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Dear Beth

**Appraisal of Retail and Town Centre Planning Policy**

**Planning Application Reference 98127/FUL/19, Unit 1, Altrincham Retail Park, Broadheath, Altrincham**

We write further to the above planning application and with reference to our earlier advice of September 2019<sup>1</sup> and May 2020<sup>2</sup> in respect of the same. Our previous advice responded to the evidence prepared in support of the application by the applicant's agent, Rapleys. A further Advice note, provided by David Manley QC and dated 19 May 2020, has now been submitted to the Council in order to substantiate the applicant's approach to the sequential test<sup>3</sup>.

We also take into account the email from Rapleys to the Council of 29 June 2020. The email responds to the Council's request for further clarification in respect of the likely differences in format of foodstore development at the application site and at Altair. In this regard, Rapleys states that its client does not wish to provide any further substantial information to support the Altrincham Retail Park application. Instead, Rapleys has attached a simple matrix to the email which summarises its view in respect of differences between proposed foodstores at Altrincham Retail Park and Altair.

At the outset, we can confirm that neither the Advice note nor the Rapleys email introduces any new information which we were unaware of when drafting our previous reports. Notwithstanding this, we believe that it is helpful to address the matters raised in the applicant's further submissions in order to confirm how we have exercised planning judgement in forming the view that Altair is both an available and suitable site for the purpose of the sequential approach to development.

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<sup>1</sup> Appraisal of Retail and Town Centre Issues report

<sup>2</sup> Appraisal of Retail and Town Centre Issues – Supplementary Report

<sup>3</sup> The Advice note also addresses highways issues, which remains a matter that the Council will form its own view on

In this regard, we believe that there are four principal matters which benefit from further clarification, namely:

- i) our consideration of sequential alternative sites on the basis of whether they could accommodate the proposed new foodstore only (allowing for flexibility in respect of matters such as format and scale);
- ii) the 'suitability' of the Altair development site;
- iii) the 'availability' of Altair; and
- iv) whether any current pressing need for economic activity should reasonably lead us to form a different view in respect of Altair.

We deal with each of these matters in turn below.

#### The Consideration of Sequential Alternative Sites with Reference to the Proposed Foodstore Use

The consideration of the sequential approach to development by the Courts and the Secretary of State is often referred to in order to help define how the test should be applied in practice. In terms of the Judgments and decisions referred to by the Advice note, we recognise that:

- The *Tesco Stores Limited v Dundee City Council [2012] UKSC 13* Supreme Court Judgment is framed by a different planning context and should be considered in that context. Notwithstanding this, the general principle that the application of the sequential test should reflect the 'real world' considerations of developers is sensible and of some assistance in helping to provide for a meaningful review of the availability and suitability of sequential alternative sites.
- It has been repeatedly confirmed that there is no default national planning policy requirement to disaggregate constituent elements of proposals in applying the sequential test. However, a number of Planning Inspectorate decisions indicate that planning judgement can be exercised in this regard and that the circumstances *as they apply to each case* may support disaggregation.

Whilst we also recognise that the same particular circumstances apparent at the 'Stanway' Secretary of State recovered appeal<sup>4</sup> do very clearly not apply to the subject application proposal, the decision is helpful in establishing *as a general point of principle* that the option of disaggregating a proposal is open to the determining authority should the facts of the case merit such a position.

As we set out in some detail at paragraphs 2.2 to 2.15 of our May 2020 Supplementary Report, we have examined the facts as they apply to this application and believe that the appropriate approach is to consider alternative sites on the basis of whether they are able to accommodate the foodstore element of the proposal (allowing for appropriate flexibility in respect of format and scale). Whilst we again recognise that Homebase is clearly happy to trade from a smaller store, it is not clear why this could not still be achieved (through other means) if the foodstore component of the proposal is provided more centrally. The principal purpose of the application is to introduce a new operation (i.e. retail foodstore use) to the site.

We identified at paragraph 2.14 of our Supplementary Report that:

**'Whilst the fact that Homebase is willing to downsize is self-evident through the application proposal, no persuasive evidence has been submitted to substantiate the position that the proposed development is the only means of securing this objective. Indeed, even if it were necessary to provide additional commercial floorspace at the site, we are uncertain why such additional floorspace could not take a different form (e.g. bulky comparison goods retail, which may be less likely to be accommodated within Altrincham town centre).'**

Whilst we have reached on our own view on this matter having taken account of all available evidence, we again note that paragraph 6.15 of the Planning and Retail Statement (prepared by Rapleys and dated July 2019) submitted in support of the application found that the consideration of sites on the basis of whether they could accommodate the foodstore element of a proposal is representative of a '**robust approach**'.

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<sup>4</sup> PINS reference APP/A1530/W/16/3147039

## The 'Suitability' of Altair

The Advice note appears to raise two principal matters in respect of the suitability of the Altair site: firstly, the Council did not consider it to be an available or suitable site in granting planning permission for the relocation of the Aldi store to Atlantic Street<sup>5</sup>; and, secondly, the contract that Lidl has signed with Nikal provides for a 'metropolitan model' store and it is not reasonable to assume that the application proposal itself could be 'substituted' in.

In respect of the first matter, Nikal has previously secured planning permission<sup>6</sup> for a scheme that did not make provision for a foodstore. As a consequence, at the time of the determination of the Broadheath Aldi application, the Council's view was that there was no indication that part of the Altair site could or would be made available by the developer for foodstore development. Rapleys was itself very helpful in identifying that the nature of the proposed Altair development has changed, and that Lidl has secured a unit within a revised proposed scheme (which will be the subject of a future planning application). We believe that it is entirely appropriate (and necessary) to reflect these changed circumstances when applying the sequential test.

In terms of the second matter, as paragraph 2.25 of our May 2020 Supplementary Report identifies, we consider the Altair site on the basis that it would accommodate a 'metropolitan model' foodstore in practice. Whilst such a model may provide a lesser floorspace than a standard format discounter, we understand that the Altair foodstore would be served by underground car parking, which suggests that it will cater for some car borne customers (and that the store could support more than just limited 'top up' purchases).

'Metropolitan model' foodstores are typically progressed where there is insufficient land to provide a traditional store with surface car parking. In our view, this is indicative of operators being able to be flexible in respect of their store format in order to secure representation on more challenging and constrained central sites.

We note that neither Rapleys nor Lidl has confirmed the exact floorspace and car parking provision associated with the proposed Altair foodstore. The matrix submitted with Rapleys email of 29 June 2020 suggests that the Altair foodstore would provide no more than 1,200 sq.m of net sales. In our view, the email fails to provide any information which clearly differentiates why discount foodstores at Altair and Altrincham Retail Park would trade in a substantially different manner in practice.

We note that paragraph 3.10 of the applicant's Planning and Retail Statement indicates that the proposed Lidl foodstore would have a net sales area of 1,272 sq.m. On this basis, Rapley's submission merely indicates that the Altair foodstore would have a net sales at least 72 sq.m smaller. The difference in the net sales areas of the two stores could therefore be relatively limited.

We believe that, in practice, both sites could:

- accommodate discount supermarkets of a broadly similar nature, carrying broadly comparable product lines;
- cater for car-borne customers; and
- cater for some main food shopping trips.

Having carefully considered all of the applicant's submissions, we believe that the implementation of a 'metropolitan model' discount foodstore on the Altair site is consistent with the NPPF paragraph 87 requirement for applicants to '**...demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.**' As such, we can confirm that we identify Altair as a suitable sequential site on the basis of it being able to accommodate a 'metropolitan model' discount foodstore with underground car parking.

<sup>5</sup> Planning permission reference 96088/FUL/18

<sup>6</sup> As provided for by outline planning permission reference 86661/VAR/15, and reserved matters planning permissions reference 86755/RES/15

## The 'Availability' of Altair

Paragraph 19 of the Advice note states that:

**'...the Altair site is not available now and it cannot be so in a reasonable time. The Altair site is complex and any revised proposals - I am told - would take three to four years before they reached implementation stage. Nexus seem to suggest that is a reasonable time, but on what basis I am not clear and I note they do not support their suggestion with any appeal decisions. The simple fact is that Lidl have a robust programme of bringing new stores forward quickly. Expecting Lidl to wait for three to four years in the hope that a scheme involving an A1 foodstore can be consented (contrary to the Development Plan) on the Altair site is wholly unrealistic.'**

It is recognised that the Altair site cannot immediately accommodate the proposed use, albeit the developer has clearly made it available to accommodate a foodstore development (as part of a wider scheme). In considering the NPPF paragraph 86 requirement that sequential alternative sites should be available with a reasonable period, we note the following.

Firstly, the last guidance which defined what a 'reasonable period' may be for the purpose of the sequential test was provided by the Planning for Town Centres Practice Guidance on Need, Impact and the Sequential Approach (published December 2009 and subsequently superseded in March 2014). Given the status of the Practice Guidance, we have not directly relied on it in reaching our view on 'availability' and refer to only as a broad reference point. Paragraph 6.39 of the 2009 Practice Guidance indicates that, whether it is appropriate to assess availability over three to five years or a longer timeframe will depend on local circumstances. The subsequent paragraph 6.40 indicates that major town centre schemes can take 10 to 15 years to deliver.

In this context, the suggested three to four year period now proposed for the delivery of a foodstore at Altair does not appear unusual or excessive.

Secondly, we note that the timeframe for the availability of alternative sequential sites was considered by the Inspector and Secretary of State in respect of the 'called in' proposal for large-scale retail-led development at Cribbs Causeway near Bristol<sup>7</sup>. It is important to recognise that, at the time the Inspector drafted her report, the NPPF sequential test<sup>8</sup> required only that consideration be given to whether a site is 'available' and not 'available within a reasonable period'. Notwithstanding this, paragraph 571 of the Inspector's report<sup>9</sup> provides some assistance in setting out considerations of relevance when determining a sequential alternative site's availability.

In comparing the timescale for the development of the application site at The Mall to that of the sequential alternative in Bristol city centre, the Inspector's report finds that:

**'...it is important not to lose sight of what the sequential test is seeking to achieve. It is a key part of the town centre first approach and its purpose is to ensure that town centre uses are directed to central locations if at all possible. It should not be a particularly controversial proposition that a location such as The Mall is likely to be more straightforward to develop than many in-centre sites. It seems to me reasonable to bear this in mind when timescales are being considered. What would be reasonable and appropriate will depend on the particular circumstances of the sequential site and the proposals that it is being expected to accommodate. This is a matter of judgement...'**

In our judgement and in the above context, the three to four year period suggested by Rapleys for the operation of a foodstore at Altair is reflective of a reasonable timeframe. We provided justification to support this view at paragraphs 2.20 and 2.21 of our May 2020 Supplementary Report, which indicate that the proposed programme for the delivery of Altair simply accounts for basic requirements necessary to bring forward development – *secure planning permission, appoint a contractor and build the development out*. To rule out sites simply on the basis that they need to go through the planning process runs the risk of available sequential alternative sites being limited to those that are already under construction or currently available.

<sup>7</sup> PINS reference APP/P0119/V/17/3170627

<sup>8</sup> As set out in the first iteration of the NPPF, which was published in March 2012

<sup>9</sup> Which is validated at paragraph 18 of the Secretary of State's decision letter

We are firmly of the view that our approach in accounting for such stages in confirming the Altair site's availability is consistent with the direction provided at paragraph 87 of the NPPF for the potential of sequential alternative sites to be '**fully explored**'. Accordingly, we remain of the view that three to four years is representative of a reasonable period to allow the Altair site to come forward.

#### The Need for Economic Activity

We recognise that the circumstances related to the current Covid-19 pandemic mean that decision-makers will need to appropriately consider the economic benefits arising from development. However, that does not remove the need to appropriately apply the retail policy tests.

The grocery retail provision in the Altrincham area is comprehensive, comprising: superstores operated by three of the 'big four' (Asda, Sainsbury's and Tesco); discount and value operators (including Aldi and Iceland); premium operators (including Marks & Spencer and Waitrose); and, high street independents (including those that operate from Altrincham Market). Parts of the Altrincham catchment also provide access to further competing provision at Sale and at Baguley.

As a consequence, we do not believe that the Altrincham area is poorly provided for such that there is a pressing need for additional facilities. Indeed, the grocery sector already makes an important contribution to Altrincham's economy and supports local jobs. In this regard, we note that paragraph 11.6 of the Trafford Retail and Leisure Study (which was undertaken by Nexus Planning and reported in August 2019) found that the principal current qualitative deficiency in grocery provision in Trafford Borough is around Sale Moor, and that there may be future additional grocery retailing needs related to planned housing growth at Carrington and Timperley Wedge.

As a consequence of the above, we do not believe that there are particular circumstances – either relating to the general grocery provision in Altrincham or to the current Covid-19 pandemic – which mean that the 'reasonable period' within which sequential alternative sites should become available is truncated for the purpose of this planning application. As a consequence, we reaffirm our judgement that Altair coming forward within a three to four year period is consistent with the requirements of the NPPF sequential test. In our view, it remains an 'available' site on this basis.

#### Conclusion

We have reviewed the Advice note in detail and have provided additional justification in this letter to substantiate how we formed our view that Altair is both suitable and available (within a reasonable period of time) to accommodate a broadly similar foodstore proposal. In order to form part of the Altair development, the foodstore proposal would take the form of a 'metropolitan model' discounter. As the name suggests, this is a discount foodstore model adapted to fit on a central site which will likely have constraints in respect of land take.

Given the above, we remain of the view that the planning application fails to accord with the requirements of paragraphs 89 and 90 of the NPPF. In doing so, it also contravenes the provisions of UDP policy S11 and Core Strategy Policy W2.12 insofar as they relate to the sequential test.

It will be for the Council to attribute appropriate weight to such matters in determining the application. Should the Council be minded to approve, it is relevant to note that a further out of centre application proposal<sup>10</sup> is currently under consideration, which provides for the re-use of the existing Aldi foodstore at Broadheath for comparison goods retail. Nexus Planning is currently considering the compliance of this proposal with key retail and town centre planning policies. In advising on the change of use of the Aldi unit, we will also comment on the acceptability of the cumulative impacts that would arise should both Broadheath developments come forward. Accordingly, the Council will need to have regard to this future advice should it be in the position where planning permission might be granted for both developments.

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<sup>10</sup> Planning application reference 100006/VAR/20

We trust that the above is helpful in demonstrating our consideration of relevant issues, but we would be delighted to provide further clarification should this be helpful to the Council in determining the application.

Yours sincerely



**Richard Shepherd**

Director