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PINS REF: APP/B1605/W/18/3200395 & APP/B1605/W/18/3214761

LAND OFF GROVEFIELD WAY, THE REDDINGS, CHELTENHAM

CLOSING SUMISSIONS FOR THE LPA

1. **Introduction:**

The case for the LPA can be simply stated. The proposals are not in accordance with the development plan taken as a whole. In any event on whatever planning balance is taken the real objectives of the plan in terms of the use of sites such as this is to deliver high quality jobs from land for B class use will be undermined by using such an amount of the site in the manner proposed with such a high non-B1 content which, in in the manner proposed gives such a retail tone. In respect of Appeal A the costa element of the proposal is not acceptable in design terms.

2. **The Development Plan**

The development plan is up to date and is consistent with the NPPF.

3. Within the 2016 Planning Statement in support of Appeal A (CD 1.4) it is nowhere stated that either the extant nor emerging policies are out of date. The basis of the case made is that the proposals had the support of policy – not that policy was out of date.

4. The May 2018 Planning Statement in support of Appeal B (CD 7.2) similarly does not anywhere make a secondary or tertiary case per JG only making to the LPA the single basis of case (Primary) that the proposal is in accordance with the development plan. This does not remove the ability to duly make that case but it does raise doubts about the cogency of contentions that could have been made earlier but never have been.
5. The Appellant's SoC (CD 6.1) which at section 5 identifies the A's case as it states " T(t)he arguments set out below will be developed in due course by Proofs of Evidence. Within the remainder of section 5 the case to be so developed contains no reference either express or implied to suggest that a secondary or tertiary case as now made applies. The only reference to a policy being out of date relates to §5.16 and EM2 of this saved policy. No suggestion is made that policy SD1 of the JCS is out of date, nor emerging policy EM3. It is nowhere suggested that the tilted balance applies other than in relation to EM2 in terms of long term protection of employment land contrary to §22 NPPF and only in the event of conflict. A policy is either up to date or it is not and this case is misconceived. The facts now said to base the different basis of alleging the development plan is out of date - existed at the time of the Statement of Case — yet that case was not made. In other words the proofs of evidence develop other arguments. This places further doubt on the cogency of those arguments.

Foot note 1
future use of
allocated site.

- 6, Para 22 ¹of the NPPF is no longer with us – not in NPPF 2018 see now §80-82 and the somewhat different point of NPPF (2018) §122.
7. The Appellants place reliance on views of the Officers in each POR. There is no issue in the POR (see CD 10.2) that the JCS is up to date and the basis of the Officer view is one of compliance with the dev/plan (see 6.2.33)- ultimately as a matter of judgement on the extent of and tone of the non-B1 elements - not an application of the tilted balance.
8. The Appellant's now say that each of the appeals fall to be considered against the tilted balance within paragraph 11(d) of the NPPF, as it is considered that the development plan is out of date. JG argues this to be the case because he says:
 - 7.1 The development plan fails to make sufficient provision for employment, retail, leisure and other commercial development;
 - 7.2 if the development plan precluded ancillary uses, it would conflict with the NPPF; and
 - 7.3 JCS employment allocations are out of date
9. Aside from the plain fact that this is not the case made in either appeal in the planning statement nor in the Statement of Case, it is not correct for other reasons.
10. A relevant starting point here is NPPF para 213:

¹ Concerned with future use of allocated sites.

However, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).

11. The next step is to consider what specific development plan policies are being referred to. JG's Section 7 is cursory on this and refers only to JCS policy SA1, which deals with strategic allocations (which do not directly relate to the appeal site).
12. However, the key policies, cited in both decision notices are JCS policy SD1 and adopted ('saved') Local Plan policy EM2, which each relate to employment land. It is also consider that JCS Policies SP1 and SP2 are also relevant, as these set the strategic context.
13. **Policy SP1** is fundamental to any assessment of whether policy is 'out of date'. SP1 establishes that the JCS area requires at least 192 hectares of 'B class employment land'. It further states 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.*" The important point here is that the appeal site is an existing commitment and is part of the 192 hectares of planned B class employment land. It is not accepted that land has to be built out in order to be a

commitment - PS is right on this.

14. **Policy SP2** deals with the distribution of new development and repeats the same figure and establishes that of the 192 hectares, at least 84 will come from the strategic allocations (SA1), with the balance being identified in District Plans.
15. Neither JG nor any other witness for the A (including PF) provides any evidence of substance to challenge the assessed need for B class employment land (at least 192 hectares) under SP1 in the recently adopted JCS. Nor does he provide any evidence to challenge the SP2 distribution i.e. just over half coming from the SA1 sites and the balance being found elsewhere (including through district plan allocations).
16. Given the comprehensive evidence base supporting the JCS which has been covered in the evidence of Dr Athey, the relatively recent examination and adoption, along with the absence of any substantive changes through the revised NPPF, it is difficult to see how an argument that policies SP1 and SP2 [and SD1] are 'out of date' can begin to gain traction. The evidence of PF on this:-
 - 15.1 misuses and reheats arguments similar to those addressed to the JCS examination process rather than adopted JCS policy that emerges from that examination;
 - 15.2 places at the core of his argument that the policy is out of date – the contention that the supply from SALA sites was only 10 ha when he had made

against the inevitably changing supply position from that source precisely the same point that SALA sites was 14.5 ha to the JCS examination (a difference of 4 ha [agreed in xx])- [see Appendix 1 EXAM 156 cf Table at POE 3.26]. This in the context of previously saying the supply was 64 ha against the requirement of 192ha [cf now saying 149 ha] – the key point here is that as PS says the JCS is recently adopted – needs time to bed in and develop through the emerging LPs and is subject to review and monitoring – it cannot now be said that the supply position has so changed since adoption to a point where the policies should be regarded as out of date.

15.3 has not provided a reliable alternative assessment of need that could begin to supplant that found by the inspector within the plan making process;

15.4 as JG acknowledged there is no equivalent requirement to 5LS in respect of employment as distinct from housing land and employment land is different – that includes a need to recognise that delivering strategic sites takes time;

15.5 the fact that some of the sources of supply may have changed is not unusual – and does not make the strategy a failing strategy;

15.6 fails to engage with the point that 25 -33 % of the land within the supply as proposed is being lost to other uses within the proposals.

17 Policy SD1 deals with employment (except retail development) and provides support for ‘employment related development’ at specified locations. The specified locations include, at (vi)(a), sites “*within or adjacent to a settlement or existing employment area and of an appropriate scale and character*”.

18. Whilst the policy does not make direct reference to commitments / extant permissions, the Grovefield Way site clearly falls under the Policy's support for employment development. Para 4.2.4 of the supporting narrative is helpful in stating:

In order to prevent the incremental loss of existing employment land to non-employment uses, and to ensure an adequate supply and choice of employment land and premises for the employment market, district level plans will contain policies to safeguard existing employment sites. These policies in district plans will only permit changes of use in certain appropriate circumstances to be defined by those plans. This policy is intended to be read alongside these district plan policies when considering development proposals for any area.

19. The appeal site has been permitted in the Green Belt for B1 employment use, has an existing extant planning permission for B1 and is on any sensible view to be seen as part of the portfolio of sites in the Borough for B 1 employment use.
20. JG provides no evidence to support the view that SD1 is out of date.
21. At §7.2 JG asserts that the Development Plan fails to make sufficient provision. The JCS is a strategic plan and limits its allocations to very large (strategic scale) sites. It is not the role or purpose of the JCS to identify the full complement of 'at least' 192 hectares of B class employment land.

22. However, the JCS does set the strategy. Part of that strategy is a reliance on existing commitments / available employment land opportunities. It is not part of the JCS strategy to allow scarce B Class employment land opportunities to be lost to other uses, which would not provide the same economic benefits and would frustrate the achievement of the JCS's assessed needs and requirements for employment development.

23. The JCS Inspector's report, (CD 13.2) at para 119, states:

The sources of employment land supply are to include a mix of high quality and well-located strategic sites, existing undeveloped available employment sites, and potential smaller sites in the urban and rural areas.

23. This is consistent with the LPA approach of treating the supply as including land such as the appeal site which we know :-

- (1) forms part of a larger site permitted in the Green Belt in order to provide B class employment;
- (2) part of that larger site has been developed for a *sui generis* land use;
- (3) has the benefit of planning permission- the extant permission referred to at E3 referred to in the relevant explanatory text to the eLP;
- (4) is available;
- (5) is further included in the eLP as an employment land allocations to convey certainty as to where traditional B class employment activities will be

concentrated.²

24. With regard to the *Moulton* case, the JCS is up to date and it is consistent with the Framework. Whilst its policies could be seen to be 'broad brush' (as it is a strategic plan), any 'policy gap' concerning how the balance of the needed B1 employment land is to be met, is a matter for Local Plans. It does not make the JCS policies out of date and the achievement of the JCS planned employment land quantum is not going to be assisted by further diminishing the supply of existing consented Class B1 employment land. This is not a case such as *Moulton* in which restrictive policies precluding a form of development are at issue – the issue is related to achieving more use of B1 employment land - development in which the principle of development of a site is accepted. [cf. see §75 of CD 14.1 and note the acceptance of the clear difference that five year land supply and housing land is different in the xx of JG.
25. The Appellants set up a false point in the context of the current appeal proposals. In terms of ancillary development - nothing in the development plan precludes 'ancillary' development. It is as PS explained a matter of planning judgment often applied flexibly without the need for a policy reference. In xx JG accepted there was an issue of judgment here. Indeed the issue of judgment – contextually - the amount is apparent from the SCG §6.18. Both appeal proposals involve more than half of the land area of the original site, granted permission for B1 development in 2007, falling into non

² Please note the LEP object to the appeal site in the eLP on the basis that is one of three pre-existing employment sites...[

B1 uses[33/25% off app sites] - and there is no tension with the Framework.

27. Taken properly in context the planning purpose of the policy remains sound.

Indeed, it seems to illustrate a perennial Planning issue in the Cheltenham area i.e. there is a systemic shortfall of quality employment land needed to serve economic needs of the area which the planning system needs to properly address not frustrate.

28. The LPA can only do so much to achieve the aspirations of their plan – this situation is comparable to that in *St Modwen CA* in which Ousely J commenting on the difference between delivery and deliverability³ in a housing context⁴ said this:-

“52. There are many reasons why the difference may exist: the assumed production rates off large sites may be too high for the market, though that does not seem to have been an issue here; the building industry’s infrastructure, skilled labour, finance, and materials, may not be geared up to the assumed rate; and the market may not wish to build or buy houses at the assumed rate of delivery; mortgage funds may not be available for those who would wish to buy. As Mr [Paul] Tucker [Q.C.] pointed out, the local planning authority can only do so much, that is to maintain a five year supply of deliverable housing land. The market, comprising house builders, finance and purchasers, has to do the rest. I reject this aspect of ground 1; the Inspector made no error of law.”

29. Accordingly the development plan policies relevant to this appeal are up to date and need to be given effect to and the true issue remains are the proposals in accordance with the development plan.

³ whilst this site has not been delivered [implemented] it is deliverable. It has a permission – is viable and there is no evidence that it has been marketed for B1. This is no way undermined by a market preference for mixed use. Moreover, there is evidence of all B1 schemes (or B1 with small non B1) coming forward at Hatherley Place and Honeybourne Place.

⁴ a context in which viable land with a permission - amounts to a commitment – as here.

30. The non B1 elements of each scheme do not accord with the development plan and do not deliver the level of benefit to the local economy that justified the release of this land from the Green Belt and is planned.
31. The focus of the case for the A and indeed that of the POR in each case is on floorspace. However, on appeal A 1.38 ha is non B1 (33% of the site area) and on appeal B 1.08 ha is non B1 (26%).
31. When the contribution of the BMW scheme is taken into account these proportions rise to 56% and 52% respectively.
32. The loss of both land and displaced office floorspace which arises is demonstrable and significant as PS makes clear.
33. There is common ground that there is an “acute shortage” of B Class employment land and need.
34. To undermine the objectives of SD1 and reduce the finite stock of quality B 1 employment land in a preferred and sustainable location conflicts with policy SD1 ‘s support for employment related development.
35. The proposals would not accord with EM2 of the time expired 2006 Local Plan which protects employment land. By the time JG gave evidence the difference in interpretation of the policy was clear as JG acknowledged in xx .

It would not have well- served the Inquiry to have had a detailed trawl through the matter for the third time. The dispute remains to be resolved.

36. In terms of approach there is no disagreement that the correct approach as a matter of law is that identified in *Tesco v Dundee* [2012] SC [UKSC] 278 at §18-19:-

“On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in *R (Raissi) v Secretary of State for the Home Department* [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.

19 That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean. ”

37. The view of PS is that 9.21 is not the policy and the wording of EM2 relates to both land and buildings and the site is clearly an unoccupied site which can be marketed for the B class use. Moreover, the retention of the site for B1 employment purposes has not been fully explored and the loss of part of the site to non B1 uses does have an adverse impact on the range and size of sites for B1. This in the context of a site with a planning permission released for a particular use from the Green Belt is too interpret and apply the policy in

context and not to read the policy as if it were a contract – which was the way in which KG took both PS and JG through the policy wording.

38. There is a difference of judgment here having regard to the objectives of the plan. The issue can be looked at simply the objective is to protect B 1 employment land. Looked at in more detail objectives were touched upon in RX of JG. For the avoidance of doubt the proposals by failing to meet the objectives as indicated in the evidence of PS would not make best use of development land [Ob.7] by diminishing the scarce range of sites available for office business with a major incursion into a B1 site [7.36 -37] nor accordingly maintain the range of B1 opportunities [Ob. 20].
39. The LPA and PS are not behaving like Humpty Dumpty and it is entirely reasonable and indeed right to regard the site as employment land and this policy and the objectives of it remain relevant and in the context of Cheltenham should be seen to carry weight . The criteria of EM2 are not met:-
- 35.1 There has been no evidence of extensive marketing or indeed of any marketing for the site as a B1 business park (offices) ;
- 35.2 The non B1 elements are not *sui generis* nor do they display B class-lie characteristics;
- 35.3 This is a mixed use proposal containing “other uses” which does have “detrimental impact on the types and and sizes of sites for business uses in the area “.

40. As a mixed use site so heavily devoted to non-B1 this site would diminish the range of sites available for office use.
41. The introduction of a large retail store (plainly outwith JCS SD1) is plainly not appropriate under the mixed use criteria. The non B1 elements do not provide local community benefit which is not otherwise available nearby and of themselves do not provide a strong synergy with B1 despite the Appellant's claims to the contrary.
42. PS at §7.40 to 7.45 explains why weight can now be attached to the emerging policy EM3 of the eCP. The objections of the LEP strengthen the policy and the policy is entirely consistent with the NPPF. This policy has a strong provenance and it is unarguably the case that the non B1 elements are in conflict with it – accepted by JG.
43. JG seeks to argue that there limited weight to the this policy - based on the need for more flexibility of the policy and by reference to the objections of the LEP supporting ancillary or complimentary uses including by reference to proportion of employment content and scope for higher levels of job creation [JG pp21/22].
44. In terms of the policy wording:-
- 44.1 The site is supported for “P(p)roposals for traditional B Class employment uses of Sui Generis uses that exhibit the characteristics of

traditional B class employment – it is clear that the non-B 1 elements of this scheme are neither;

44.2 This relaxation for *sui generis* reflected in the Show Room permission is the flexibility indicated at 3.18 of the explanatory text;

44. 3 The specific allocation wording refers to providing *an “ opportunity for the establishment of modern business environment at an important gateway location “*

44.4 as explored and clearly demonstrated in the evidence - the use of such a large proportion of the most prominent part of the site for non-B1 dilutes this sought environment.

45 In terms of the LEP objection referred to by JG this does not square with the evidence of either Mr Hardisty or Dr Athey terms of the actual effects of the proposals in terms of job creation:-

45.1 Appeal A provides only 71 FTE jobs from the 33% of site area attributable to non B1 (wages £1.28 m) according to Mr Hardisty in the context of providing overall 1,018 jobs; [PoE 7.3.1]

45.2 Appeal B provides only 52 FTE jobs from the 26% of the site are attributable to non B1 (wages £0.92 m) in the context of providing overall 1040 jobs; [PoE 7.4.1]

45.3 on the basis of the single notional alternative modelled for all B1 the FTE jobs rises according to Mr Hardisty to 1,217 jobs with an even greater impact when wages are looked at. [PoE 7.5.1].

46. The retail use is self-evidently a destination in its own right. Nor is it truly complimentary to the Business Park in this location. It provides nothing not already provided for in the area. This is also true of the other non-B1 elements. A drive-thru Costa is seeking to target the car-bourne trade as a destination in its's own right – it is by design and defining characteristics seeking to go beyond use within a business park. The nursery equally does not fall within this analysis.

* clearly
demands backed by the
restrictions on the use
agreed by the parties in
condition 5, as prepared

47. For the reasons set out later the design of the proposal does not accord with SD4⁵ of the JCS nor CP7 of the Saved Plan in respect of the Costa drive thru. Good design is at the very heart of good planning and this policy breach renders Appeal A out of conformity with the development plan without more. The absence of a Costa is self-evidently not a market signal of any significance at all in terms of the generally curious evidence from Mr Pratt.

⁵ Be wary of submissions by reference to *R V Rochdale MBC ex parte Milne* the circumstances are quite different and given the importance of the corner in design terms – compliance with these policies is not a minor matter – it is very important. If so important infringement of this one policy can justify refusal and nothing in *Milne* contradicts that.

Appeal B demonstrates this with the absence of any café and Ridge's apparent commitment as a replacement. This justifies refusal of Appeal A.

48. It can accordingly be seen that the proposal does not accord with the development plan taken as a whole.

Jobs

49. The Appellant's thesis is that the proposals will assist the delivery of quality jobs and employment on the site by reason of the enhanced attractiveness of providing non-B1 at an appropriate (14-16%) of the floorspace of the site.
50. The Council do not see any justification for allowing 26-33% of the most prominent areas including frontage of the site being devoted to such uses which demonstrably exceeds what is truly ancillary or complimentary and result in loss of jobs and specifically jobs that should be seen as quality jobs. This is not to diminish the jobs from the scheme – it however, does not justify accepting loss of land from the planned use which it is agreed would deliver greater benefits which are substantial.
51. The effect in terms of job & wages in Cheltenham is seen in Hardisty's evidence :-
- 47.1 Alternative 1 1,217 FTE jobs and £42.8 m wages p.a
- 47.2 Appeal A 1,018 FTE jobs and £34.59 m wages p.a
- 47.3 Appeal B 1,040 FTE jobs and £35.66 m wages p.a

52. Mr Hardisty agreed with the view that the issue of leakage was best considered at a JCS level.
53. As table 7.10 shows the net additional operational phase impacts are also appreciably greater for Alternative 1 as opposed to Appeals A or B.
54. This is significant in itself but Dr Athey has explained why this assessment is generally robust it does understate the modelled economic impacts benefits of B1(a) office use in one respect .
55. The evidence of Dr Athey shows a lack of sites to meet the demand for modern office space enabling support for high growth industries. The evidence of Dr Athey shows the major earnings differences in terms of part time and full time work and differences in earnings level between the non B1 elements and B1 offices [summarised at PoE §4.17]. This evidence is fully supported by relevant earnings data. Accordingly, there is a very significant difference in economic output per worker.
56. The evidence of Dr Athey shows by reference to the employment land review local monitoring evidence a continued loss of B class land to alternative land uses and limited pipeline supply of alternative office accommodation in Cheltenham much of which land north of Hubble Road (see GA Fig.11) . Dr Athey himself confirms and by reference to source documents that the

extant planning permission for Grovefield Way needs to be maximised as a short term opportunity for a business park environment to meet business needs.⁶ There is a prescient identification of threat from alternative uses attracted to road frontage locations such as retail uses. [p/50 of the Appendix B to CD 13.11] within the industrial strategy he wrote. As the author he is in a good position to properly apply the lessons from his work to the appeal proposals. His conclusion and advice is clear and supports the position of the LPA.

57. In terms of the implications for jobs the position remains consistent. Different outcomes are assessed. Dr Athey finds the extant Business Park permission to provide for a range of 1,044 to 1,428 jobs. Conversely the 2016 scheme (Appeal A) has a range of 916 to 1,173 jobs. Appeal B has a range of 905 to 1,162 jobs. This is not out of line with the assessment of Mr Hardisty. The mid range for Dr Athey [extant 1,236 – Appeal A 1044/Appeal B 1039] are very comparable with Mr Hardisty[agreed in xx].
58. However, Dr Athey shows the greater jobs potential in the appeal site across a range of scenarios allowing for more multi-story office buildings per the evidence of PS even allowing for design and frontage issues. For a revised Appeal A this is in the range 1,357 to 1,408 jobs and a revised Appeal B this is in the range 1,281 to 1,372 jobs. The corresponding improvements in GVA that flow from this are very significant. All of this is agreed as is the fact that the difference between the appeal schemes and the extant permission in terms of benefits is ‘substantial’.

⁶ See GA PoE §4.34 referring to the Cheltenham Economic Strategy 2015 CD13.11 at Appendix B p/50

59. The extent to which the non B1 elements of the scheme can be said to be truly ancillary in part relates to the quantum of space (which is too high) but also relates to the fact that they are destinations in their own right in conjunction with the location of the alternative uses and how they set the tone of the location . In Appeal A a drive thru café and discount food store does not set a business park tone at all. The loss of the drive thru to be replaced by offices does improve Appeal B but certainly does not overcome the issue. Moreover, drawing reference from much larger schemes in another context elsewhere in the region is meaningless in terms of seeking to sustain a case that the modern business park really expects the sort of uses proposed here. A discount food store is not the expectation of a modern business park nor is a drive thru nor a nursery and certainly not for a park of this size in this location with such pressure on the need to maximise B1 (offices) with other equivalent provision nearby. As Dr Athey stated he can think of no example in which a modern business park has within it a discount food store as part of complimentary offer. In this context there can be no justification based on complimentary uses. Moreover, there is a lack of coherence inherent in the Appellants evidence on the 2 schemes. The removal of the costa has not prevented interest in scheme B – it is accordingly perverse to attach any weight to the contention that the drive thru is any part of the expectation of the modern business park.
60. The oddity that the extant permission has not come forward – is less odd than it might first appear. There is no admissible evidence of financial appraisal.

No case on this having been previously been made. There is no evidence of marketing. If there was serious commitment to the implementation of the extant permission this should be readily apparent – it is not. Demand for retail may exist but this does not show rigorous marketing⁷ of the extant permission was undertaken – pursued and failed. The credibility gap at the core of the Appellant’s case remains. The extant permission is viable and there is no evidence that it has been marketed. There is no good reason why it will not happen. The evidence on the desirability (it can not be seriously placed any higher) of complimentary uses is for reasons explored at this Inquiry unconvincing in this context.

Dilution of function and character as an employment site (business park)

61. It has been agreed that the appeal site is an important opportunity for a modern business park. It is in this context that the function and character issue has to be understood.
62. This is a gateway site and has a prominent face as a gateway to the town. In each scheme the public facing proportion of the site devoted to non-B1 uses is too great – this undermines the proper function and character of the site as a business park as the non - B1 elements set the tone. The BMW permission makes the site particularly susceptible to this – as whilst this is a *sui generis*

⁷ see by comparison the marketing material produced for Hatherley Place.

use with sufficient B1 characteristics to have been granted permission – it also does give more of a retail tone than traditional B1.⁸

63. In terms of other facilities being necessary to support this site as a Business Park – this is not a very large site which may seek to integrate non B1 elements given the size or distances from other facilities. Retail facilities are nearby, as is a nursery and café .
64. This case has never been presented to this Council on the basis that there is a minimum level of non B1 uses of certain value – necessary in order to subsidise the deliver the balance of a Business Park or associated infrastructure. Never.
65. The case is presented on the basis that such facilities are expected, more attractive to staff and more attractive to investors. The absence of a supermarket, nursery or café in this location is unlikely to persuade staff to look elsewhere for employment in the context of simple location but also proximity to other services. There is no evidence that a scheme which does not involve a supermarket but may have some low key ancillary services on a less prominent part of the site and more offices would not be attractive to investors. The provision of the facilities in the manner of the proposals dilutes the function and character of the site as a modern business park environment. To take the discount food store - this follows not from a criticism of the design of the supermarket, but from the fact that it is a supermarket that is

⁸ see WT §7.9

being designed in a most prominent part of the site. It is understood and accepted that the architectural language of the supermarket as a building is acceptably considered in the context but it remains a supermarket and obviously so. This is true in both schemes. The Costa drive thru can be seen and understood for what it is in a similar way.

66. In policy terms all of the above (which does have a “character” and hence design component) re-inforces the view of PS that the proposals do not accord with policy EM2 of the CH LP not only because the uses are not *sui generis* but also in that way do not exhibit characteristics of B1, B2 or B8 employment uses. The same applies in relation to the policy wording in eLP EM3.⁹ This also undermines the objective and spurns the opportunity to establish a modern business environment at an important gateway location. The location is a gateway - the prominence of the position of the non B1 elements within the site is emphasised as a problem for the character of the non B1 elements (which respond to the site constraints in a logical way to accommodate the [non B1] land use – and the requirements thereof) but do not set a business park tone – but as here with Aldi – sets a retail tone. It is not B1 can be seen to be so and does not have a character other than its true character which is retail. This does indeed tie back to JCS policy SD1 as SD1 is the policy for employment except retail development .

67. This part of the case is not made on the basis that specific design policies SD 4 of the JCS or CP7 is breached in this respect for if it were intended to

⁹ see WT §4.21

develop this site with the prominent frontage that it has for a non B1 use then the design is not of poor quality in that context or for that proposal – it is an issue for the reason identified by the Council that it dilutes the character of the site as a Business Park.

68. This evidence is supported by WT in addressing his issue 1 “the character and quality in the business environment “ in the following way:-

68.1 the prominence of the BMW development and its use of a striking contemporary approach at this gateway location [3.5];

68.2 the appearance of the Aldi supermarket (with a strong corporate identity 6.13) and its appearance within Area 1- similarly the nursery (6.14) and drive thru (6.12) [Appeal A only];

68.3 the issue at 6.18 a.in terms of the site’s prominence and how the site reads in terms of character as a business park and b. in accommodating the non B1 elements on the locations proposed;

68.4 the eastern end of the site is prominent and is the steeper part of the site (7.1);

68.5 On appeal A non B1 occupies the whole of the Grovefield Way frontage (§7.6) which is 110 m long – although on Appeal B this reduces to 85m but non B1 continues to be dominant ;

68.6 Non B1 occupies the site to a depth of 160 m along the spine road and WT explains including at 7.6 -7.8 how the site takes it’s dominant character including within the arrival sequence from non B1 – this does not make the proposal a bad design of itself but it does not achieve or delivery a high quality business park ;

68.7 the non B1 do not appear or read as ancillary uses supporting the business function of the site but as destinations in their own right;

68.8 dilution of character must mean something and needs to be specifically explained. The clear explanation of WT of what it means is criticised as a new case it is not – it explain how the non B1 character differs and follows the function in terms of frontage access , the number of blank elevations, specific car parking and servicing requirements and single storey buildings (7.11 to 7.12) all of which contribute to the dilution of character as Business Park;

68.9 whilst there was a reluctance on the part of ST to engage with all of the above at all – he did finally accept for example that the retail proposal was retail and discernably and understandably so.

Appeal A – design quality *per se*

69. WT paragraphs 7.13 to 7.16 are relevant as a case made against Appeal A only they are not part of the Council's case against Appeal B. This is harm which goes beyond dilution of character as relevant to rfr 1 as WT puts it "*further failure*".

70. These issues have been addressed in detail by WT in his evidence

70.1 By placing 65 metres length of supermarket at a right angle to the fall of the land to the west and the north creates level change issues – this leads to cut in to the east and raise up to the west- the car park is raised above the spine road in places by over a metre- this produces knock on effects in terms of levels for the café which is the area of concern;

70.2 The supermarket and café parks occupy 90 m of the Grovefield Way frontage with the drive thru lane making up the remainder. The drive thru lane pushes the café 10 m back from the frontage ;

70.3 There is no active edge and this very important edge to the delivery of a high quality scheme misses the opportunity to provide real enclosure and presence whilst any response would inevitably be subservient to the BMW 4

70.4 The concerns addressed by WT lead to a contrived and unsatisfactory appearance led by the nature of the café and meeting it's operational requirements and the number of inactive frontages. The change in levels set back , number of accesses, relationship between parking and the building and the lack of a suitable use of the corner in design terms undermines the entry to this Business Park.

70.5 Mr Tucker in xx was unconcerned with the original Costa design – he considered it to be acceptable – it is submitted that he really did not appear to set the bar very high at all and his evidence needs to be understood with that in mind.

70.6 The weakness of the café in design terms can be seen from the montages provided by Mr Davis at Appendix 4.

70.7 in relation to Appeal A only therefore – not only does the prominent position occupied result in an adverse dilution of the character of the site as a business park (for all of the reasons identified above) it is in itself poorly designed so as to be contrary to saved policy CP7 of the CBLP 2006 and SD 4 of JCS.¹⁰

¹⁰ The assertion that PS accepted conformity with policy under rfr 1 is wrong. PS made the case that SD1/EM2 was not complied with as set out in

71. For the avoidance of doubt the residual criticisms made by WT at 7.19 b and c serve only the dilution of character point they do not amount to a design objection to Appeal B *per se*. The Council has in these respects not relied upon breach of CP7 or SD 4.

Summary Structure of submissions

- 72.1 The proposals are not in accordance with the development plan;
- 72.2 The non-accordance matters and is not relating to 1 or 2 trivial policies;
- 72.3 There is agreed non- accordance with the emerging Local Plan;
- 72.4 More than limited [moderate weight] can be accorded to this – given the stage, continuity with the JCS thread, continuity with the saved local plan thread and sensibly understood objectives of the plan.
- 72.5 The relevant policies of the development plan are up to date;¹¹
- 72.6 The objective of seeking to make use of this land for B1 employment use [or *sui generis* equivalent] remains up to date.
- 72.7 If not up to date considerable weight can be attached to those policies nonetheless .¹² – and should be;
- 72.8 The planning balance falls against the proposals.

his PoE and was not shaken from that position in xx- however, selective the A choose to be in closing.

¹¹ as to employment land policies Lord Carnwath in *Hopkins SC* did accept that employment land supply policies could become out of date – see §55 but not by means of §49 NPPF (as then was) and not covered by his example. The evidence of PF does not begin to meet the point. Whether out of date is – as with other issues in the case] extent of ancillary uses] a matter of planning judgment. Note also observation at §25 even where disputes of interpretation .. may well not be determinative of the outcome.

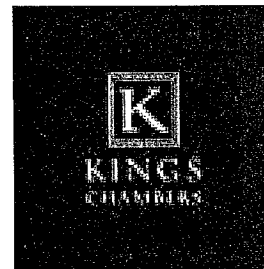
¹² per PS in RX . As in *Hopkins SC* the amount of weight of an out of date policy is for the decision maker [see §56]. It is agreed that an emerging policy [certainty in a housing context] can be out of date – *Woodcock*.

Conclusion

73. Each of the appeals should be dismissed.

G.A.GRANT

15th January 2019



A handwritten signature in cursive script, appearing to read 'G.A. Grant', written in black ink.

KINGS CHAMBERS

MANCHESTER-LEEDS-BIRMINGHAM