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**STATEMENT OF CASE
LAND AT GROVEFIELD WAY,
CHELTENHAM
ON BEHALF OF HINTON GROUP
(GROVEFIELD WAY) LTD
October 2018**

**STATEMENT OF CASE
LAND AT GROVFIELD WAY, CHELTENHAM
OCTOBER 2018**

Prepared for

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1. INTRODUCTION

- 1.1. This Statement of Case (SoC) is submitted on behalf of Hinton Group (Grovefield Way) Ltd in support of their appeal against the decision of Cheltenham Borough Council (CBC) to refuse a hybrid planning application comprising:

Detailed planning permission for 5,914 sq.m of commercial office space (Use Class B1), 502 sq.m day nursery (Use Class D1), 1,742 sq.m food retail unit (Use Class A1), with associated parking, landscaping and infrastructure works.

Outline planning permission sought for the erection of 8,034 sq.m of commercial office space (Use Class B1), together with associated car parking, landscaping and infrastructure works, with all matters reserved – except access (resubmission).

- 1.2. This Statement should be read in conjunction with the accompanying draft Statement of Common Ground (SoCG). The SoCG, amongst other things, sets out the relevant planning policies from the Development Plan and the broad matters where agreement is anticipated between the Council and appellant. The appellant will seek to work with the LPA to agree a suitable list of draft planning conditions.

- 1.3. This appeal relates to a revised application which was validated on 23rd May 2018, and assigned application reference number 18/01004/FUL. Contrary to officer's firm recommendation to Permit, the application was refused by Planning Committee on 18th October 2018 for the reasons set out below:

The site has extant consent for B1 office development and is allocated for employment use (specifically B class employment or Sui Generis uses that exhibit the characteristics of traditional B class uses) within the emerging Cheltenham Plan (Pre-submission version, December 2017). The application is for a mixed use development with considerable and prominent parts of the site being given over to an A1 food retail store and a D1 day nursery.

These proposed non-B1 uses will result in a reduction in the amount of the site available for B1 office development, for which this has been allocated, along with the high quality jobs this would provide. The amount of the site given over to non-B1 uses in combination with the prominent position they would occupy on the site would result in a dilution of the character and function of the site as an employment site and represent an inappropriate balance between B1 and non B1 uses. For these reasons the proposal is considered to be contrary to policy SD1 of the Joint Core Strategy, policy EM2 of the adopted Local Plan and emerging policy EM3 of the Cheltenham Plan (Pre-submission version, December 2017).

- 1.4. A copy of the decision notice is attached at **Appendix 1**.
- 1.5. A copy of the Officers' report to committee is attached as **Appendix 2**.
- 1.6. This statement sets out the principal elements of the appellants' case which will be expanded within its Proofs of Evidence (PoE) addressing the reason for refusal in more detail as well as highlighting the benefits of the proposal.
- 1.7. The appellant contends that the appeal should be determined following an Inquiry procedure and this statement has been written on that assumption. It is relevant that appeal APP/B1605/W/18/3200395, relating to similar proposals on the same site is currently registered and under consideration with an Inquiry scheduled to commence on 8th January 2019. It is the appellant's strong request that the existing and current appeal should be co-joined in light of their similarities and fact that they relate to the same appeal site.
- 1.8. This statement of case explains the reasons as to why planning permission should be granted and how this will be expanded upon through future evidence submissions.
- 1.9. In assessing the planning considerations, the appeal proposal is assessed in the context of Section 38(6) of the Planning and Compulsory Purchase Act 2004 that requires *"Where in making any determination under the planning Acts, regard is to be had to the development plan, the determination shall be made in accordance with the Plan unless material considerations indicate otherwise."*
- 1.10. The appellants' case is set out at Section 3.0, having regard to relevant planning policy considerations contained within the adopted Development Plan and National Planning Policy Framework (the Framework), along with other relevant material considerations.

2. SITE AND SURROUNDING AREA

- 2.1 A description of the site and surrounding area is contained in the accompanying draft SoCG and submitted Planning Statement.

Relevant Planning History

- 2.2 The planning history is summarised within Section 3.0 of the statement and the accompanying SoCG.

3. THE APPEAL PROPOSAL

3.1. A full description of the appeal proposal is contained in the accompanying draft SoCG, Section 2.0 of the Planning Statement and the Design and Access Statement submitted with the planning application.

3.2. The appeal proposal consists a hybrid planning application split into two parts to reflect two development phases and to allow for appropriate timing of development on the site to take into account market factors and user requirements.

3.3. The full description of development is as follows:

Hybrid application seeking detailed planning permission for 5,914 sq.m of commercial office space (Use Class B1), 502 sq.m day nursery (Use Class D1), 1,742 sq.m food retail unit (Use Class A1), with associated parking, landscaping and infrastructure works.

Outline planning permission sought for the erection of 8,034 sq.m of commercial office space (Use Class B1), together with associated car parking, landscaping and infrastructure works, with all matters reserved – except access (resubmission).

3.4. The non-B class uses are proposed as a result of market conditions to attract office occupiers to the site and avoid a sterile business park environment. The non-B class uses account for only 14% of the total floor space proposed and are job creating uses that will support the local economy and B1 uses on site, as acknowledged within the JCS and emerging Cheltenham Plan evidence bases.

Planning History

3.5. Planning permission was granted at appeal in May 2007 [PINS Reference: APP/B1605/A/06/2015866/NWF] on the wider site at Grovefield Way for B1 industrial uses and the extension of the Arle Court Park and Ride Facility; the application subject of that appeal [LPA Reference: 05/00799/OUT] was refused by Cheltenham Borough Council in March 2006.

3.6. Following the grant of outline planning permission 05/00799/OUT, Reserved Matters approval was granted in May 2009 [LPA Reference 09/00369/REM] for details of the access road, parking and siting of the proposed buildings. A subsequent Reserved Matters application was approved [LPA Reference: 09/00720/REM] in December 2009 including details of the proposed landscape scheme and management plan, the design and appearance of 'Phase 1' and a design handbook relating to

design and appearance of remaining phases of development and boundary treatments. Further Reserved Matters approval [LPA Reference 10/00690/REM] was approved in July 2010 for the design, appearance and landscaping of 'Phase 2' of the development.

- 3.7. Notwithstanding the approval of the above reserved matters application the proposed development has not been implemented.
- 3.8. Planning permission was subsequently granted [LPA Reference: 10/00468/TIME] by Cheltenham Borough Council for an extension of time for the implementation of outline planning permission [05/00799/OUT]; granted in June 2012.
- 3.9. Following the approval of the above extension of time application, leave was requested in November 2012 and July 2013 from the High Court to challenge the legality of the permission by way of Judicial Review. Leave was denied by the Courts and no challenge proceeded.
- 3.10. Further to the above extension of time application 10/00468/TIME, and the denial of a legal challenge, the LPA granted reserved matters approval 12/01086/REM for the remaining details required from the outline approval. That application was submitted in July 2012 and approval was issued 21st August 2013.
- 3.11. On 14th March 2014 full planning permission was granted [LPA Ref: 13/01101/FUL] for the erection of a flagship BMW, Mini and Motorrad dealership including vehicle sales and servicing facilities and includes the creation of an access from Grovefield Way. The proposal comprises some 7,595sqm of sui generis employment space. The application site comprised some 1.8Ha at the north east of the Grovefield Way site referenced above.
- 3.12. In April 2014, the applicant submitted a revised application proposal [LPA Ref: 14/00656/FUL] for the erection of a flagship BMW, Mini and Motorrad dealership including vehicle sales and servicing facilities. The scheme comprised of minor amendments to the original scheme to include a revised access ramp and an additional mezzanine level for car storage. This development has been completed and the business is fully operational.
- 3.13. More recently, an application for outline planning permission (ref 14/01323/OUT) was granted by the LPA in December 2014 for the erection of up to 16,800 sq.m of B1 Office space on the application site.

3.14. The planning history at the site, in particular the existence of the extant outline planning permission 14/01323/OUT, is material to the consideration of this appeal.

3.15. Importantly and of particular relevance to this appeal, is the fact that planning permission (16/02208/FUL) was refused in December 2017 for the following:

Full planning permission for a 5,034 sq.m commercial office space (use class B1), 502 sq.m day nursery (use class D1), 1,742 sq.m supermarket food retail unit (Class A1), A 204 sq.m coffee shop, retail unit and drive-thru (use classes A1 and A3), with associated parking, landscaping and infrastructure works; and

Outline planning permission for the erection of 8,034 sq.m of commercial office space (use class B1) together with associated car parking, landscaping and infrastructure works, with all matters reserved (except access).

3.16 The application was refused on the following grounds:

1. *The site has extant consent for B1 office development and is allocated for employment use (specifically B class employment or Sui Generis uses that exhibit the characteristics of traditional B class uses) within the emerging Cheltenham Plan (Pre-submission version, December 2017). The application is for a mixed use development with a considerable and prominent part of the site being given over to non-B1 uses including a supermarket, "drive thru" coffee shop and day nursery. The proposed non B1 uses will result in a reduction in the amount of the site available for B1 office development along with the high quality jobs this would provide. The amount of the site given over to non B1 uses in combination with the prominent position they would occupy on the site would result in a dilution of the character and function of the site as a business and represent in inappropriate balance between B1 and non B1 uses. For these reasons the proposal is considered to be contrary to policy SD1 of the Joint Core Strategy, policy EM2 of the adopted Local Plan and emerging policy EM3 of the Cheltenham Plan (Pre-submission version, December 2017).*
2. *Due to the mix of uses proposed, the development would result in an increase in traffic on the surrounding road network into the evenings and at weekends in addition to the AM and PM weekday peaks. This would have an unacceptable impact upon the local road network which is already heavily used. For these reasons the proposal is considered to be contrary to policy INF1 of the Joint Core Strategy.*
3. *The proposed layout of the site results in a predominance of hardstanding and retaining structures which result a poor appearance and do not create an attractive streetscape or strong sense of place which responds to the character of this transitional location. The position of buildings including the 'Drive thru' coffee shop and supermarket, close to the edges of the site give the layout a cramped and contrived appearance exacerbated by exterior features such as the 'drive thru' lane and external yards. The proposal is therefore harmful to the surrounding area by reason of its visual impact and also fails to create a high quality business environment in this edge of town location. For these reasons the proposal is considered to be contrary to policy SD 4 of the Joint Core Strategy and CP7 of the Local Plan.*

3.17 Following refusal by the Council, an appeal was logged and accepted to proceed under Inquiry procedure. During discussions with the Council, refusal reason 2, relating to highway impact was withdrawn by the Council due to no objections being raised by the Local Highways Authority and

Highways England. Two refusal reasons currently remain, 1 and 3. As noted above, it is the appellant's firm request that both the extant appeal and current submitted appeal are co-joined.

4. PLANNING POLICY

4.1 Section 38 (6) of the Planning & Compulsory Purchase Act 2004 requires that, when making a determination on development proposals, the decision shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

4.2. The Joint Core Strategy (JCS) has now been adopted by all three local authorities (Cheltenham, Tewkesbury and Gloucester).

4.3. As such, the Development Plan for Cheltenham now includes the Joint Core Strategy (December 2017) and the remaining saved policies of the Cheltenham Borough Local Plan (CBLP) (2006). The emerging Cheltenham Plan is still in its infancy having only just been submitted for examination (as at October 2018).

4.4. Other relevant material considerations include:

- National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (PPG)

4.5. The full policy framework is set out in the accompanying Statement of Common Ground. However, key policies of relevance to this appeal are listed below as follows:

Joint Core Strategy, adopted December 2017

- Policy SD1: Employment – Except Retail Development
- Policy SD2: Retail and City/Town Centres

Saved policies of the Cheltenham Borough Local Plan (2006)

4.6. The Cheltenham Borough Local Plan was adopted in December 1997, and revised in June 2006. Several policies are still saved following adoption of the JCS until the Local Plan is replaced by policies in the new Cheltenham Plan. However, the Local Plan was prepared and adopted in accordance with the Planning and Compensation Act 1991 and not the Planning and Compulsory Purchase Act 2004. Paragraph 213 of the NPPF is therefore applicable and weight should be afforded to the relevant policies according to their consistency with the Framework. Nevertheless, policies of relevance are as follows:

- Policy CP3: Sustainable Environment

- Policy CP6: Mixed use Development
- Policy EM2: Safeguarding Employment Land
- Policy RT1: Location of Retail Development

Submission Cheltenham Plan 2018

4.7 The Cheltenham Plan is still in its infancy have only been submitted for examination in October 2018. In light of its emerging position, very limited weight should be applied to its relevant policies. EM3 is highlighted in the reason for refusal:

- Policy EM3: New Employment allocations

5. THE APPELLANT'S CASE

5.1 This section analyses the reason for refusal within the context of Section 38(6) of the Planning and Compulsory Purchase Act 2004. The arguments set out below will be expanded upon in due course by the Proof of Evidence.

5.2 The main issues as cited by the LPA on its decision notice, and as recommended by the Council's Planning Committee, can be summarised as:

1. Whether the principle of development is in conflict with policy SD1 of the adopted JCS, EM2 of the adopted Local Plan and emerging policy EM3 of the submission version of the Cheltenham Plan, as a result of the proposed mix of uses on the site and the site's proposed allocation for employment development in the emerging Cheltenham Plan.

Refusal Reason 1: Principle of Development

5.3 86% of the floorspace pursuant to the proposed development, would be for B-class employment use. Indeed, the principle of employment use at this location is established through the extant planning permission. Moreover, this provision of employment land would be entirely consistent with the development, including policies SP1 and SP2 of the JCS, which seek to provide 'at least' 192 hectares of B-class employment land.

5.4 The key issue, therefore, is not the principle of development but rather the introduction of non-B1 uses at the site, and whether these are acceptable given current Development Plan policy.

5.5 In response, the Appellant will demonstrate that there are no policies in the adopted Development Plan that actually restrict the development of the appeal site for the type of uses proposed. It will be highlighted that the appeal proposals are, in fact, in accordance with the policies of the development plan as follows:

JCS Policy SD1

5.6 It will be highlighted that Policy SD1 of the JCS (as referenced in RFR1) states that new employment-related development will be supported in certain circumstances, at locations allocated for employment uses within the Development Plan. The site is proposed to be allocated in the emerging Cheltenham Plan for employment uses, under policy EM3.

- 5.7 The appellant will demonstrate that the subsequent retail element of the proposals also accords with all relevant development plan policy, including Policy SD2 of the JCS or existing saved Local Plan Policy regarding retail development under Policy RT1, which is also now time expired.
- 5.8 Furthermore, it should be noted that Policy SD1 is entirely supportive of development, as opposed to seeking to prevent development. Thus, as a matter of interpretation, the appellant rejects the notion that the proposal could be in conflict with the policy in any event.
- 5.9 It will also be highlighted that the Employment Land Assessment update (Oct 2015) which formed part of the JCS' evidence base and that of the emerging Cheltenham Plan, highlights that employment is now considered in the broader sense and non-B class uses are still job creating and help support the growing local economy. It will be highlighted that the ELR recognises that these users are needed and that the function of the site to provide B1 users would not be undermined.
- 5.10 It will be highlighted that the submitted planning application was supported by a Retail Impact Assessment prepared by DPP Planning. That report concluded that the retail impact test contained in the NPPF was comfortably complied with. Moreover, the Council's retail consultant concluded: "the proposal is in accordance with national and local policy for retail development". The Officers' report to committee also concluded that "the impact of the development of a supermarket in this location is acceptable, in accordance with Local Plan policy RT7 and Section 7 of the NPPF".
- 5.11 It will therefore be concluded that the proposals for mixed use employment related development at the site cannot be said to conflict with the thrust of adopted Development Plan policy.

Saved Local Plan Policy EM2

- 5.12 Saved Local Plan Policy EM2 is referred to in RFR1 on the decision notice. That policy seeks to safeguard land that is currently or was last in use for employment purposes (in the B classes) unless one of the listed exception tests is met.
- 5.13 The Appellant will demonstrate that Policy EM2 is not relevant to the appeal proposals as the appeal site is not in employment use currently, and its last use was also not for employment purposes. It will be highlighted that whilst outline planning permission was granted for B class employment uses on this site since 2007, the site has not been developed for such uses to date and therefore the site cannot be considered to be currently or last in use for B class employment uses.
- 5.14 Furthermore, the Appellant will highlight that previous development at the site has moved away from purely B1 uses through the granting of planning permission on part of the site which has

extant permission for B1 uses for a BMW dealership (*sui generis* use) which has now been constructed and is in operation (App. Ref: 14/00656/FUL).

- 5.15 It will be demonstrated that, when determining the aforementioned BMW application, Officers took into account the wider definition of employment uses beyond traditional B-class uses, as described in emerging policy. When determining the BMW application Officers concluded that the commitment to retain B class uses under policy EM2 was not significantly harmed by the loss of part of the Grovefield Way site to a *Sui Generis* use which has B class characteristics and would generate jobs, given the need for growth in facilities and space for non B class employment. It is therefore contended that this policy approach equally applies to the appeal proposals. The appellant will demonstrate, with reference to the previous Officer report to committee regarding the approved BMW application, that limited weight should be afforded to this policy in the decision making process by virtue of the lack of current or previous history of B use classes on the site.
- 5.16 It will also be highlighted that the NPPF states clearly that planning decision need to reflect changes in the demand for land (para. 120) and that significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development (para. 80). Policy EM2 is inconsistent with the flexibility advocated in the NPPF and is out of date.
- 5.17 Nevertheless, should it be concluded that the site does constitute B class employment land for the purposes of this policy, the policy goes on to state that mixed use development on employment land will be permitted provided that certain criteria are met. The appellant will demonstrate that all of the criteria are met by the appeal proposals in any event and therefore the proposals do not conflict with Policy EM2.

Emerging Local Plan Policy EM3

- 5.18 This policy in fact supports the development proposal.
- 5.19 With reference to the Officer's report to committee, the appellant will demonstrate that whilst aspects of the proposed development do not fall solely within B-use classes, the proposals will sufficiently contribute to meeting the employment needs of the Borough regardless of the subservient complimentary non-B class uses proposed. It will therefore be demonstrated that the appeal proposals still achieve the aims that emerging Policy EM3 sets to achieve. It will be highlighted that this position was previously taken by officers in their committee report (dated December 2017) where it was stated that: "*the proposed development is in accordance with the three policies that were cited in the first reason for refusal including EM3*".

- 5.20 The above notwithstanding, it will be highlighted that the supporting text to emerging policy EM3 itself highlights that the site's allocation 'provides an opportunity for the establishment of a modern business environment at an important gateway location.' (*Our emphasis*). This was a point also acknowledged in the Officer's report to committee.
- 5.21 Additionally, it will also be highlighted that the Economy Background Paper (2018) which forms part of the evidence base to the emerging Cheltenham Plan highlights the importance of employment being considered in a wider sense than traditional B-class uses. It acknowledges at para 3.26 that uses such as 'retail, hotels, tourism, leisure facilities, education, health services and residential care' can also be 'large employment providers'. Para 3.27 also goes on to state that "*the economy will therefore need a flexible supply of land that is responsive to the changing needs of the market and, in terms of the Cheltenham Plan it falls to the suite of economic policies to provide a sufficiently positive and pro-active steer.*" (Our emphasis)
- 5.31 The appellants' primary position is that the development proposal conforms with the adopted Development Plan and there are no material considerations indicating the development should be refused. Accordingly, in accordance with section 38(6) of the Planning and Compulsory Act 2004 and the first limb for decision taking in paragraph 14 of the NPPF, permission ought to be granted.

6.0. DOCUMENTS TO WHICH THE APPELLANT WILL REFER

- 6.1. In addition to relevant national planning policy and practice guidance the appellant will make reference to the following documents (in addition to those referred to above and in the decision notice):-

1. The Assessment of Cheltenham, Gloucester and Tewkesbury Employment Land Reviews, Final Report, March 2011, prepared by Nathaniel Lichfield and Partners on behalf of Cheltenham Borough Council, Tewkesbury Borough Council and Gloucester City Council.
 2. Employment Land Assessment Update October 2015, prepared by Nathaniel Lichfield and Partners on behalf of Cheltenham Borough Council, Tewkesbury Borough Council and Gloucester City Council.
 2. Economy Background Paper to emerging The Cheltenham Plan 2011-2031 January 2018.
 2. Appeal decision APP/B1605/A/06/2015866/NWF, pertaining the development of a proposed B1 office park and extension of the Arle Court Park and Ride facility.
 3. Officer's report to committee for application 13/01101/FUL, pertaining the erection of a flagship BMW, Mini and Motorrad dealership including vehicle sales and servicing facilities and will include the creation of an access from Grovefield Way.
 4. Officer's report to committee for application 16/02208/FUL, pertaining the previous refused hybrid application for a mixed use employment led development office and retail uses.
- 6.2 The appellant reserved the right to refer to documents in addition to the above as may be required during the appeal.

APPENDIX 1

Decision Notice

APPENDIX 2

Officers' Report to Committee



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