



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

11<sup>th</sup> October 2022

Mr S Gill  
Development Management (Planning)  
Oldham Council  
Civic Centre  
West Street  
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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 15<sup>th</sup> 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 7<sup>th</sup> 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 7<sup>th</sup> 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 (15<sup>th</sup> 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 7<sup>th</sup> 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**