

Our Ref: 2995/MR/LT20221007

7th October 2022

Mr Peter Richards
Head of Planning
Oldham Council
Civic Center
West St
Oldham
OL1 1UT

MRPP
**MARTIN ROBESON
PLANNING PRACTICE**

*Town Planning Consultants
Development Advocacy*

21 BUCKINGHAM STREET
LONDON WC2N 6EF
TELEPHONE: 020 7930 0007
FACSIMILE: 020 7930 4049

Via Email: peter.richards@oldham.gov.uk

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

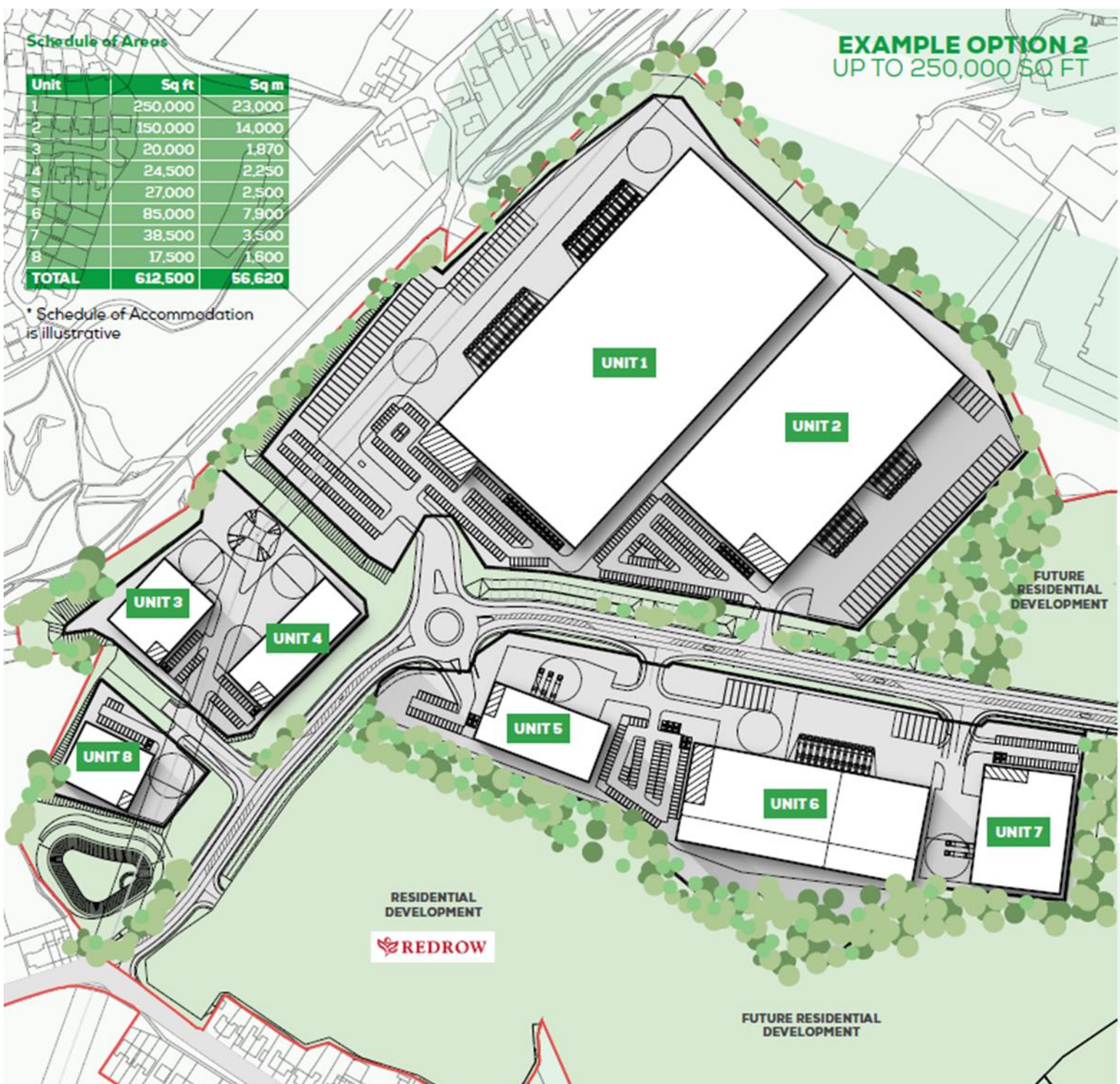
APPENDIX 1

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



RESIDENTIAL DEVELOPMENT



FUTURE RESIDENTIAL DEVELOPMENT