

## **ADDITIONAL INFORMATION REPORT**

### Agenda Item 8 Urgent Business (b) - Member update: Appeal by Lidl UK/Orchard street investments Management LLP.

Since report publication matters have moved on and the appointed Inspector for the upcoming inquiry has now confirmed that she is minded to accept the substituted highways plans and that the appeal will now proceed on this basis. The Inspector confirmed this is subject to a number of conditions: a) that the appellants, with the support of the Council, undertake appropriate consultation on the revised plans; b) statements of common ground are progressed which clearly set out the Council's position; and c) that the Council and appellants be mindful that the Rule 6 parties may still want to raise general highway safety concerns and that questions may be asked on this basis.

With this in mind and following further advice from Counsel it is intended, if Members are minded to authorise the recommendation in the main report, that some evidence to the inquiry will be submitted in respect of highways and planning balance only (evidence on retail matters will not be given). This is in order to assist the Inspector and Rule 6 parties in understanding the Council's position in no longer contesting the appeal.

In respect to Paragraph 4 of the report, again matters have moved on since its publication and the renewal hearing has now been transferred from London to the Manchester administrative court. Consequently the date for the renewal hearing is now 7 December 2021, which will be after evidence has been given to the inquiry but may be before a decision is made by the Inspector.

A representation has been received from a planning consultant on behalf of Tesco Stores Ltd, who are the claimant in the judicial review proceedings against the 8 April 2021 grant of planning permission (ref. 103414/FUL/21) and a Rule 6 party at the inquiry. This has been sent to all Members.

The key points raised in this representation can be summarised as:

- Up until now the Council has sought to maintain its position on the refusal of the first application in July 2020 (ref. 98127/FUL/19);
- The recommendation put before Committee on 9 September 2021 relies upon the marginal but unproven reduction in harm arising from the revised highways egress to change the overall planning balance. That would seem wholly inappropriate;
- The Council's acceptance of the revised highways egress is dependent on additional traffic surveys which have not been carried out;
- Planning decision-making is a statutory process and decisions made should not lightly be put aside and should always have regard to evidence; and
- The change in position put forward by officers should not be authorised.

In responding to these points; the first application (98127/FUL/19) and the second application (103414/FUL/21) were materially different (as explained in the officer report regarding the second application) and different conclusions were reached. The representation has misunderstood the position of the Council in regard to the acceptability of the revised vehicular egress; additional traffic surveys would only be required if the Council was required to continue to defend its position regarding the potentially unacceptable highway safety impacts arising from the originally proposed egress (as proposed in 98127/FUL/19).

In respect of the planning balance, this is a matter of planning judgement for the decision maker. Members, in approving planning application 103414/FUL/21, determined that the planning balance did indeed weigh in favour of the application and that the materially different highways position was determinative when having regard to the totality of harms versus benefits. The representation suggests that this is 'wholly inappropriate' but it is a decision that Members have already made, in accordance with a reasoned and detailed officer justification, and which has already been found to be robust by the High Court (albeit this is subject to a renewal hearing).

The representation refers to a 'change in position' by the Council which should not be authorised. This is not a change in position but rather is intended to ensure consistency; the authorisation being sought is for the Council's stance to reflect the position it took in approving application ref. 103414/FUL/21 since the two proposals are now the same.

A further representation has been received from Altrincham & Bowdon Civic Society, who are also a Rule 6 party at the inquiry. In summary this representation opposes the officers' recommendation on this item.

### **Recommendation**

That the Planning and Development Management Committee authorises officers to formally take the position that the Council will no longer contest the appeal.