. However, the key concern is that a cinema operator has not yet been secured.
41. PBA therefore advise that the Council consider the fact that the proposed development, if approved, would create a large cinema of over 15 screens in an out of centre location. There is a clear benefit in delivering a cinema in Ashford town centre at Elwick Place, along with the associated restaurant uses given that this would deliver regeneration and have numerous spin off benefits for the town centre. Similarly, a second cinema operator serving the town would improve consumer choice for cinema goers in the Borough and beyond. Therefore, the key to this matter is whether an operator has been signed up to the Elwick Place scheme.
42. Ultimately, there is a finite number of cinema operators that could occupy space at Elwick Place, albeit it is recognised that the Elwick Place website identifies Picturehouse as an operator (which is a cinema operator brand owned by Cineworld). But even if Picturehouse were not the eventual operator, PBA appreciate that other operators might seek to operate from Elwick Place and distinguish themselves from Eureka Leisure Park in a manner that would be commercially viable. Nevertheless, there is uncertainty in this regard and so due consideration needs to be given to how the delivery

of additional out of centre screens might frustrate the ability to attract a town centre cinema tenant at Elwick Place. Accordingly, PBA advise that without appropriate safeguards in place there is a likelihood of a significant adverse impact on planned public and private investment in the town centre.

43. The development would therefore in principle fail to comply with the requirements of Development Plan policy and Central Government guidance contained within the NPPF given that Elwick Place is available and sequentially preferable (policies CS3, SP3 and EMP9). However, there are other material considerations that in my view outweigh the failure of this planning policy/guidance test.
44. If the Council receives reassurance over the commitment of the cinema operator to Elwick Place and/or there is clear evidence that the scheme at Elwick Place is progressing with a cinema operator signed up in full knowledge of the Eureka Leisure Park proposals, then the Council could be more confident that the cinema proposals at Eureka Leisure Park would not cause a significant adverse impact on this planned 'town centre first' investment which now has the benefit of planning permission.
45. Therefore in line with the requirements of the NPPF it is necessary to consider whether there are planning obligations and/or planning conditions that can be imposed that would make a potentially unacceptable development into an acceptable one. If the Elwick Place scheme progresses to major commencement of the planning permission (rather than just the beginning of clearance works) and a cinema tenant is signed up helping deliver that major commencement, then this would effectively remove the Elwick Place site as a sequentially preferable alternative to Eureka Leisure Park. This would also go some way to limit any impact on investment, although the potential for restaurants at Eureka would remain.
46. Bearing in mind these requirements, I consider the following safeguards could be put in place to ensure adherence to the 'town centre first' planning approach and thus make the proposed development acceptable in planning terms;
 - No development to begin at Eureka Leisure Park until major works are underway at Elwick Place (i.e. to ensure that delivery of the town centre scheme is not undermined). The trigger for works being substantially underway is deemed appropriate given that it is improbable that that a cinema would be built to this specification unless there was an operator signed up to deliver it.
 - The additional A3 units at Eureka Leisure Park not to be occupied until a main contract has been let for the additional 3 cinema screens at Eureka Leisure Park and works are substantially underway (i.e. to

ensure that the A3 uses do not happen independently to the cinema extension at that site, especially given the applicant's contention that primary demand arises from those using the cinema)

- The additional A3 units shall be subject to an 'excluded brand /tenant list'. (i.e. to accord with the approach taken by the Council in respect of the extension and alterations to the Designer Outlet centre and to ensure that occupiers are not those who might be a consideration for locating at the Elwick Place Scheme).
47. I have discussed these safeguards with the applicant who has agreed to these being secured through obligations in a S106 agreement. Subject to a S106 being signed in relation to this, alongside a condition to ensure the IMAX screen remains as an IMAX quality or greater, I consider that the harm identified by the Council's advisor can be satisfactorily overcome and that the application can be recommended for approval.
48. The site is well connected with the M20 and the A28 and A20 roads located within the vicinity. Public transport links and cycle and pedestrian infrastructure provide the site with an enhanced level of sustainable transport options seeking to ensure ample opportunity is afforded to future employees and visitors to travel sustainably. The site is well connected to the town centre as a result. This is in line with Paragraph 24 of the NPPF which states that when considering edge of centre and out of centre proposals, preference should be given to accessible sites that are well connected to the town centre
49. I recognise that the proposed scheme is an extension to the existing out of centre leisure park, rather than the development of a fresh out of centre site, and would bring the added benefit of delivering an IMAX screen in Ashford for the first time. Furthermore, planning obligations, (detailed above and within Table 1), would make the development acceptable. Subject to these obligations being secured through a s.106 agreement and a planning condition to ensure the IMAX screen remains as an IMAX quality (or greater), I consider that harm identified can be appropriately mitigated.
50. As a result, the overall principle of the development is one I consider to be acceptable in planning terms subject to appropriate controls.

Visual impact and design quality

51. The architectural approach of both the extensions to the existing cinema building and the standalone A3 unit has been derived in response to the characteristics of the site and the uses they are designed for. Designing with these aspects in mind is key to the creation of buildings which are distinct and help to create a sense of place. I consider that the proposed extension would

complement and blend with the architecture of the existing design. The use of matching materials is also considered to be appropriate.

52. In relation to the surrounding context, the height of the extension would sit comfortably and would result in appropriate proportions, creating a pleasant environment to both move through but more importantly spend time in.
53. The proposed standalone restaurant unit would be of a design and scale that is in keeping with the other modern restaurant buildings located within the immediate vicinity of the site within the leisure park. This design approach is considered to be both appropriate and acceptable. The proposed materials would be of a high quality and are acceptable.
54. The visual impact of the additional car parking would not be significant due to the new spaces being dispersed throughout the existing parking areas. Whilst it is acknowledged that some areas of soft landscaping would be lost to accommodate some of these spaces, the overall impact would not be significant and areas of soft landscaping would be retained to the visual benefit of the site.
55. In light of the above I am satisfied that policy CS9(a) is addressed by the proposals.

Impact upon residential amenity

56. The proposed extension to the cinema and the new restaurants would be separated from the nearest residential properties by over 80 metres and a steep embankment. I am satisfied that the distances involved are such that noise generation from the leisure uses would not give rise to significant harm to residential amenity given the totality of the surrounding environment.

Impact upon highway safety/ car parking/bus route

57. KCC Highways and Transportation have raised no objections relating to highway capacity and safety on both local and strategic roads. In addition they are satisfied with the level of parking provision to be provided within the site to serve the development.
58. I recognise that at peak times the carpark of Eureka Leisure Park does become extremely busy. Because the site does not include any adopted highway the effects of this are, however, contained within the site itself. In order to alleviate concerns, the applicant proposes 29 additional car parking spaces – a number of which are at the ends of aisles and close to the main entrance for those seeking parking close by with others available a short walk way - and has agreed to a planning condition relating to parking information and signage enabling customers to be directed to the various to available

parking resources within the leisure park. It is proposed that the applicant will monitor this going forward to ensure the effective operation of the parking facilities (which is in the applicant's commercial interests in terms of repeat custom).

59. The proposed development would result in the loss of the existing bus stop that is currently located to the north west of the cinema. Following detailed discussions with the applicant in consultation with Stagecoach (who operate of the Eureka Leisure Park service) amended drawings have been submitted detailing the creation of a new bus stop and turning area. This solution would enable the current service to be maintained and is capable of accommodating the largest of the buses that operate along this route. Stagecoach has confirmed satisfaction with the amended approach but has requested additional signage directing customers to the new bus stop. My recommendation therefore seeks to secure this enhancement through planning condition.

Other issues – e.g. sustainable design and construction, flooding, SUD's.

60. Flooding and surface water – With regard to drainage issues no objections have been raised by the EA or Southern Water. The Council's drainage engineer raises no objection subject to a condition requiring final fine details of a sustainable drainage system to serve the site.
61. The site lies outside of floodzones 1 and 2 and is not subject to flooding. In respect of surface water management it is also important to consider that the site is currently developed and predominantly covered in hard surfaces resulting in the existing site discharging surface water at a much higher rate than an undeveloped green field site.
62. Policies CS1, CS19 and CS20 of the Core Strategy require all development to respect the limits of the local environment, including the efficient use of natural resources and minimising downstream flood risk. I am satisfied that the surface water drainage proposals are well considered and comply with the aims of local policy.
63. Core Strategy Policy CS10, as amplified by the Council's subsequent SPD (2012 version), sets out the approach to carbon neutrality. The development will need to be constructed to meet BREEAM 'very good' with 'excellent' energy & material credits, 'maximum' water credits and 10% reduction in regulated CO2 through low and zero carbon technologies.. This is proposed to be secured through a condition with any additional carbon offsetting required safeguarded through the S106.

Whether planning obligations are necessary

64. There are a number of planning obligations considered to be necessary. These are listed below:
- a) Monitoring fee
 - b) CS10
 - c) No development to begin at Eureka Leisure Park until works are underway at Elwick Place.
 - d) The additional A3 units at Eureka Leisure Park shall not be occupied until a main contract has been let for the additional 3 cinema screens at Eureka Leisure Park and works are substantially underway (i.e. to ensure that the A3 uses do not happen independently to the cinema extension)
 - e) The additional A3 units shall be subject to an excluded list of operators.

Planning Obligations

65. Regulation 122 of the Community Infrastructure Regulations 2010 says that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:
- (a) necessary to make the development acceptable in planning terms,
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development
66. I recommend the planning obligations in Table 1 be required should the Committee resolve to grant permission. I have assessed them against Regulation 122 and for the reasons given consider they are all necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. Accordingly, they may be a reason to grant planning permission in this case.

Table 1

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
1.	<p>Development monitoring fee</p> <p>Contribution towards the Council's costs of monitoring compliance with the agreement or undertaking</p>	<p>Index linked £1000 per annum</p>	<p>Upon commencement of development.</p>	<p>Necessary in order to ensure the planning obligations are complied with.</p> <p>Directly related as only costs arising in connection with the monitoring of the development and these planning obligations are covered.</p> <p>Fairly and reasonably related in scale and kind considering the extent of the development and the obligations to be monitored</p>
2.	<p>Carbon Offsetting</p> <p>Carbon off-setting of the development towards funding carbon savings (excluding infrastructure) based on the residual carbon emissions of new builds set out in the approved energy performance</p>	<p>To be calculated using the shadow price of carbon set out in the Sustainable Design and Construction SPD.</p>	<p>Payable on practical completion</p>	<p>Necessary in order to ensure the development is carbon neutral pursuant to Core Strategy policies CS1 and CS10 (C), the Sustainable Design and Construction SPD and guidance in the NPPF.</p> <p>Directly related as only carbon</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
	certificate and quantified over 10 years.			<p>emissions from the development of the new builds and refurbished buildings would have to be off-set.</p> <p>Fairly and reasonably related in scale and kind as off-setting would not be required in the absence of carbon emissions from the development and any payment is based on the amount of carbon dioxide to be offset.</p>
3.	No development pursuant to this Planning Permission shall be begun at Eureka Leisure Park until a main contract has been let for that part of the development consisting of the cinema and associated restaurants granted at Elwick Place (15/01195/AS) and the works are substantially underway pursuant to that contract or, in the event that there is no contract signed,	NA	Upon commencement of development	<p>Necessary in order to ensure the development at the sequentially preferable Elwick Place is implemented prior to any further development at Eureka Leisure Park ensuring a town centre first approach to development. Policies CS3 (Core Strategy) SP3 and EMP9 (draft Local Plan Reg 19 version)</p> <p>Directly related to the proposal subject of this application that has</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
	that a draft main contract together with a letter of intent to sign that contract is in place and the works are substantially underway pursuant to that contract.			<p>an impact upon the town centre without appropriate mitigation.</p> <p>Fairly and reasonably related in scale and kind as the proposal is out of centre and would have an impact on the town centre that requires mitigation.</p>
4.	The additional 2 A3 units at Eureka Leisure Park shall not be occupied until a main contract has been let for the additional 3 cinema screens at Eureka Leisure Park and works are substantially underway pursuant to that contract or, in the event that there is no contract signed, that a draft main contract together with a letter of intent to sign that contract is in place and the works are substantially underway pursuant to that contract	NA	Upon commencement of development	<p>Necessary in order to ensure that the A3 units which are required to support the viability of the cinema extension and accommodate linked trips are not built in isolation to the cinema extension.</p> <p>Directly related to the proposal subject of this application that has an impact upon the town centre without appropriate mitigation.</p> <p>Fairly and reasonably related in scale and kind as the proposal is out of centre and would have an impact on the town centre that</p>

Planning Obligation			Regulation 122 Assessment
Detail	Amount(s)	Trigger Point(s)	
			requires mitigation.
5.	The additional 2 A3 units shall not be occupied by any of the concerns listed on the attached schedule unless otherwise previously agreed in writing by the Council until all of the A3 units in the Elwick Road scheme have been fully let to occupiers who have leases of a period of no less than 3 years each.	NA	<p>Upon commencement of development</p> <p>Necessary in order to prevent significant adverse impacts of the proposal on the town centre in terms of vitality and viability taking into account the context of existing investment in floorspace capable of accommodating food and beverage units and the importance of securing favourable local conditions for future investment in the town centre supported by A3 food and beverage uses.</p> <p>Directly related due to the quantum of additional A3 food and beverage floorspace that is proposed at the application site and the town centre impact thereof if 'traders are able to relocate and trade from Eureka Leisure Park instead.</p> <p>Fairly and reasonably related in scale and kind as without the</p>

	Planning Obligation			Regulation 122 Assessment
	Detail	Amount(s)	Trigger Point(s)	
				existence of such controls the proposal would be likely to have an adverse impact on further investment in the town centre being brought forward.

Human Rights Issues

67. I have also taken into account the human rights issues relevant to this application. In my view, the “Assessment” section above and the Recommendation below represent an appropriate balance between the interests and rights of the applicant (to enjoy their land subject only to reasonable and proportionate controls by a public authority) and the interests and rights of those potentially affected by the proposal (to respect for private life and the home and peaceful enjoyment of their properties).

Working with the applicant

68. In accordance with paragraphs 186 and 187 of the NPPF, Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner as explained in the note to the applicant included in the recommendation below.

Conclusion

69. The proposal would result in investment and an improved offer at an already established leisure park within the Borough. The development would also generate employment opportunities for local people.
70. Subject to obligations and conditions the Council would be able to ensure that the planned investment and development at Elwick Place will come forward first securing the town centre first approach set out within both local and national planning policy.
71. The impact of the proposal in highway terms and car parking is acceptable subject to conditions.
72. No significant harm to the visual amenity of the surrounding area would be caused by the proposed development. The design is in keeping with the existing development at Eureka Leisure Park.
73. The impact of the proposal upon residential amenity is acceptable.
74. I consider that the recommended obligations comply with Regulation 122 of the Community Infrastructure Regulations 2010 and should therefore be sought. Furthermore, the importance of these has been discussed and is accepted by the applicant.

75. The development would comply with policy TP6 of the Ashford Borough Local Plan, policies CS1, CS2, CS10, CS19 and CS20 of the Local Development Framework Core Strategy and with policies SP1, SP6, EMP1, TRA3b, ENV6, ENV8, ENV9, ENV11 and ENV12 of the Ashford Local Plan (regulation 19 version – note this is a draft document and therefore whilst it is a material consideration it does not form part of the development plan).
76. This is an unusual case where the development would, in strict terms, fail to comply with policy CS3 of the Local Development Framework Core Strategy and policies SP3 and EMP9 of the draft Ashford Local Plan (regulation 19 version - note this is a draft document and therefore whilst it is a material consideration it does not form part of the development plan). Furthermore it would strictly fail to comply with the NPPF which requires planning policies to promote competitive town centre environments and in particular sets out the town centre first approach which is crucial in achieving these aspirations.
77. Notwithstanding this there are material considerations in the form of planning obligations which would otherwise make this unacceptable development an acceptable one in planning terms because the obligations would have the practical effect of ensuring delivery of the town centre first approach planning approach by (i) controls on when development at Eureka Leisure Park can commence pegged with major commencement works at the sequentially preferable Elwick Place, (ii) controls on when additional restaurants at Eureka Leisure Park may be occupied to ensure that delivery is alongside delivery of the additional cinema screens at the site and (iii) controls on restaurant occupiers to make sure that these are not the occupiers who would be expected to locate in a town centre scheme such as Elwick Place (thereby assisting its delivery now that planning permission is in place). Such obligations would reinforce the Council's town centre first approach and the benefits Elwick Place would have on regeneration. As a result of this any potential conflicts with the development plan can be satisfactorily addressed with obligations.
78. In light of the above, my judgement is that, on balance, the development not a departure from the development plan as a whole and therefore does not need to be advertised as such. In addition it is not required to be referred to the Secretary of State under the terms of the Town and Country Planning (Consultation) (England) Direction 2009.

Recommendation

(A) Subject to the applicant first entering into a section 106 agreement/undertaking in respect of planning obligations related to:

a. Development monitoring fee

b. Carbon off-setting

c. No development at Eureka Leisure Park being begun until a main contract has been let for that part of the development consisting of the cinema and associated restaurants granted at Elwick Place and the works are substantially underway pursuant to that contract or, in the event that there is no contract signed, that a draft main contract together with a letter of intent to sign that contract is in place and the works are substantially underway pursuant to that contract.

d. The additional A3 units at Eureka Leisure Park not being occupied until a main contract has been let for the additional 3 cinema screens at Eureka Leisure Park and works are substantially underway pursuant to that contract or, in the event that there is no contract signed, that a draft main contract together with a letter of intent to sign that contract is in place and the works are substantially underway pursuant to that contract.

e. The additional A3 units not being occupied by any of concerns on a list to be agreed with the Council (see annexe 2) unless otherwise previously agreed in writing by the Council until all of the A3 units in the Elwick Road scheme have been fully let to occupiers who have leases of a period of no less than 3 years each.

as detailed in table 1, in terms agreeable to the Head of Development Strategic Sites and Design in consultation with the Corporate Director (Law & Governance), with delegated authority to the Head of Development Strategic Sites and Design to make or approve changes to the planning obligations and planning conditions (including adding additional conditions or deleting conditions as necessary), as she sees fit.

(B) Permit

Subject to the following conditions and notes;

Time limit for implementation

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this decision.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Materials

2. Written details including source/ manufacturer, and samples of bricks, tiles and cladding materials to be used externally shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced and the development shall be carried out using the approved external materials.

Reason: In the interests of visual amenity.

Highways/parking/public transport

3. The area shown on the drawing number 0404-ST-P04 D as vehicle parking space shall be provided, surfaced and drained in accordance with details submitted to and approved in writing by the Local Planning Authority before the use is commenced or the premises occupied, and shall be retained for the use of the occupiers of, and visitors to, the development, and no permanent development, whether or not permitted by the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order), shall be carried out on that area of land so shown or in such a position as to preclude vehicular access to this reserved parking space.

Reason: Development without provision of adequate accommodation for the parking of vehicles is likely to lead to parking inconvenient to other road users

4. Prior to the first occupation of the A3 floorspace hereby approved or the first opening of any of the three new cinema screens (whichever is sooner) a travel information and monitoring plan shall have been submitted to and approved by the Local Planning Authority in writing containing the following elements:
 - (a) *a review of the effectiveness of existing information/signage directing car borne customers to available car parking resources (including any specially designed spaces) close to the cinema and associated eateries,*
 - (b) *arising from (a) above, details of any additional measures to be implemented in respect of information and signage to ensure that car borne customers have good quality information on available car parking resources and their capacity with timescales for the implementation of such additional measures at the site, and*
 - (c) *proposed future monitoring arrangements of the effectiveness of customer car parking information/signage serving the cinema and associated eateries, including a timescale for the submission of an update report to*

the Local Planning Authority and any additional measures proposed to be put in place arising from monitoring.

(d) Details and locations of additional directional signage relating to the new bus stop.

Thereafter the development shall be carried out in accordance with the approved details unless the Local Planning Authority has agreed to any other variation in writing.

Reason: In order to ensure that car borne customers are provided with good quality information and signage as to available car parking areas and their capacity close to the approved development in order to help limit unnecessary queuing and associated vehicle emissions.

5. Before the development is occupied or brought into use the new bus turning facility and stop/shelter shall be provided in accordance with details which have been previously submitted to and approved in writing by the Local Planning Authority and the turning area shall be permanently retained available for this purpose.

Reason: In the interests of improving bus connections and movement throughout the site.

Odours/plant

6. Prior to the commencement of the development details of the equipment to be installed for the suppression and dispersal of fumes/and or smells produced by cooking and food preparation (including a maintenance schedule) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

Reason: In the interests of the amenity of the area.

7. No plant/antennas or aerials shall be installed on the roof of the cinema extension hereby approved without the prior written consent of the Local Planning Authority.

Reason: In the interests of visual amenity

Landscaping

8. No development shall take place until full details of landscape works have been submitted to and approved in writing by the Local Planning Authority, and these works shall be carried out as approved. Details shall include

species of trees and shrubs, their sizes and positions. The approved landscaping scheme shall be completed within the first available planting season following the commencement of the development or as otherwise agreed in writing by the Local Planning Authority. If, within a period of five years from the date of planting, and tree or plant is removed, uprooted, destroyed or dies, another of the same species and size shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

Reason: In order to protect and enhance the amenity of the area.

Heritage/Archaeology

9. No development shall take place until the developer following on from the approved archaeological evaluation works in the archaeological watching brief received 11 August 2008 has secured the implementation of the safeguarding measures identified in the evaluation, to ensure preservation in situ of important archaeological remains and/or further archaeological investigation in accordance with the approved timetable.

Reason: To ensure appropriate assessment of the archaeological implications of any development proposals and the subsequent mitigation of adverse impacts through preservation in situ or by record.

Drainage

10. No development shall commence until plans and particulars of a sustainable drainage system (including the details below) for the disposal of the site's surface water has been submitted and approved by Ashford Borough Council.

The final drainage plan for the scheme will be approved by Ashford Borough Council to ensure that surface water runoff from the site is being dealt with appropriately and in line with Ashford Borough Council's Sustainable Drainage SPD.

Areas of the new development that are currently considered greenfield (permeable) should have a total peak runoff rate of no greater than 2l/s for all storm events and durations up to the 1:100+40% CC.

The submitted system shall comprise retention, or storage, of the surface water on-site, or within the immediate area, in a way which is appropriate to the site's location, topography, hydrogeology and hydrology.

Surface water runoff should be dealt with within the application boundary via suitable methods approved by Ashford Borough Council. Surface water network calculations is to be submitted to ensure that on site flooding does not occur on site as a result of the proposed development before the critical 1:100+40% CC storm event. Should elements of the existing surface water infrastructure be used an assessment is to be undertaken to ensure that any surface water being conveyed through the system does not cause for the capacity of the existing infrastructure to be exceeded.

The submitted system shall be designed to (i) avoid any increase in flood risk, (ii) avoid any adverse impact on water quality, (iii) achieve a reduction in the run-off rate in accordance with the Ashford Borough Council Sustainable Drainage SPD document, adopted October 2010. (iv) promote biodiversity, (v) enhance the landscape, (vi) improve public amenities, (vii) return the water to the natural drainage system as near to the source as possible and (viii) operate both during construction of the development and post-completion.

The submitted details shall include identification of the proposed discharge points from the system, a timetable for provision of the system and arrangements for future maintenance (in particular the type and frequency of maintenance and responsibility for maintenance).

The approved system shall be provided in accordance with the approved timetable. The approved system shall be maintained in accordance with the approved details and shall be retained in working order until such time as the development ceases to be in use. A plan indicating the routes flood waters will take should the site experience a rainfall event that exceeds the design capacity of the surface water drainage system, or in light of systems failure (Designing for exceedance), including any appropriate mitigation measures.

Reason: In order to reduce the impact of the development on flooding, manage run-off flow rates, protect water quality and improve biodiversity and the appearance of the development pursuant to Core Strategy Policy CS20 Sustainable Drainage.

11. All surface water drainage from parking areas and hardstanding's shall be passed through an petrol/oil interceptor designed and constructed to have a capacity and details compatible with the site being drained. Roof water shall not pass through the interceptor. Thereafter the interceptor shall be retained and maintained.

Reason: To prevent pollution of the water environment.

12. Construction of the development shall not commence until details of the proposed means of foul and surface water sewerage disposal have been

submitted to, and approved in writing by, the Local Planning Authority in consultation with Southern Water.

Reason: To ensure the adequate disposal of waste and surface water.

Use

13. The premises/site shall be used for the use hereby approved and not for any other purpose whether or not in the same use class of the Schedule to the Town and Country Planning (Use Classes) Order 2005 or any subsequent Order revoking or re-enacting that Order, or whether the alternative use is permitted by virtue of Article 3 and Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) Order 1995 or any Order revoking or re-enacting that Order.

Reason: In order to preserve the amenity of the locality.

14. The IMAX theatre hereby approved shall be fitted with an IMAX screen in accordance with the details set out within this application and shall be retained as this quality or greater unless variations have otherwise been agreed in writing by the Local Planning Authority.

Reason: To ensure the delivery of a high quality development.

Development in accordance with approved plans

15. The development shall be carried out in accordance with the plans listed in the section of this decision notice headed Plans/Documents Approved by this decision, unless otherwise agreed by the Local Planning Authority.

Reason: To ensure the development is carried out in accordance with the approval and to ensure the quality of development indicated on the approved plans is achieved in practice.

Monitoring and enforcement

16. The development shall be made available for inspection, at a reasonable time, by the local planning authority to ascertain whether a breach of planning control may have occurred on the site (e.g. as a result of departure from the plans hereby approved and/or the terms of this permission).

Reason: In the interests of ensuring the proper planning of the locality and the protection of amenity and the environment, securing high-quality development through adherence to the terms of planning approvals, and ensuring community confidence in the planning system.

Note to Applicant

1. Working with the Applicant

In accordance with paragraphs 186 and 187 of the NPPF Ashford Borough Council (ABC) takes a positive and proactive approach to development proposals focused on solutions. ABC works with applicants/agents in a positive and proactive manner by;

- offering a pre-application advice service,
- as appropriate updating applicants/agents of any issues that may arise in the processing of their application
- where possible suggesting solutions to secure a successful outcome,
- informing applicants/agents of any likely recommendation of refusal prior to a decision and,
- by adhering to the requirements of the Development Management Customer Charter.

In this instance

- the applicant/agent was updated of any issues after the initial site visit,
- was provided with pre-application advice,
- add a brief statement as to how the applicant/ agent responded to our initial contact, and if appropriate, how we dealt with the case thereafter? ie. "...the applicant/ agent responded by submitting amended plans, which were found to be acceptable and permission was granted/ the amended plans did not address all the outstanding issues, and permission was refused..."
- The applicant was provided the opportunity to submit additional information to the scheme/address issues.
- The application was dealt with/approved without delay.
- The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the committee and promote the application.

2. Informatives

Southern Water

A formal application for connection to the public sewerage system is required in order to service this development, please contact Southern Water, Sparrowgrove House Sparrowgrove, Otterbourne, Hampshire S021 2SW (Tel: 0330 303 0119) or www.southernwater.co.uk

SGN – Southern Gas Networks

SGN's consultation response to the Local Planning Authority (contained within the email of the 07 July 2016) contains an extract from the mains records of the proposed work area. This plan only shows the pipes owned by SGN in their role as a Licensed Gas Transporter (GT). Please note that privately owned gas pipes or ones owned by other GTs may be present in this area and information regarding those pipes needs to be requested from the owners. If any other pipes in the area are known they will be noted on the plans as a shaded area and/or a series of x's.

The accuracy of the information shown on this plan cannot be guaranteed. Service pipes, valves, siphons, stub connections etc. are not shown but you should look out for them in your area. Please read the information and disclaimer on these plans carefully. The information included on the plan is only valid for 28 days from the date of issue.

On the mains record you can see a low/medium/intermediate pressure gas main near the site. There should be no mechanical excavations taking place above or within 0.5m of a low/medium pressure system or above or within 3.0m of an intermediate pressure system. You should, where required confirm the position using hand dug trial holes.

A colour copy of these plans and the gas safety advice booklet enclosed should be passed to the senior person on site in order to prevent damage to plant and potential direct or consequential costs to your organisation.

Safe digging practices, in accordance with HSE publication HSG47 "Avoiding Danger from Underground Services" must be used to verify and establish the actual position of mains, pipes, services and other apparatus on site before any mechanical plant is used. It is your responsibility to ensure that this information is provided to all relevant people (direct labour or contractors) working for you on or near gas plant.

Damage to our pipes can be extremely dangerous for both your employees and the general public. The cost to repair our pipelines following direct or consequential damage will be charged to your organisation.

Please ensure that SGN are able to gain access to their pipeline throughout the duration of your operations.

If you require any further information please contact the Plant Location Team on 0800 912 1722

Background Papers

All papers referred to in this report are currently published on the Ashford Borough Council web site (www.ashford.gov.uk). Those papers relating specifically to this application may be found on the [View applications on line](#) pages under planning application reference: 16/00887/AS)

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Annex 1



Ashford Borough Council



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Annex 2

PROHIBITED FOOD AND DRINK BRANDS

Be at 1
Brew Dog
Byron
Carluccios
Chicago Rock Café
Coal
Cosmo
East Restaurants
Five Guys
Cau
GBK
Giggling Squid
Giraffe
Glendola
Gondala (ASK / Zizzi)
Gourmet Burger Kitchen
Green King (Hungry Horse)
Handmade Burger Co.
Itsu
JD Wetherspoons
JRC Global Buffet
La Tasca / La Vina
Las Iguanas
Loungers
Intertain
Mitchells and Butlers
Nandos
Prezzo PLC (Prezzo / Chimichanga)
Real China
Richoux Group PLC (Deans Diner, Villagio, Richoux, Zippers)
Ruby Tuesdays
Spur Steakhouse
Stonegate PLC
Tasty PLC — Dim T (excluding Wildwood)
TGI Fridays
The Real Greek
Tragus (Café Rouge / Strada / Bella Italia)
TRG (Frankie & Benny's / Chiquitos / Garfunkel's / Filling Station / Brunning & Price / Home Counties)
Turtle Bay
Youngs