



PLANNING APPEAL BY:

Hinton Properties (Grovefield Way) Ltd

**SITE: LAND AT GROVEFIELD WAY
CHELTENHAM**

UPDATED FURTHER STATEMENT OF CASE

OF

THE LOCAL PLANNING AUTHORITY

OCTOBER 2019

LPA Ref: 16/02208/FUL

PINS Ref: APP/B1605/W/18/3200395

1.0 BACKGROUND

1.1 This Updated Further Statement of Case has been prepared by the Local Planning Authority (LPA) following the High Court Consent Order (CO/1439/2019) issued on 11 June 2019 in respect of the original Inspector's appeal decision dated 27 February 2019.

1.2 The Planning appeal relates to the refusal of an application for a development described as:

"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)."

1.3 The LPA's Planning Committee refused the application ('Scheme A') at its 14th December 2017 meeting. There were three reasons for refusal:

Reason 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).

Reason 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.

Reason 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.

- 1.4 For brevity, the reasons can be referred to as 'the B1 / non-B1 balance reason' (1), 'the highways reason' (2) and 'the character and appearance reason' (3). The Appellant lodged an appeal against the refusal of Scheme A (Appeal A).
- 1.5 The Appellant also submitted a revised application for a different proposal (Scheme B) which, in essence, removed the Costa coffee component and replaced it with office development floorspace. The LPA refused that application on 18 October 2018 and an appeal was lodged against that refusal (Appeal B).
- 1.6 The two appeals were the subject of a joint Inquiry which opened on 8 January 2019 and sat for 5 days. The LPA did not pursue the highways reason in respect of Appeal A, but gave detailed evidence in support of the B1 / non-B1 balance reason and the character and appearance reason.
- 1.7 The Inspector's Appeal Decision was issued on 27 February 2019. On the main issue concerning the B1 / non-B1 balance, the

Inspector considered that both Scheme A and Scheme B did not conflict with the overall employment aims of the Joint Core Strategy (JCS) Policies SD1 or the saved Local Plan Policy EM2. However, on the main issue concerning character and appearance, the Inspector found Scheme A to fall well short of the design quality aims of JCS Policy SD4 and saved Local Plan Policy CP7. As a result, the Inspector dismissed Appeal A but allowed Appeal B.

1.8 The Appellant then sought a Judicial Review (JR) of the Inspector's decision in respect of Appeal A, in so far as it failed to provide adequate reasons for the rejection of the Appellant's 'secondary case'. This related to whether the development plan was out of date so as to engage paragraph 11d) of the National Planning Policy Framework (the Framework) and, if it is engaged, whether the harm associated with Scheme A would significantly and demonstrably outweigh the benefits.

1.9 The Secretary of State for Communities and Local Government agreed that the JR should be allowed. The Consent Order issued by the Court quashed the Inspector's decision to dismiss Appeal A and instructed that the appeal should be remitted for redetermination. It is understood that the redetermination will take place by way of an informal Hearing of up to 2 days.

2.0 SCOPE OF THIS UPDATED FURTHER STATEMENT OF CASE

- 2.1 In the light of the background set out above, the scope of this Updated Further Statement of Case is confined to the matter that has led to the quashing of the Inspector's decision i.e. whether paragraph 11d) is engaged and, if so, whether the harm associated with Scheme A would outweigh its benefits. It follows a similar format and structure to the LPA's 'Further Statement of Case' issued in July 2019. It now includes relevant updates, further details and responses to the Appellant's Statement of Case (dated July 2019).
- 2.2 The LPA reserves the right to refer to earlier evidence, documents or submissions insofar as it is necessary to address the contentions of the Appellant in respect of those matters.
- 2.3 The LPA has retained its Inquiry library of documents and this includes a previously agreed Statement of Common Ground (SOCG) (Core Document CD6.3). This library will be made available for the forthcoming Hearing. However, other than appropriate cross references to previously submitted Inquiry documents, the LPA does not consider it necessary to address matters outside the scope of paragraph 11d).
- 2.4 The LPA notes that the Appellant's Statement of Case seeks to introduce matters that sit outside the matter that has led to the quashing of the Inspector's decision, and relate to another development proposal (Appeal B) which has an extant planning permission. These matters, concerning 'site marketing, funding and the deliverability'¹ of the scheme and viability matters², are not considered relevant to the focus of the (re) Hearing in respect of Appeal A following the decision of the Court.
- 2.5 The LPA's position in this regard accords with established case law, notably the recent Davison³ case, concerning the principle of consistency in decision making. It is a plain fact that these matters

¹ Paragraph 5.8 of the Appellant's Statement of Case – July 2019

² Paragraph 5.9 of the Appellant's Statement of Case – July 2019

³ R (oao Matthew Davison) v Elmbridge Borough Council [2019] EWHC 1409 (Admin)

now being raised relate to another scheme (the Appeal B scheme). These matters did not, in any event, form the basis of the Appellant's legal challenge to the Inspector's decision in respect of Appeal A, which related to a narrow and bounded matter i.e. whether paragraph 11d) of the Framework was engaged and, if so, its implications. This is a case where the parts of the decision affected by, and unaffected by, the quashing are distinct and clear cut.

3.0 RECENT PLANNING APPLICATIONS UPDATE

3.1 There have been two recent applications relating to the appeal site.

3.2 The first application (LPA Ref 19/01132/FUL) sought permission for *"Use of land for temporary car parking for BMW car dealership. Eastern car park to provide 82 car parking spaces for a temporary period of up to 2 months. Following cessation of use of eastern car park, western car park to provide 161 car parking spaces for a temporary period of up to 2 years."* The LPA granted permission for this temporary use, subject to conditions, on 23 July 2019.

3.3 The second application (LPA Ref 19/01793/CONDIT) relates to the permission granted on appeal for Scheme B (the scheme without the Costa building). This application seeks to remove Condition 24 which deals with the phasing of the development and 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.

The Inspector's reason for imposing this condition was *"to ensure that 'the prime purpose of the business park is achieved'⁴.*

⁴ Paragraph 39 – Appeal Decisions APP/B1605/W/18/3200395 and APP/B1605/W/18/3214761

4.0 'MOST IMPORTANT' PLANNING POLICIES

4.1 Paragraph 11d) of the Framework states that:

Where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁶; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

Note section i) does not apply in this case, as the development does not relate to any of the areas identified in the associated footnote 7.

4.2 Any assessment of whether Paragraph 11d) is triggered must begin by identifying which are the 'most important' development plan policies in determining the application / appeal. The LPA considers that this identification must be holistic and not selectively focusing on one or two policies to suit a particular argument. In this regard, the LPA's approach follows case law principles, including the recent Wavendon Properties Ltd case⁵.

4.3 In this regard, there are specific policies cited in the character and appearance reason for refusal (JCS Policy SD4 and Local Plan Policy CP7) and the B1 / non-B1 balance reason for refusal (JCS Policy SD1 and saved Local Plan Policy EM2). These policies clearly fall under the 'most important' category. However, it is also important to consider the wider development plan context, notably its strategic policies, SP1 and SP2.

4.4 Accordingly, the LPA assesses that the following suite of development plan policies are 'most important' to the determination of the appeal:

⁵ Wavendon Properties v SSHCLG & Milton Keynes Council [2019] EWHC 1524 (Admin).

JCS (Adopted 2017)

Policy SP1 - this strategic policy 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 LPA considers that the appeal site is an existing commitment under this policy and is part of the 192 hectares of planned B class employment land.

Policy SP2 - this strategic policy deals with the distribution of new development and repeats the same figure. It establishes that, of the 192 hectares, at least 84 will come from the strategic allocations (SA1), with the balance being identified in District Plans.

Policy SD4 - sets out the JCS design requirements for new development. These include considerations of context, character and sense of place; legibility and identity; amenity and space; public realm and landscape; safety and security; inclusiveness and adaptability; and movement and connectivity.

Policy 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*".

'Saved' Policies - Cheltenham Borough Local Plan (2006)

Policy CP7 - requires a high standard of design. The policy says that development will only be permitted where it is of a high standard of architectural design; adequately reflects principles of urban design and complements and respects neighbouring development and the character of the locality and/or landscape. A supporting 'Table 3' sets out principles of urban design, including considerations of character, continuity and enclosure, quality of the public realm and ease of movement.

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

- 4.5 There is a wide range of other development plan policies, and policies contained in the emerging Cheltenham Plan, that have some relevance to the appeal proposal. These are listed in the earlier Inquiry's Statement of Common Ground (Ref CD6.3) and the Proof of evidence of Mr. Staddon on behalf of the LPA (CD17.1). However, these other policies are not considered to be 'most important' to the determination for the purposes of paragraph 11d) and are therefore not rehearsed here.

5.0 THE CASE FOR THE LPA CONCERNING PARAGRAPH 11d)

- 5.1 The LPA considers that, for the purposes of the determination of this appeal, its development plan is up to date and its 'most important' policies for determining the application are not out of date. Moreover, those policies have a very high level of consistency with the Framework and its objectives. Its case is that the 'tilted balance' under Paragraph 11d) is not engaged.
- 5.2 At the Hearing, the LPA will explain its view that none of the 'most important' policies, cited in section 4 above, should be considered 'out of date'.
- 5.3 In terms of the JCS strategy, it will explain that Policies SP1 and SP2 have a very high degree of consistency with the Framework and, in particular, the Section 6 objective of building a strong, competitive economy and the importance of setting out a clear economic vision and strategy.
- 5.4 The LPA will demonstrate that the JCS assessed need for B class employment land (at least 192 hectares) under Policy SP1, and its proposed spatial distribution under Policy SP2, were underpinned by a comprehensive evidence base and are firmly grounded in sustainable development principles. That evidence base was only relatively recently examined and the JCS has been adopted for less than 20 months. Policies SP1 and SP2 are not out of date.
- 5.5 More specifically, in terms of employment development, the LPA will demonstrate that the positive presumption towards employment development in a wide range of specified locations, as set out in JCS Policy SD1, is entirely consistent with the Framework's approach, as contained in paragraphs 80, 81 and 82. Policy SD1 is not out of date.
- 5.6 Importantly, the LPA will explain that the JCS was never conceived to make site allocations for all of the assessed 'at least 192 hectares'. The JCS is a strategic plan and limits its allocations to very large (strategic scale) sites.
- 5.7 Paragraphs 3.2.20 and 3.2.21 of the JCS explain the rationale behind the 192 hectare figure. The JCS Economic Update Note (February 2016) assessed the potential employment land supply for each of the districts. It

provided an indicative availability of B class land of approximately 1ha in Cheltenham Borough over and above previous allocations and extant permissions. Policy EM3 of the emerging Cheltenham Plan allocates four employment sites (E1, E2, E3 and E4). The Council believe that sites E1, E2 and E3 have not previously been accounted for as 'Existing Undeveloped Capacity' and can therefore be classified as new employment sites.

5.8 The LPA has noted earlier submissions made by the Appellant about employment land supply generally and references to undetermined application proposals on certain strategic allocations which, if permitted, may limit employment land coming forward for development in other places. In practice, other proposals will be determined on their planning merits and it will take time for district plans to progress, and for the full complement of planned employment land to be identified and come forward. However, that does not make the JCS, or its relevant employment land policies, out of date or inconsistent with the Framework. Indeed, it is simply a function of the real world and underlines the importance of monitoring and reviewing the plan, a process that is already underway. It also underlines the continuing importance of saved Local Plan Policy EM2, which provides appropriate protection to the existing finite employment land resource, in the interests of building a strong, competitive economy in line with the Framework's objectives. EM2 is not out of date and remains consistent with the Framework.

5.9 The LPA will also contend that its design related policies, JCS Policy SD4 and Local Plan Policy CP7, are fully consistent with the Framework, in terms of the overarching environmental objective component of sustainable development, as set out in paragraph 8, and Section 12, which deals specifically with achieving well designed places. The scope, content and objectives of SD4 and CP7 have a very strong accord and consistency with the Framework. Indeed, they link directly to paragraph 124 of the Framework which states that achieving high quality buildings and places is fundamental to what the planning and development process should achieve. JCS Policy SD4 and Local Plan Policy CP7 are not out of date.

- 5.10 It is the LPA's case that, when considered individually and collectively, the above policies cannot be regarded as out of date for decision making purposes. Accordingly, the LPA contends that the tilted balance under 11d) is not engaged.
- 5.11 However, even if the decision maker were to reach a different view, i.e. that Paragraph 11d) were to be engaged, the LPA's case is that the adverse impacts arising from Scheme A, due to its significant shortfall on design quality, as identified by the Inspector, are significant and demonstrable and this outweighs the benefits.
- 5.12 The LPA notes that some of the Appellant's legal submissions suggested that the LPA witnesses agreed that the tilted balance in this case would always 'trump' poor design. That is simply not the case and the balanced Planning judgement hinges on the severity of the harm.
- 5.13 In this regard, the Inspector's assessment of Scheme A on design matters did not articulate some limited infringement of good design. Rather, he identified that 'the effect on character and appearance' was a Main Issue for Appeal A and he assessed that Scheme A contained significant failings. Paragraph 29 of his appeal decision refers to an 'overwhelmingly retail character', a development that would 'lack legibility' and that would fail 'to define the character of the eastern part of the site or to create a distinctive identity'. He goes on to explain that the Costa building would appear 'cramped' beside the main entrance and would be 'a poor corner feature' at the key 'gateway' entrance to the business park.
- 5.14 Paragraph 31 continues saying that Scheme A would lead to a poor sense of place and that this would not be helped by the moving queue of traffic around the perimeter of the Costa coffee outlet (including a large binstore attached to the building).
- 5.15 The LPA shares these views and considers that they accurately articulate significant and demonstrable planning harm. Moreover, the LPA contends that poor design cannot be considered to be 'sustainable development' and cannot therefore be permitted

through the application of the tilted balance. The evidence of the LPA previously provided supports this view. At the Hearing, the LPA will further explain its design and planning evidence, focussed on the legibility and sense of place issue.

- 5.16 Indeed, paragraph 124 of the Framework states that achieving high quality buildings and places is fundamental to what the planning and development process should achieve. This is reinforced by the Government's recent publication of its National Design Guide (October 2019) and the associated Planning Practice Guidance (PPG) content titled *Design: process and tools* (as updated on 1 October 2019). These documents continue to support the imperative of good design in the built environment and the rejection of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
- 5.17 The LPA considers that the employment creation potential of Scheme A in itself, whilst clearly desirable, does not enable the imperative of good design to be bypassed. This is particularly so when there is an extant permission for an alternative proposal (Scheme B), which the earlier Inspector assessed to be acceptable in design terms.
- 5.18 Moreover, the Appellant's case on the tilted balance seems to be that, because (it claims) not enough employment land has been allocated, the development plan's employment land policies are rendered 'out of date' and, as a result, a scheme entailing less B class employment land and poor design should be allowed. To the LPA's mind, that does not seem logical, credible or consistent with the Framework and its overarching objective of achieving sustainable development.
- 5.19 At the Hearing, the LPA will refer to evidence from its earlier Inquiry witnesses covering policy, employment and design matters. It will ensure that its witnesses on Planning (Mr. Staddon) and Design (Mr. Tomaney) are available to attend the Hearing to explain the LPA's case and position.

6.0 CONCLUSION

- 6.1 The LPA considers that its most important development plan policies for determining this appeal are, individually and taken as a whole, up to date and have a very high level of consistency with the Framework.
- 6.2 The LPA concludes that the 'tilted balance' under Paragraph 11d) is not engaged. This means that the appeal should be determined in accordance with the development plan and, as there are substantive conflicts with JCS Policy SD4 and Local Plan Policy CP7, the appeal should be dismissed.
- 6.3 Even if the decision maker were to reach a different view and conclude that Paragraph 11d) was engaged, the LPA contends that the poor design contained in Scheme A represents significant and demonstrable harm that outweighs the benefits of the scheme. Put simply, poor design can never be sustainable development under the terms of the Framework.
- 6.4 Accordingly, the LPA requests that the appeal be dismissed.