

STATEMENT OF COMMON GROUND UPDATE NOTE (NOVEMBER 2019)

LOCAL PLANNING AUTHORITY: Cheltenham Borough Council

APPELLANT: Hinton Properties (Grovefield Way) Ltd

SITE: Land at North Road West and Grovefield Way, Cheltenham

APPEAL REFERENCE: APP/81605/W/18/3200395

LPA REFERENCE: 16/02208/FUL

Signed on behalf of the LPA:

Position: Head of Planning

Date: 11.11.19

Signed on behalf the appellant:

Mr James Griffin

Position: Planning Consultant

Date: 11.11.19

1.0 BACKGROUND TO THIS NOTE

1.1 This Update Note has been prepared by the Local Planning Authority (LPA) and Hinton Properties (Grovefield Way) Ltd (the Appellant) following the High Court Consent Order (C0/1439/2019) 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 81), 502 sq.m day nursery (Use Class 01), 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 81), 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 14 December 2017 meeting. There were three reasons for refusal which, for brevity, can be referred to as 'the BI / non-BI 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).

1.4 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).

1.5 The two appeals were the subject of a joint Public Local 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 BI / non-BI balance reason and the character and appearance reason.

1.6 The Inspector's Appeal Decisions were issued on 27 February 2019. On the main issue concerning the BI / non-BI balance, the

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 be unacceptable and in conflict with 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.

- 1.7 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 1 d) 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.
- 1.8 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. The redetermination will take place by way of an informal Hearing, which is scheduled to commence on 3 December 2019 and is anticipated to sit for 2 days.
- 1.9 The Council will re-open its inquiry library of documents for the redetermination hearing. This library of documents includes a previously agreed Statement of Common Ground (SOCG) (Core Document CD6.3) which was prepared by the LPA and the Appellant. The Parties agree that this SOCG remains a material consideration and provides a useful summary of common ground matters. However, to assist the Inspector and the Hearing process, the LPA and the Appellant have prepared this Update Note. Rather than rewrite and reformat the SOCG, it provides agreed factual updates and should be read alongside the original document.

2.1 AGREED FACTUAL UPDATES TO THE SOCG (NOVEMBER 2019) SECTION 1- INTRODUCTION

- 2.2 The Parties agree that the above 'Background to this Note' provides an accurate updated introduction.

SECTION 2 - THE SITE AND PLANNING HISTORY

- 2.3 The Parties agree that no updates to the 'site location' are required.
- 2.4 With regard to 'the site' certain works to create a temporary car park (see planning history 'update 3' below) have been implemented.
- 2.5 In terms of the Planning History, the Parties agree that the following four updates are relevant:

Update 1 - LPA Ref 18/01004/FUL (Scheme B)

'Scheme B' (the scheme without the Costa building) was granted planning permission by the Inspector and this decision was not challenged in the courts. The parties agree that this extant planning permission and the associated imposed conditions are material considerations.

Update 2 - LPA Ref 19/01793/CONDIT

This application seeks to remove Condition 24 attached to the Scheme B permission. This condition deals with the phasing of the development and states that: *"The A1 food retail unit shall not be occupied until 81 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'"¹.*

The LPA has not yet made a decision on this application (November 2019).

Update 3 - LPA Ref 19/01132/FUL

This application 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.

¹ Paragraph 39 - Appeal Decisions APP/B1605/W/18/3200395 and APP/B1605/W/18/3214761

Update 4 - LPA Ref 19/01191/CLPUD

This application is for a Certificate of Proposed Lawful Development and was validated by the LPA on 24 October 2019. It seeks *'to establish that the two temporary car parks granted permission by application ref. 19/01132/FUL] do not relinquish the ability to lawfully implement extant permission [LPA Ref.: 18/01004/FUL] on land to the west of Grovefield Way, Cheltenham.'*

The LPA has not yet made a decision on this application (November 2019).

SECTION 3 - THE APPEAL PROPOSAL

- 2.6 The Parties agree that the description stated in paragraph 3.1 of the SOCG remains accurate.

SECTION 4 - DEVELOPMENT PLAN AND RELEVANT MATERIAL CONSIDERATIONS

The statutory development plan

- 2.7 The Parties agree that the statutory Development Plan remains the Joint Core Strategy (adopted December 2017) and the 'saved' policies of the Cheltenham Local Plan Second Review (adopted June 2006).

The Cheltenham Plan

- 2.8 The Parties agree that:
- The Cheltenham Plan 2011-2031 Submission Draft (Regulation 19) was submitted for examination in October 2018.
 - Public hearing sessions were held during February 2019.
 - The examining inspector issued a Post Hearing Advice Note on 9 April 2019 which assessed that the Cheltenham Plan could be found sound subject to recommended 'main modifications'.
 - The Council has now published its 'main modifications' (MM) and is undertaking a six week period of public consultation from Monday 4 November 2019 until Monday 16 December 2019.
 - The MMs include the proposed deletion of Policy EM3 (cited in reason 1) and its amalgamation into a new Policy EMI.

The National Planning Policy Framework (The Framework)

- 2.9 The Parties agree that the relevant version of the Framework is the February 2019 publication.

SECTION 5 - SUGGESTED CONDITIONS AND SECTION 106 MATTERS

- 2.10 The Parties agree that the suite of conditions imposed by the Inspector on Appeal B followed detailed submissions and discussions, concerning both Appeal A and Appeal B, at the January 2019 inquiry. As such, the Parties agree that this list of conditions provides a useful starting point for the conditions session at the forthcoming December 2019 hearing.

SECTION 6 - MATTERS NOT IN DISPUTE

- 2.11 The Parties agree that Section 6 of the SOCG remains relevant and up to date.

SECTION 7 - MATTERS IN DISPUTE

- 2.12 The Parties agree that the matters in dispute in this redetermination appeal are now:
- The extent to which any Planning harms previously identified in the quashed decision remain a material consideration and if so the weight to be attached thereto.
 - Whether the most important policies for determining this appeal (including strategic, employment land and design policies) are out of date and whether the 'tilted balance' under Paragraph d) of the Framework is engaged.
 - Whether the non-Use Class BI elements of the proposal, with specific regard to the coffee shop / drive-thru, being in addition to the foodstore and day nursery, dilute or contribute to the character and function of the area as an employment site.
 - Whether the proposal is acceptable in design terms in respect of local and national policies and guidance.
 - In circumstances where the Inspector assessed that the 'tilted balance' was engaged, whether any Planning harms identified (under the third

and fourth bullet points) constitute adverse impacts that would significantly and demonstrably outweigh the benefits of the scheme, when assessed against the policies of the Framework taken as a whole.

