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Planning Statement Addendum

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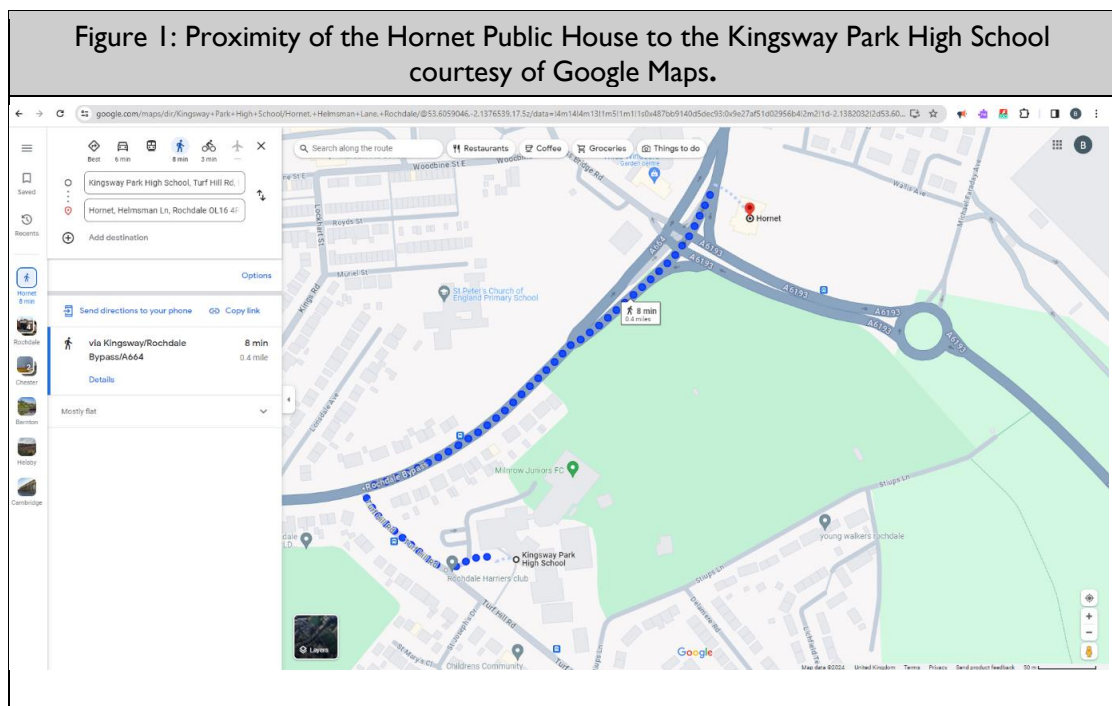
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I INTRODUCTION

- I.1** This written statement is submitted as an addendum to the Planning Statement, focussing on whether the uses of the proposal are Hot Food Takeaways (HFT) and whether there was a conflict with the content of an SPD produced by the Council (which influences the interpretation of policies within the Development Plan).
- I.2** Following this is evidence of the marketing of the application site as a Local Centre. The site has been actively marketed, as evidenced by the statement that the site has not received interest in being taken forward as a Local Centre as envisaged on the Masterplan.
- I.3** The proposed development, while being within proximity of a Secondary School (see Figure I), is neither proposing an HFT by legislative definition nor in operation due to the characteristics and design of the proposal, which do not include paraphilia (which would need Full Planning Permission) that an HFT would need to operate and comply with other legislation out with the planning system.



2 BACKGROUND

- 2.1 Full planning permission is sought to erect a Petrol Filling Station (PFS), including a four-bay Jet Wash and a Car Wash, to erect 2no. Drive-through units to be within Class E. This is alongside car parking spaces, internal circulation routes, pedestrian footways and soft landscaping.
- 2.2 The Applicant is a market leader in the provision of roadside facilities, and the applicant is prepared to make a significant investment in the site because they have identified a need for the services to be provided and that they are economically viable in the long term.
- 2.3 At the outset, it is important to note that the operator of the drive-through units is not set; typically, users of such units operate under Use Class E(b) use; hence, this has been applied for. Any future operator will know from the outset the Use Class to which they need to comply, or that any operator will need to apply for any alternative consents they may need; in such a circumstance, the Council has the opportunity to apply the provisions of the Development Plan and resist HFT's from the site, should it wish to.

Petrol Filling Station

- 2.4 A Petrol Filling Station has an ancillary retail unit (PFS) to facilitate the sale of fuels and provide conveniences for the welfare of motorists. The position that a PFS is a Sui Generis use, and hence not an HFT, is long established, legislatively.
- 2.5 The Applicant's model is to obtain permissions for an operator so that they could take up the unit as soon as possible after it is built; hence, equipment and extracts would usually be evident on a submission if they were intended. Floor plans accompany this application, and there are no cooking facilities or associated flues or extracts evident on the plans; noting that these would require planning permission, these would need to be a part of the submission if necessary for the units to be occupied expediently.
- 2.6 The ancillary unit has been designed to suit its intended function, which is to facilitate the sale of fuels and convenience goods for the welfare of motorists. This is a retail unit associated with the PFS, designed to be so; thus, in operation and Uses Class, the proposed PFS is not an HFT.

Drive-through units

- 2.7 2no. drive-through units are proposed of differing sizes; however, both share similarities in that their function serves motorists' welfare. The units are designed with this in mind to suit motorists' needs: seating areas if motorists want a break mid-journey or a drive-thru lane for motorists or passengers who wish to consume food/drink on the go.
- 2.8 The units are modelled to brand standards for Class E(b) operators. The applicant is a long-standing roadside provider who provides an offering to serve motorists and is well-versed in designing units to a suitable standard for the operator to move straight into.
- 2.9 These units have a small back of house, reflecting the indented occupant, which would be a retailer of food and drink options and not an operation that cooks food from raw ingredients. Kitchens in these units have little space for storing raw ingredients, unlike a restaurant or HFT, which requires raw ingredients to be stored on-site in a suitably sized store/refrigeration unit. The food offerings for sale at the proposed units will be delivered to the site in a largely prepared manner suitable for the limited food preparation required.
- 2.10 The units would be suitable for a retailer of hot beverages and other associated products, i.e., a roadside drive-thru coffee shop or a food retailer requiring limited preparation, noting motorists typically use sites such as the proposed for a break in journeys. Such units are retailers of food/drink for consumption on the site, noting the intention of the refreshments being as a break of a journey (Use Class A1/A3 typically, which subsequently became Class E(b)).
- 2.11 The food provided would involve limited cooking, hence, lack of external ventilation equipment; most products would require re-heating as the predominant form of cooking. If the intention were for another form of cooking, the paraphernalia would have been demonstrated in the submission plans. The Applicant intends an operator to be able to take up the units swiftly and not have to seek fresh permissions (notwithstanding the need for conditions to be satisfied).
- 2.12 The proposed units are not designed to be used by an HFT operator. As the end user is not determined, the Council has an opportunity to restrict the use of the units to be Class E(b) and, hence, influence the operators who can utilise the site to be those which, for health reasons, the Council determines to be the most appropriate and not those the Council views as requiring restricting,

Development Plan position

- 2.13 The Development Plan for Rochdale consists of the Rochdale Core Strategy (CS), adopted in 2016, and saved Unitary Development Plan 1996-2016 (UDP) policies. Policies within the Development Plan seek to protect the health of neighbouring residents at a proposed site by resisting uses that could be detrimental to health.
- 2.14 It is relevant that none of the policies within the Development Plan create restricted boundaries for use within proximity of a school, i.e., policies within the Development Plan are not explicit in restricting hot food takeaways within 400m of a school.
- 2.15 Notwithstanding, there is no explicitly worded policy to restrict types of uses within proximity of a school. It is recognised that policies within the Development Plan aim to create prosperous and healthy communities, and the content of the Guidelines & Standards for Hot Food Takeaway Uses Supplementary Planning Document November (2014) have some alignment with this aim; accordingly, due consideration needs to be given to the SPD as a material consideration. Notwithstanding, any requirement expressed in the SPD is guidance only, not policy.
- 2.16 The application site is adjacent to the Kingsway Park High School, which could be considered a sensitive site for the purposes of the SPD.
- 2.17 The Council recognises that HFTs are Class A5 uses in the SPD. A HFT is now a (Sui Generis use) and therefore it is not the case that the Applicant is seeking consent for a HFT. The Application is explicitly seeking permission for a Class E use (Class E(b)).
- 2.18 Notwithstanding the above, there was some concern expressed concerning whether the proposed uses could be considered to act in a manner that the supplementary guidance is seeking to avoid, i.e. contribute to the reduced health of nearby residents by providing an accessible (to Secondary School children in particular) operator of food retailer of less healthy options. There is no contention that the application site is not close to a secondary school, noting the nearby presence of the Kingsway Park High School. The existing Hornet public house is within 0.4 of mile from the main school buildings (Figure 1).
- 2.19 After adding further to our position that the application does not propose a use whereby the requirements of the SPD are applicable, none of the proposed uses are HFTs or akin to HFTs, as the proposed uses are motorist-tailored food product retailers. Hence, the Council's content in the SPD, which seeks to restrict HFT in proximity to Schools, cannot apply.

- 2.20 Content on the intent of the SPD and how the process addresses the intent will be detailed.

Section 4 of the SPD on Page 14 states:

"In an effort to establish healthy eating habits and reduce the rate of childhood obesity in the local population, it is considered appropriate to restrict the establishment of new hot food takeaways around secondary schools. A 400m restriction buffer is considered to be a reasonable distance given that it broadly represents a 10-minute walk, taking into account physical barriers on any route. The buffer will be measured from the boundary of the grounds of each school."

- 2.21 This is the only reference to restricting a use within the proximity of a secondary school. The document refers to Use Class A5 on various occasions in the SPD, and hence, in the absence of a formal definition, it must be taken that the Council considers a use within Use Class A5 to amount to an HFT.
- 2.22 The proposal is clear that the proposed uses would be Use Class E(b) or as a PFS. None of these are HFTs that would be A5 uses. A condition that applies appropriate restrictions to the proposed drive-through units could be readily applied.

Enforceability of a condition restricting use

- 2.23 The Applicant, noting the presence of the school nearby, appreciates that the Council will seek to restrict the uses that can occur from the site. From the outset, the Applicant has suggested that a planning condition be applied that will ensure the Council can have means of recourse (via planning enforcement powers) if another use is implemented without consent.
- 2.24 Section 70(1)(a) of Town and Country Planning Act 1990 - Where an application is made to a local planning authority for planning permission—
- (a)subject to [section 62D (5) and] sections 91 and 92, they may grant planning permission, either unconditionally or subject to such conditions as they think fit; or
- (b)they may refuse planning permission.
- 2.25 Paragraph 54 of the NPPF states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

- 2.26 Paragraph 55 of the NPPF states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. Agreeing conditions early is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided unless there is a clear justification.
- 2.27 The tests of what constitutes an effective condition: whether it would be enforceable, precise, and reasonable in all other respects.
- 2.28 A precise condition could easily be drafted; it is well established that a condition can be precisely drafted restricting permitted development rights for changes of use within Class E and subsequently that the use of the units shall only be Class E(b),
- 2.29 Establishing whether a use was as a Hot Food Takeaway (Sui Generis) or a Class E(b) operation would be a simple matter to investigate. Utilising enforcement powers notably, a Section 171(c) contravention notice could be issued whereby the occupier of the unit or another party with ownership would be compelled to reply with any information the Council required to establish the use at that time.
- 2.30 Similarly, it would be evident from the presence of external flues and other physical development that it is necessary to comply with other legislation governing the operation of HFTs.
- 2.31 A condition restricting the use: Class E(b) demonstrably would satisfy the tests of a suitable planning condition. The applicant has been, from the outset, open to reviewing and agreeing the language of the condition.

Intent of the SPD Hot food takeaway SPD

- 2.32 The intent of the SPD guides how the SPD and the planning system can contribute to the commitment of the Council to driving health improvements and improving the overall health of residents.
- 2.33 The SPD and the Council intend to limit the accessibility of hot food takeaways to secondary school children. Notwithstanding, the proposal is not for an HFT; consideration of this aim raises a pertinent consideration that requires balancing the benefits of the intended use and the proximity of the school.

- 2.34 It is recognised that the drive-through units contain large seating areas, which allows motorists (and passengers) to take a break from their journey, have food/drink, and rest before continuing their journey.
- 2.35 Motorists require a drive-thru option and the welfare option of being able to stop and consume food and beverages and then continue their journey by sitting within a building away from the elements. The Applicant is an experienced roadside provider, and such a welfare offer is an essential element of the proposal. Indeed, it is a planning benefit because it is an offering that will provide a beneficial purpose to motorists.
- 2.36 For the site to operate to its optimal purpose, it must have space to provide this function. Supporting the welfare and needs of motorists is a recognised planning benefit that must be given considerable positive weight.
- 2.37 The offering intends to target a customer base of motorists; the purpose and, hence, design of the units is different from that of an HFT, whereby there would be little need for the extent of parking proposed, the extent of internal seating (reflecting the desire to serve the customer base derived from motorists who wish to have food/drink and rest before continuing their journey), the lack of extractions and refrigeration and small size of kitchen amongst other internal characteristics.
- 2.38 The units are designed to suit their intended users, Class E(b) operators. They are not designed to be used as a typical hot food takeaway, which the express intent of the SPD is to restrict when in proximity to a secondary school.

3 CONCLUSION

- 3.1 The proposal is not for an HFT, and hence, the position in the SPD does not apply; however, it is recognised that there are policies concerning public health and that secondary school children age are sensitive. Hence, the applicant has recognised this and wishes to point out that there are economic and economic benefits to the motorists of the highways network, which are very important planning benefits. Similarly, the proposals are not for a use which the Council considers to be of most significant risk to encouraging and promoting the health of residents as the proposal is not for an HFT.
- 3.2 The proposed units are not designed to be used by a hot food takeaway (HFT) operator. They are intended to be used by a Class E(b) operator; this is what is expected by the customer base the applicant wants to serve; the applicant is one of the nation's top providers of services for motorists.
- 3.3 The proposed drive-through units can be controlled within Class E(b) via planning conditions. It would be reasonable to do this in light of the Development Plan, and a condition that is precise and enforceable could be drafted. The applicant is open to reviewing suggestions from the Council.
- 3.4 The proposed units do not include the necessary development needed by a hot food takeaway operator to satisfy other legislation. Hence, if permission were granted and an operator opened a hot food takeaway, irrespective of the fact that this would amount to a material change of use and, hence, contravene planning legislation, it would be clear that a breach of planning control had occurred. The Council could proceed to utilise enforcement powers available to them.

4 PLOT U2 MARKETING SUMMARY JLL P3



As joint marketing agents for Kingsway Business Park, JLL and P3 have been asked by Wilson Bowden Developments Limited, who are the joint applicant with Euro Garages (application 23/01230/FUL), to provide a brief summary of the historic marketing of Plot U2.

We have been part of the Kingsway Business Park (KBP) agency team since April 2004. During this time KBP has been marketed on an all-enquiries basis, primarily to B2 and B8 users, but also including ancillary uses suitable for Plot U2 and V, which include retail use classes A1-A5, leisure, hotel, residential and B1 uses.

Marketing initiatives have included the use of marketing boards, bespoke marketing brochures, a continually updated and managed website, HTML/email focused targeting, hard copy mailshots, HTML updates and commercial agent and local occupier open days. It is also important to highlight the cooperation with the Rochdale Development Agency (RDA) and the commercial agents, working together with local, national and international enquiries, which has brought a healthy level of successful transactions over this period.

In our 20-year involvement with KBP, we cannot recall any interest for a small-scale local centre (neighbourhood centre). Initially, we did not have the critical mass of occupiers within KBP to make an amenity development viable.

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