

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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