

Our Ref: RW/1882  
Your Ref: 98127/FUL/19

3<sup>rd</sup> April 2020

Bethany Brown  
Major Planning Projects Officer  
Planning and Development  
Place Directorate  
Trafford Council  
Trafford Town Hall  
Talbot Road  
Stretford  
M32 0TH

Norfolk House  
7 Norfolk Street  
Manchester  
M2 1DW

T: +44 (0)8449 02 03 04  
F: +44 (0)161 956 4009

[avisonyoung.co.uk](http://avisonyoung.co.uk)

Dear Ms Brown,

Further Representations of Objection to Planning Application Ref.  
98127/FUL/19 for Retail Development at Unit 1, Altrincham Retail Park,  
George Richards Way, Altrincham, WA14 5GR

I am writing to you on behalf of Aldi Stores Limited ('Aldi') who are seeking to make further representations of objection to proposals for modifications to Unit 1 (Homebase) of Altrincham Retail Park, George Richards Way, Altrincham by Orchard Street Investment Management LLP and Lidl (Great Britain) Limited (hereafter referred to as 'the applicants').

As explained as part of our preceding September 2019 objection (which should be read in conjunction with these further representations) Aldi are a key investor and employer in Trafford's existing town centres with in-centre stores in Urmston, Stretford and nearby Sale. They therefore take a keen interest in out-of-centre food retail development proposals and continue to have particular concerns with the robustness of the retail policy case being advanced by the applicants in respect of the George Richards Way scheme.

These further representations are made in response to a letter dated 15<sup>th</sup> January 2020 by Rapleys on behalf of the applicants. Rapleys' letter seeks to address critical comments made by Nexus Planning (Trafford Council's appointed retail consultant) as part of their audit of the applicants' sequential site assessment. Whilst we are not in receipt of Nexus Planning's audit and would request that Trafford Council upload this to their website for transparency, we have reviewed Rapleys January response and, given its contents, we wish to maintain our objection on grounds that the planning application fails to demonstrate compliance with the sequential test as outlined at Paragraph 86 of the National Planning Policy Framework ('NPPF'). We also remain concerned about the scheme's potential impact on investment decisions at Altrincham town centre's Altair development site.

## Sequential Test

### Avison Young Representations, September 2019 (Background)

We highlighted as part of our September 2019 representations that in undertaking the sequential test Rapleys have identified a single site for consideration within Altrincham town centre at land bound by Oakfield Road, Thomas Street and Altrincham Interchange. This site forms part of the 'Altair' development site, which already benefits from outline planning permission and reserved matters consent for comprehensive mixed-use development comprising residential, office, leisure and retail uses.

Whilst the Altair planning permission doesn't currently include sufficient convenience goods floorspace to accommodate the sales space of a Lidl food store, Rapleys' explain at Paragraph 6.18 of their Planning and Retail Statement (July 2019) that they are "*in advanced discussions with Nikal [Altair's developer] to revise the scheme to accommodate a Lidl food store*". They state that this scheme is "*likely to be advanced shortly*" and that a Lidl food store at Altair will be taken forward separately to one at George Richards Way, Altrincham.

Our September 2019 representations highlighted that with Lidl revealing their intention to open a new Class A1 food store on a sequentially preferable town centre site which is within their defined catchment area (and that they are in advanced negotiations upon) it must be concluded that Altair is a 'suitable' and 'available' alternative to the out-of-centre George Richards Way Homebase site. On this basis the Lidl scheme evidently fails the sequential test.

We added that it is no justification for Rapleys to simply state that Lidl intend to deliver both stores, as such an argument could theoretically be used by any applicant to discount any sequential site, thereby making the sequential test redundant. We also referenced caselaw (Aldergate Properties Ltd vs Mansfield District Council) in highlighting that such an approach would be at odds with the longstanding 'town centre first' approach advocated by the NPPF and preceding national planning policy, which requires retail investment to be located in town centres in the first instance rather than elsewhere.

There can be no advantage given to Lidl when applying the sequential test simply because they have an interest in both sites, and we questioned how the authority can be certain that Lidl will not deliver the out-of-centre George Richards Way scheme and then neglect to deliver the more sequentially preferable Altair site? Thereby bypassing the test altogether.

### Rapleys Letter of Response, January 2020

The letter submitted by Rapleys on behalf of Lidl in January 2020 makes the following points in relation to the sequential approach, which appear to respond to criticisms made by Nexus as part of their retail policy audit:

- Rapleys argue that any suggestion that the Lidl store should be tested in isolation of the Homebase unit is inappropriate as there is no policy requirement to demonstrate 'disaggregation'. They state that Altair cannot accommodate both retail units alongside surface level car parking;
- Aligned to the above, Rapleys suggest that the two proposed units (Lidl and Homebase) are inextricably linked and that the 'downsizing' of Homebase can only be viably achieved

through the reconfiguration of the existing unit into two retail units, with one occupied by a discount convenience retailer;

- Rapleys state that the format of the Lidl foodstore will be different to that proposed at Altrincham Retail Park in that it will be a 'metropolitan format' with a shared below ground car park. The suggestion is therefore that even the Lidl element in isolation cannot be accommodated 'like-for-like'; and,
- Finally, in relation to 'availability', Rapleys' are of the view that the NPPF requires sequentially preferable sites to be 'available now' and that if this is not the case then it can be discounted. They also comment that even three to four years would be unreasonable in this case.

#### Avison Young Further Representations, April 2020

We set out our representations on the above points of response by Rapleys under the below headings.

#### *Disaggregation and Flexibility in the Application of the Sequential Test*

In Page 2 of Rapleys' response they argue that "...the proposed development must be treated as a whole and that disaggregation is not required by local or national policy". We would agree that when applying the sequential test there is no longer a policy obligation which explicitly requires a retail proposal to demonstrate 'disaggregation' as a matter of course. However, there is a key requirement within NPPF is to apply 'flexibility' (Para 87) when undertaking the sequential test and what constitutes sufficient flexibility is for the decision maker to form a judgment upon (as has been held by both case law and planning appeal decisions).

Indeed, 'flexibility' in certain circumstances can require consideration as to whether one or more parts of a proposal might be reduced or removed. For example, this matter was dealt with at length as part of a relevant, dismissed planning appeal in December 2017 at Kingswood, Hull (Ref. APP/V2004/W/17/3171115). Here, the Inspector concludes (see Paras 52 to 57 in particular) that whilst disaggregation is no longer explicitly part of national guidance, that does not mean in certain circumstances that it would not be appropriate to interpret the approach to 'flexibility' as requiring some form of sub-division of a scheme.

In this particular case, our view is that 'sufficient flexibility' on the applicant's part should involve them testing the Lidl foodstore in isolation of the Homebase unit. This is because there is no commercial reason why a Lidl foodstore cannot come forward on a town centre site without a Homebase unit adjoining it. This is evidenced by the fact that Lidl occupy such sites alone in town centres throughout the country. Furthermore, the specifics of the scheme are clearly important in this case. The application is for the introduction of a new foodstore via the sub-division of an existing bulky goods unit, which in turn forms part of a larger retail park. Logic must surely suggest that the appropriate approach is to test the foodstore element in isolation of the bulky goods retail floorspace, given that an entirely new retail unit is being created and the remaining floorspace (and retail park) already exists.

Furthermore, despite arguing that the Lidl and Homebase units must be treated 'as a whole' when applying the sequential test in their January 2020 response letter, we note that this is not actually the approach that has been adopted by Rapleys in the sequential site assessment that forms part of their July 2019 Planning and Retail Statement. Paragraph 6.15 of that document confirms that "the

[sequential] *assessment is based on the site area required by Lidl only*" (i.e. a site area of 0.6ha). We also note that the appraisal of the Altair site which is provided as part of their Planning and Retail Statement's sequential assessment (Appendix 5) makes no reference to the need for both Homebase and Lidl to be accommodated together, and instead focuses on an argument that a Lidl foodstore will be provided at Altair in the future in any case (an argument we have discredited in our previous letter).

Given this, it is clear that as part of their July 2019 Planning and Retail Statement Rapleys have had appropriate regard to 'flexibility' when applying the sequential approach and have tested the Lidl foodstore in isolation. However, the consultant's position appears to have changed in their more recent January 2020 response to one whereby it is considered inappropriate to look at anything other than the two units 'as a whole'. This is not a credible position to adopt at this stage in our view. The consultant was correct in their original approach to apply sufficient 'flexibility' in line with the NPPF (as we have explained) and cannot disregard their original analysis of the Altair site simply because it no longer supports their case.

Drawing the above points together, whilst disaggregation is no longer explicitly referenced in planning policy, that does not mean in certain circumstances that it is not appropriate to interpret the necessary approach to 'flexibility' as requiring some form of sub-division of a scheme. It logically applies in this case, with a new foodstore unit being created and food retailers (such as Lidl) more than capable of operating independently on town centre sites. Despite now seemingly arguing that this level of flexibility is not appropriate, Rapleys have already adopted it as part of their Planning and Retail Statement – by testing the Lidl foodstore in isolation in their sequential assessment.

Accordingly, it must either be concluded that Rapleys' original sequential assessment stands, and the scheme fails the test for the reasons outlined in our original representation of objection (September 2020); or, if their current position is adopted, the test is failed because the applicant is now unwilling to demonstrate an appropriate level of flexibility in their approach (having shown previously that this is possible).

#### *Cross Funding Argument and the Sequential Test*

We note on Page 2 of Rapleys' letter that it is suggested that one of the reasons that the scheme must be tested 'as a whole' when applying the sequential approach is because the downsizing of the Homebase unit "can only be viably achieved through the reconfiguration of the existing unit into two retail units, one of which is to be occupied by a discount convenience retailer".

In response, unless the applicants are able to support this statement with viability evidence, it is not considered that the Local Planning Authority can give any weight to the suggestion that their proposals are the 'only way' that the Homebase unit can be viably downsized. For example, the scheme before the Local Planning Authority involves various other site works over and above the division of the unit, including: an increase in overall (internal) retail floorspace of some 450 sq.m, the relocation (and rebuilding) of the existing garden centre, construction of a new egress to George Richards Way, a new pedestrian access to George Richards Way, and reconfiguration of the existing car park.

In short, it seems to us that the works proposed are simply borne out of the commercial preferences of the two end users. Accordingly, it cannot be claimed that they represent the bare minimum intervention required in order to facilitate the downsizing of Homebase and somehow therefore justify a conflict with the sequential test. We would urge the Local Planning Authority to interrogate

Rapleys' position on this matter further and would certainly expect to see detailed supporting viability evidence if any weight is to be given to this argument.

#### *Suitability of the Altair Site Based on Retail Format*

On Page 3 of their January 2020 letter, Rapleys state that whilst a Lidl foodstore will be applied for as part of a revised Altair scheme, this will be for a 'metropolitan format' and will have a shared below ground car park. They argue that even if the currently proposed foodstore and associated surface level car parking was being considered independently of the re-configured Homebase unit, it would still be inappropriate for the Altair site – given the 'metropolitan format' that they state is required.

In response, we would urge the Council to be very cautious in taking this statement at face value. As already explained as part of this letter, the need to demonstrate 'flexibility' remains a key requirement of the sequential test and adapting a store format is part and parcel of this. Accordingly, if it is simply the case that the only difference between the Altrincham Retail Park Lidl foodstore and the model proposed at Altair is that one provides surface level car parking and the other provides this underground, then this is not sound reasoning for Altair to be dismissed as a sequential site. The courts have held (see *Aldergate v Mansfield* [2016] EWHC 1670 (Admin) as referred to in our previous submission) that sites should be assessed based on a broadly similar form of development to that which is proposed. Accordingly, it is one thing if a site such as Altair is unable to accommodate a comparable amount of retail floorspace, but it is quite another if the only difference is that parking or servicing arrangements will be different.

In our view the Local Planning Authority needs to seek much greater clarity from the applicants in terms of what is meant by the term 'metropolitan format' and why they consider this not to be 'broadly similar' to the Lidl foodstore proposed at Altrincham Retail Park in terms of type, size, range of goods sold, etc. Without a very robust justification it has to be concluded that the two stores are competing for the same market opportunity and therefore the Altair foodstore must be delivered in advance of any out-of-centre proposal.

#### *Availability of the Altair Site*

Finally, we note on Page 4 of Rapleys' letter that they argue that the Altair site is not 'available' because "*the NPPF is clear in Paragraph 89 that sites must be 'available now' or become available 'within a reasonable period'*". They state that even a period of three to four years would not be reasonable in this case.

In response, we do not agree with the suggestion that Paragraph 89 of the NPPF states that a sequentially preferable site must be '*available now*'. In fact, Paragraph 89 of the NPPF relates to the impact test rather than the sequential test and so we assume that reference to this paragraph number is an error. Paragraph 86 deals with the sequential test and is clear that a sequentially preferable site must be '*expected to become available within a reasonable period*'. Accordingly, there is no requirement for the site to be '*available now*' as Rapleys suggest.

Turning to whether the Altair site is expected to become available within a 'reasonable period', our view is that this has to be considered the case. Altair is being actively promoted for development by its landowner, with planning permission previously granted for a mixed-use scheme and Lidl themselves seemingly pursuing a foodstore as part of a revised proposal. There are no known ownership constraints and the land in question has already been cleared for redevelopment. Whilst Rapleys speculate a timescale for the site's redevelopment of up to four years, in our view this could easily be shortened by twin-tracking elements of the planning, design and construction process.

In summary, we contest Rapleys' position that a more central site needs to be 'available now' in order for it to be sequentially preferable. The NPPF is clear that the matter for consideration is whether a site will become available within a 'reasonable period', which in part is at the discretion of the decision maker. In this case, with the Altair site being actively promoted for development and there being no ownership constraints, policy barriers or demolition requirements, it is entirely reasonable to conclude that the land is available to accommodate a broadly similar foodstore to that which is being proposed at Altrincham Retail Park.

### Impact on Investment

As explained in our previous representations, the first part of Paragraph 89 of the NPPF concerns the impact of a proposal on existing, committed and planned public and private investment in centres within the catchment area. In this case, Lidl has revealed that there is a more sequentially preferable investment opportunity at Altair in Altrincham town centre which they have the opportunity to take forward. Accordingly, the local planning authority needs to carefully consider whether the granting of planning permission at George Richards Way could result in a 'significant adverse impact on in-centre investment'.

In our view, such a scenario could easily arise if the Altair site is not prioritised for convenience retail investment ahead of any out-of-centre competing site. This is particularly given that no quantitative or qualitative evidence is provided as part of the applicant's submission which robustly demonstrates that there is capacity for two such foodstores. Indeed, the Trafford Retail Study has since been published (January 2020) and this evidently does not conclude that there is such a foodstore requirement in Altrincham. We would question what guarantee there is that Lidl will not deliver the out-of-centre George Richards Way scheme and then neglect to deliver the town centre Altair site, particularly given future economic uncertainties.

### Summary

In summary, Aldi are a key investor and employer in Trafford's existing town centres with in-centre stores in Urmston, Stretford and nearby Sale. They take a keen interest in out-of-centre food retail development proposals and continue to have particular concerns with the robustness of the retail policy case being advanced by the joint applicants for a discount foodstore scheme at George Richards Way, Altrincham Retail Park. These further representations are made in response to a letter dated 15<sup>th</sup> January 2020 by Rapleys on behalf of the applicants, which focusses specifically on the sequential test.

Our letter has raised concerns with applicants' apparent shift in position on 'flexibility' when applying the sequential test, with their July 2019 Planning and Retail Statement appropriately testing a foodstore in isolation on the Altair site, whilst the January 2020 correspondence appears to suggest that the Homebase and Lidl units should only be tested 'as a whole'. From our perspective, the planning authority must either conclude that: Rapleys' original sequential assessment stands, and the scheme fails the test for the reasons outlined in our original representation of objection (September 2020); or, if their current position is adopted, the test is failed because the applicant is now unwilling to demonstrate an appropriate level of flexibility in their approach (having shown previously that this is possible).

These representations have called into question the applicants' suggestion that the proposals are the 'only way' that the Homebase unit can be viably downsized, with there being no evidence presented to substantiate this. Greater clarity is also required from the applicants in terms of what a

'metropolitan format' store actually comprises and how (and if) this differs from the foodstore proposed at Altrincham Retail Park in terms of type, size, range of goods sold, etc. Without a robust justification it must be concluded that the two foodstore formats are competing for the same market opportunity. In such circumstances the Altair foodstore must be delivered in advance of any out-of-centre proposal.

Our final point in relation to the applicant's approach to the sequential test is that the Altair site has to be regarded as 'available', in contrast to the comments in Rapleys' January 2020 letter. This is because the Altair site is being actively promoted for development and there are no ownership constraints, policy barriers or demolition requirements that would unduly hold up its delivery.

In addition to conflicts with the sequential test, we have also raised concerns that the proposals could give rise to a significant adverse impact on in-centre investment, if the Altair site is not prioritised for convenience retail investment ahead of out-of-centre competing sites. The recently published Trafford Retail Study concludes that there is no quantitative or qualitative requirement for a new foodstore to serve Altrincham and therefore it is very unlikely that there is market demand for two Lidl foodstores. Accordingly, compliance has not been demonstrated with Paragraph 89 of the NPPF.

I trust that you will take these representations into account in your determination of this planning application. Should you have any questions then please do not hesitate to contact me.

Yours sincerely

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For and on behalf of  
GVA Grimley Limited t/a Avison Young