

Hearing Statement

Hybrid application comprising 5,034 sq.m of 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. 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)

at Land at Grovefield Way, Cheltenham

for Hinton Properties (Grovefield Way) Ltd

LPA ref: 16/02208/FUL

Appeal ref: APP/B1605/W/18/3200395

October 2019

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1.0 QUALIFICATIONS AND EXPERIENCE

- 1.1 My name is James Griffin and I am presenting this evidence on behalf of the Hinton Properties (Grovefield Way) Ltd which is the Appellant for the proposed development.
- 1.2 I am a member of the Royal Town Planning Institute and I hold a Masters degree in Town and Country Planning. I am a Planning Consultant for Design Development Partnership. Prior to this, I worked as an Associate Planner for Ridge and Partners LLP.
- 1.3 Prior to working in consultancy, I obtained over 10 years' experience working with Tewkesbury Borough Council and Cotswold District Council.
- 1.4 During my time I have obtained considerable experience dealing with a wide range of planning matters relating to a variety of developments. I undertake, and am responsible for, a wide range of consultancy tasks including the preparation of site appraisals, the preparation of planning briefs, planning applications and local plan representations and representing clients at planning appeals and at Local Plan Examinations.
- 1.5 I provide planning and development advice to a range of clients from Local Planning Authorities and Parish/Town Councils to private property companies, developers, housebuilders, individual land owners and trusts.

DECLARATION

- 1.6 The evidence which I have prepared and provided in this planning proof of evidence is true and is given in accordance with the guidance of the Royal Town Planning Institute. The opinions expressed are my true and professional opinions.
- 1.7 I have visited the appeal site and the surrounding locality. I was the agent for the planning application which is the subject of this appeal from its early preparation through to its determination.

2.0 INTRODUCTION

2.1 This re-determined appeal is by Hinton Properties (Grovefield way) Ltd ('the Appellant') against the decision of Cheltenham Borough Council ('the Council') to grant planning permission in respect of the hybrid planning application.

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

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 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.

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)

2.3 This Statement should be read in conjunction with the original 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 Council have confirmed that the contents of this original SOCG remain valid for the purposes of this redetermined appeal. The Appellant will endeavour to agree other items with the Council in advance of the Hearing.

2.4 This appeal relates to a revised application which was validated on 10th December 2016 and assigned application reference number 16/02208/FUL. Contrary to officer's firm recommendation to permit, the application was refused by the Council's Planning Committee on 14th December 2017 for the reasons set out below:

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.

- 2.5 Despite a highway reason for refusal being added this was later withdrawn by the Council in July 2018.
- 2.6 A copy of the Officers' report to committee is attached as **Appendix 1**.
- 2.7 This statement sets out the principal elements of the appellants' case which will be expanded within its Hearing Statements. These will address fully those material changes in circumstances which have arisen since the original appeal decision was issued and specific issues upon which the original appeal decision was quashed.
- 2.8 It has been previously confirmed to PINs that the appellant and Council are in agreement that this re-determined appeal should be dealt with through the informal hearing procedure. We consider that those outstanding issues can be suitably addressed and considered through this procedure.
- 2.9 This Hearing Statement reaffirms why planning permission should be granted.
- 2.10 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, which says: *"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.”

2.11 The appellants’ case is set out at Section 6.0, 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. Those material considerations include those changes that have arisen since the original appeal decision was issued.

2.12 In addition to the original SoCG, this Statement should be read in conjunction with the following Update Hearing Statements which are appended. I have summarised against each of the matters which the witness addresses:-

- Mr Stephen Tucker – Urban Design (**Appendix 2**)
- Mr Paul Fong – Employment Land Supply (**Appendix 3**)
- Mr Phil Pratt – Deliverability and Marketing (**Appendix 4**)
- Mr Ben Blackwell – Development Funding and Marketing (**Appendix 5**)
- Mr James Hinton – Appellant’s Intentions and Marketing (**Appendix 6**)

3.0 DEVELOPMENT PROPOSAL

- 3.1. A full description of the appeal proposal is contained in the original 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 to allow for appropriate delivery timing and to take into account market factors and user requirements.
- 3.3 In terms of floorspace, 84% of the development would be in B1 office use. The development would also offer approximately 1,018 full time equivalent jobs¹ and would provide a very significant contribution to employment in Cheltenham.

Planning History

- 3.4 Planning permission was allowed 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.
- 3.5 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

¹ See Mr Hardisty's Proof of Evidence on Economic Impact

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. Notwithstanding the approval, the development was not implemented.

- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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.
- 3.10 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, providing very significant employment for Cheltenham.

- 3.11 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.
- 3.12 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.

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).

- 3.13 As set out above, in 2016 (16/02208/FUL) a hybrid planning application was submitted for the development subject to this appeal. Despite an officer recommendation in support of the development, the application was refused at planning committee in December 2017. Those refusal reasons are listed above at paragraph 1.3. An appeal was then made against that decision in January 2018.
- 3.14 A revised application was then submitted which sought to address the concerns raised by the Council. The application was submitted in 2018 (18/01004/FUL) and, despite a firm recommendation from officers to permit the development, it was refused at planning committee in October 2018. Unlike the 2016 application however, that application was refused on one refusal reason which is set out below:

- 1. The site has extant planning permission 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 policy EM3 of the emerging Cheltenham Plan (Regulation 19 version, February 2018). 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 in inappropriate balance between B1 and non-B1 uses. For these reasons the proposal is considered to be contrary to policy SD1 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy, policy EM2 of the adopted Cheltenham Borough Local Plan and policy EM3 of the emerging Cheltenham Plan (Regulation 19 version, February 2018).

- 3.15 The appellant appealed against the above decision and both the 2016 (known as 'Appeal A') and 2018 (known as 'Appeal B') applications were co-joined. The appeal was conducted as an Inquiry in January 2019.
- 3.16 The appeal decision was issued on 27th February 2019. The Inspector Jackson allowed Appeal B but dismissed Appeal A. A partial costs award was also ordered against the Council for unreasonable behaviour in respect of their handling of Appeal A.
- 3.17 The **sole** reason for dismissing the original appeal was in relation to the siting and appearance of the Costa coffee.
- 3.18 Following detailed review of the appeal decision letter, it was apparent that the Inspector had erred in law in not providing adequate reasons for rejecting the appellants secondary case which was that the Development Plan was out of date and 'tilted' planning balance within paragraph 11 (d) of the NPPF should be engaged. This was particularly significant, given that it was agreed between the Council and the Appellant that, if the tilted balance was engaged, permission should therefore be granted. On that basis, the appeal decision was challenged pursuant to section S.288 of the Act. That Secretary of State conceded to judgment at the earliest available opportunity. The Council were served with the claim form as an interested party, but they elected not to participate in the proceedings. A Consent Order was approved by the Court, whereby the decision in so far as it relates to Appeal B was not affected, whereas Appeal A was quashed. A copy of the approved Consent Order is appended (**Appendix 7**). Accordingly, the planning permission granted by Appeal B remains a relevant material consideration.
- 3.19 At the time of writing, a Section 73 application (19/01793/CONDIT) is currently being considered by the LPA which seeks removal of phasing Condition 24 as imposed on

the allowed Appeal B. This is discussed in more detail below as it directly relates to the timely delivery of mixed-use development on this site.

4.0 SITE AND SURROUNDING AREA

- 4.1 A description of the site, the site location and planning history is agreed in the Statement of Common Ground and thus it is not repeated here.

5.0 RELEVANT PLANNING POLICY CONTEXT

- 5.1 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.
- 5.2 The Joint Core Strategy (JCS) has now been adopted by all three local authorities (Cheltenham, Tewkesbury and Gloucester).
- 5.3 Since its adoption in December 2017, the JCS Authorities are taking forward a review of the Plan, as directed by the examination Inspector in her final report. An 'Issues and Options' consultation for the JCS review took place between November 2018 and January 2019. In respect of economic development, the consultation reaffirmed the JCS employment strategy to deliver land and jobs in close proximity to the M5 corridor and noted that this supported the Strategic Economic Plan (SEP) prepared by the Local Enterprise Partnership (LEP). It also continues to note that the JCS requires the delivery of 192 hectares of employment land, both in main urban areas and as part of some strategic allocations.
- 5.4 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 and was only submitted for examination in October 2018.
- 5.5 Other relevant material considerations include:
- National Planning Policy Framework (NPPF)
 - National Planning Practice Guidance (PPG)

- 5.6 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 SD4: Design requirements.
- Policy SD2: Retail and City/Town Centre.

Saved policies of the Cheltenham Borough Local Plan (2006)

- 5.7 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. The policies of relevance are as follows:

- Policy CP3: Sustainable Environment
- Policy CP6: Mixed use Development
- Policy CP7: Mixed use Development
- Policy EM2: Safeguarding Employment Land
- Policy RT1: Location of Retail Development

Submission Cheltenham Plan 2018

5.8 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

5.9 A series of examination hearings took place during February 2019 into the emerging Cheltenham Plan. During the session regarding the Council's economic policies, concerns were highlighting regarding the flexibility afforded by the wording of policy EM3 to other non-B class uses and accuracy of the areas set out in emerging policy EM3. Broader concerns were also highlighted in respect of the Council's ability to meet its employment land requirements given the limited number of sites proposed for allocation and fact not all sites set out within EM3 were 'new' sites. These concerns are recognised by the examination inspector and are set out in her 'post hearing' letter to the Council dated 9th April 2019. At the time of writing, there has been no consensus between the Council and Inspector on main modifications nor has public consultation occurred. It is unlikely therefore that the emerging Plan will be adopted before January 2020.

6.0 THE APPELLANT'S PRIMARY CASE

- 6.1 The appellant's primary case is that the appeal proposal accords with the Development Plan. This was the conclusion of the Council's planning officers in recommending permission and the previous Inspector in allowing 'appeal B'.

RFR1

- 6.2 The principle reasons for refusal to be addressed are RfRs 1 and 3. The concerns set out in this reason relate primarily to the proportion of non-B1 floorspace proposed as part of the development; the alleged prominence of non-B1 uses on site and compliance with planning policy. RfR1 also highlights the Council's concern relating to the alleged dilution of the character and function of the site as a business park.

POLICY SD1, JCS

- 6.3 Policy SD1 of the JCS is referenced in RfR1.
- 6.4 In planning policy terms, the site is within the 'wider countryside' and this was agreed by the LPA in cross examination at the Inquiry held in January 2019 and in the SoCG (which the Council have re-affirmed they do not resile from). Criterion vi of SD1 supports employment-related development in wider countryside when it is:

"located within or adjacent to a settlement or existing employment area and of an appropriate scale and character."

- 6.5 These points are similarly agreed with the Council in the SoCG. The appeal site is located adjacent to Cheltenham's existing PUA and an existing employment area; immediately adjacent to the now constructed BMW showroom and B&Q/other retail units. It is also adjacent to the settlement of Reddings. It is also evidenced in the original Proofs of Mr Tucker and Mr Davies that the scale and character of the development is appropriate for the area. Consequently, I am of the firm view that the development would accord with SD1, meeting criterion vi.

- 6.6 Furthermore, criteria ii and iv state that employment development will be supported (ii) at locations allocated for employment use within the Development Plan, and (iv) for the development of new employment land within Gloucester City, the Principal Urban Area (PUA) of Cheltenham and Tewkesbury town.
- 6.7 At the time of writing, the appeal site is proposed to be allocated in the emerging Cheltenham Plan. The emerging Plan would also amend Cheltenham's existing PUA such that the appeal site would be included within it. Given the infancy of the emerging Plan, it is recognised that the allocation and PUA amendment have not been formally adopted. Accordingly, the development is also in accordance with the thrust of criteria ii and iv.
- 6.8 The written background to SD1 is of particular importance to the appeal proposal. Paragraph 4.1.3 of SD1 states:
- "In the NPPF, employment is considered in a wider sense than the traditional industrial, office and warehousing (B1, B2 and B8 uses). For example, uses such as retail, hotel, tourism, leisure facilities, education, health service and residential care, (referred to as non-B use classes) **can be also be large employment providers. This policy covers job-generating uses such as business, industry and tourism.** Retail and other uses, including those within use class 'A' are not covered by this Policy and area dealt with in Policy SD2. More detailed policies will be included in District Plans"*
- 6.9 Accordingly, it is unclear how there can be policy conflict relating to the class 'A' uses at the site given that such uses do not fall for consideration against Policy SD1. Such uses fall for consideration against Policy SD2, which the Council accept there is no conflict with. Indeed, this was the conclusion drawn by the first Inspector in original appeal decision.
- 6.10 The inclusion of a retail use on this site in either retail impact or sequential terms, is not a disputed matter between each party as set out in the originally signed Statement

of Common Ground. Indeed, this is reflected in the Officers' report to committee where it was considered that the location of the supermarket and its impact in retail terms would be acceptable.

- 6.11 Nevertheless, it is important to consider retail policy. Policy SD2 of the JCS supports retail developments that are not located in main town centre areas, where they have met the requirements of the sequential test and impact test. The appeal proposal was tested and found to be acceptable against them. The retail elements of the appeal are therefore consistent with this policy.
- 6.12 Equally, Policy RT1 of the CBLP is permissive to retail development in out-of-centre locations provided that they are accessible by a regular choice and means of transport. All parties agree that the appeal site is an accessible location and accordingly the appeal proposals are consistent with Policy RT1.
- 6.13 The Inspector's conclusions within the original appeal are important. Whilst his decision in respect of Appeal A has been quashed, his conclusions in respect of policy and Appeal B have not been. At paragraph 18 of his decision letter, he notes clearly that *'There is no JCS or LP policy that indicates whether business parks should be solely in office use or what proportion of non-B1 uses might be acceptable. Indeed, he concludes that 'the proposals would meet the relevant criteria listed in JCS policy SD1'*.
- 6.14 In respect of JCS policy SD1 therefore, there should be no ambiguity that the proposal is in accordance with JCS employment policy.

POLICY EM2, SAVED LOCAL PLAN

- 6.15 **Policy EM2** is referenced by the Council in RfR1. EM2 relates to the now time expired CBLP only intended to run until 2011 and is supported by a now out-of-date evidence base.
- 6.16 The CBLP did not allocate sufficient provision of employment land, as Mr Fong highlights. Thus, it is clear that the employment policies in the adopted CBLP are

significantly out-of-date and do not provide for the employment needs of the Borough. It is therefore my opinion that only limited weight should be given to policy EM2.

- 6.17 However, the application of policy EM2 to the appeal proposals is incorrect in any event. EM2 relates to existing employment land for which the appeal site is not. I note that a similar scenario existed when Members considered the adjacent BMW showroom (a *Sui Generis* use). In determining that application in 2013 (13/01101/FUL), Officers confirmed in their report to committee that whilst 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 (the showroom), it would generate jobs. Planning Policy Officers' at the time stated that *"the lack of a current or previous history of B class use on the site serves to reduce the impact of policy EM2 on the application"*.
- 6.18 In the original appeal, the Inspector agreed that there is no existing employment use on site. This notwithstanding, he also noted that the policy supported mixed use development providing that non-B class uses do not have a detrimental impact on the range of types and sizes of sites for business uses in the area; and the use is appropriate to the location and adds value to the local community and area. The Inspector concluded that whilst retail would reduce the amount of B-class uses within the site, retail still contributes valuable employment opportunities for both appeal schemes. Further, he noted that the proportion of floorspace allocated to retail is sufficiently small to not overwhelm the prospects for future B class jobs. In respect of policy EM2 therefore, it was agreed that the proposals would not conflict with the overall employment aims of development of policy EM2, or indeed JCS policy SD1.

POLICY EM3, EMERGING PLAN

- 6.19 The Council cite policy EM3 of the submission version of the emerging Cheltenham Plan in RfR1 on the appeal proposal. At the time of writing, the policy has yet to successfully pass examination and the weight to be attributed to it for decision making purposes should therefore be limited. This notwithstanding, emerging policy EM3 seeks to concentrate traditional B class employment activities at new employment allocations whilst also providing a *'greater degree of choice and flexibility to the market'*. It does not restrict employment uses to traditional B-class uses only and,

instead, supports alternate employment uses. Moreover, it should also be noted that the emerging plan seeks to allocate the site at Table 11 in accordance with Appeal A.

- 6.20 The flexible nature of employment policies in the emerging plan is also evident in emerging Policy EM2. For non-designated employment sites, it states that a sequential approach should be taken where traditional B class uses would be supported, followed closely by 'job generating uses'. 'Job generating uses' are confirmed as '*retail, leisure facilities, education, health services, residential care, and tourism*'. Much like outdated policy EM2, emerging policy EM2 also states that '*this list is not exhaustive and other uses may also be relevant*'.
- 6.21 Notwithstanding the direction of travel evident in emerging policy, it should be strongly noted that there are still unresolved objections to the emerging CP, as already noted above. In their formal response to the recent pre-submission consultation (Reg. 19) version of the emerging CP, Gloucestershire's Local Enterprise Partnership (LEP) stated clearly that:

*The C&I Group of the LEP also recommend **that the Council take a more practical and flexible approach to the development of new business parks recognising that it is commonplace for new business developments to provide complimentary and ancillary uses on site. Ancillary uses can comprise of hotels, cafes, pubs, restaurants, retail uses to name a few.** The addition of these ancillary facilities and uses maintains the attractiveness of the park for end users and improves the viability and delivery of the B class employment. Such uses are also recognised as providing a significantly higher number of jobs than the equivalent floor area or site area of B class uses as well as providing much needed amenity.*

It is considered that the Plan should make reference to ancillary uses being acceptable on employment parks provided they do not exceed 20% of the intended employment content."

(The response is attached in full at **APPENDIX 8**.)

- 6.22 With over **80%** of the total floorspace providing B1 class uses (the remaining 20% providing non-B class employment uses), the appeal would meet the LEP's aims of providing complimentary and ancillary uses on business park sites. It is evident

therefore that employment value can be attributed to non-B class uses and these can support the delivery of B1 uses.

- 6.23 The above notwithstanding, it should be remembered that in assessing the original appeal proposals the Inspector considered in his decision letter that policy EM3 should only be attributed *'moderate weight'* (para. 13) yet considered that *'the scheme would meet the requirements of emerging policy EM3 in that they would be predominantly B class employment'* (para. 23). Since the original appeal decision, it is also important to note that in a recent appeal decision issued on 20th September 2019 concerning a housing development at Oakhurst Rise in Cheltenham (APP/B1605/W/19/3227293), the Inspector concluded that only *'little weight'* should be applied to the emerging Plan owing to the lack of progress on main modifications required to the Plan.
- 6.24 In light of the above, it is clear therefore that limited weight should be applied at the present time to the emerging policies of the Cheltenham Plan. This notwithstanding, it should not be dismissed that it was noted by the previous Inspector that the appeal proposal, in any case, would meet the requirements of emerging policy EM3.

RR3: VISUAL IMPACT ON THE SURROUNDING AREA

- 6.25 The Council allege that the proposed layout would result in a predominance of hardstanding and retaining structures, creating a poor appearance and not create an attractive streetscene or strong sense of place which responds to the character of this location. It should be clarified at this stage that landscape impact is not a concern, as was agreed between both parties in the SoCG.
- 6.26 Detailed discussions were undertaken with Officers throughout the determination of the appeal proposal and amendments were agreed and subsequently submitted. In their report to planning committee recommending that planning permission be granted, Officers noted that *'the most serious shortcomings in the layout have been overcome'* and that the *'layout is considered acceptable'*. In respect of building design, it was noted that the supermarket and coffee shop are of a relatively *'standardised design'* yet they would *'use a similar architectural language and similar palette of materials. This has been designed to pick up on the language, materials and colours utilised within the BMW buildings'*. It was therefore noted that the design of the individual

buildings is *'acceptable and appropriate for a modern business park'* and that *'the buildings will appear as a family of buildings which is important in giving the site an identity as a high quality business park'*. There are also no concerns raised in respect of their relative heights. In concluding their design and layout section of the report, Officers' noted that they were:

"...satisfied that the proposal is acceptable in terms of layout, the design of the buildings and their size and height".

(See Section 6.4 of committee report – **APPENDIX 1**)

6.27 The appellants' case is supported by the original Proofs from Mr Tucker and Mr Davies who consider urban design and landscape matters respectively. For the purposes of this re-determined appeal, an Update Hearing Statement has been provided by Mr Tucker and is appended. Both Mr Tucker and Mr Davies were of the firm view that the appeal scheme would be of an acceptable scale and design and, consequently, would not conflict with Policy SD4 of the JCS, CP7 of the Local Plan, or, indeed, Section 12 of the NPPF, which seeks to achieve well-designed places.

6.28 In light of allowed appeal B, which upheld the overall mixed use masterplan, it is apparent that the principle design matter for consideration in this appeal is the inclusion of Costa Coffee; its siting and impact on the character of the business park. In this respect, Mr Tucker concludes that Costa Coffee *"would sit comfortably at the site access and become a useful facility for a successful mixed use business park"*.

6.29 Mr Tucker notes that the architectural design would be entirely appropriate for a modern business park and recognises that there would be a strong interaction between the existing architectural approach and broader commercial positioning of the mixture of uses, urban design and landscape strategy. Whilst of a bespoke design to this particular development, Mr Tucker notes that the unified architectural approach and materials palette would result in a *'family of buildings'*, in accordance with policy CP7. In summary, Mr Tucker concludes that the building would be appropriate in its setting; a setting that has been significantly determined by the same Inspector's decision to permit appeal B

in February 2019. It is noted that on the same frontage there is already the constructed commercial and dominant BMW garage and on the other side would be located an Aldi supermarket. It is recognised therefore that both buildings are more significant in terms of quantum and more attractive to non-B1 traffic. The Costa would not be dominant within this frontage and its bespoke design would ensure it complements the overall character of the business park. Furthermore, the B1 offices would be visually prominent when traversing along the A40 to the West of the site, a highway which provides a principle gateway route into Cheltenham and point where the site is highly visible.

6.30 In summary, it is evident from the above, allowed appeal B and supporting evidence provided from Mr Tucker, that the appeal proposal would be in accordance with development plan policy SD4 of the JCS and policies CP7 of the LP in respects of design.

7.0 THE APPELLANT'S SECONDARY CASE

- 7.1 The Appellant's secondary case is that in the event that the appeal is found to be contrary to the development plan, which the appellant firmly maintains would be an incorrect application of policy, the appeal falls to be considered against the tilted balance within paragraph 11(d) of the NPPF. The reasons for this are explored below.
- 7.2 Firstly, the development plan fails to make sufficient provision for employment, retail, leisure and other commercial development. Indeed, the JCS left it to the District Plans (in this case the Cheltenham Plan) to identify much of the required employment land. This has contributed to a significant unmet need for employment land and an acute shortage of sufficient employment space, as addressed by Mr Fong. In light of the policy vacuum as to where the identified need for employment space will be provided, **the plan is out of date**. This analysis is entirely consistent with the **Moulton** decision,² wherein the Inspector said as follows:

45. I therefore conclude that whilst the District can demonstrate a five year housing land supply, those policies relevant to the supply of housing from the DDLP are of such date that only limited weight should be attached to them. The relevant strategic housing supply policies from the WNJCS are more up-to-date by virtue of being consistent with the NPPF and accordingly I attach significant weight to them. However, as strategic policies, they are relatively broad-brush and I find that the absence of detail through the SaCLP [ie. the site allocations plan] provides a policy gap on how and where rural housing needs to 2029 will be met.

46. In this policy context the presumption in favour of sustainable development, as set out in the first sentence of paragraph 49 of the NPPF, applies and it is therefore necessary to apply the tests in paragraph 14. This means, that where the relevant policies in the development plan are dated, and therefore of little weight, or more up-to-date policies silent on the detailed

² Appeal Reference: APP/Y2810/A/14/2225722

scale and location of rural housing allocations, then I have to apply the stipulated planning balance.

- 7.3 Secondly, if the development plan is to be read as precluding any ancillary uses on an employment site, clearly the plan would be contrary to the NPPF's ambition, as stated in paragraph 81, of being flexible enough to accommodate needs not anticipated in the plan.
- 7.4 Thirdly, Mr Fong noted in the first appeal that the JCS was already struggling to meet recognised employment needs. Indeed, it was noted at the time that site A4 North West Cheltenham is now only providing 10 hectares of employment land, whereas the intention at the point that the JCS was adopted was that it would provide for 23.4 hectares of employment land. Similarly, Site A5 (Ashchurch) was intended to provide for 14.3 hectares of employment land, whereas planning permission has been granted for retail development on the site. Furthermore, the unresolved objections to emerging LP employment policy, which should perform the role of delivering employment sites at 'district level', means the strategy set out in the adopted JCS is not being achieved. Thus, it is now accepted that the allocations within the JCS will provide for significantly less employment land than previously thought, rendering these policies out of date.
- 7.5 Furthermore, and alternatively, there is no existing retail strategy within the development plan (or the emerging plan for that matter) and thus there are no relevant development plan policies in this respect.
- 7.6 In Mr Fong's Update Hearing Statement, he notes that the employment land situation within Cheltenham Borough has not improved and the stated provision required at district level through the JCS has still not been met. In fact, the employment land supply position within the Borough has not changed since the position given at the first appeal. There remains significant outstanding objections to the employment strategy of the Plan which have not been resolved and no significant new employment sites have come forward or been allocated despite the objections to the Plan.
- 7.7 Furthermore, it is relevant that at the first inquiry the Council did not challenge that there was a shortfall of employment land supply against the minimum standard set in the JCS. The Council have also not sought to challenge this through the examination into the emerging Plan.

- 7.8 Mr Fong's evidence states clearly that when strategic JCS employment allocations are assessed against existing undeveloped capacity and those allocations coming forward (from Tewkesbury Borough Council), there remains a specific shortfall of 42.4Ha in order for the minimum requirement of 192ha of employment land to be met, as set by policy SD1 of the JCS. At the time of writing, it is evidenced that this shortfall is not met by the remaining JCS Authorities (Gloucester City and Cheltenham Borough) and this deficit will remain unless the emerging District Plans are amended.
- 7.9 On this matter, it is important to recognise conclusions drawn in the recent New Home Ltd³ case. Here, Sir Duncan Ouseley confirms that in order to determine whether development plan policies are out-of-date, it is firstly important to identify the 'basket of policies' from the development plan which constitute those most important for determining the application. The second task is to decide whether *“that basket, viewed overall, is out of date; the fact that one or more of the policies in the basket might themselves be out of date would be relevant to but not necessarily determinative of whether the basket of most important policies was itself overall out of date”*.
- 7.10 As noted above, the collective 'basket' of policies relating the principle of development in this case are JCS policy SD1, Policy SA1 and LP policy EM2. It is noted above and supported in evidence provided by Mr Fong, that the JCS allocations are now out-of-date on the basis that the allocations within Policy SA1 are no longer correct and that wider of employment land delivery at district level is not being achieved.
- 7.11 In respect of adopted policy EM2 of the Local Plan, this sits within a time-expired LP which was intended to run until 2011 and derived by a now out-of-date evidence base. Furthermore, and as recognised by Council's policy team during the consideration of the application, EM2 'was of only limited relevance' as the policy is considered with protecting existing or last employment uses rather than implemented planning permissions.

³ Paul Newman New Homes Ltd v SSHCLG and Aylesbury Vale DC [2019] EWHC 2367 (Admin)

- 7.12 From the clear updated evidence provided by Mr Fong, it is thus apparent that Cheltenham Borough continue to have an unmet employment land supply. As above therefore, the JCS is out-of-date in respect of employment land supply therefore and, as such, paragraph 11 (d) of the NPPF (the tilted' planning balance) should be engaged.
- 7.13 Accordingly, within the tilted balance, permission should be granted unless *“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole”*⁴.
- 7.14 It has always been firmly advanced by the appellant that even in the event that harm is identified in respect of Costa Coffee, that harm would not 'significantly and demonstrably' outweigh the benefits arising from the proposal. These benefits are outlined again in Section 10.0 below yet were also noted by the Inspector in the original appeal decision. He stated clearly that *‘both schemes A and B would provide a substantial boost to employment within Cheltenham including a very significant number of potential B1 jobs’* (para. 25 of decision letter).

⁴ Paragraph 11 (d) ii of the National Planning Policy Framework, February 2019

8.0 THE APPELLANT'S TERTIARY CASE

8.1 Irrespective of the tilted balance and planning policies, the reality is that the Council are relying on the appeal site to provide employment development. Indeed, the strategy in the emerging plan hinges on the appeal site delivering substantial employment land. However, as demonstrated through the original Proof and update Statement of Mr Pratt, the only practical means of delivering B class employment land at the Site is through allowing ancillary uses to come forward. It is also critical that any permission is flexible enough to ensure timely delivery and does not impose an unjustifiable and disproportionate financial burden on the Appellant, as clearly set out in the Planning Practice Guidance⁵.

8.2 In allowing 'appeal B' the Inspector imposed phasing condition no.24 to '*ensure the prime purpose of the business park is achieved*' (para. 39). The condition states that:

'The A1 food retail unit shall not be occupied until B1 office units labelled 'office 1' and 'office 2' and 'office 5' have been constructed and are capable of occupation'.

8.3 Unfortunately, the condition in question is having the opposite effect and actually preventing timely delivery of a prime business park for Cheltenham. As reflected in the S.73 application which seeks removal of this condition and, at the time of writing, is being considered by the LPA, the condition is preventing early delivery and limiting the development's attractiveness to future office occupiers. The condition requires the developer to firmly secure 3 no. office occupiers at the same time all with the same occupational requirements to be available prior to the A1 supermarket becoming operational. Whilst creating practical construction and occupational problems, this requirement places an unreasonable financial burden on the Appellant which is firmly contrary to PPG advice. This states that conditions should not be imposed which '*unreasonably impact on the deliverability of a development*'. It further states that conditions which '*place unjustifiable and disproportionate financial burden on an applicant will fail the test of reasonableness*'.

⁵ Paragraph: 005 Reference ID: 21a-005-20190723

- 8.4 In the development funding evidence provided by Franck-Steier Price (**APPENDIX 5**), it is clear that the condition is imposing a severe financial burden on the applicant and speculative development (building all offices without occupiers) is too high a risk for lenders – this is simply not an option in the current climate. On the latter, it is also relevant that the economic growth forecast for the UK has been downgraded since the grant of permission in February 2019. The Bank of England and independent forecasters note that the UK economy is performing poorly, and predictions have been reduced. Consequently, and in line with paragraph 80 of the NPPF, it is important to support business and assist delivery where possible, even through the removal of restrictive planning conditions if necessary.
- 8.5 In respect of the market attractiveness of the development, the Alder King report by Mr Pratt (**APPENDIX 4**) notes that office occupiers now want ancillary facilities on ‘new generation’ business parks from day one as this provides delivery confidence and limits immediate term disruption caused through construction phases. The report, and supporting letters from national property agents, confirm that these are important factors and underlines that condition 24 is creating uncertainty in respect of development delivery. Evidently, this is unattractive to the current commercial office market. In this context, it is therefore impossible to expect office occupiers to come forward to occupy all three units at the same time. This emphasises the unreasonable nature of the condition.
- 8.6 This report also highlights that the condition is also preventing the occupational delivery of an otherwise acceptable form of development. The A1 supermarket will provide employment and economic benefits now, yet its early delivery is restricted due to the unreasonable phasing restriction imposed by the condition. It is common ground between both parties that an employment led scheme should come forward at this site. This appeal and the removal of condition 24 is simply intended to achieve that end goal. To that end, the Appellant is happy to provide a legal undertaking that the non-B class floor space built on site will not fall below that proposed by this scheme and that no alternative development can come forward at the site.
- 8.7 Based on the evidence provided above, it is my opinion that an important material consideration in the appeal is that the mixture of uses and current named users proposed would greatly assist in the delivery of the site for employment purposes.

However, the phasing condition (no.24) imposed on allowed 'appeal B' is having an unreasonable impact on the deliverability of the development. This is a material consideration for this re-determined appeal. Whilst the importance of non-B class uses has already been accepted by the previous Inspector, this does underscore why such uses are critical in promoting timely business park delivery and development funding.

9.0 THIRD PARTY REPRESENTATIONS

9.1 The primary third party representations that were submitted to Cheltenham Borough Council during the determination of the development subject to this appeal (16/02208/FUL) have been considered below.

IMPACT ON EMPLOYMENT

9.2 Concerns were raised by third parties throughout the consideration of the application that the development would result in the loss of B class employment land. Despite officers considering that the development would be in accordance with location and national planning policy, the application was refused on these grounds and this concern is a principle matter subject to this appeal and the appellant's position is set out above.

IMPACT OF RESIDENTIAL AMENITY

9.3 A number of concerns relating the residential amenity and environmental matters were raised during the consideration of the application.

9.4 Whilst no objections were or are raised by the Council in respect of air quality matters, this was considered in detail in the officers' report relating to appeal B (2018 scheme). Officers noted the high levels of traffic generated in and around the application site, and agreed that the proposed development will increase vehicle journeys. However, they noted that there was no evidence to suggest air pollution generated from the proposed development would provide unsafe levels of CO_2 , consequently the Council agreed that the proposal would be in accordance with JCS Policy SD14. They also note that the development was not considered to be significantly different than the extant planning permission in land use terms. In reaching this conclusion, the Council have noted data sources from the Air Quality Status Report published in 2017, readings taken close to the site in 2013 and 2016.

9.5 It is noted that residents have also raised concerns in respect of noise and light pollution, and waste management. Officers agreed that the physical presence of the proposed buildings will not cause significant loss of light and proposed lighting can be suitably

controlled by planning condition. Furthermore, it was considered that the noise generated by the appeal scheme would be appropriate in amenity terms, as supported by the noise survey. It was also considered that matters relating the noise and lighting could be suitably controlled by an appropriately wording planning condition, in addition to matters such as deliveries, opening hours and waste management. This was further reflected by the decision to allow appeal B, where the Inspector imposed condition to suitably control these matters. No objections were raised by the Council's Environmental Health officer subject to these controls.

- 9.6 Overall, it was concluded that the appeal scheme would not have an adverse impact on the residential presently enjoyed by residents, particularly when set assessed against the extant planning permission. In this regard, the Council are still in agreement with this position.

IMPACT ON HIGHWAYS

- 9.7 It is noted that local residents have raised concerns regarding the impact on congestion, highway safety and parking levels proposed. Despite no objections being raised by the Local Highway Authority or Highways England to both appeal schemes, the Council did originally refuse appeal A on highway grounds. The Council have, however, decided to withdraw this as a reason for refusal in light of there being no objection from statutory consultees.
- 9.8 It is acknowledged that whilst the development would increase traffic generation, this increase would not be detrimental to highway safety. Furthermore, it was noted that there were adequate levels of car parking for the proposal and no harm would be caused. As set out in the Transport Assessments submitted with the application, the appeal proposal would accord with relevant local and national transport policy, as supported by statutory consultees.

IMPACT ON GREENBELT

- 9.9 Concerns have also been raised on the grounds that the development would create unacceptable built development in the Greenbelt. Since the adoption of the JCS in December 2017 however, the site has been removed from the Greenbelt and the

Greenbelt boundary has been amended. As a result, the Council are in agreement that concerns relating the Greenbelt matters are no longer applicable.

IMPACT ON FLOODING AND DRAINAGE

9.10 Concerns were also raised regarding drainage proposals and increased flooding on site. Following assessment of both schemes by officers and the Lead Local Flood Authority, it was concluded that both developments would have an acceptable impact in drainage terms as recognised in the submitted Flood Risk Assessment and the surface water drainage strategy submitted in support of both applications. In both cases, the development would provide permeable paving to accommodate the storage of surface water, and geocellular crates for all remaining storage as well as an existing balance pond to provide appropriate drainage solutions for the site. Subject to relevant conditions to control these matters, the development is therefore considered acceptable in drainage and flood impact terms.

IMPACT ON ECOLOGY

9.11 Some concerns were also raised in respect of impact on local wildlife and ecology. An ecological assessment was undertaken and consisted of a number of ecological surveys across the site. This assessment confirmed there are no biodiversity constraints that would limit the development. Notwithstanding this, bat and bird boxes are proposed to allow for new habitat opportunities and native planting is included within the soft landscaping aspects of the development to help enhance the ecological value of the site. No objections were raised to the application by Natural England during their consideration of the application and no objections have been raised to either scheme. In light of this, the Council are in agreement that the scheme accords with local and national planning policy in respect of ecology matters.

10.0 BENEFITS

10.1 This section considers the key benefits arising from the appeal proposal and the degree of weight that should be attributed to them. It should be remembered that in considering both proposals the previous Inspector acknowledged that a wide range of benefits would be arising from both schemes and the permission arising from appeal B still stands.

Provision of B1 office space

10.2 There should be significant weight afforded to the provision of B1 office space. This, in itself, will help meet the employment land requirements of the JCS and provide a much-needed prime business park for Cheltenham.

Economic Benefits

10.3 It is clear from the evidence provided by Mr Hardisty, which utilised data direct from JCS employment policy, that the direct benefits arising from the proposal in terms of job creation would be significant. The scheme, once delivered, would create over 1,000 new jobs for the local area, directly helping to support the growth of the local economy. As highlighted above, the Inspector noted in his decision that *'both schemes A and B would provide a substantial boost to employment within Cheltenham, including a very significant number of potential B1 jobs'*. (para. 25)

10.4 This support for the growth of the local economy should be attributed significant weight in my opinion. Mr Hardisty also noted that the development would support gross direct wages of £5.5 million per annum, during its construction phase. Importantly, during its respective operational phase, the development would support £34.6 million per annum in gross direct wages. This is significant and would have a significant positive impact on the vitality of the local economy, supporting increased spending and economic activity.

Mixed Uses

10.5 The appeal proposal would also offer a mix of uses and job opportunities which should be afforded moderate weight in the planning balance. The NPPF recognises that mixed use developments are desirable – as per paragraph 118(a). Indeed, the JCS makes

clear that a mix of future job opportunities is just as important as specifically allocating parcels of land for employment provision. Mr Pratt and Mr Blackwell also note that mixed uses and particularly uses that support 'new generation' business park environments should also be valued, encouraged and can greatly assist timely delivery.

Non- B1 Uses

- 10.6 The non-B1 uses at the site ought to be afforded significant weight in their own right as it is recognised in the JCS that they will contribute to jobs which are predicted to provide two-thirds of projected growth across the area. Indeed, all of the non-B1 uses would still provide employment and contribute to the JCS objective of securing economic growth. Furthermore, the Inspector also noted that '*mixed uses are recognised as attractive in business parks and non-B1 jobs are important to overall economic growth*' (para.25).

Design

- 10.7 In environmental terms, the development would provide a high-quality business park which is noted in Mr Tucker's evidence and is now a market requirement as noted by Mr Pratt. Unlike existing development in the vicinity of the site, namely the B&Q retail park adjacent to the site and the GCHQ site, the development would ensure a continuation of the existing BMW development in terms of its design approach and language. It would provide public realm features along the main access road (already in place), whilst infrastructure and built form would be integrated and connected visually by a high quality planting and landscape scheme. This would maintain the high standards set by the existing BMW development and ensure a complementary form of development. This benefit should be attributed moderate weight in my opinion.

Under-Utilised Land

- 10.8 Moderate weight ought to be afforded to the fact that the site constitutes under-utilised land as per paragraph 118(d) of the NPPF. There are no technical constraints to development to site and indeed the intention has been to development the site for over 12 years. Thus, it is currently under-utilised in its current state as a greenfield site with limited functions. The appeal proposal will bring the site into use for an identified need.

Sustainable Location

10.9 The site is also in a sustainable location, adjacent to Cheltenham's existing Principal Urban Area (PUA) and connected to main road networks through existing infrastructure. It is also adjacent to an existing park and ride facility, providing access to the existing conurbations in Cheltenham, whilst foot and cycleways provide active travel opportunities and are located directly opposite the site. Indeed, this would avoid office users from having to travel further distances by car to shops during lunch periods and thus would reduce car travel, which is consistent with the NPPF. Consequently, the accessible location of the development should also be noted as a moderate benefit of both proposals in my opinion.

11.0 BALANCE AND CONCLUSIONS

11.1 This appeal relates to the following proposal:

5,034 sq.m of 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. 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).

11.2 Despite outline planning permission for B1 development on site being granted in 2014, to date, this has not come forward. The development was not viable in the current market and the appeal proposal was brought forward to address this.

11.3 The site's ability to help meet the acute unmet need for employment land as identified in Mr Fong's evidence has therefore been slow. The recently granted mixed use scheme in 2019 (appeal B) is a positive step forward, yet its timely delivery is being prevented due to a restrictive phasing condition (no.24) which is placing a disproportionate financial burden on the applicant, as demonstrated by the evidence from Mr Pratt and Mr Blackwell. For this reason, it is important that any new permissions are flexible enough to accommodate needs not anticipated, as per para. 81 of the NPPF.

11.4 As demonstrated in evidence, the appeal proposal has been designed to deliver a comprehensive B1 led business park environment with complimentary uses. This is reflective of the current modern business park requirements, as identified by Mr Pratt, yet would still ensure that over 80% of total floorspace on both schemes is dedicated to B1 uses. The inclusion of Costa Coffee would greatly assist the development in providing on-site refreshment facilities which will support on-site businesses and compliment the overall offering of the park. It is also apparent from evidence provided that the location and services offered would be consistent with other 'new generation' business parks which often provide such facilities in prominent frontage locations.

- 11.5 The appeal proposal would accord with SD1 of the adopted JCS and Section 6 of the Framework which firmly states that significant weight should be placed on the need to support economic growth and productivity, taking account of both local business needs and wider opportunities for development. Although for the reasons detailed above it is considered that limited weight should be attributed to both policies contained within the out-of-date and time expired Local Plan and emerging Local Plan, it is also held that the proposed developments would be in consistency with their respective employment policies which seek to deliver new employment land to create jobs and prosperity.
- 11.6 In deliverability terms, Mr Pratt has demonstrated that the format and type of development proposed would ensure it responds positively to the existing market whilst still delivering B class employment space. This notwithstanding, it was firmly advanced in Mr Hardisty's evidence that the non-B class uses proposed would still be economically valuable and meet the employment needs of the JCS area. He also points to the fact that the proposals in their current form would generate strong employment uses that respond well to achieving the needs of the Borough; a point acknowledged previously by the Inspector when allowing Appeal B. In overall employment policy terms, the proposals would be in accordance with the development plan and national Framework.
- 11.7 Importantly, the evidence provided by Mr Tucker demonstrates that the design and layout of the development would create a high-quality business environment and there would be no harm to the character of the area, in accordance with policy SD4 of the JCS and CP7 of the Local Plan.
- 11.8 The structure of the Appellant's case is:
- **The primary case:** The development accords with the development plan (and emerging plan to the extent that this is relevant) and thus permission should be granted without delay.
 - **The secondary case:** In the event that it is found that there is some conflict with the development plan, the plan is out of date. Thus, within the context of the tilted

balance, any alleged harm does not significantly and demonstrably outweigh the benefits.

- **The tertiary case:** Even applying the 'straight' statutory test, the benefits of the proposal are a material consideration of sufficient weight that would justify departure from the plan in any event (notwithstanding the Appellant's firm submission that the proposed development complies with the plan). It is also presented that it extremely important to minimise barriers to timely delivery, namely phasing conditions which place a disproportionate financial burden on the applicant.

11.9 I am of the opinion that the appeal proposal would be in accordance with the development plan and Framework. Furthermore, there are no other reasons why development should be prevented and I respectfully ask that the appeal be allowed.