

PLANNING COMMITTEE Regulatory Committee Agenda

- Date Wednesday 12 October 2022
- Time 6.00 pm
- Venue Council Chamber, Civic Centre, Oldham, West Street, Oldham, OL1 1NL
- Notes
1. DECLARATIONS OF INTEREST- If a Member requires any advice on any item involving a possible declaration of interest which could affect his/her ability to speak and/or vote he/she is advised to contact Paul Entwistle or Constitutional Services in advance of the meeting.
 2. CONTACT OFFICER for this Agenda is Constitutional Services Tel. 0161 770 5151 or email Constitutional.Services@oldham.gov.uk
 3. PUBLIC QUESTIONS – Any member of the public wishing to ask a question at the above meeting can do so only if a written copy of the question is submitted to the Contact officer by 12 Noon on Friday, 7 October 2022.
 4. FILMING – This meeting will be recorded for live and/or subsequent broadcast on the Council’s website. The whole of the meeting will be recorded, except where there are confidential or exempt items and the footage will be on our website. This activity promotes democratic engagement in accordance with section 100A(9) of the Local Government Act 1972. The cameras will focus on the proceedings of the meeting. As far as possible, this will avoid areas specifically designated for members of the public who prefer not to be filmed. Disruptive and anti social behaviour will always be filmed.

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MEMBERSHIP OF THE PLANNING COMMITTEE IS AS FOLLOWS:

Councillors Al-Hamdani, Cosgrove, Dean (Chair), H. Gloster, Hobin,
A Hussain, F Hussain, S Hussain, Islam, Lancaster, Nasheen, C. Phythian,
Surjan and Woodvine

Item No

9 Late List (Pages 1 - 30)

PLANNING COMMITTEE

12th October 2022

Late information

AGENDA PAGES	DETAILS
Pages 5 - 37	<p>AGENDA ITEM NUMBER: 6</p> <p>SITE ADDRESS:</p> <p>Land at Snipe Clough, Oldham</p> <p>Representations</p> <p>The first line in this section in relation to objections from local councillors should read 3 not 7.</p> <p>In the final paragraph in this section, a further letter of support has been received. This should therefore now be read as 4.</p>
Pages 39 - 69	<p>AGENDA ITEM NUMBER: 7</p> <p>SITE ADDRESS:</p> <p>Land at Broadway Green Business Park, Foxdenton Lane, Chadderton</p> <p>Amendment to PLANNING HISTORY section of report:</p> <p>The following addition should be made to the Planning History section of the Committee Report:</p> <p>OUT/346784/21 - Hybrid planning application for mixed-use development comprising: (1) Detailed planning permission sought for the erection of a Use Class E foodstore with internal vehicular access road, car parking, servicing area, and hard and soft landscaping; and, (2) Outline planning permission (with all matters reserved) sought for a flexible-use commercial unit capable of operating within Use Classes E(a) and / or E(b).</p> <p>Refused for the following reason:</p> <p><i>“The proposed foodstore would conflict with the aims and objectives of Development Management Policy 14 of the Local Plan insofar as it applies to Foxdenton Business Employment Area. This is because it would not provide the high-quality office, business and industrial developments that provide skilled job opportunities to comply with the policy. Furthermore, the application</i></p>

does not satisfy the Exceptions criteria listed within the policy. As such, the proposed foodstore is contrary to Policy 14 of the Local Plan, and conflicts with paragraphs 81, 82, and 83 of the National Planning Policy Framework”

Additional Representation

Since the publication of the Planning Committee Agenda, 44 letters of support have been received, the following is a summary of the comments received:

- A new Aldi would be great for local residents and would help reduce car usage.
- Aldi is reasonably priced and is very popular, fully support a proposal for a new store.
- The Aldi store is a great addition, especially during the current cost of living crisis.
- The proposal for this store would benefit many people in the area.
- A proposal for a new Aldi store in this location will prevent the need to drive further to other stores.
- The new Aldi store would create jobs for people, and this is a strong positive for the area.
- The Aldi will provide quality food at reasonable prices in the area and should be supported.
- The application is not open 24 hours, and the applicants have amended their scheme to minimise impacts to residents.
- Aldi can build more sympathetically scaled buildings, so they do not cause disruption.
- The whole area is an industrial park, and it would be a huge bonus if part of that park would be beneficial to locals.
- The shopping in Chadderton’s town centre is poor and as crime increases more out of town centre stores are needed.
- Lots of the older generation in the local area will be able to get to the store easily.
- Aldi would be an affordable and convenient option for local residents

In addition to the above, a detailed representation has been received from Martin Robeson Planning Practice (“MRPP”) on behalf of Tesco Stores Ltd. A copy of the letter is included with this late list at Appendix A and has also been circulated to Planning Committee Members by MRPP. The following is a response to the points raised in the letter received.

Local Planning Authority response to objection from MRPP on behalf of Tesco

MRPP’s representation makes reference to the fact that the planning history does not reference the previous application’s (OUT/346784/21) reason for refusal. This is fully noted, although this information is publicly available given that the decision notice for the previous application is available on the Council’s website. Nonetheless, the reason for refusal on the previous application is

provided as part of this late list. The reason for refusal will also be discussed in the presentation by officers at Planning Committee, just for the avoidance of any doubt.

MRRP state in their letter that the “exceptions” in Local Plan Policy 14 do not apply to the application site because it does not fall within a category of sites that are currently or ‘most recently’ used for employment purposes.

However, this representation ignores the statement at the end of the section of Policy 14 entitled “Exceptions”, which states:

“This applies to sites located within the BEAs and SEAs and elsewhere”. (p.94)

The application site is part of the Foxdenton Business Employment Area (“BEA”) as designated on Oldham Council’s Proposals Map. Therefore, whilst the application site was not most recently used for employment purposes, it is allocated for such uses as part of a BEA, and the policy wording is clear that the exceptions therefore do apply to sites, like this application site, within a BEA.

Furthermore, the National Planning Policy Framework (“NPPF”) is clear that Councils should be flexible in the face of changes in the economy, market and in the demand for land, and this has never been more relevant than in the present day where, because of the covid pandemic and changes in businesses’ working practices, the demand for certain employment uses, such as office space, has decreased significantly.

Paragraph 82 of the NPPF states:

*“Planning policies should ... (d) be flexible enough to accommodate needs not anticipated in the plan, allow for new and flexible working practices (such as live-work accommodation), **and to enable a rapid response to changes in economic circumstances.**” (emphasis added)*

Paragraph 122 of the NPPF also states:

“Planning policies and decisions need to reflect changes in the demand for land. They should be informed by regular reviews of both the land allocated for development in plans, and of land availability. Where the local planning authority considers there to be no reasonable prospect of an application coming forward for the use allocated in a plan:

a) it should, as part of plan updates, reallocate the land for a more deliverable use that can help to address identified needs (or, if appropriate, deallocate a site which is undeveloped); and

b) in the interim, prior to updating the plan, *applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need for development in the area.* (emphasis added)

In this context of national planning policy, the aim of Local Plan Policy 14 is to allocate land for employment uses, so long as there is a reasonable prospect of the land coming forward for the proposed employment uses. The aim of Local Plan Policy 14 is not to permanently curtail alternative uses for undeveloped sites in BEAs, hence the inclusion of the section on “Exceptions”.

In the case of the site subject of the application, it has remained undeveloped since planning permission was granted in 2013, and no other planning application has come forward on the site (aside from this planning application and the previous refusal (ref: OUT/346784/21) for a similar proposed development).

Ultimately, the site is in a Business Employment Area and is protected by Local Plan Policy 14. Therefore, in order to assess if the site qualifies for an alternative use, other than those identified as being acceptable for the site in the Local Plan, and in order for the Council to understand if there are any changes to the demand for land in accordance with NPPF Paragraph 122, it was considered entirely appropriate to test the site’s suitability for an alternative through the exceptions set out in Local Plan Policy 14. Therefore, the method used in the Committee Report to assess whether an alternative use for the site was acceptable is neither irrational nor perverse as MRPP suggest.

MRRP also assert that they have concerns with the approach taken in concluding that the site meets exception (a) of Local Plan Policy 14. They also have concerns that the level of marketing was not agreed with officers prior to submission, and the general content of the marketing material in the submitted Employment Land Marketing Report (“ELMR”).

In response to those concerns, there is no criteria in either the Local Plan or the NPPF on what information should be included in a compliant marketing assessment. Therefore, it is at the discretion of the Council as to whether the information is acceptable. MRPP in their letter reference all of the methods in which the site has been marketed (which are set out in the Committee Report) and then concludes the following:

“All of this would be expected to take place routinely as part of the commercial activity in relation to the development or letting of such a major business park scheme.”

The Council agrees with this statement. The methods of marketing put forward as part of the ELMR is what would be expected and we concur with this point, hence why the Council have concluded that the site meets the requirements of

exception (a) of Local Plan Policy 14, because the site has been marketed as would be expected and garnered no real interest from employment end-users.

MRPP also assert that Aldi's involvement with the site from 2020 will have frustrated the effectiveness of any marketing undertaken for the site since then. However, as set out in the Committee Report, the site has been marketed since 2013, which is a substantial amount of time prior to Aldi's involvement with the site. With that considered, even if it was the case that Aldi's involvement has curtailed interest in the site since 2020 (a statement for which MRPP have supplied no evidential basis), the site has still been marketed using the methods set out in the Committee Report for a substantial period prior to Aldi's involvement.

MRPP have also stated that since the Council have not had the ELMR independently reviewed, this is a serious shortcoming. There is no requirement in either Local Plan Policy or the NPPF which states that the Council are required to have this information independently reviewed and so, following a review of the ELMR by officers in the Planning Service, it was considered that the information was sufficient to meet Local Plan Policy 14 exception (a).

As discussed in the Committee Report, it was not considered necessary to have the viability assessment assessed independently on the strength of the information submitted for Local Plan Policy 14 exception (a). MRPP disagrees and are of the view that this should have been undertaken. MRPP also conclude that an office scheme was the only use assessed as part of the viability appraisal. Given the constraints of the site, in terms of its size, shape and proximity to residential properties, it was considered that the office use was the most realistic prospect for the site if a policy compliant use was to come forward.

MRPP state that they disagree with Avison Young's assertion that Local Plan Policy 14 is out of date. The Council agrees with this, Local Plan Policy 14 is not considered to be out of date and is consistent with the NPPF.

MRPP disagree with the approach to the planning balance and in summary state that the scheme proposed as an alternative form of development for the site cannot be seen as a benefit. They also conclude that the benefits listed could easily be achieved on a sequentially preferable site.

A response to the retail matters is discussed below from Nexus Planning, however for the reasons set out in the Committee Report and below, it is not considered that there are any sequentially preferable sites. In terms of the approach to the planning balance, the weight to be attached to any material considerations and all matters of planning judgement are within the exclusive jurisdiction of the decision-maker to weigh up. The planning balance set out in the Committee Report is not considered to be irrational, and the Local Planning Authority is able to give the material considerations appropriate weight as it

sees fit, dependent on the information presented as part of the planning application.

Response to MRPP representation by Nexus Planning (“Nexus”)

As set out in the Committee Report, Nexus have provided independent retail advice on the Council’s behalf. Nexus have reviewed the representation received by MRPP and have made the following comments on the retail matters raised by MRPP:

Sequential Approach and 5-minute Drive Time

Nexus’s advice to the Council in respect of the appropriate area of search for the sequential test is informed not just by the distance that a shopper would have to drive but also by the location of existing competition in the wider area. Taking this into consideration, it is accepted that Chadderton district centre (in Oldham borough) and The Downs and Grimshaw Lane local centres (in Middleton, within Rochdale borough) are situated such that a comparable foodstore in and around these centres could meet a similar need to the application proposal. As such, the centres which should be considered as part of the sequential search are clearly identified and justified.

The Lack of Flexibility Applied to Sequential Assessment

Nexus identified 0.5 hectares as being a minimum site size based on the quantum of retail floorspace proposed and operators’ general operational requirements. Indeed, 0.5 hectares is less than discount operators’ specified general requirement to support a store of the broad type proposed. Smaller sites are not considered to be suitable to support the application proposal (even when allowing for appropriate flexibility) within the identified area of search. Nexus have considered all relevant sites and believe it to be clear that there is no sequentially preferable opportunity.

The Suitability and Availability of the Land at the Rear of the Chadderton Reform Club

Nexus considers the site to be too small to accommodate the proposal (allowing for appropriate flexibility). In addition, it is currently in use. Furthermore, it is somewhat ‘tucked away’ with no main road frontage and is unlikely to be attractive to operators. For these reasons, it is not considered to be a realistic sequential alternative site.

Response to MRPP representation by Avison Young (“AY”)

Since the representation from MRPP was received, AY have submitted a formal response on behalf of Aldi Stores Limited (“Aldi”), which raise the

following points (In summary). Please note that the full letter is contained at Appendix B of this late list.

- AY state that Tesco are the only retailer to object to this planning application, and the proposed Aldi foodstore is less than one third of the size of the smallest of the Tesco Stores, which Tesco claim are affected by the development, it is clear given the distance between the application site and the above Tesco Stores that those Tesco Stores highlighted do in fact serve a different catchment area. Therefore, it is very difficult to imagine a situation whereby the proposed discount foodstore would affect the long-term viability of Tesco's existing, much larger assets in Oldham and Middleton.
- MRPP do not make any suggestion in their letter that Aldi's introduction would have any harmful consequences for the trading performance of the Tesco's stores in Oldham or any associated defined centres. Retail impact appears to have been ignored completely as an avenue for objection by Tesco.

Local Plan Policy 14

- AY provide a response to MRPP's assertions that Local Plan Policy 14 has been misunderstood by officers. AY state that a policy and its reasoned justification must be read and interpreted as a whole. In this case, Paragraph 6.59 of the Local Plan provides a clear context to the 'exceptions test' outlined in Policy 14, it explains that:

"Instances can arise when uses other than those listed within the policy may be appropriate within the BEAs and the SEAs. Development proposals for other uses will only be permitted either where it can be demonstrated (through a marketing or viability exercise) that there is no realistic prospect of a continuing employment use, or that the alternative proposal would bring community or regeneration benefits to an area identified by the council as being in need of investment"

If the 'exceptions test' truly intended to explicitly exclude land such as the planning application site, which is within a BEA and allocated for employment purposes but has never seen such uses realised, then surely this supporting paragraph would have made this distinction.

- AY state that based on MRPP's suggested policy interpretation, it would mean that land such as the planning application site (which as no present use) would effectively be sterilised from all alternative forms of development unless and until a policy compliant 'traditional employment use' is found.

- Excluding such sites as Foxdenton from the exceptions test would result in some very odd and surely unintended consequences, with land sterilised in perpetuity until a policy compliant employment use could be found.

Contents of the Employment Land Report

- AY state that the ELMR report was scoped in detail with the Local Planning Authority at pre-application stage. Information that the Council considered relevant to the assessment was agreed in advance and all of this forms part of the submitted document.
- AY state that on the one hand that MRPP criticise the fact that in terms of the marketing evidence submitted 'very limited evidence' is provided but on the other there appears to recognise that an entirely typical commercial approach has been adopted, reflective of any major employment scheme of this regional profile.
- MRPP suggest that information on how the marketing has been managed and recorded on a day-to-day or week-to-week basis in respect of the application site" should have been submitted. AY state that such a request is unreasonable in the case of a site such as Broadway Green, which has been available and offered on the open market from late 2013 / early 2014 onwards (8+ years)
- AY state in response to MRPP's assertions that that a third part review should have taken place on evidence submitted that there is no policy requirement for an independent appraisal to be undertaken.

Response to Retail Matters

- AY state that the Local Planning Authority has taken independent advice on the sequential test and other town centre policy matters from a specialist consultant (Nexus Planning). Their comprehensive report for Oldham (dated September 2022) covers all aspects of the sequential test, including matters raised by MRPP. Nexus have reached the same conclusion as AY on the outcome of the sequential test, and in summary have no objections to the application based on the sequential test.

Conclusion

Given all of the above, responding to the representation from MRPP on behalf of Tesco, in summary:

- Local Plan Policy 14 has been correctly interpreted and applied by the Council. Foxdenton is a BEA and as such, it is appropriate to utilise the

	<p>exceptions within Policy 14 in relation to this proposal for the application site.</p> <ul style="list-style-type: none">• The marketing evidence submitted is considered acceptable by the Council. There is no local or national policy requirement which sets out a specific set of criteria for what marketing evidence should be submitted. In addition, there is no local or national policy requirement, which states that this information should be assessed by a third party to confirm its acceptability. The Council are satisfied with the marketing evidence submitted and this addresses the reason for refusal of the previous application.• The retail information submitted has been independently assessed by Nexus who specialise in retail planning. Nexus confirm that the application is acceptable in retail terms and there is not a reasonable basis to refuse the application on retail grounds.
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Our Ref: 2995/MR/LT20221007

7th October 2022

Mr Peter Richards
Head of Planning
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MRPP
**MARTIN ROBESON
PLANNING PRACTICE**

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Dear Mr Richards,

ITEM 6 – PLANNING COMMITTEE 12th OCTOBER 2022. HYBRID APPLICATION INCLUDING FOR PROPOSED OUT OF CENTRE FOODSTORE (ALDI). LAND AT BROADWAY GREEN BUSINESS PARK, CHADDERTON. PLANNING REFERENCE: OUT/349440/22

We act on behalf of Tesco Stores Limited and make representations in respect of the above planning application. In the local area, Tesco trade from their superstore on Featherstall Road North which opened in 1998. Tesco also trade from a further two Tesco Extra stores, their Huddersfield Road store opened in 2009 and a town centre ‘anchor’ store in Middleton which opened in 2010. Tesco has invested significantly in these facilities across Oldham and continues to do so today.

On behalf of our client we made representation dated 8th October 2021 and 14th February 2022 to the previous, essentially identical, planning application made by Aldi Stores Limited. That application was refused by the local planning authority by notice dated 2nd March 2022.

We have reviewed the application material submitted on behalf of the applicant by its agent, Avison Young, together with the Employment Land Market Report, also on their behalf, by Aherne. These contain material seeking to support the new submission. We have also reviewed the Officer’s Report. Before explaining our concerns with that Report we think it is useful to comment on the applicant’s justification for locating a standard format store in the heart of a key, strategic employment allocation.

Inappropriate Justification for the Scheme’s Location Within a Key Business and Employment Area

Avison Young’s Statement on behalf of the applicant places considerable weight on the concept that the two parts of the proposed development will, together, provide a “commercial hub” that will “...take on an important ancillary role within Broadway Green Business Park by providing a complementary retail offer that will support its day-to-day operation” (paragraph 9.25). They rely upon a developer of part of the scheme (Harworth) suggesting that “...neighbourhood foodstores, drive-thru restaurants/coffee shops, public

houses, day nurseries and petrol filling stations...” help to provide employees with “...subsistence, provisions, or simply a place to meet during the course of their working day.”

Reliance is placed upon what they describe as *“A good example of a commercial hub supporting the operation of one of our business parks in practice is at our flagship Logistics North Site in Bolton”*. This is described as containing *“...some 3 million sqft of Grade A logistics / manufacturing space and employs some 5,500 people. The commercial hub occupies a prominent position at the gateway to the business park from the A6/M61 and includes an Aldi neighbourhood foodstore, Costa Coffee drive-thru and public house.”*

Harworth conclude by confirming that *“...the provision of proportionate, complimentary, retail and leisure uses help stimulate investment in our schemes and make an important ongoing contribution to their successful operation.”*

However, what is proposed by Aldi is far from being ‘proportionate’ or ‘complimentary’ in nature. References both by the applicant and Aldi seek to seriously understate the scale of the proposal. It is repeatedly described as a *“neighbourhood foodstore”*. However, in retail planning terms, *“...shops of purely neighbourhood significance”* are seen as sitting at the bottom of the relevant retail hierarchy and described as *“small parades of shops”* (Glossary to the NPPF).

Aldi are proposing a foodstore with a gross area of 1,881sqm together with 124 car parking spaces (paragraph 3.4). Retail assessment of the proposal is based, Avison Young say, on a catchment area *“...from which the majority of the retail unit’s trade will be drawn”* (paragraph 7.10). The catchment area is said to contain 17,200 residents. However, the Retail Impact Assessment is based upon data from a single zone from the Council’s recently commissioned household survey of shopping habits. Data for this zone projected forward to 2025 reveals that it will have a population of 41,481 (Table 2(a) of Appendix IV). Significantly, the assessment explains that of the proposed store’s turnover nearly 20% is assessed as coming from stores located outside that much more significant catchment area. Whilst there is no analysis of trade draw from residents within or beyond that larger study area (zone 3), it does serve to confirm the significance of trade from beyond the initially suggested, 5-minute catchment area.

The proposal is therefore seeking to serve an extensive residential catchment but from a location where this does not sit well in terms of co-location with the large scale and extensive housing areas across this part of Oldham. In policy terms, it would be better associated with a town centre location where policy seeks to encourage such development to serve those residential communities beneficially. The concept of this development serving the Broadway Green Business Park as part of the Foxdenton key business area has neither development plan policy support (see later) nor credibility in terms of appropriately serving what would be the vast majority of its customer base. They would predominantly need to drive from residential areas and estates from across the wider area. Indeed, this explains why there is a need for a car park to accommodate 124 cars (even if a modest number are to support the other commercial use(s)).

Moreover, Foxdenton is identified as a new employment area in the Joint Core Strategy with the evidence base to it identifying the site as being “key” to meeting the employment land requirements of the Borough. Unlike other existing major Business and Employment Areas i.e., at Hollingwood and the Chadderton Technology Park, the designating policy (Policy 14) does not promote the concept of ancillary uses. On those other two sites, a range of such uses are specifically permissible, including up to 1,000sqm of leisure and 500sqm of retail facilities (gross).

Indeed, the example given by Harworth of their Bolton site was subject to a policy that permitted ancillary uses including retail of up to 1,000sqm. The developments are also of very different scales and arise from different planning policy backgrounds and intentions.

Matters Arising from our review of the Officer’s Report

We have now had the opportunity of reviewing the Officer’s Report on this planning application. We have found it to contain a significant omission, misapplication or misinterpretation of case law, a misunderstanding of the approach to Policy 14’s exceptions and notwithstanding the above, inappropriate reliance on the paucity of material concerning the nature and extent of marketing that has been said to have been carried out in the context of the application site.

Failure to advise the Committee of the Significance of a Recent Refusal of Planning Permission

The Officer’s Report should set out material which is seen as relevant and of assistance to members in their decision making on the application. The planning history of the site (and its surroundings) is obviously relevant. Indeed, a heading in the report is titled ‘Relevant Planning History’. However, a particularly relevant planning decision was recently made in respect of the application site itself. This was a decision made by Members of the Planning Committee at its meeting on 16th February 2022. This was a decision on an identical planning application which was refused for the following reason:

“The proposed development would conflict with the aims and objectives of Development Management Policy 14 of the Local Plan insofar as it applies to Foxdenton Business Employment Area. This is because it would not provide the high quality office, business and industrial developments that provide skilled job opportunities to comply with the policy. Furthermore, the application does not satisfy the Exceptions criteria listed within the policy. As such, the proposed development is contrary to Policy 14 of the Local Plan, and conflicts with paragraphs 81, 82, and 83 of the National Planning Policy Framework.”

This refusal arose from Members choosing to not accept the officer’s recommendation for approval. It is therefore fundamental that this starting point for the consideration of the current identical application is fully reported.

It is clear from reading this reason for refusal that members of the local planning authority were fully aware of the content of Policy 14. In particular, they came to a decision that “...the application does not satisfy the Exceptions criteria listed within the policy”.

The applicant, their agent and their property consultant have, as part of the current submission, provided commentary and material seeking, in hindsight, to now attempt to

justify the proposal against the three exception criteria. However, the local planning authority's decision was very clearly put that there was a failure to satisfy the policy in this regard. As this is a development plan policy that would have been well known to Members and local Members, in particular, would have been aware of the progress of development on the site, they were entitled to come to a view on the basis of their knowledge. If that knowledge had been lacking the Committee would, no doubt, have chosen to defer the application so that material could be submitted for their consideration. However, the wording of the decision is that that was not seen as necessary.

The expectation of consistency in decision making is central to an effective planning system. It is a principle that is regularly upheld. It is in its own right a convincing ground to reject the application.

Consideration Against the Policy 14 Criteria

It is important that the exceptions provision to Policy 14 is correctly understood. In this context, it is relevant to note that Foxdenton is a new release in the development plan unlike other Business and Employment Areas. That is no doubt why Policy 14 treats Foxdenton differently. The exceptions test follows that approach. The opening wording that sets the framework for the exceptions states "*Uses other than those listed above will be permitted on sites currently or most recently used for employment purposes...*" (our emphasis). The Foxdenton location and the application site in particular does not fall within a category of sites that are currently or 'most recently' used for employment purposes. Therefore, the exceptions test does not apply to such allocations.

Even if it the exceptions provision could be interpreted to embrace the application site, we raise significant concerns with the approach that the officer now takes to those tests, in particular criterion (a) relating to marketing. This is explained in the development plan as needing to demonstrate "*...no realistic prospect*" of employment use. That is a very high hurdle to meet and needs to be considered in the context of the application site being part of a new, important large employment allocation which the plan recognises has a 15 year, or more, timeline for delivery.

The submitted Employment Land Market Report (ELMR) provides very little evidence on marketing. It is dealt with in only seven paragraphs. It does not set out detailed evidence of the marketing campaigns employed. Neither does it refer to agreeing the necessary approach with Council officers. That is no doubt, because until now there had been no need to record the full details of marketing initiatives and responses to them because there had been no cause or need to engage criterion (a) of Policy 14. The need to promote a non-conforming use had simply not arisen.

The ELMR refers to a "*structured approach*" but there is nothing of substance in its content. It refers to a "*dedicated website which provides the latest scheme brochure and plans*". We append an extract from that document. The website is only an introductory document through which interested parties can identify the kind of units that might be available and contact details. The 'structured approach' then refers to the "*marketing brochure*". This is the material that can be viewed and downloaded from the website. It is noted that the brochure "*has also been circulated to targeted occupiers and developers.*" It should be noted that this is written in the past tense suggesting that the

activity is no longer occurring and may not have been for some time. A compliant marketing appraisal would set out a list of those who had been targeted and their responses. The approach then refers to *“retained marketing agents”* and their role including to introduce the development location to occupiers with requirements in the Greater Manchester Area. Reference is made to *“site marketing boards”* being displayed on the site. Reference is then made to *“site promotion with national and international property events”*. This explains how the developer has attended *“major property events”* including MIPIM in Cannes in order to promote the scheme. And finally *“engagement within inward investment bodies”* including agencies such as MIDAS.

All of this would be expected to take place routinely as part of the commercial activity in relation to the development or letting of such a major business park scheme. But there is no explanation as to how this ‘structured approach’ has been managed and recorded on a day-to-day or week-to-week basis in respect of the application site. The material confirms the length of this overall marketing, there is a paragraph referring to an approach by DPD relating to the site in 2016, and that the strategy *“has been generally successful”*, including that some developers have been attracted to deliver some of the larger plots. In that regard they explain *“there has been very little interest in the much smaller Plot 4 (the application site).”* In fact, the application site is shown as Plot 5 on the brochure. The extract from the brochure appended to this letter (Appendix 1) illustrates the existence of three other smaller scale plots/units namely 3, 4 and 8 to the west. Compared with the application site, Plot 5, which is shown to accommodate a building of 2,500sqm, plots 3, 4 and 8 accommodate units of 1870sqm, 2,250sqm and 1,600sqm. Thus, all are targeted to provide smaller units than the application site would.

The evidence (letter at Appendix 8 to the ELMR) confirms that Aldi made a subject to planning offer for the site in January 2020. This would have been known shortly afterwards in the marketplace and the prospects of an occupier or developer then putting forward an interest from that time would be most unlikely. Aldi’s relationship with the site has therefore frustrated the effectiveness of any targeted marketing for ‘planning purposes’ over the last couple of years.

Whilst the property consultant concludes that marketing *“...has been undertaken in a professional and appropriate way”*, the normal standard of evidence to support the release of land from an allocation is lacking. As explained above, the test cannot be demonstrated by a general lack of developer/occupier interest, rather it is the much higher hurdle test of there being *“no realistic prospect”* of the use of the land for employment purposes. And that has to be in the context and purposes of the development plan and particularly, its long plan period for delivery.

Moreover, exception (a) requires that *“The marketing exercise should be agreed with the Council before commencing.”* It does not seem to have not been. In addition, the test is that there is *“no market”* for the allocated uses.

Immediately after refusing permission at the February meeting, Members approved a nearby Foxdenton scheme (Chancerygate) at Plot 3000, Lydia Becker Way for 8 employment use units, ranging in size from only 677sqm with four in total under 1,000sqm. This compares with the suggested 2,500sqm unit for the application site (see Appendix 1). That a developer is so recently promoting such a scheme through the

reserved matters stage in order to construct these smaller scale units serves to confirm the reality of there being strong local market interest in bringing forward the allocated employment use on the application site. Facts on the ground should be given much greater weight than opinion in a report.

The officer confirms that there has been no independent appraisal of the ELMR evidence. That appears to be a serious shortcoming. With regard to the viability evidence has been provided to the Council to satisfy criterion (b), the Officer's Report also confirms that no independent review has been provided. Indeed it states that such evidence "...was not considered necessary on the strength of the information submitted to demonstrate compliance with exception policy (a)". However, (a) and (b) are distinct criteria. The Officer's Report has not considered the prospect that the Planning Committee might reject the submission on marketing as not being adequate and will then have failed to provide the Committee with any relevant advice on criterion (b).

In these circumstances, we would comment only that the viability assessment provided in the ELMR looks at an office development rather than a B2/B8 proposal as promoted in the developer's brochure. This may have been chosen to avoid scrutiny of the viability of such development and the prospect that it might be shown to be viable (but that what is lacking is specific operator interest).

Whilst office development may not generally be viable in present economic conditions, the development of business and industrial parks will always be subject to cyclical changes in economic and market forces. The ELMR's viability assessment fails to have regard to those macro-economic factors in the context of planned development here spanning a 15 year period. However, its overview of the Property Market does. It explains the "...significant uncertainties as the UK's future trading relationship with Europe, which when combined with global inflation and energy costs, gives rise to uncertainty to the UK economy for the foreseeable future."

The Officer's Report rejects the agent's assertion with regard to exception (c) that requires an alternative use to benefit the regeneration of an area identified by the Council as being in need of investment. This rejection is based on a lack of consultation with the Council with regard to the agreement of necessary preliminary matters. We are not aware that the Council has identified the Broadway Green Business Park as an area "*in need of investment*". Whether the alternative use would "*benefit the community*" is a matter on which assertions are also made in the final 'planning balance'. We consider below the benefits put forward but first respond to Avison Young's assertion that Policy 14 is out-of-date and should not carry full weight.

Whether Policy 14 is Out-of-Date and Review Mechanisms

Avison Young assert that reduced weight should be applied to Policy 14 in light of its age. However, there is no evidence put forward to support this. We cannot identify any ourselves. The policy is up-to-date and consistent with policy in the NPPF. The approach in the NPPF at paragraph 122 does not apply since on Avison Young's own admission there is demand for land at Foxdenton and that even if it was felt that the policy should be amended to facilitate ancillary uses, any 122 (a) request of the local planning authority is to be couched in terms of "*reallocate the land for more developable use that can help*

to address identified needs” and that (b) “in the interim... applications for alternative uses on the land should be supported, where the proposed use would contribute to meeting an unmet need of development in the area” (our emphasis).

No cogent case has been made that there is a “need” for the proposed development. Whilst a case has been put forward that the development might have benefits, these have largely been dismissed and in any event ‘benefits’ do not serve to trigger the paragraph 122 provisions.

The Planning Balance

The Officer’s Report weighs the positive and negative aspects of the development. It does so on the basis that there is “no real prospect” of employment development coming forward on the site (although we do not see this as having been demonstrated). This compliance with exception (a) is said to “weigh in favour of the development” despite its loss from the allocation. However, the Officer’s Report then explains that the original planning permission for the overall development included for B2 and B8 uses “that could be provided” (and would potentially be harmful to the amenity of neighbouring residents) and thus “presents a fallback position”. It is asserted that this “is therefore a material planning consideration”. This cannot be the case. The Judgment in P.F Ahern specifically found that a fallback proposition cannot exist if there is ‘no realistic prospect’ of it coming forward.

In any event, the 2013 and 2015 permissions provided for both uses to co-exist with the benefit of a landscape buffer. The introduction of an alternative type of development cannot be seen as a ‘benefit’ when the original planning permission for the wider site ensures effective co-location of residential and industrial/warehousing uses.

The other benefits asserted relate to the enhancement of consumer choice from the proposal, the spending clawback to the local area from Aldi stores elsewhere in Oldham and the 40 or so, we understand full-time equivalent, jobs created. However, these so-called benefits would also come forward with the supermarket located on a more sequentially preferable site. The existence of such an opportunity is addressed below. In these circumstances, there are no benefits that arise to meet the second arm of criterion (c). With a failure against all of the exceptions criteria and thus a fundamental breach of Policy 14, together with a lack of benefits, planning permission should be refused.

Sequential Approach and 5-minute Drive Time

Avison Young has undertaken a sequential site assessment which is based on a 5-minute drive catchment area. They assert that this “...is not an arbitrary distance based on Aldi’s commercial preferences. It is a reasonable and geographic area from which a foodstore of this size will draw the vast majority of its trade” (paragraph 6.8). This catchment area is then used to identify “The only ‘Oldham Council’ defined centre within a five-minute off-peak drivetime...” (paragraph 6.11).

This approach towards sequential assessment is, however, flawed. Simply put, a catchment area around a retail proposal suggests where shoppers will come from. That area will likely differ from the catchment area(s) of relevant nearby town and district centres being the first preference in respect of policy-led locations within which such shopping is encouraged. Thus, the sequential test should start with an identification of the town and

district centres in the retail hierarchy that would be the preferable location(s) for such shopping activity. This is reflected in the NPPF and its requirement that *“Planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation”* (paragraph 86). Thus, sequential assessment should start by identifying all of those town and district centres (not necessarily just one) where shoppers in the proposal’s local catchment might expect to undertake shopping activity of this type. This approach sits with the Government’s ‘Town Centre First’ principle.

It is unfortunate and, we say, erroneous that the Council’s advisor on retail planning matters has accepted this catchment area approach as the basis for sequential assessment.

The Requirement to Disaggregate the two Proposals

Avison Young has sought to rely on past decisions to justify why the two components of this application should not be disaggregated for the purposes of sequential assessment. However, it is the circumstances pertaining to each case that are relevant. If the components of an application proposal have little or no ‘functional relationship’ with each other, or in terms of their ‘delivery’, it is logical that each part should be assessed separately. The Council’s advisors agree with this approach based on ‘delivery’ (see paragraph 3.15 of their Appraisal (September 2022)).

As a result, Nexus set a reduced site size parameter for sequential assessment of 0.5ha. That contrasts with the applicant’s agents more excessive 0.84ha (paragraph 6.30).

The Lack of Suitable Flexibility Applied to Sequential Assessment

Whilst the Council’s advisor suggests a site size parameter of 0.5ha, there are recent examples of applications for discounter supermarket schemes delivering their standard formats on smaller sites by applying a two-storey solution. Planning applications have been submitted (by Aldi) on sites of no more than 0.3ha with around 50 parking spaces (for example, at Orpington and Thames Ditton). These do not rely on concepts such as Lidl’s ‘metropolitan format’. The Council’s consultants in their analysis at paragraphs 3.18 to 3.23 fail to have regard to this recent adaptation made by Aldi to their standard operating format in order to occupy smaller sites. Sequential test site searches should therefore focus on sites upwards from circa 0.3ha.

The applicant has failed to apply necessary flexibility in their sequential assessment. It is likely that sequentially more preferable opportunities have not been identified whether in town centres, within edge-of-centre locations or on more accessible out-of-centre sites.

The Suitability and Availability of the Land at the Rear of the Chadderton Reform Club

Avison Young choose to assess this town centre opportunity. It is just below 0.3ha in size and is of a regular shape. That would make it suitable to accommodate a two storey format of the type described above. Being in a town centre location would reduce the need for car parking to a scale that could be accommodated on-site. Avison Young assert

that as Asda are the freehold owner of part of the site it is “...highly unlikely to sell this to a rival food retailer” and that this means that “it must be logically dismissed as ‘unavailable’” (paragraph 6.68).

The Council’s consultant rejects the opportunity on grounds of site size and visibility from a main road. The former arises from their failing to have regard to Aldi’s two storey format and the latter should be less of a constraint in a central area where car access is less of a requirement.

On the Asda ownership issue, some comfort can be obtained from an appeal decision concerning sequential test issues arising from a proposal for a Lidl store in Sutton in Ashfield. The Inspector recorded that “*The NBR site is owned by Asda. Much has been made of the letter sent by FHP Property Consultants in February 2018, which indicates that the NBR land was not (at that time) being actively ‘pushed’ for disposal and would be unlikely to be available to a competitor. However, that letter has been contradicted by Asda and described as unauthorised and not a proper reflection of the situation. Asda maintains that the site is available*” (Planning Appeal ref APP/W3005/W/18/3204132 and 3265806).

Further investigations should therefore take place as to the opportunity that this identified town centre site could play in being a sequentially preferable site to accommodate the development and its resulting benefit in underpinning the health of Chadderton District Centre.

Conclusions

The applicant has sought to justify, in large part, the location of the scheme within a key strategic employment location on the basis that it provides a ‘commercial hub’ to serve employees. Elsewhere it is described as a neighbourhood facility suggesting that it has only limited reach to local residents. However, the assessment of the proposal itself together with its 124 parking spaces demonstrate that it will serve a broad catchment with largely car born custom.

The Officer’s Report has failed to advise the Committee of the important and highly relevant decision to refuse an identical planning application in February 2022. The reason relates to conflict with Policy 14 and that the exceptions criteria to it are not satisfied. Fundamentally, the proper interpretation of Policy 14 is that the exceptions criteria can only be applied to ‘sites currently or most recently used for employment purposes’. This is confirmed in the justification to the policy which relates to ‘no realistic prospect of a continuing employment use’. The application site does not fall within this category. On this basis, there is a fundamental breach of Policy 14 and planning permission should be refused.

Even if that were not the case, the evidence that has been submitted on marketing seeks to address matters ‘after the event’. What has been submitted does not conform to an appropriate methodology for a marketing campaign to demonstrate beyond all

reasonable doubt that “*there is no market for the uses listed...*” and “*no realistic prospect*” of them occurring.

No independent verification has been sought on the attempt to provide marketing evidence or on the submitted viability evidence, which the officer has acknowledged. No finding is given on the viability exception evidence. In any event, it has only considered office development and at a time of significant economic uncertainty.

Officers dismiss the attempt at compliance with exception (c) because no engagement has taken place with the Council on necessary matters.

The applicants assert that there will be, we understand, 40 full time equivalent jobs created, that consumer choice will be enhanced and that there will be claw back from Aldi stores further afield to this store. These benefits can equally be secured through the development taking place on the identified, sequentially preferable, town centre opportunity in Chadderton. They are not unique to the application site. An additional benefit is asserted in terms of the replacement of potential B2/B8 activity with the Aldi store. However, fallback positions cannot apply in a scenario where the applicant themselves assert that there is “*no realistic prospect*” of the B2/B8 alternative occurring.

The applicant’s approach to sequential assessment is flawed. It is based on defining a study area using a drivetime from the application site itself. This does not properly replicate the need to focus the search for opportunities in or on the edge of town centre locations to which residents would normally travel to undertake shopping. These may well be located outside the artificially defined area.

The applicant has failed to apply necessary flexibility in respect of the size of site required, particularly bearing in mind Aldi’s ability to adapt their standard format to a two level scheme. As a result, it is likely that sequentially more preferable opportunities have not been identified whether in town centres, within edge-of-centre locations or on more accessible out-of-centre sites. An example of such an opportunity is the land at the rear of the Chadderton Reform Club. Without review of this and other such opportunities, the sequential test is failed.

For all the above reasons, planning permission should be refused.

Yours Sincerely,



Martin Robeson

martinrobeson@mrpp.co.uk

Cc. stephen.gill@oldham.gov.uk

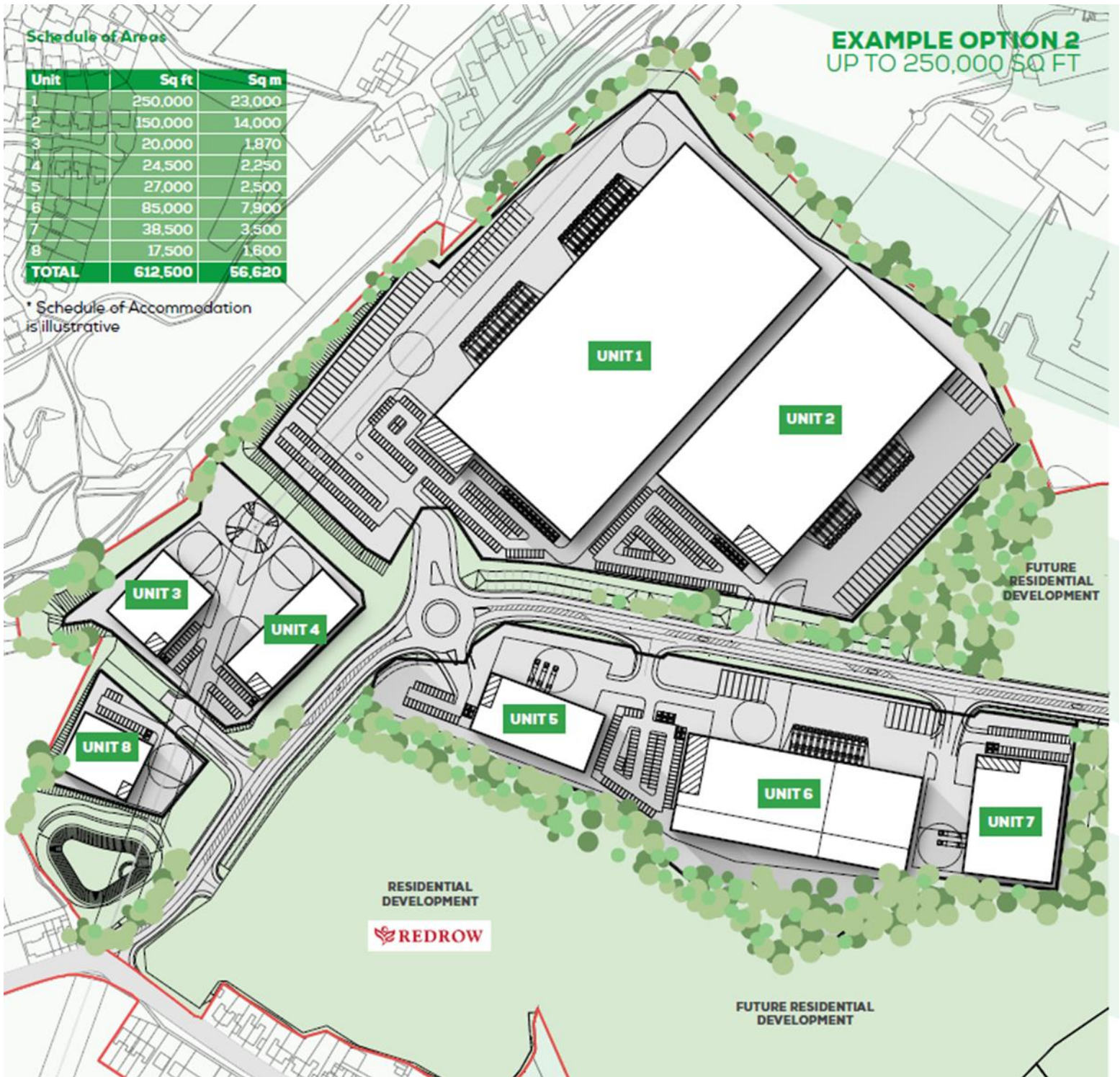
APPENDIX 1

Schedule of Areas

Unit	Sq ft	Sq m
1	250,000	23,000
2	150,000	14,000
3	20,000	1,870
4	24,500	2,250
5	27,000	2,500
6	85,000	7,900
7	38,500	3,500
8	17,500	1,600
TOTAL	612,500	56,620

* Schedule of Accommodation is illustrative

EXAMPLE OPTION 2
UP TO 250,000 SQ FT





Our Ref: 04C001150
Your Ref: OUT/349440/22

11th October 2022

Mr S Gill
Development Management (Planning)
Oldham Council
Civic Centre
West Street
Oldham
OL1 1UT

Dear Stephen

Application Ref. OUT/349440/22

Land at Broadway Green Business Park, Foxdenton Lane, Chadderton

Response to Representations of Objection on Behalf of Tesco Stores Ltd

Introduction

I write on behalf of my client Aldi Stores Limited ('Aldi') in regard to application reference OUT/349440/22 which was validated by Oldham Metropolitan Borough Council ('Oldham Council') on 15th July 2022 and seeks 'hybrid' planning permission for a new commercial hub to serve Broadway Green Business Park. This involves detailed planning permission for the erection of a Use Class E foodstore with internal vehicular access road, car parking, servicing area, and hard and soft landscaping; and, outline planning permission (with all matters reserved) for a flexible-use commercial unit capable of operating within Use Classes E(a) and/or E(b). The commercial hub is proposed on vacant land south-east of Lydia Becker Way in the heart of Broadway Green Business Park ('the site').

Following receipt of a commercial objection on behalf of Tesco Stores Ltd ('Tesco') by Martin Robeson Planning Practice ('MRPP') dated 7th October 2022 we wish to take this opportunity to offer our views on some of the comments made and provide further clarification on a number of points raised where we feel this is necessary. To our knowledge, Tesco are the only retailer that has objected to this planning application. The stores that Tesco claim will be affected, their distance from the application site, and their approximate size are as follows:

- Oldham, Featherstall Road North, 'Superstore' Format – 2.3km north-east – Approx. 6,000 sq. m;

- Barton Road, Middleton, 'Extra' Format – 2.5km north-west – Approx. 7,000 sq. m; and,
- Huddersfield Road, Oldham, 'Extra' Format – 4.5km east – Approx. 7,000 sq. m.

Aldi's proposed foodstore is therefore less than one third of the size of even the smallest of the affected foodstores identified by Tesco, and this store (Featherstall Road North, Oldham) is an 'out-of-centre' facility which does not benefit from town centre policy protection. Furthermore, it is abundantly clear that none of the foodstores referenced by Tesco are proximate to the application site, with two further than 2km away and a third over 4km away, on the far western side of Oldham town centre. Each Tesco store clearly serves a very different catchment to that of Aldi's planned foodstore, all are well-established 'main' food shopping destinations, and all lie within very densely populated urban areas.

Set against this context, it is very difficult to imagine a situation whereby the proposed discount foodstore would affect the long-term viability of Tesco's existing, much larger assets in Oldham and Middleton, and this is reinforced by the findings of our robust Retail Impact Assessment (see Appendix IV, Planning and Retail Statement, July 2022). Indeed, we consider it to be very telling that MRPP themselves do not make any suggestion whatsoever in their letter that Aldi's introduction would have harmful consequences for the trading performance of Tesco's foodstores (or indeed any associated defined centres). One would imagine that this would be Tesco's chief concern, given the nature of their business.

The fact that retail impact has been ignored entirely as an avenue for objection by Tesco's representatives, and that their letter has arrived extremely late in the planning process, surely serves to emphasise that their objection is commercially motivated and designed purely to delay the determination of this planning application by Oldham's planning committee. The retailer has a vested commercial interest in maintaining the existing 'status-quo' within Oldham's food shopping offer and their representations should be considered in this context.

This letter will explain that the overall conclusions of Avison Young's ('AY') Planning and Retail Statement and the conclusions of the Employment Land Market Report prepared by Aherne Property Consultants ('Aherne') remain entirely robust and represent a sound basis upon which to determine this planning application. The letter will also deal, amongst other things, with criticisms of the Planning Committee Report in respect of local employment land policy, confirming that the planning officers' approach is, in our view, entirely sound and an appropriate basis upon which to determine this planning application favourably.

Finally, whilst this letter touches briefly on town centre policy issues, it should be emphasised at the outset that the Local Planning Authority has taken independent, specialist advice on this matter. Nexus Planning concluded as part of their recent '*Appraisal of Retail Policy Issues*' report (September 2022) that Aldi's application is compliant with both the retail impact and sequential tests of local and national planning policy.

We have ordered the following paragraphs of this letter based on the headings set out in MRPP's letter dated 7th October 2022. We deal in turn with those points that we consider to merit a further written response on behalf of the applicant. Where we do not comment further, the application submission documentation (15th July 2022) should be referred to for the applicant's position.

The Proposed 'Commercial Hub' in the Context of Broadway Green Business Park

On Pages 1 to 3 of their letter, MRPP appear to suggest that the retail and commercial uses proposed as part of the planned commercial hub are neither 'proportionate' nor 'complimentary' in nature to Broadway Green business park. They suggest that the scale of the proposal has been 'seriously understated'.

In response, both the planning application documentation and the officer report are entirely clear on the scale and form of development proposed. The application site extends to 1.1ha and the total floorspace proposed across the full and outline elements totals 2,100 sq. m (with the foodstore equating to 1,800 sq. m of this). In contrast, Page 43 of the Committee Report states that (excluding residential development) Broadway Green contains up to 36ha of employment land which has permission for up to 66,460 sq. m of employment floorspace. The commercial floorspace proposed therefore equates to just 3% of the total which can be realised across the site, and this ignores the purely 'ancillary' nature of the scheme in overall land-take and locational terms. On this basis, we fail to see MRPP's point regarding the scheme's proportionality, particularly in quantitative terms. All key metrics point to the commercial hub being entirely subsidiary to the primary role and function of the business park.

MRPP also suggest that the scheme will not be 'complimentary' to Broadway Green, by which we assume that they are implying that it will not function as part of the business park and will not provide the economic catalyst capable of supporting further inward investment. In response, the economic and wider benefits of the commercial hub's introduction are dealt with at length in our Planning and Retail Statement – see the commentary on Local Employment Land Policy at Paras 8.2 to 8.34. It will, amongst other things, provide a focal point, generating activity and footfall, and will help to create an environment where people want to work. It will also of itself provide 40-50 quality full and part-time jobs, reflective of the overarching objective of 'employment land'.

MRPP do not respond to these clear co-locational benefits, instead attempting to argue that Broadway Green is not an accessible or suitable location from which to serve the Chadderton catchment. However, this argument fails on the basis that Chadderton is without question a densely populated urban area, with some 9,000 people living within a 1km walking distance of the site and 17,200 within a five-minute drive-time (Source: Experian 2022). It is therefore hardly the case that this is some isolated location devoid of a resident population.

MRPP also attempt to question the contents of the letter contained at Appendix I of our Planning and Retail Statement from Harworth Estates Investments Ltd. Harworth, are one of the leading

land and property regeneration companies in the UK and whose portfolio includes 15 separate business and employment parks (including some of the largest in the UK). However, they are not a “*developer of part of the scheme*” as MRPP suggest on Page 1 (which would appear to be an error) but instead a party who are entirely independent of this planning application. Notwithstanding this, two developers who are involved in the development of Broadway Green Business Park – FO Developments and Chancerygate – have written separately in support of the planning application and these letters are found at Appendices 8 and 10 of the Employment Land Market Report.

Turning back to Harworth’s letter, this explains that from the developer’s extensive experience the type of ‘commercial hub’ development being proposed at Broadway Green is in actual fact of considerable benefit to the operation of employment parks. This is not just in terms of serving the day-to-day needs of a substantial local workforce, but is also in relation to stimulating further tenant interest and investment decisions. We would suggest that the findings of an experienced owner and manager of multiple employment parks should be given far more weight than the opinion of the objector’s planning consultant on this matter. The fact that Chancerygate, another experienced industrial developer, make the same points in a letter provided at Appendix 10 of the Employment Land Market Report further reinforces this.

Drawing the above together, in contrast to the comments of MRPP, the application submission clearly demonstrates that the planned commercial hub is both entirely ‘proportionate’ and ‘complimentary’ in nature to Broadway Green business park. The scale of the development has been clearly articulated and justified and its clear co-locational benefits for the business park have been outlined through robust evidence. It is therefore entirely correct for the Local Planning Authority to give weight to this evidence in their determination of the application.

Local Employment Land Policy – Scheme Consideration Against Local Plan Policy 14

On Pages 4 to 7 of their letter of objection, MRPP seek to criticise the Committee Report’s approach to the application of Policy 14 of Oldham’s Core Strategy. As a starting point, they suggest that Policy 14 has been incorrectly understood by officers, that Foxdenton is treated differently than other Business and Employment Areas (‘BEAs’) and that, specifically, the ‘exceptions test’ for alternative uses does not apply because the land is not “currently or most recently” used for employment purposes.

In response, quite simply, a policy and its reasoned justification must be read and interpreted as a whole. In this case, Paragraph 6.59 provides a clear context to the ‘exceptions test’ outlined in Policy 14, it explains that:

“Instances can arise when uses other than those listed within the policy may be appropriate within the BEAs and the SEAs. Development proposals for other uses will only be permitted either where it can be demonstrated (through a marketing or viability exercise) that there is no realistic prospect of a

continuing employment use, or that the alternative proposal would bring community or regeneration benefits to an area identified by the council as being in need of investment”.

If the ‘exceptions test’ truly intended to explicitly exclude land such as the planning application site, which is within a BEA and allocated for employment purposes but has never seen such uses realised, then surely this supporting paragraph would have made this distinction. As it does not, the logical interpretation of “currently or most recently” used for employment purposes must be land that falls within allocated Business and Employment Areas (‘BEA’), the Saddleworth Employment Areas (‘SEA’), or other land in historic use for employment purposes. Indeed, it is notable that in setting out the ‘exceptions test’ in Policy 14, the sentence after the three criteria reads *“This applies [i.e. the test] to sites located within the BEAs and SEAs and elsewhere”*. This again is a clear statement, with no qualification excluding land allocated for employment purposes but not yet in employment use.

Indeed, based on MRPP’s suggested policy interpretation, it would surely mean that land such as the planning application site (which as no present use) would effectively be sterilised from all alternative forms of development unless and until a policy compliant ‘traditional employment use’ is found. With the ‘exceptions test’ suggested to not be applicable, there would be no policy mechanism for alternative uses to be considered (however appropriate / beneficial) and a site could therefore remain vacant in perpetuity. We simply do not believe that the policy was designed in this way or that the Secretary of State envisaged that it would be applied in such a manner when examining the Core Strategy. This would run entirely counter to the economic growth objectives of national planning policy and the need for policy allocations to be flexible in the face of changing future market conditions.

In summary, it is unquestionable in our view that the ‘exceptions test’ outlined in Policy 14 of the Local Plan applies equally to undeveloped BEA sites as it does developed ones. A review of the policy and its reasoned justification as a whole fully supports this view. Furthermore, excluding such sites from the test would result in some very odd and surely unintended consequences, with land sterilised in perpetuity until a policy compliant employment use could be found. MRPP’s arguments in relation to this policy’s ‘misinterpretation’ are therefore clearly erroneous.

Local Employment Land Policy – Contents of Employment Land Marketing Report

MRPP make various unfounded claims about the robustness of the Employment Land Market Report and its contents. It should be emphasised at the outset that, in contrast to their suggestion, the report was scoped in detail with the Local Planning Authority at pre-application stage. Information that the Council considered relevant to the assessment was agreed in advance and all of this forms part of the submitted document, which has been prepared by a highly respected and experienced Greater Manchester based commercial agent.

One particular criticism that MRPP seek to make is in relation to the marketing evidence presented as part of the Employment Land Report. They claim on the one hand that the report *“provides very little evidence on marketing”* but then acknowledge in paragraphs at the foot of Page 4 and start of Page 5 that there is a dedicated scheme website and marketing brochure. They also acknowledge that this brochure may have been circulated to targeted occupiers and developers by retained commercial agents, that site marketing boards may have been displayed consistently, and that the developers may have promoted the scheme at national and international property events.

However, all of these various marketing activities – which have taken place – are dismissed by MRPP (Para 2, Page 5) as actions which *“would be expected to take place routinely as part of the commercial activity in relation to the development or letting of such a major business park scheme”*. The objector therefore presents a very confused position on the site’s marketing. On the one hand they criticise the fact that *‘very limited evidence’* is provided but on the other there appears to be a recognition that an entirely typical commercial approach has been adopted, reflective of any major employment scheme of this regional profile. Surely this professional and co-ordinated approach to marketing is what is envisaged by Policy 14.

What MRPP appear to actually want, based on Para 2 of Page 5 of their letter is an *“explanation as to how this ‘structured approach’ has been managed and recorded on a day-to-day or week-to-week basis in respect of the application site”*. Such a request is clearly entirely unreasonable in the case of a site such as Broadway Green, which has been available and offered on the open market from late 2013 / early 2014 onwards (8+ years) by several leading commercial property agents (BC Real Estate, WHR Property, and JLL). When marketing has spanned years rather than months, a lack of recording on a day-to-day/week-to-week basis is hardly a determinative factor. This simply amounts to *‘nit picking’* on the objector’s part in the face of overwhelming evidence that the site has been appropriately marketed for a sustained period – as required by Policy 14.

A final point to reference in relation to the Employment Land Market Report is that MRPP criticise the fact that the Council has not sought an independent appraisal of the submitted evidence. In connection with this matter, the Committee Report is clear (Para 5, Page 45) that an appraisal *“was not considered necessary on the strength of the information submitted to demonstrate compliance with exception policy (a) [Marketing]”*. In our view, this is an entirely reasonable conclusion for the Local Planning Authority to reach. There is no policy requirement for an independent appraisal to be undertaken, the marketing evidence contained within the Employment Land Report is extensive, and marketing has evidently been undertaken in a professional and appropriate way for a site of this nature. This is expressed throughout the Aherne report and, in particular, we draw the reader to the letter prepared on behalf of FO Developments (the joint venture delivery partner for Broadway Green) in connection with site marketing efforts, contained at Appendix 8 of the report.

It can therefore be robustly concluded by the Council that if there had been genuine commercial interest in the development of the application site for traditional employment uses then this would

have been identified over the extensive marketing period. Further contributing factors to this outcome are also explored in detail in the Employment Land Market Report, including the site's irregular shape, its proximity to residential properties, the constraint of the adjacent roundabout, and the lack of industrial demand for smaller plots of this nature. These issues are ignored entirely by MRPP in their letter of objection.

Drawing the above together, an independent review of the submitted Employment Land Market Report is evidently not required to reach a robust conclusion on the findings of the document and, particularly, its marketing evidence.

The Sequential Test and Town Centre Policy Matters

In Pages 7 to 9 of their letter of objection, MRPP make various criticisms of the applicant's sequential assessment, including unfounded points concerning the catchment area assessed, the scope for disaggregation, application of 'flexibility', and the 'suitability' and 'availability' of a long operational car park site in Chadderton district centre. We do not consider it necessary to respond to each of these points in turn, given that the sequential test (inclusive of the above points) is addressed in a comprehensive manner as part of Section 6 (and Appendix III) of AY's submitted Planning and Retail Statement.

Furthermore, the Local Planning Authority has taken independent advice on the sequential test and other town centre policy matters from a specialist consultant (Nexus Planning). Their comprehensive report for Oldham (dated September 2022) covers all aspects of the sequential test at Section 3, including matters raised by MRPP. As Nexus have approached their appraisal independently, it is perhaps unsurprising that they do not agree with all aspects of the applicant's sequential test case. For example, they have reduced the minimum site size for assessment to 0.5ha from AY's proposed 0.8ha. They have also 'disaggregated' the units proposed as part of their sequential assessment. Finally, they have provided their own view on a total of seven sequential alternative sites in Chadderton district centre, rather than simply relying on the evidence provided by AY.

However, in spite of these differences in approach, it is significant that Nexus still reach the same conclusion as AY on the outcome of the sequential test. This is that there are no sites within any centres in a realistic catchment area of the planning application site which are both 'available' and 'suitable' to accommodate the application proposal. Nexus state that they are therefore unaware of any other site which is 'in centre', 'edge of centre', or better connected to a centre, that could support the application proposal in practice. Given this, they independently find that the application proposal conforms to the requirements of the sequential test as articulated by paragraphs 87 and 88 of the NPPF.

Given the independent findings of the Council appointed consultant, in conjunction with the robust retail policy justification provided on behalf of the applicant, it is clear that MRPP's criticisms

of the sequential assessment are entirely without foundation. It is therefore reasonable for the Local Planning Authority to reach the logical conclusion that the sequential test has been passed robustly.

Conclusions

This letter has sought to respond to representations of objection by Tesco Stores Ltd which have been submitted by their consultant Martin Robeson Planning Practice (letter dated 7th October 2022). It has explained that the overall conclusions of AY's Planning and Retail Statement and the conclusions of the Employment Land Market Report prepared by Aherne remain entirely robust and represent a sound basis upon which to determine this planning application.

The letter has also dealt with criticisms of the Planning Committee Report in respect of local employment land policy, confirming that the planning officers' approach is, in our view, entirely sound and an appropriate basis upon which to determine this planning application favourably.

In relation to the sequential test, MRPP's comments concerning the application of 'flexibility' to the format and scale of development and the disaggregation of the two units are of no consequence to the outcome of the sequential test. This is evidenced by the fact that Nexus Planning have accounted for increased flexibility / disaggregation in their very recent appraisal of the scheme (September 2022) and still find no 'suitable' and 'available' alternatives within the centres identified in the defined catchment area.

I trust this response is of use in coming to your decision on this planning application. Please could you let me know as soon as possible if the Council requires any further information to support the application or clarification on any of these matters and I shall be pleased to assist further. I look forward to hearing from you.

Yours sincerely,

Dan Brown

Associate Director

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For and on behalf of Avison Young (UK) Limited