



TOWN AND COUNTRY PLANNING ACT 1990

S. 78 PLANNING APPEALS

APPEALS BY Hinton Properties (Grovefield Way) Ltd

SITE: Land off Grovefield Way, The Reddings, Cheltenham, GL51 6RF

APPEAL 1 - APP/B1605/W/18/3200395

Hybrid application seeking detailed planning permission for a 5,034 sq.m of commercial office space (Use Class B1), 502 sq.m day nursery (Use Class D1), 1,742 sq.m Aldi food retail unit (Use Class A1), a 204 sq.m Costa Coffee retail unit and drive-thru (Use Classes A1 and A3), 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).

APPEAL 2 - APP/B1605/W/18/3214761

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).

PROOF OF EVIDENCE

of

MR. PHILIP STADDON

ON BEHALF OF

Cheltenham Borough Council (The Local Planning Authority)

NOVEMBER 2018

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APPENDIX 4 - Plan showing land areas of components of the 2007 appeal site

APPENDIX 5 - Nathaniel Lichfield and Partners (NLP) Employment Land Assessment Update - October 2015

1.0 PROFESSIONAL BACKGROUND

- 1.1 My name is Philip Staddon. I hold a Bachelor of Science Degree and a Post Graduate Diploma in Town Planning from the University of Wales, Cardiff. I also hold a Masters of Business Administration (MBA) with distinction from the University of Gloucestershire. I have been a Member of the Royal Town Planning Institute (MRTPI) since 1989. I have over 30 years' experience as a Planning professional, gained in both the public and private sectors.
- 1.2 In the public sector, I worked at a range of local authorities including Swansea (1985 - 86), Derby (1987 - 1999) and Gloucester (1999 - 2013), undertaking roles including Planning case officer, Team Leader, Development Control Manager, Assistant Director and Corporate Director.
- 1.3 Since 2013, I have been the managing director of the specialist planning consultancy, PJS Development Solutions Ltd. This business provides a wide range of expert advice, support and project management on complex planning, development and regeneration schemes and matters. The company provides services to private and public sector clients, including landowners, employers, developers, Local Planning Authorities and Parish Councils.
- 1.4 I am also employed by the States of Jersey as an expert Planning Inspector and regularly undertake Hearings and Public Inquiries on complex and often contentious cases.
- 1.5 As a result of my different and varied professional roles, I have a wide range of experience in all aspects of Town Planning, including development management, planning strategy and policy, economic development and urban design.
- 1.6 The evidence that I have prepared and provided for these appeals is true and has been prepared by me alone, and is given in accordance with the guidance of my professional institution, The Royal Town Planning Institute. I can confirm that the opinions expressed in this Proof are true and professional opinions.

2.0 INTRODUCTION AND SCOPE OF EVIDENCE

- 2.1 This Proof of Evidence has been prepared on behalf of Cheltenham Borough Council, the Local Planning Authority (LPA). It relates to two Planning appeals made by Hinton Properties (Grovefield Way) Ltd pursuant to Section 78 of the Town and Country Planning Act 1990.
- 2.2 The Appeal follows the LPA's refusal to grant planning permission for two planning applications. Both applications were 'hybrid' applications, including 'full' and 'outline' elements for schemes involving a large food store, office development and other uses.
- 2.3 The first application scheme comprised a discount foodstore, a children's day nursery, a 'drive-thru' coffee shop and office buildings. It was refused by the LPA's Planning Committee in December 2017.
- 2.4 The second application comprised a similar scheme which, in essence, removed the coffee shop unit and replaced it with office space. It was refused by the LPA's Planning Committee in October 2018.
- 2.5 The LPA's objections to the schemes relate principally to the extent of 'non-B class' uses on this employment site and related concerns about urban design and consequent dilution of the character and function of this employment location.
- 2.6 The application descriptions and more detailed content are set out in the Statement of Common Ground (SOCG).
- 2.7 My evidence focuses on the overarching Planning case. I explain why, in my professional view, the LPA's Planning Committee decisions to refuse to grant planning permission were justified, when considered against national and development plan policies and other material considerations.
- 2.8 My evidence is supported by the more detailed and specialist evidence of Mr Athey, who covers economic matters, and Mr Tomaney, who covers urban design matters.

3.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 3.1 The application site is a parcel of land extending to 4.15 ha and located on the western edge of the built-up area of Cheltenham. The town centre is about 4.4 kilometres to the west.
- 3.2 The site is located north of North Road West and west of Grovefield Way and immediately south of the A40. To the north, the application site is separated from the dual carriageway at the A40 by an earth bank with a belt of tree planting that provides screening.
- 3.3 About 1 kilometre to the north-east of the site is GCHQ, which is the largest and most strategically important employer for Cheltenham. To the west of GCHQ and the existing built-up area, is a large strategic employment allocation at West Cheltenham (no development has commenced).
- 3.4 To the north of the site is the recently opened Cotswold Cheltenham BMW car showroom, with workshop and servicing facilities. This is a large and striking modern building. To the north-east of the BMW site, lies the Arle Court Park and Ride facility. To the south of the Park and Ride is a retail park and, to the south of Hatherley Lane, there is a private hospital and an Asda superstore.
- 3.5 To the east of the site (across Grovefield Way) the land uses and character are residential, being an area known as The Reddings. The nearest dwellings to the site are located in Chalford Avenue and these are predominantly two storey and suburban in nature. There is a belt of trees that runs parallel to Grovefield Way which screens these homes.
- 3.6 The site itself is now rather scruffy in appearance, comprising unkempt grassland and spoil arisings, along with temporary hardstanding containing construction huts, parking and materials storage.

4.0 THE APPEAL PROPOSALS

4.1 The first application comprises a 'hybrid' planning application split into two parts:

Full permission

Relates to the south-eastern part of the site and 'Full' planning permission is sought for the development of:

- *5,034 m² of commercial office space (Use Class B1)*
- *502 m² day nursery (Use Class D1)*
- *1,740 m² Aldi retail unit (Class A1)*
- *204 m² Costa Coffee Retail Unit and Drive Thru (Use Classes A1 and A3)*
- *Associated parking, landscaping and infrastructure works*

Outline permission

Relates to the balance of the site and 'Outline' planning permission, with all matters reserved except access, is sought for:

- *8,034m² of commercial office space (Use Class B1)*
- *Associated car parking, open space, landscaping and infrastructure works*

4.2 The second application would comprise:

Full permission

Relates to the south-eastern part of the site and 'Full' planning permission is sought for the development of:

- *5,914 m² of commercial office space (Use Class B1)*
- *502 m² day nursery (Use Class D1)*
- *1,742 m² Aldi retail unit (Class A1)*
- *Associated parking, landscaping and infrastructure works*

Outline permission

Relates to the balance of the site and 'Outline' planning permission, with all matters reserved except access, is sought for:

- *8,034 m² of commercial office space (Use Class B1); and*
- *Associated car parking, open space, landscaping and infrastructure works*

5.0 THE PLANNING HISTORY

- 5.1 The factual Planning history is summarised in the SOCG and is not repeated here. However, there are a number more detailed points and observations that are important.
- 5.2 First, it is important to recognise that the appeal sites form part of a somewhat larger area of land that was for many years part of the Gloucester/ Cheltenham Green Belt (GB). That policy status, and the associated presumption against inappropriate development (in the GB), existed up until very recently, i.e. December 2017, when the Joint Core Strategy (JCS) was adopted.
- 5.3 Second, the general dearth in availability of quality employment land in Cheltenham has permeated the last 15 years or so and remains an issue to date. The appeal site has featured as a candidate to help address the serious shortfall in employment land. Indeed, the Local Plan Inspector's report in May 2005 recommended that the site be allocated for employment development in the light of this serious shortfall.
- 5.4 Third, the 2007 appeal decision (APP/B1605/A/06/2015866/NWF) remains highly relevant and material to the current appeals. This appeal proposal related to a larger area of land (including the now built BMW showrooms) and sought Outline permission for B1 use development, plus an extension to the Arle Court Park and Ride facility. The Appeal decision is attached at APPENDIX 1. In allowing the appeal and granting planning permission, the Inspector confirmed his colleague's earlier concerns about employment land provision.
- 5.5 A copy of the Inspector's decision letter is included at APPENDIX 1. The following excerpt is particularly relevant:

"To my mind, this proposal satisfies the sequential test in PPS 6 in respect of new office provision in that there are no suitable alternative sites readily available of the type necessary to meet modern business requirements in the town centre or in more sustainable locations than the appeal site in the remainder of the built up area at present. Accordingly, I consider that the scale and urgency of the need in this case outweighs the general desirability of awaiting the completion of the LDF Core Strategy in accord with the plan led system before additional land is released for new employment development in the Borough. In my judgement, it also overrides the

conflict with the CBLP, which makes no provision for additional employment land allocations, and policy GB1 of the GSPSR.” [Paragraph 21].

“Consequently, I conclude that the serious shortfall in local employment land provision, up to 2011 at least, is a very special circumstance that justifies the use of this site for B1 development now.” [Paragraph 24].

- 5.6 The extract below shows the illustrative B1 office park scheme for the development allowed on appeal in 2007.



- 5.7 Fourth, the subsequent development of the BMW garage has substantially reduced the land area available for B1 employment purposes. I return to this matter later.

6.0 PLANNING POLICY FRAMEWORK

THE STATUTORY DEVELOPMENT PLAN

- 6.1 Section 38 (6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions should be taken in accordance with the relevant adopted Development Plan unless material considerations dictate otherwise.
- 6.2 At the point of determination of both applications, the statutory Development Plan comprised the Joint Core Strategy (JCS), which had been adopted a matter of days before the December 2017 Planning Committee (which refused the first application), and the 'saved' policies of the Cheltenham Local Plan (Second Review) that was adopted in June 2006.
- 6.3 The most relevant objectives and policies contained in these two components of the development plan are summarised below.

Joint Core Strategy (Adopted December 2017)

- 6.4 The Joint Core Strategy (JCS) was produced through a partnership between Gloucester City Council, Cheltenham Borough Council, and Tewkesbury Borough Council. The JCS is a co-ordinated strategic development plan that sets out how this area covered by the three councils will develop during the period up to 2031.
- 6.5 The JCS content listed below is relevant to these appeals. Those objectives and policies which have particular significance are highlighted by underlining:

Strategic objective 1 is concerned with building a strong and competitive urban economy, and states that the potential of the JCS area for investment should be developed by providing the right conditions and sufficient land in appropriate locations to support existing businesses and attract new ones.

Strategic objective 2 is concerned with ensuring the vitality of town centres.

Strategic objective 4 seeks to conserve and enhance the environment.

Strategic objective 5 seeks to deliver excellent design in new development.

Strategic objective 6 seeks to meet the challenges of climate change.

Strategic objective 7 promotes sustainable transport.

Strategic objective 9 promotes healthy communities.

Policy SP1 states that during the plan period, provision will be made to meet the need for approximately 35,175 new homes and a minimum of 192 hectares of B-class employment land to support approximately 39,500 new jobs and that this is to be delivered by development within existing urban areas through district plans, existing commitments, urban extensions to Cheltenham and Gloucester, and the provision of Strategic Allocations at Ashchurch. This strategy aims to locate jobs near to the economically active population, increasing sustainability, and reducing out-commuting thereby reducing carbon emissions from unsustainable car use.

Policy SP2 deals with the distribution of new development. It explains that to support their economic roles as the principal providers of jobs, services and housing, and in the interests of promoting sustainable transport, development will be focused at Gloucester and Cheltenham, including urban extensions to these areas. It states that the JCS will make provision for the required "at least 192 hectares of B-class employment land" through "at least 84 hectares" at its strategic allocation sites and with further capacity being identified in District Plans.

Policy SD1 relates to employment (except retail development). The policy states that employment related development will be supported at strategic allocations, at locations allocated for employment within the development plan, for the redevelopment of land already in employment use and for the development of new employment land within the Principal Urban Area (PUA) of Cheltenham.

Policy SD2 is concerned with retail and town centres. It seeks to support and strengthen the role and function of Cheltenham's town centre, which

occupies the top tier in the hierarchy (along with Gloucester City Centre). The Policy also references the saved retail policies in the Cheltenham Local Plan (2006).

Policy SD3 promotes sustainable design and construction.

Policy SD4 sets out the JCS design requirements for new development.

These include considerations of context, character and sense of place; legibility and identity; amenity and space; public realm and landscape; safety and security; inclusiveness and adaptability; and movement and connectivity.

Policy SD5 addresses the Green Belt and, on the plan's adoption, formalised the removal of the appeal site and other locations where very special circumstances had been demonstrated. At paragraph 4.5.21 of the JCS it records "*A small change has been made to the Green Belt boundary in the area of the Reddings to provide a more appropriate boundary after an implemented permission at Grovesfield Way.*"

Policy SD6 considers the landscape and states that development will seek to protect landscape character for its own intrinsic beauty and for its benefit to the economic, environmental and social well-being by: having regard to the local distinctiveness of different landscapes, protecting and enhancing landscape character, reducing visual impact and consider the sensitivity of the landscape.

Policy SD14 addresses health and environmental quality.

Policy INF1 states that developers should aim to provide safe and accessible connections to the transport network to enable travel choice for residents and commuters. It goes on to state that developers will be required to assess the impact of proposals on the transport network to ensure that they will not detrimentally affect its safety or efficiency.

Policy INF2 addresses flood risk management.

Policy INF3 covers green infrastructure requirements.

Policy INF4 covers social and community infrastructure.

Policy INF5 promotes renewable energy and low carbon energy development.

Policy INF6 addresses infrastructure delivery.

Policy SA1 sets out the strategic allocations including West Cheltenham, which under **Policy A7** is allocated for "*approximately 45 hectares of B-class led employment land to be focussed upon a cyber security hub and other high technology and high 'Gross Value Added' generating development and ancillary employment uses*".

- 6.6 The adopted JCS contains a commitment to undertake an immediate review on the issues of housing supply for Gloucester and Tewkesbury and the retail / town centre policies for the whole area. In the light of the July 2018 publication of the revised National Planning Policy Framework (NPPF), the scope of the review has been expanded and will cover employment land requirements. The October 2018 Issues and Options Consultation (Regulation 18) is included at APPENDIX 2.

Cheltenham Borough Local Plan (2006)

- 6.7 The Cheltenham Borough Local Plan covered the period 1991 – 2011. It was adopted in June 2006. The policies of the Local Plan were 'saved', as set out in the schedule to a Government Office for the South West (GOSW) direction letter in June 2009. A number of policies have since been replaced by the JCS on its adoption.
- 6.8 The policies listed below are relevant to this appeal.

Policy CP1 states that development will only be permitted where it takes account of the principles of sustainable development.

Policy CP2 establishes the sequential approach to the location of new development.

Policy CP3 seeks to promote a sustainable environment. It sets out that development will only be permitted where it would not harm the setting of Cheltenham, not harm the landscape, conserve or enhance the built environment, promote biodiversity and avoid pollution and flooding.

Policy CP5 relates to sustainable transport, ensuring that new development is located and designed to minimise the need to travel.

Policy CP6 concerns mixed use development. It states that where mixed uses are proposed on employment land they will be subject to assessment under Policy EM2 - Safeguarding of Employment Land (see below).

Policy CP7 requires a high standard of design.

Policy RT1 relates to the location of retail development and states:

Retail development will be permitted, subject to the availability of suitable sites or buildings suitable for conversion, which relate to the role and function of retailing centres and their catchments only in the following sequence of locations:

- a) the Central Shopping Area, subject to Policy RT2;*
- b) the Montpellier Shopping Area or the High Street West End Shopping Area, subject to Policy RT2;*
- c) elsewhere within the Core Commercial Area, subject to Policy RT1;*
- d) district or neighbourhood shopping centres, subject to Policy RT3;*
- e) out-of-centre sites which are accessible by a regular choice of means of transport, subject to Policies RT7 and CP5;*

In considering the location of retail development, developers and operators should demonstrate flexibility and realism in format, design, scale and car parking.

Policy RT7 - states that, subject to Policy RT1, retail development outside defined shopping areas will be permitted only where:

- a) a need for the additional floorspace has been demonstrated, and the proposals;
- b) individually or in conjunction with other completed and permitted retail development, would not harm the vitality and viability of the town centre as a whole or of a district or neighbourhood centre.

Policy EM1 is concerned with employment uses. It states: *The development or change of use of land for employment use will be permitted where the development:*

- a) involves land already in employment use; or*
- b) is on land safeguarded for employment uses in this plan; or*

c) forms part of a mixed use development in accordance with Policy CP 6; and

d) accords with Policies CP4, BE 2 , and HS7.

Policy EM2 seeks to protect employment land for employment purposes (in the B classes) unless one of the listed exception tests is met. It goes on to state that mixed use development will be permitted on employment land provided that certain criteria are met.

THE EMERGING CHELTENHAM PLAN

- 6.9 The Cheltenham Plan is the LPA's new Local Plan. It will replace the 2006 Plan and, once adopted, will form the development plan for the area alongside the JCS. The new Cheltenham Plan is reaching its final stages of production. On 3 October 2018, the Council submitted the plan and its supporting evidence base to the Secretary of State for independent examination.
- 6.10 **Policy EM3** in this emerging Local Plan is relevant to this appeal. The policy identifies and allocates four locations for new employment development. Allocation E3 covers 6.4 hectares of land north-west of Grovefield Way (including the appeal site). The other three allocations are much smaller, all being less than 1 hectare. The Policy states that *"proposals for traditional B class employment uses or Sui Generis uses that exhibit the characteristics of traditional B class employment will be supported at these locations subject to being in accord with other relevant policies embodied within this Plan. The contents of Policy EM3 reflect the evidence bases of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy and the Cheltenham Plan."*
- 6.11 Other Policies in this new Plan which have some relevance are:
- Policy EM4** - employment skills plans
 - Policy EM5** - promoting the cyber security sector
 - Policy D1** - design
 - Policy SL1** - safe and sustainable living

THE REVISED NATIONAL PLANNING POLICY FRAMEWORK (NPPF)

- 6.12 The National Planning Policy Framework was revised in July 2018. It sets out government's planning policies for England and how these are expected to be applied.
- 6.13 The NPPF defines the purpose of the Planning system as being to contribute to the achievement of sustainable development, highlighting the importance of three objectives in respect of its economic, social and environmental dimensions.
- 6.14 The following NPPF chapters are relevant to this appeal:
- Chapter 2 - Achieving sustainable development
 - Chapter 4 - Decision making
 - Chapter 6 - Building a strong, competitive economy
 - Chapter 7 - Ensuring the vitality of town centres
 - Chapter 9 - Promoting sustainable transport
 - Chapter 11 - Making effective use of land
 - Chapter 12 - Achieving well-designed places

OTHER POLICY AND GUIDANCE DOCUMENTS

- 6.15 Other policy documents and guidance relevant to this appeal include:
- Planning Practice Guidance
 - The UK's Industrial Strategy
 - Gloucestershire Local Enterprise Partnership (LEP) Strategic Economic Plan (2014)
 - Cheltenham Economic Strategy (2015)
 - Cheltenham Economic Review (2018)
 - JCS background / examination documents and, in particular, the Nathaniel Lichfield and Partners Employment Land Assessment Update (2015)

7.0 DISCUSSION AND ASSESSMENT

- 7.1 The central issue in these appeal cases relates to the appropriateness, in Planning terms, of introducing non-B1 uses on to land which is consented and allocated for B1 employment purposes.
- 7.2 There is no dispute that the B1 elements (Outline and Full) of both appeal schemes are acceptable and, indeed, desirable in Planning terms. These office floorspace components align with the site's Planning history, including the 'very special circumstance' of a serious shortfall of employment land which justified allowing development in the Green Belt. They also accord with the development plan policies (statutory and emerging).
- 7.3 However, the proposed non-B1 use development in the form of a supermarket (Class A1), drive thru coffee outlet (Class A3) and a children's day nursery (Class D1) raise significant planning issues. These uses are at odds with the site's Planning history and with the very special circumstance that led to a permission being granted for B1 use development in the 2007 appeal. These use elements do not accord with the development plan policies (statutory and emerging) and would not deliver the level of benefit to the local economy that is planned.
- 7.4 In this section, I explain the LPA's concerns in the context of the development plan (statutory and emerging) and other material considerations.

Facts and figures

- 7.5 When I first reviewed these cases, I noted an understandable focus on proportions and percentages of the different use components. These appear in the (then) Applicant's submissions and the LPA's officer reports. They continue to appear in the Appellant's Statements of Case.
- 7.6 The Appellant, understandably, wishes to draw attention to the relatively low floorspace proportion of non-B1 uses within each scheme, and the not insubstantial amount of B1 office space proposed, some in 'full', the majority in 'outline'.

- 7.7 There is no disputing the mathematics. The Scheme 1 floorspace would be 84% B1 and 16% non-B1. Scheme 2 would be 86% B1 and 14% non-B1. These are indeed seductive figures and appear to portray the non-B1 elements as subservient and, some would no doubt argue, 'ancillary'. Indeed, I believe the LPA's officers, who authored the respective committee reports, gave a degree of weight to these statistics, as they feature in both the December 2017¹ and October 2018² Committee reports.
- 7.8 However, I consider that great care is needed in applying weight to a breakdown of the floorspace components alone. These appeals are about important land use planning matters and need to be considered more holistically.
- 7.9 When looked at in terms of land area, a rather different picture emerges. APPENDIX 3 to this Proof contains a plan which shows the appeal site broken down into the proposed different land use components within the 'red lined' area of 4.2 hectares.
- 7.10 Appeal Scheme 1 would mean that **1.38 hectares** of the site would be given over to non-B1 low rise developments and associated surface car parking areas. This is **33%** of the site area i.e. a third of the site.
- 7.11 Appeal Scheme 2 would mean that **1.08 hectares** of the site would be given over to non-B1 low rise developments and their car parking areas. This is **25.6%** of the site area i.e. more than a quarter.
- 7.12 However, I consider that this does not tell the full picture. It must be remembered here that the appeal site forms part of a larger site of about 6.5 hectares which secured Outline planning permission for B1 employment development through the 2007 appeal decision³.
- 7.13 APPENDIX 4 to this Proof contains a plan showing the extent of the 2007 Outline permission, overlaid with the components of the current schemes and the now built BMW scheme, which is clearly non-B1 development.

¹ December 2017 Planning Committee Report paragraph 6.6.12

² October 2018 Planning Committee Report paragraph 6.2.18

³ APP/B1605/A/06/2015866/NWF

- 7.14 This demonstrates that if Appeal 1 were to be allowed, well over half of the site, released from the Green Belt to address a significant shortfall of B1 employment land, would be taken up by non-B1 uses. The actual percentage breakdown would be **56.57%** falling into non-B1 use (3.6854 / 6.5149 hectares x 100).
- 7.15 If Appeal 2 were to be allowed, the amount of non-B1 land take would be slightly reduced but it would still mean that less than half of the original site would be available for its intended B1 employment purpose. The actual percentage breakdown would be **52%** in non-B1 class employment use (3.3886 / 6.5149 hectares x 100).
- 7.16 The important factual points are that Scheme 1 would displace **1.38 hectares** of consented B1 employment land and Scheme 2 would displace **1.08 hectares** of consented B1 employment land.
- 7.17 It is helpful to expand this further by explaining what that could mean in terms of potential lost B1 floorspace. This can be done, without controversy, by simply applying the Appellant's floorspace density on its B1 elements of the site (Areas 1 and 2 on the plans at Appendices 3 and 4). This gives a B1 floorspace density of 4,618.48 sq metres per hectare (13,068sq m / 2.8295 hectares).
- 7.18 Applying this B1 floorspace density to Appeal scheme 1 demonstrates that it would displace the potential for **6,373.50 square metres** of office space.
- 7.19 Applying the same floorspace density to Appeal scheme 2 demonstrates that it would displace the potential for **4,987.96 square metres** of office space.
- 7.20 I conclude here, on a merely factual basis, that the quantum of land and 'lost' B1 office floorspace are demonstrable and significant. I explain the Planning policy implications of these losses below. Mr Athey's evidence explains the economic implications.

Loss of Employment land

The JCS (statutory development plan)

- 7.21 The LPA's principal Planning policy objection to both appeal proposals relates to loss of B1 employment land. Such land is in very short supply in Cheltenham and it is critical to meeting the needs of modern businesses and to building a strong and competitive local economy.
- 7.22 The evidence concerning the shortfall of quality employment land in the town is substantial. Indeed, it has been a perennial theme through past and recent development plan examinations. It has also been a central theme running through the planning history of the appeal site.
- 7.23 It is a matter of common ground that *"there is currently an acute shortage of B Class employment land and premises within Cheltenham."*⁴
- 7.24 A key piece of recent evidence is the Nathaniel Lichfield and Partners (NLP) Employment Land Assessment Update of October 2015 (APPENDIX 5). This was produced to support the JCS. It evidenced a notable lack of employment land within the JCS area, which it assessed to be threatening the economy by undermining the ability of existing companies to expand and new firms to invest in the area. It further assessed that this **"has been exacerbated by recent losses of employment land as a result of redevelopment for non-B Class purposes and has resulted in a pent-up demand for employment land."**⁵
- 7.25 The NLP report findings led to significant amendments to the JCS, including its job creation target of 39,500 (in place of the 28,000 new jobs in the originally submitted Plan) and the adoption of the delivery of a minimum of 192ha of B-class employment land (in place of the 64.2ha of employment land in the Plan). This is reflected in Policy SP1: *The Need for New Development* and Policy SP2: *Distribution of New Development* and Policy SD1: *Employment – except retail development*.

⁴ Statement of Common Ground between Cheltenham Borough Council and Hinton Properties Ltd

⁵ Paragraph 5.3 Gloucester, Cheltenham and Tewkesbury JCS Employment Land Assessment Update (2015) - NLP

- 7.26 As the JCS is a strategic plan, it does not include any site specific allocation in respect of the appeal site. However, the JCS policies and approach to supporting sustainable economic development are highly relevant and they are reliant upon the provision of minimum amounts of B-class employment land. The appeal site must be properly regarded as a consented commitment, which should count against the required minimum amount of B-class employment land.
- 7.27 The important point here is that all of the JCS, and other, evidence convincingly demonstrates that employment land is a finite and precious resource. In Cheltenham, there has been a significant shortfall of available land to accommodate modern new office space that occupiers and the economy require. The Appellant makes that case and I agree with it. Indeed, it is the very reason why I consider the appeal proposals conflict with the JCS policies and objectives.
- 7.28 Sacrificing well over 1 hectare of quality Class B1 employment land, and the potential for perhaps 6,373.50 square metres of office space, makes no sense in terms of good Planning. Indeed, it frustrates the JCS. It would mean that the Policy SP1 and Policy SP2 minimum B class employment land requirements will be undermined. It diminishes the finite stock of quality B1 employment land and does so in a preferred and sustainable location. As such, it conflicts with and frustrates Policy SD1's support for employment related development. Indeed, the JCS Review consultation document (APPENDIX2), launched in November 2018 states (at Para 10.2) that *"Extending the plan period will mean that new land will be required to support economic growth. At the same time it will be important to ensure that existing employment land is used in the best possible way in order to improve productivity and minimise the amount of land that is required elsewhere."*
- 7.29 I consider that the proposals conflict with the JCS policies and the JCS objectives. These conflicts should carry significant weight in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004

The Cheltenham Borough Local Plan Second Review 2006 (statutory development plan)

- 7.30 Whilst the 2006 Local Plan predates the JCS and the NPPF, its saved policies still enjoy statutory development plan status. Setting aside its Green Belt policy content (as this was overtaken by the 2007 appeal decision), the Plan's approach and policies in respect of employment are relevant.
- 7.31 Paragraph 9.20 of the Plan explains that "*in view of the limited opportunities for the development of new employment sites in the urban area, the town cannot afford to lose existing employment land and premises to alternative uses.*" Accordingly, Policy EM2 seeks to safeguard existing employment land.
- 7.32 The policy's drafting appears to have a primary focus on existing employment uses. This is unsurprising as the Plan did not make any new employment land allocations and the 2007 appeal decision post-dated the plan's examination and adoption. However the policy does extend to include 'unoccupied' land. Given the 2007 appeal decision, I consider that it is reasonable to regard the site as 'employment land' and that the policy, and its objectives, are relevant.
- 7.33 In essence, the policy precludes non-B class uses on such land unless certain exceptions criteria are fulfilled. Criterion a) does not apply. Criterion b) could allow an exception if extensive marketing demonstrated that there was no interest in the site but there is no such evidence in this case. Criterion c) provides a possible exception for *sui generis* uses, which exhibit B-class characteristics; this was clearly a consideration in the approval of the BMW development, but cannot possibly apply to a discount foodstore, drive thru coffee shop and a children's day nursery. None of these are *sui generis* uses nor do they display B-class use characteristics. Criteria d) and e) do not apply in this case.
- 7.34 Policy EM2 then continues to cover 'mixed use' and says that these will be permitted subject to three specified requirements, although only two apply in this case.

- 7.35 The first relevant mixed use requirement (g) is that the loss of part of the site to other uses '*does not have a detrimental impact on the range of types and sizes of sites for business uses...*'. The second requirement (h) is that the use must be '*appropriate to the location and adds value to the local community and area.*'
- 7.36 For reasons stated above, concerning the scarcity and strategic importance of B1 employment land in Cheltenham, I do not consider that the first criterion is met. Indeed, it would diminish the range of sites available for office business use.
- 7.37 The second relevant criterion (h) is not met. In my view, the introduction of a large discount food store, in particular, is not appropriate. It would be a major incursion into the intended B1 employment site which is of a limited size and should be maximised for its planned, policy compliant, B1 use. I do not dispute that the supermarket, day nursery and coffee outlet will provide some benefit to the local community, but these are not new and novel facilities and all already exist in the community area (and within easy walking distance). Indeed, there is a retail park with a large supermarket, catering and other outlets just 150 metres to the west of the site and The Reddings Playgroup nursery is immediately to the south of the application site boundary. Furthermore, these are not uses that would appear necessary, or have any strong synergy with, office developments. Whilst care is always needed in weighing the views of interested parties, the volume of opposition to the appeal proposals does not suggest that the local community holds the view that these non-B1 uses will add value.
- 7.38 I consider that the proposals conflict with saved Policy EM2 and that this conflict should carry significant weight in accordance with Section 38(6) of the Planning and Compulsory Purchase Act 2004.

The Cheltenham Plan (submitted for examination October 2018)

- 7.39 The Cheltenham Plan's Policy EM3 relates specifically to the original 2007 appeal site i.e. the current appeal site and the now built BMW centre. It allocates the site for B class employment or *sui generis* uses that exhibit similar characteristics, the latter provision reflecting the BMW garage on

part of the allocation. An important point here is that the Grovefield Way allocation is the only sizeable one, the other three allocations being under 1 hectare, and the only one in the borough capable of delivering a modern high quality office park.

7.40 Paragraph 48 of the NPPF advises of three considerations that influence the degree of weight to be afforded to 'relevant policies' in emerging plans.

7.41 The first relates to the stage of preparation and, having been submitted for examination, the Cheltenham Plan must be regarded as being 'advanced'.

7.42 The second relates to whether there are unresolved objections and clearly these will be heard through the examination sessions. There are outstanding objections to the Plan's employment land allocations. Indeed, Gloucestershire LEP has submitted representations which include the following statement:

The Cheltenham Plan advocates four new employment sites through Policy EM3. The combined area of these sites provides 8.28ha of employment land which is considered to be insufficient against an outstanding requirement of 93.2ha.

In addition, three of the sites that have been identified and allocated are all pre-existing employment sites (existed as an employment site before 2011) and accordingly should not be utilised to make up a supply of new sites for the Borough. These sites should be safeguarded under Policy EM1 of the Plan as 'Key Existing Employment Land and Buildings'.

In my view this objection, rather than lessen the weight to be attached to the relevant policy EM3, appears to increase it. The LEP's concern is that not enough employment land is being put forward.

7.43 The third consideration relates to consistency of the emerging plan with the NPPF. I consider the relevant policy EM3 to be entirely consistent with the NPPF.

7.44 Furthermore, it is important to record here that Policy EM 3 has a very strong pedigree, as its lineage is direct from the recently adopted JCS and its evidence base. In particular, the NLP Employment Land Assessment Update of October 2015 made specific reference to the importance of non-

strategic employment land allocations being made through Local Plans and that "a clear policy position should be established in relation to the protection of employment land"⁶.

- 7.45 The substantial non-B1 elements of the appeal proposals directly conflict with Policy EM3 and frustrate its objective of promoting and protecting B class employment uses on this site, in the interest of the town's economy.
- 7.46 In the circumstances, I consider that the emerging relevant policy EM3 has weight in these appeals, and that the proposals' conflicts with it are significant.

Dilution of the character and function of the area as a business / employment location

- 7.47 The LPA has serious concerns that the appeal proposals will dilute the character and function of the site as a business location. This flows not simply from the scale of the displaced employment land and office floorspace, but from the permutation and nature of uses and their disposition on the site.
- 7.48 Rather than fulfil its potential as a quality business park destination, much of the site will be given over to low rise non-B1 uses and extensive surface car parking. Furthermore, these uses would be positioned in the most prominent front (Grovefield Way) part of the site, where they would define the prevailing character.
- 7.49 These concerns lead to broader urban design considerations. These are covered in detail in the evidence of Mr Tomaney. He concludes that the scheme fails to deliver the level of design which the 2007 Inspector considered necessary and which local and national policy and guidance is demanding.

Other material considerations – employment from non-B1 use elements, the concept of mixed uses

- 7.50 I do recognise that the non-B1 elements of the appeal proposals will generate some employment and that it is important that planning for a

⁶ Paragraph 5.8 Gloucester, Cheltenham and Tewkesbury JCS Employment Land Assessment Update (2015) – NLP.

strong and competitive economy is seen in a broader context. However, the evidence for protecting and prioritising this site's use for its consented B1 purposes is compelling. The expert evidence of Mr Athey explains why the economic benefits of B1 office development substantially outweigh the more limited benefits that might arise from the non-B1 supermarket, catering and childcare jobs. It is for these sound evidence based reasons that the development plans, adopted and emerging, identify and protect land to deliver B class employment opportunities.

- 7.51 I am also mindful of the recognition in the Planning world that 'mixed uses' are generally regarded as a good thing. However, mixed uses already exist – there are shops, hotels, a BMW dealership, a private hospital, residential properties etc. already present in the area. As I noted earlier, the uses proposed are not critically, or even closely, linked to the delivery and occupation of modern B1 office space.
- 7.52 I have also considered the fact that the original permission granted on appeal did not limit the development to office purposes only (Class B1a). In theory at least, it could be argued that any B1 use could be built out (e.g. for light industry) or that B1 buildings could be constructed and subsequently undergo a 'permitted development' change of use to Use Class B8 (storage or distribution). These scenarios would clearly not deliver the offices and economic benefits that Mr Athey's evidence defines. However, these are not real world scenarios, as landowners can be expected to seek the highest returns. The scarcity of quality office space in Cheltenham has pushed up rents significantly (to over £30/sq ft). It is inconceivable that a landowner would willingly fall back to a development type that would be likely to yield less than a third of the current office rental value.

8.0 CONCLUSIONS AND THE PLANNING BALANCE

- 8.1 The Law⁷ states that, to the extent that development plan policies are material to an application for planning permission, the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
- 8.2 The NPPF stresses the importance of having a planning system that is genuinely plan-led. Where a proposal accords with an up-to-date development plan it should be approved without delay, as required by the presumption in favour of sustainable development at paragraph 11 of the NPPF.
- 8.3 Paragraph 11 continues to explain that where the development plan is absent, silent or the relevant policies are out of date, the NPPF requires the application to be determined in accordance with the presumption in favour of sustainable development unless “any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”.
- 8.4 My evidence sets out my view that both appeal proposals will result in a significant reduction of land available for B1 employment floorspace delivery in this location. There is an undisputed significant shortfall of such employment land and a widely held recognition of its importance to the local economy to support businesses and drive growth.
- 8.5 The development plans, in their statutory and emerging forms, are up to date, consistent with the NPPF and consistent with each other. The appeal proposals’ introduction of substantial non-B1 land uses would conflict fundamentally with the JCS policy SD1, saved Cheltenham Local Plan policy EM2 and Policy EM3 of the submission draft Cheltenham Plan.
- 8.6 The proposals would not only reduce land available for its plan-led purpose of B1 office space, but would notably dilute the site’s qualitative character and function as a business location and would fail to create a high quality business environment. This conflicts with national and local policies.

⁷Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004

- 8.7 Land use planning is what it says. It is about planning, thoughtfully and carefully, the best and most efficient use of land in the public interest. The development plans do promote and support B1 employment development on this site. The plans do not promote the displacement of planned employment land, which is in short supply, by unrelated developments for shops, drive-thru coffee outlets and day nurseries, all of which already exist nearby and cannot, in any event, deliver the same economic benefits to Cheltenham.
- 8.8 The conflicts with the development plan are clear and will result in demonstrable and significant Planning harm. In my professional view, I conclude that the proposals do not constitute sustainable development and I request that the Inspector dismisses both appeals.

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