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WALSINGHAM PLANNING

SPECIALIST PLANNING & DEVELOPMENT CONSULTANTS

Planning, Design and Access Statement

Land At Junction of Sir Isaac Newton Way/Michael
Faraday Avenue, Kingsway, Rochdale, OL16 4PS

on behalf of EG Group LTD

OCTOBER 2023

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Appendix 1: Pre-application Advice, July 2023

Appendix 2: Appeal Decision APP/W1525/W/14/3001905

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I INTRODUCTION

I.1 This Planning Statement has been prepared by Walsingham Planning on behalf of EG Group Limited, the Applicant for the proposed development. This Statement has been prepared to assist the Council in considering the proposed development, particularly concerning matters outlined within the Development Plan and national policy.

I.2 The application seeks full planning permission for the following:

“The erection of a Petrol Filling Station inclusive of 4 Jet Wash Bays and 1 Roll Over Car Wash, 2no. Drive-Through units (Class E) with circulatory routes, associated car parking, landscaping, and other works.”

I.3 EG Group Limited (EG Group) is the second-largest independent company in the UK (as of July 2019, as reported in the Sunday Times) and one of the most recognisable roadside service providers. The vision at all EG Group sites is to provide an excellent roadside offer that exceeds the expectations of motorists.

I.4 The application site has been identified as a commercially sustainable location for further business expansion, where the Applicant can provide a high-quality offer to serve an established need identified via the Applicant before submission.

I.5 The facility, as we will demonstrate in this Statement, is sustainable development, conforming with the overarching objectives of the planning system. The proposal achieves planning benefits in terms of generating economic activity and job creation, as well as providing enhanced facilities for local motorists and employees of the adjoining Strategic Employment Zone. The proposal is in accordance with the Development Plan and, accordingly, must be supported by the Council.

I.6 This Statement is structured as follows:

- The Site and Its Surrounds (Section 2);
- The Proposed Development (Section 3);
- Planning Policy Background (Section 4);
- Planning Analysis (Section 5);
- Design and Access Statement (Section 6);
- Sequential Assessment (Section 7); and
- Summary and Conclusion (Section 8).

2 THE SITE AND ITS SURROUNDINGS

Application Site and Surrounding Uses

- 2.1 The application site is an approx. A 1.3ha piece of vacant land (except for a constructed vehicular access) is located approximately 1.6km southeast of Rochdale Town Centre.
- 2.2 The site is located at the junction of Sir Isaac Newton Way (A6193) and Michael Faraday Avenue. The site is currently undeveloped and thus serves no economic or social benefit.
- 2.3 To the north of the site are residential uses, and to the east is the JD Sports Distribution Warehouse. To the south are the Playing Fields of Kingsway Park High School, whilst to the west is The Hornet Public House and its associated car park. The surrounding area, therefore, has a mixed-use character, where various development types sit close to one another.
- 2.4 The site falls within Kingsway Business Park, identified for economic / employment development since the 1990s. The Business Park is an allocated Employment Zone within the adopted Local Plan.

Pre-Application Advice

- 2.5 Pre-application advice was obtained in July 2023 by the Applicant (Appendix 1). This was for a mixed-use development for a food store and 2no. Drive-Through units.
- 2.6 The response summarised concerns the Council had regarding design-related matters; these are satisfied, as can be seen in the re-designed scheme. Also, the Council raised concerns on the principle of the development proposals, noting a preference that commercial uses on the site meet residents' needs via the provision of a Local Centre.
- 2.7 In terms of design, the proposal differs from that proposed at the pre-application stage; the units are smaller, the units are set within an attractive landscaped site, and the architecture is cohesive to the wider development, noting the scale of development in the area.
- 2.8 The proposed development removes the retail store; hence, the site is entirely geared toward providing services for motorists. Accordingly, if the proposal were delivered, it would not compete with any neighbouring or future retail developments geared toward serving the needs of residents, as promoted on alternative sites with the wider Kingsway Masterplan.

Planning History

- 2.9 The application site is one of the plots identified within the Kingsway Business Park. This is a longstanding designation within the Development Plan and has an extensive planning history.
- 2.10 The application site is referred to as Plot U2 on the illustrative Masterplan of the Outline Planning Permission, I4/00542/OUT. The site is identified as a suitable location for mixed-use development, which this application directly delivers.
- 2.11 The pre-application response (Appendix I) reiterates that Plot V was intended to be the Local Centre; Plot V is opposite Plot U2. Thus, the proposal will not conflict with the intended location of the Local Centre. The application proposals in no way jeopardise the future of Plot V being developed as a Local Centre. If anything, the application proposals improve such prospects by delivering mixed-use development, employment and activity at an adjoining long vacant plot.
- 2.12 The offering is tailored to motorists, providing food-to-go options and a smaller range of convenience goods than one would expect from retail within a local centre. Hence, the proposed uses will not function as retail customers in local centres would expect and, consequently, would not be competition for retail in a local centre. Accordingly, this proposal would not prejudice the future delivery of a local centre on Plot V.

3 THE PROPOSED DEVELOPMENT

- 3.1 Full planning permission is sought for the erection of a Petrol Filling Station (PFS), including a 4 bay Jet Wash and a Car Wash, the erection of 2no. Drive Through units to be within Class E. This is alongside car parking spaces, internal circulation routes, pedestrian footways and soft landscaping.
- 3.2 The Applicant is a market leader in the provision of roadside facilities, and EG is prepared to make a significant investment in the site on the basis that they have identified a need for the services to be provided and that they are economically viable in the long term.

Description of the Proposed Development

- 3.3 Quantum of development is below:

Unit	Unit size
Drive-Through 1	181.80sq.m (GEA) 171.78sq.m (GIA)
Drive-Through 2	253.86sq.m (GEA) 232.94sq.m (GIA)
Petrol Filling Station	505.85sq.m (GEA) 484.83sq.m (GIA)
Totals	941.51sq.m (GEA) 889.55sq.m (GIA)

Petrol Filling Station

- 3.4 The PFS will be located in the eastern portion of the application site. The PFS includes the provision of 12 EV Car Charging Bays and has 4 pump islands set under a canopy to industry standard. The PFS has a unit that will facilitate the sale of fuels and ancillary welfare retail options. All these options serve the needs and welfare of road network users.
- 3.5 The proposed unit is to a high standard of modern design and is designed to reflect best practices gained from numerous successful locations throughout the UK. The Applicant is well-versed in designing PFSs to the standard that customers expect. Equally, the proposal is of a scale, mass, and overall design to sit comfortably with surrounding uses and design precedents.

Drive-Through Restaurants

- 3.6 The first Drive-Through (Drive-Through 1 above) is in the southwest corner of the application site. The extent of seating on offer is illustrated on the application plans, and it is clear that most of the space will be used as seating for patrons.
- 3.7 The unit is served by 34 internal seating spaces and 28 external seats, 62 in total. Similarly, the food preparation areas are smaller because there is little need for food preparation involved in the food/drinks on offer.
- 3.8 Internal areas like those proposed are important welfare offers, allowing a vehicle user to purchase drinks and food in a comfortable environment and facilitating a break from driving.
- 3.9 The unit is to a high standard of modern design and is designed to reflect best practices gained from numerous successful locations throughout the UK. The Applicant is well-versed in designing Drive-Through's to the standard that customers expect. Equally, the proposal is of a scale and mass and designed to sit comfortably with surrounding uses and design precepts.
- 3.10 The second Drive-Through is located in the northwestern corner of the application site. While this unit is larger than the first, a significant proportion of the unit is given off to seating for patrons. The unit has 20 internal seats and 16 external—36 seats in total. Noting the areas for seating, the space essential for the Drive-Through hatches and ancillary space, it is clear that there is little left for a kitchen area; this reflects the lack of need for such a space due to the food offer not needing substantial preparation space.

Parking Spaces

- 3.11 The proposed development contains 44 parking spaces inc. 4 DDA bays to serve the Drive-Through's. The PFS is served by 14 parking spaces, inc. 2 DDA bays, 12 EV car charging spaces and a small number of overflow/staff bays (10 spaces).
- 3.12 Cycle parking spaces in the form of Sheffield Cycle Stands are located on the application site in 3 locations, totalling 8 stands. Each is in a suitable location close to a proposed unit.

Pedestrian routing

- 3.13 There is clear and well-defined pedestrian and cycle routing, allowing access from Sir Issac Newton Way and Michael Faraday Avenue. An individual, including an individual with limited mobility, could safely walk to and around the application site.

Landscaping

- 3.14 The Landscaping Plan that supports the planning application includes 431 metres of native hedgerows and retains 157 metres of hedgerows. The proposed trees include 35 heavy standard trees and 75 standard trees. Overall, as the Landscaping Plan illustrates, the proposal successfully delivers a landscaped and attractive site that remains fit for purpose in design and function terms.
- 3.15 The Applicant is committed to ensuring the protection of the amenity of nearby residential properties. The Applicant has committed to providing and is happy to secure this via a planning condition, acoustic fencing. The Jakoustic reflective barrier reflects the noise away using heavy section planed timber boards with a special profile that has been carefully developed. Boards are constructed in such a way that eliminates gaps that sound can easily travel through. The location of the beneficial fencing is on the submission plans.

Access Arrangements

- 3.16 The site's existing vehicular access and egress arrangements will be retained with minor amendments to serve the proposed development, with access and egress provided via a priority-controlled junction off Wallis Avenue.
- 3.17 An internal access road will facilitate access to all elements of the site, where access and egress of the Drive-Through units will be taken via a new two-way priority-controlled junction off the northbound lane of the internal access road.
- 3.18 A swept-path assessment has been undertaken of the site access/egress and internal arrangements for the largest servicing vehicles associated with the development, together with a large car along the Drive-Through lanes.

Background to the Proposed Development

- 3.19 The provision of new modern roadside facilities must be attributed significant planning weight. The Applicant, Euro Garages, has identified this site as meeting an essential roadside service requirement from the surrounding road network.
- 3.20 The Department of Transport Circular 02/2013 identifies a functional need for a range of services on major transport routes. Appendix B of the Circular, 'Roadside Facilities for Road Users on Motorways and All-Purpose Trunk Roads in England' seeks to ensure sufficient

roadside facilities are provided to improve road safety and to promote drivers to stop and take a break during their journey.

- 3.21 Indeed, it is deemed that the proposed development could quite reasonably be considered to represent local transport infrastructure. Within a landmark appeal decision relating to a similar proposed facility, provided in Appendix 2 of this Statement (APP/W1525/W/14/3001905), the Inspector concluded that:

‘The proposed development falls within the provision for local transport infrastructure and that it would go some way to meeting an otherwise unmet, or inadequately met, need for a petrol station and motorist facilities in the area.’

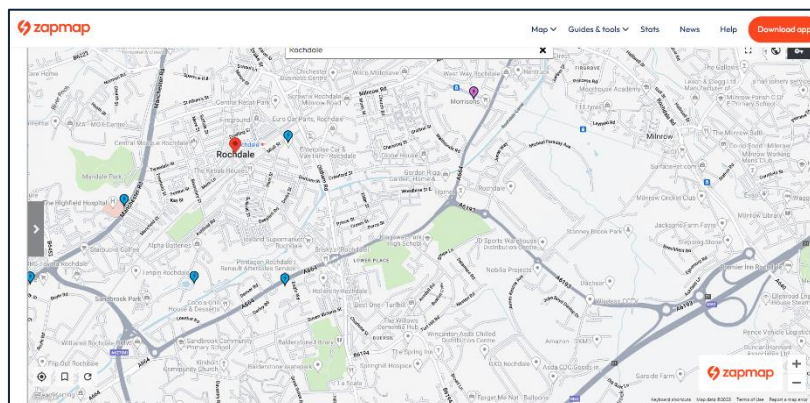
- 3.22 Furthermore, in his conclusions, the Inspector stated that the development would likely attract passing trade rather than new trips to the highway network.
- 3.23 The current proposals are geared explicitly towards seeking custom from users of the surrounding road network, A664 (Rochdale Bypass), A6193 and the M62 (junction 21 is within 5 minutes’ drive time). It is therefore evidenced that the proposed development will help improve road safety and the welfare of drivers in the area and should be recognised as per the Transport Circular. This is an important social benefit that weighs heavily in favour of the proposal.
- 3.24 Travelling east on the M62, the next closest motorway service area is 24 miles away from J21 at Hartshead Moor. Travelling west, Birch Services is also 24 miles away from J21. Clearly, this new service location will fit a strategic gap in motorist fuel, food and beverage and rest provision.
- 3.25 As the extract below demonstrates, the immediate area is not well-served by petrol filling stations, especially those within a reasonable distance of the M62, were a motorist to leave the M62 to take a break before returning and continuing a journey.

Extract from Google Earth 2023, application site in red and yellow pins highlight the location of fuelling options for motorists.



- 3.26 Significant material weight should also be attributed to the environmental benefits of a roadside service development with alternative fuelling options.
- 3.27 The extract below from Zap Map plots the location of existing EV Charge Points that are accessible to the public (i.e., you do not need to be a customer or visitor to an existing business to use them).

Extract below from Zap Map (<https://www.zap-map.com/live/>) existing facilities marked as blue pins.



- 3.28 The extract shows a significant lack of EV Charging Points. This needs to change if the Local Planning Authority is serious about helping the population transition to a low-carbon future. The submitted site plan shows the development includes 12no—EV Charging Bays.
- 3.29 Whilst these elements make the site future-proof, the increase in the availability of public EV Charging Points, given the current lack of availability, is an essential environmental gain for the Borough.
- 3.30 Overall, the provision of a service to serve the needs of motorists to provide welfare needs is a social benefit, and the provision of a significant number of EV Charging Bays is an environmental benefit. These are significant benefits that need to be kept fully in mind when determining this planning application.

The use of the proposed Drive Through Units

- 3.31 The proposed Drive-Through units fall wholly within Class E(b) of the Town and Country Planning (Use Classes) Order.
- 3.32 The Use Classes Order defines E(b) uses as being for ‘the sale of food and drink for consumption (mostly) on the premises. Historically, applications by the Applicant, including for Drive-Through operations, have always been for class A1/A3; now, Class E and Councils have been satisfied with this definition.
- 3.33 The proposed units will not represent ‘hot food takeaways’, explicitly noted as Sui Generis uses in the Use Classes Order. The relevant phraseology for takeaways is ‘hot food takeaways’, explicitly referring to ‘hot food’. Sandwich and coffee shops and the like, including bakeries, continue to be considered Class E. Sandwich bars and off-sales of other cold food were included in the former Class A1 shops class, with superseded Circular 13/87 stating that a sandwich bar did not cease to be in the shops class merely because it sold hot drinks, or if a few customers ate on the premises. ‘Hot food takeaways’ involve the cooking of food and sales of hot food and generally operate longer/late hours and come with a whole host of other issues, including odours, noise, litter, behaviour, etc. The Government’s definition of Sui Generis (hot food takeaways) is ‘hot food takeaway for the sale of hot food where consumption of that food is mostly undertaken off the premises.

- 3.34 The proposed Drive-Throughs are specifically focused on serving the needs of motorists and accordingly provide ample internal and external seating areas for motorists to rest and consume food and beverages on the premises.
- 3.35 These are not 'hot food takeaway' uses, which generally only open in the evening and late into the night and do not have extensive on-site areas.
- 3.36 As required, the applicant is comfortable accepting a planning condition limiting the occupation Of the Drive-Through units to Class E (b) only.

4 PLANNING POLICY BACKGROUND

- 4.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 and Section 70(2) of the Town and Country Planning Act 1990 confirm that to the extent that development plan policies are material to an application for planning permission, the decision must be taken in accordance with the development plan unless there are material considerations that indicate otherwise.
- 4.2 The Development Plan consists of the Development Plan for Rochdale consists of the Rochdale Core Strategy (CS), adopted in 2016, and saved Unitary Development Plan 1996-2016 (UDP) policies.
- 4.3 Other material considerations include, amongst other things, Supplementary Planning Documents (SPDs), Development Plan Documents (DPDs), the Greater Manchester Joint Minerals Plan, the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG) and the draft Places for Everyone (PFE).
- 4.4 Whilst the entirety of the above Development Plan is relevant, we consider the below to be of particular importance.

National Planning Policy Framework (2023) (NPPF)

- Section 2 Achieving sustainable development.
- Section 6 Building a strong, competitive economy
- Section 7. Ensuring the vitality of town centres
- Section 9. Promoting sustainable transport
- Section 11. Making effective use of land
- Section 12. Achieving well-design places
- Section 15. Conserving and enhancing the natural environment

Rochdale Core Strategy (2016) (CS)

- Section 4 Strategic Objectives
- Section 5. Delivering sustainable development
- Section 6. Spatial Strategy

SP3/R - The Strategy for Rochdale

- Section 7. Delivering a more prosperous economy

Policy E1 Establishing thriving town, district and local centres

Policy E2 Increasing jobs and prosperity

Policy E3 Focusing on economic growth corridors and areas

Policy E4 Managing the release of land to meet future employment needs

- Section 8. Creating successful and healthy communities

P3 - Improving design of new development

- Section 9. Improving design, image and quality of place
- Section 10. Promoting a greener environment

G1 - Tackling and adapting to climate change

G2 - Energy and new development

G3 - Renewable and low carbon energy developments

G7 - Increasing the value of biodiversity and geodiversity

G8 - Managing water resources and flood risk

- Section 11. Improving accessibility and delivering sustainable transport.

T1 - Delivering sustainable transport

T2 - Improving accessibility

Unitary Development Plan 1999-2016 (UDP)

- Section 4. The Plan Strategy

G/SP/1 Urban Concentration and Regeneration

- Section 7. Defined Urban Area, Green Belt and Protected Open Land

G/D/1 Defined Urban Area

- Section 8. Employment and the Economy

EC/7 Kingsway Business Park

- Section 10. Shopping and the role of centres

G/S/1 Hierarchy and Role of Centres

G/S/2 Regeneration of Centre

- Section 12. Regeneration

- Section 18. Accessibility

A/24 Strategic Highway Network

- Section 19. Design and the Built Environment
 - G/BE/1 Design Quality
 - BE/2 Design Criteria for New Development
 - BE/8 Landscaping in New Development
- Section 20. Environmental Management
 - EM/7 Development and Flood Risk
 - EM/8 Protection of Surface and Ground Water
 - G/EM/1 Environmental Protection and Pollution Control
 - EM/2 Pollution 185 EM/3 Noise and New Development
 - EM/4 Contaminated Land
 - G/EM/12 Renewable Energy and Energy Conservation
- Section 21. The Natural Environment
 - G/NE/1 Nature Conservation
- NE/3 Biodiversity and Development
 - G/NE/5 Landscape and Woodlands
- NE/6 Landscape Protection and Enhancement

5 PLANNING ANALYSIS

Principle of Development

- 5.1 The NPPF was updated in 2023 and set out the Government's economic, environmental, and social planning policies for England.
- 5.2 Paragraph 7 states that the purpose of the planning system is to contribute to the achievement of sustainable development. Paragraph 8 states that in order to achieve sustainable development, the planning system has three overarching objectives: an economic objective, a social objective, and an environmental objective.
- 5.3 The proposal will generate economic activity in a suitable location, providing economic benefits for the Borough. The proposal will deliver substantial employment opportunities, again an economic benefit for the Borough. The proposal is sustainable development, complying with the economic objective. As expressed previously (Section 3), the proposal also complies with the social and environmental objectives.
- 5.4 Paragraph 81 explains that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. Paragraph 119 explains that planning policies and decisions should promote the effective use of land in meeting the need for homes and other uses while safeguarding and improving the environment and ensuring safe and healthy living conditions.
- 5.5 The proposal would effectively use land for a beneficial purpose and would support the economic growth and productivity of the Borough's economy. Thus complying with the emphasis and steer from national planning policy to deliver economic growth.
- 5.6 As set out in Paragraph 11 of the NPPF, where there are no specific policies which relate to proposals, applications should be determined in line with the policies of the NPPF. Roadside servicing provision for the welfare of motorists is not mentioned within the Development Plan; due to the absence of specific development management policies, a degree of interpretation of relevant policies is required, as is the application of Paragraph 11 of the NPPF.

- 5.7 The proposed development achieves sustainable development as it is defined in the NPPF. As such, the proposals must be supported in line with the favour of sustainable development contained within Paragraph 11 of the NPPF.
- 5.8 Overall, the proposal achieves the objectives of sustainable development and would assist in creating a strong, responsive, and competitive economy; accordingly, the proposal complies with the NPPF.
- 5.9 Turning to the Development Plan. The Spatial Strategy is contained within Section 6 of the Core Strategy (CS). Policy SP3/R within Section 6 expresses the priorities for Rochdale. It explains the importance of delivering the Kingsway Business Park and that a way to optimally deliver the Business Park is for the Council to facilitate the delivery of new high-quality employment to grow the job opportunities available.
- 5.10 Policy E2 of the CS explains that the Council will ensure a sufficient supply of suitable land, buildings, and infrastructure in the right places to support the creation and retention of successful businesses and increase the number and quality of jobs. The Council outlines an intention in this policy to support employment-generating uses, in principle, where the proposals also comply with the other policies of the Development Plan.
- 5.11 Policy EC3 of the CS outlines that focusing employment development on high-quality sites in economic growth corridors and areas in accessible locations in the south of the Borough will help deliver and maximise the benefits of new investment and the growth potential and provide accessible jobs for local people.
- 5.12 Policy EC31. details the Rochdale town centre/ Kingsway corridor. Within this area, the Council intends to deliver development that seeks to maximise economic growth and, amongst others, strive to make the best use of the improved road access to J21 of the M62 through Kingsway. E3.1 culminates in E31f. which includes a Council commitment to coordinated development of the key sites, including the Kingsway Business Park.
- 5.13 The proposals comply with Policy E31. as the proposal maximises the economic growth potential of the corridor, making the best use of a site which is highly accessible from the strategic highway network and making best use of the improved access to J21 of the M62 whilst also delivering employment and wider benefits to the Borough.
- 5.14 The proposed development will provide a substantial number of jobs and economic activity and would contribute to the Council's expressed aims for Rochdale, ensuring Rochdale

remains an important economic driver for the Borough to the benefit of the Borough overall. The proposal delivers economically beneficial uses that maximise the opportunities available to deliver a beneficial form of development for the Kingsway corridor and wider strategic highway network.

- 5.15 Turning to the Unitary Development Plan (UDP), Policy EC/7 is dedicated to the Kingsway Business Park. The Council has outlined a series of criteria a) to o) that the Council will expect development to follow.
- 5.16 The proposal will provide a small-scale facility that serves the needs of employees in the Business Park, complements the function of the Business Park, and is, hence, in compliance with EC/7(m).
- 5.17 The proposed development does not compromise the delivery of the wider Local Centre or other elements of the Business Park; therefore, the proposed development will accord substantially with the approved Master Plan for the comprehensive development of the whole site. As noted earlier, the proposal will not compromise the delivery of a local centre on Plot V, noting the fundamental differences in the offers. The proposal is geared to serve the needs and welfare of motorists; in a local centre, one would expect that retail is geared to serve the necessities of nearby residents.
- 5.18 As established above, the proposal is sustainable development in a suitable location that does not prejudice the delivery of the Master Plan for the Business Park. The proposal, by being beneficial development, would support the Business Park. That being acknowledged, it bears relevance to consider the proposal in the context of Chapter 7 of the CS, where it details the Council's approach to establishing thriving districts and local centres.
- 5.19 A sequential assessment is contained within the following section. The results can be summarised as follows: due to the specific operational requirements of the operator, there are no suitable sites which could accommodate the proposed development. As such, it is concluded that the proposed site is the only viable site for the proposal.
- 5.20 The proposed development is economically beneficial to the Borough, in a suitable location to serve its intended customers. It would bring these benefits without competing with offers in the Borough's Town, District or Local Centres. Thus, the proposal is, in principle, in compliance with the Development Plan with regard to the Council's sequential approach.

- 5.21 Overall, the proposal complies with the Council's strategic approach when it comes to encouraging economic growth and activity in the Borough and, in particular, in the strategically important settlement of Rochdale. The proposal will deliver sustainable development that will benefit the Borough and do so without compromising the ability of the strategic allocation, Kingsway Business Park to be built out as envisaged. Thus, the proposed development is in compliance with the Development Plan.

Other Material Consideration

Healthy Communities

- 5.22 Recognising the aim of Policy CS to create successful and healthy communities and the content of the Guidelines & Standards for Hot Food Takeaway Uses Supplementary Planning Document November (2014), due consideration needs to be given to this material consideration. Notwithstanding, any requirement expressed in the SPD is guidance only, not policy.
- 5.23 The application site is adjacent to the Kingsway Park High School, which could be considered a sensitive site for the purposes of the SPD. The Council recognises that Hot Food Takeaways (when the SPD was written) are Class A5 uses.
- 5.24 A hot food takeaway is now a Sui Generis use, and the proposed non-petrol uses are Class E(b) and the use of the units as Class E(b) can be secured via a planning condition.
- 5.25 The application does not propose a use whereby the requirements of the SPD are applicable.

Amenity

- 5.26 The application is supported by a Noise Impact Assessment produced by Dragonfly Consulting. The noise assessment has been conducted with reference to the Noise Policy Statement for England (NPSE) and to appropriate British Standards, recognised guidance and reference documents relevant to this site.
- 5.27 The conclusion is that concerning plant noise, servicing, car parking and the car wash, the impacts arising are predicted to be below the LOAEL (Lowest Observed Adverse Effect Level; this is the level above which adverse effects on health and quality of life can be detected) for the assessment.

- 5.28 To assist in achieving the above, it has been determined that limiting servicing operations (HGV deliveries) to daytime hours (0700h–2300h) and including boundary treatments in the form of 2.0m reflective noise barriers to the north of the servicing area and the drive-through lane and a 2.3m barrier around the jet wash bays, will be introduced to secure levels to below the LOAEL for the assessment.

Transportation Considerations

- 5.29 A Transport Assessment supports this application. The highway accident data has been reviewed for the most recently available five-year road safety record for the site's surrounding area. The data does not demonstrate any pre-existing patterns or trends of incidents that could be affected by the development proposals.
- 5.30 The trip generation assessment shows that the proposed PFS and Drive-Through units generate an anticipated total of around 49 and 47 'new' two-way trips during the AM, PM peak-hour assessment periods, respectively, with the vast majority being diverted trips from the A6193 Sir Isaac Newton Way and the A664 Rochdale Bypass.
- 5.31 Although it has been demonstrated that the proposed development is likely to generate a relatively low level of new trips, a stand-alone capacity assessment of the Sir Isaac Newton Way/ Michael Faraday Avenue roundabout and Michael Faraday Avenue/ Wallis Avenue/ warehouse access junction has been undertaken.
- 5.32 The assessments show that with the application of development-related traffic, the assessed junctions will continue to operate within capacity, with the proposals having a negligible impact on the operation of both junctions.
- 5.33 Car parking provision is provided as part of the proposals to cater for both staff and customers and is shown to align with local parking standards. The proposals also include EV charging bays and cycle parking provision to encourage the use of sustainable modes of travel further.
- 5.34 A Travel Plan supports the application. This Travel Plan will promote a combination of measures to encourage staff to travel by sustainable modes of transport whilst discouraging travel by car, particularly single occupancy car journeys.
- 5.35 The proposed development is located adjacent to the highway network, which it will serve, resulting in fewer newly generated trips and attracting those already using the local road network. Additionally, the site is located next to pedestrian footways and cycle paths, which

will allow staff who live in the local area to use sustainable transport methods on their commute. Overall, it can be summarised that the site offers good potential for some journeys, particularly those by staff, to be undertaken by modes other than cars.

- 5.36 Overall, the application site contains a robust and detailed Travel Plan, which details measures to positively influence staff into utilising public transport options to commute to employment opportunities. This, alongside the content of the Transport Assessment, illustrates that the proposed development satisfies considerations related to transportation. Thus, we are firmly of the opinion that the site complies with Policies within the Development Plan as well as the NPPF.

Flood Risk, Contamination, Air Quality and Drainage Considerations

- 5.37 The application is accompanied by a Phase 1 and 2 Contamination Assessment and Remediation Strategy. These documents were prepared for an earlier iteration of the proposed development; hence, the description of the proposed development differs from that for this planning application. Notwithstanding this fact, the report's conclusions are not materially impacted by this difference. The Phase 2 report recommends the production of a Remediation Strategy, which accompanies the application.
- 5.38 An Air Quality Assessment supports this application. The assessment concluded that the proposals meet the requirements of national and local planning policy, and air quality does not pose a constraint to the proposed development. Hence, the proposal complies with policy in this regard.
- 5.39 The details contained within the technical documents related to drainage and flood risk demonstrate that the proposed development can operate on the site without detriment in either regard. Thus, the proposal complies with the Development Plan and the NPPF.

Landscaping, Ecology, and Trees

- 5.40 An Arboricultural Report accompanies this application. Of the few trees to be removed to facilitate the development, the trees to be removed are of low quality and young species. These losses are mitigated within the landscape scheme for the site, and the tree and hedge population, as illustrated, is significantly increased.
- 5.41 A habitat survey accompanies this application, concluding that no statutory or non-statutory protected sites lie within the proposed development site or immediately adjacent to it. The

desk study identified that the site is located within the Impact Risk Zone of the Rochdale Canal Site of Special Scientific Interest (SSSI). However, the proposed development will not require the Local Planning Authority to consult with Natural England. As this designation is a significant distance away from the site (120 metres to the west), there is expected to be no deleterious impact on the protected sites from development.

- 5.42 The proposed development is predicted to result in a net gain of habitat units and hedgerow units; thus, the proposal complies with current planning policy requirements in this regard, and this must be recognised as a significant planning gain. Habitats will be managed for 30 years via a Landscape and Ecology Management Plan (LEMP).
- 5.43 Thus, the proposal complies with policies within the Development Plan and the NPPF concerning landscaping, ecology, and the protection of existing green infrastructure.

6 DESIGN AND ACCESS STATEMENT

- 6.1 Design and Access Statements are a national requirement set out in Article 9 of The Town and Country Planning (Development Management Procedure) (England) Order 2015. The level of detail in a Design and Access Statement should be proportionate to the complexity of the application, and the below satisfies these requirements.
- 6.2 The proposed development, while below the threshold of 1,000 square metres, requires a Design and Access Statement as the site exceeds 1ha; hence, a proportional statement is provided below. However, being significantly below 1,000 square metres bears relevance when considering design aspects of the proposal and demonstrates the complementary nature of the proposals and how the Applicant has responded to surrounding buildings to provide units of a complementary scale, massing, and size.
- 6.3 The application site is identified in earlier sections of this report and is not repeated here.
- 6.4 In terms of access. The Applicant is well versed in providing units for the welfare of motorists, including those requiring accessible facilities. The proposed units have ample accessible parking, and the units are designed, like others throughout the UK, to be accessible to all customers.
- 6.5 The site takes advantage of pedestrian links in the existing and wider Business Park; safe access for all is possible, and individuals with limited mobility or additional requirements can safely move around the site. These routes are detailed in the submission plans.
- 6.6 In terms of design, scale and massing respond to the surrounding context and follow existing design precedents on the Business Park's already delivered elements. The Applicant is well-versed in providing units, with numerous examples throughout the UK of well-designed fit-for-purpose units that positively contribute to the overall quality of the street scene.
- 6.7 In terms of the overall design, the proposal is an optimal solution for its purpose, minimal in form and massing, and is made from high-quality materials. The application site is verdant, utilising appropriate landscaping to add to the overall visual quality of the area whilst also delivering a significant gain for biodiversity (please see the later section for details).
- 6.8 In conclusion, while a Design and Access Statement is required, the proposed development delivers minimal new built form. The built form is contained within an attractive, verdant and well-landscaped site that provides a suitably accessible facility for all customers.

7 SEQUENTIAL ASSESSMENT

- 7.1 The Core Strategy requires the submission of a Retail Impact Assessment for any retail development in the Rochdale area that provides more than 2,000 sq.m of floor space (gross). Hence, the threshold is not triggered. Furthermore, the justification text of Policy EI states that the floorspace threshold for Rochdale is 2000 sq.m gross and above.
- 7.2 Paragraph 87 of the NPPF states:
- "Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered."
- 7.3 NPPF paragraph 88 notes that applicants and local planning authorities should be flexible when considering sequential matters.
- 7.4 Policy EI states that out of centre development will only be considered where there are 'no suitable sites in, or on the edge, or well connected to, the town centre, district centre or local centres'.
- 7.5 In the Pre-Application Response (Appendix I), it was intimated that Policy EI does not exclude the possibility that development might be split between different buildings or even different locations in order to be accommodated in a town centre.
- 7.6 A sequential test was required to be produced on account of NPPF (Paragraph 87). That being said, with regard to NPPF (Paragraph 88), it must also be the case that where an operator is seeking to pursue a specific form of development concept – in this instance, a Drive Thorough Restaurant – then the sites that are sequentially assessed must be reviewed in relation to the characteristics and requirements of the specific use that is being sought.
- 7.7 Drive Thorough sites have strict requirements for successful operation, including large on-site circular routes alongside parking and seating spaces for customers.
- 7.8 Commenting on the application of the sequential test regarding Drive Thru sites in the Treloggan Road, Newquay decision (Appeal Ref: APP/Q0820/A/05/1182303), the Inspector noted:

“It is difficult to envisage how a developer could be flexible in respect of the format of a drive through restaurant. Unlike a conventional restaurant, which could relatively be easily accommodated on any of the identified sites [identified by the Council], a drive-through, by definition, requires vehicular access and circulation through or around the building”.

- 7.9 Nonetheless, a sequential assessment alongside the requirements established in Pre-Application Response 00037-23 has been undertaken, and the following conclusions have been established:

Rochdale Town Centre

- 7.10 Regarding Rochdale Town Centre, a review of various letting agents' websites identified seven commercial properties for sale within the centre. These do not satisfy the applicants' criteria as expressed below, most falling short on all requirements of the applicant, even accounting for flexibility in the operation.

Site	Commentary
84-86 Yorkshire Street, Rochdale, Lancashire, OL16 1JX	The site lacks the required space for vehicle use and circulation spaces. Loss of viable retail use in a suitable Town Centre location. Lack of commercial visibility from the strategic highway network.
Fresh Prep Street Food, Hunters Lane, Rochdale	It is located within a pedestrianised retail area. Unsuitable for vehicular-based units.
Unit and Yard, Wilson Street, Rochdale	Extremely small space at 50m ² and outside of the commercial area.
Moon Retail Park, Roch Valley Way, Rochdale, OL11 4QN	Loss of viable warehouse/light industrial unit. Lack of commercial visibility from the strategic highway network.
Oodles Chines Restaurant and Takeaway Franchise, Milkstone Road, Rochdale.	The site lacks the required space for circulation. Loss of operating use in a suitable edge of Town Centre location-lack of commercial visibility from the strategic highway network.
Rochdale Catholic Club, Ann Street Rochdale, OL16 1QQ	Established social club: protected asset. It does not have enough space for circulation and is located on a secondary street with limited highway capacity—also, an edge of centre location.

Vacant Office Space, Drake Street.	This former office unit has extant planning permission for change of use to residential—insufficient space for circulation alongside space for a PFS. Lack of commercial visibility from the strategic highway network. Edge of centre location.
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Kingsway Retail Park

- 7.11 Following a review of the commercial properties in the area, it was clear that there were no commercial properties or plots for sale.

Site	Commentary
There are no identifiable sites for sale within this identified centre.	The site features three existing drive-through units, indicating no further retail capacity or demand at this location.

Central Retail Park

- 7.12 This site is not designated as a local centre; however, it is adjacent to Rochdale Town Centre and, as such, must be assessed.

Site	Commentary
Vacant Plot to the North of Central Retail Park.	Central Retail Park does have vacant land capable of housing a drive-through unit. However, upon reviewing the site's planning history, the site has an extant planning permission for the erection of 81 homes. The site is also allocated in the Draft Allocations Plan as AL/HOU/60. Attempting to develop any non-residential units would be contrary to policy. This site is also not for sale.

Milnrow District Centre

- 7.13 The identified sites lie within the designated Milnrow District Centre. They have been assessed as per the requirements of the scheme and have been discounted as follows:

Site	Commentary
Fireaway Rochdale, 4 Milnrow Precinct, Newhey Road, Rochdale, OL16 4JD.	The small hot food takeaway unit is located in a small shopping precinct. It is being sold as a franchise. There is insufficient space for introducing circular routes and limited floor space.
Commercial Property, Whitworth Street, Milnrow, OL16.	This site features a large detached commercial/industrial building; however, it is located on a small plot, some distance from the highway and accessed via an industrial workshop yard. Whitworth Street is insufficiently sized to accommodate further traffic.

Well I' Th' Lane

- 7.14 Well I' Th' Lane is designated as a local centre around the existing Iceland site. This site is an unsuitable location for the proposed development, given the need for a circular route through the site and strategic visibility from the highway network. A development along this lane would rely on unsuitable road infrastructure and have extremely limited commercial visibility. Additionally, further development in this location would not align with policy insofar as there would be an overconcentration of uses. It would not be viable commercially, mainly due to the lack of commercial visibility.

Site	Commentary
There are no commercial properties for sale in this location.	Given the development requirements, no suitable sites are present in this local centre.

- 7.15 There were also identified in the sequential assessment, further plots for sale within close proximity to the M62 and on the edge of identified centres. Accordingly, we have included these sites within the sequential assessment; however, we have also discounted these options for the following reasons:

Site	Commentary
Light Industrial Unit, Green Mill, Platting Lane, Rochdale.	The land associated with the unit would be unsuitable for the proposed use. The location is isolated in terms of commercial visibility. There is no opportunity for the inclusion of a circular route.

Former Fair View Inn, 78 Broad Lane, Rochdale, OL16 4QQ	This site is located on Green Belt land, and the proposed development would be inappropriate. Additionally, there is limited connectivity to the M62 alongside limited commercial visibility.
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Conclusion

- 7.16 This sequential assessment has run through the availability of commercial properties in Rochdale and the centres identified in the pre-application advice received from the Council. These centres cannot provide sites with the required links to the strategic highway network, enough commercial visibility and ample space for the drive-thorough unit arrangement, even with the disaggregation of the site. As such, it is concluded that the proposed site at Unit U2 Kingsway Industrial Park is the only viable site for the development.

8 SUMMARY AND CONCLUSIONS

8.1 In this Statement, we have considered the implications of the application scheme and have considered all the relevant planning policies. We have arrived at the following conclusions:

- The application site is a prominent vacant site within The Kingsway Business Park, a long-established key location for strategic employment and investment. Seeing this site comprehensively developed will be a further addition to the Business Park. It will deliver a range of complimentary employment-creating and service-providing uses to the surrounding area.
- The proposed economically beneficial development can be delivered without conflicting with the ability of Business Park to come forward as envisaged in the Master Plan. The proposal is opposite the envisaged location for the local centre and the uses, being geared to motorists rather than the necessities of residents would not stop a local centre coming forward as envisaged.
- The Business Park's allocation and planning history includes various references to the need for the area to accommodate uses complementary to its primary employment-creating objectives. The development will also play a helpful role in servicing the needs of the Business Park's 5,000+ workers, who can readily visit the site on their way to or from work or during their lunch or other breaks.
- The development will create in the region of 70 new jobs in the area, jobs that will be attractive to a wide variety of the local population, as well as deliver direct economic benefits.
- The Applicant is a market leader in the provision of roadside facilities, and EG is prepared to make a significant investment in the site on the basis that they have identified a need for the services to be provided and that they are economically viable in the long term. Hence securing economic benefits in the long term.
- The current proposals are geared explicitly towards seeking custom from users of the surrounding road network, A664 (Rochdale Bypass), A6193 and the M62 (junction 21 is within 10 minutes' drive time). The proposed development will help improve road

safety and the welfare of drivers in the area and should be recognised per the Transport Circular as an important social benefit that weighs heavily in favour of the proposal.

- The proposed development positively contributes to the provision of EV charging points in this area. The proposed development would add 12no. EV charging points in locations where there are few publicly accessible charging points. This is a significant environmental benefit.
- The proposed development achieves sustainable development as it is defined in the NPPF. As such, the proposals must be supported in line with the favour of sustainable development contained within Paragraph 11 of the NPPF.
- The sequential assessment has run through the availability of commercial properties in Rochdale and the centres identified in the pre-application advice received from the Council. These centres cannot provide sites with the Applicant's requirements, even with the disaggregation of the site. As such, it is concluded that the proposed site at Unit U2 Kingsway Industrial Park is the only viable site for the proposed sustainable development.
- The proposed development delivers an attractive, verdant application site with a significant habitat increase to benefit biodiversity. The Biodiversity Impact Assessment shows a net gain of 7.79 units (+165.07%). Hence, the proposal delivers environmental benefits and a benefit from the enhanced ecological capability of the site.

8.2 This Statement demonstrates that there is a very clear, strong, and justifiable case for the proposed development based on compliance with the Development Plan and other material considerations. The proposed development complies with the relevant Government guidance in the NPPF and planning policies in the Development Plan. Accordingly, per Paragraph 11 of the NPPF, which requires decision-takers to approve development proposals that accord with the development plan without delay, we respectfully request that this planning application be approved.

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Reference: PREAPP/00037/23**Date:** 31st July 2023**BY EMAIL ONLY**

Dear Jonathan,

Reference No:	PREAPP/00037/23
Proposal:	Pre application advice for proposed new foodstore with car parking, landscaping and other associated works as well as a Drive Thru Restaurant and Drive Thru Coffee Shop
Location:	Land At Junction Of Sir Isaac Newton Way/Michael Faraday Avenue, Kingsway, Rochdale, OL16 4PS

I write in reference to your request for pre-application planning advice relating to the Plot U2 at Kingsway Business Park for a mixed-use development for a food store, drive-through coffee shop and drive-through restaurant.

The plans / documents reviewed are:

Drawing/Document Title	Drawing no.
Pre-App Covering Letter	JV/KN0052/23
Supporting Note by Dynamic Transport Planning	DTP/3705023/L01
Feasibility	4
Catchment area plan	-

Development Plan

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications are determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan for Rochdale consists of the Rochdale Core Strategy (CS), adopted 2016, and saved Unitary Development Plan (UDP) policies.

Other material considerations include, amongst other things, Supplementary Planning Documents (SPDs), Development Plan Documents (DPDs), the Greater Manchester Joint Minerals Plan, the National Planning Policy Framework (NPPF), the National Planning Practice Guidance (NPPG) and the draft Places for Everyone (PFE).

Review of the Proposal – Principle of Development

Retail Uses

Policy E1 of the Core Strategy, in accordance with the NPPF, focuses retail and leisure development to promote the viability and vitality of the Borough's town centres. Saved UDP Policy G/S/1 (which should be read in conjunction with Policy E1 following the adoption of the CS) establishes the hierarchy of centres across the borough, and requires applicants to provide a sequential approach to demonstrate that no suitable sites exist (or are likely to become available within a reasonable period of time) which would otherwise be sequentially preferable. Policy E1 sets out that out of centre development will only be considered acceptable when there are no suitable sites in, or on the edge, or well connected to, the town centre, district centres or local centres and the proposal would cause no significant overall impact on the existing centres vitality and viability

The site does not sit within any of the Borough's centres, however the extant outline planning permission for the wider Kingsway Business Park (ref 18/00943/VRCON) does make provision for a local centre either within Plot U2 (which this application relates to) or Plot V, which is to the south of Sir Isaac Newton Way.

Condition 12 of Planning Permission 18/00943/VRCON establishes floor space thresholds for various uses across the wider masterplan. Included within this is:

- a) Use Class A1 (now Use Class E) retail: 1,425m²
- b) Use Classes A3, A4 and A5 (now Use Class E/Sui Generis): 585m²
- e) Local Services, falling within A1-A5 (now Use Class E): 1,052m²

The 2015 refreshment of the original consent established that Plot V was to be intended for a local centre and to accommodate the commercial floor space included within condition 12, which supersedes the previous intention to place commercial uses on Plot U (such as this application proposes) in favour of consolidating and extending the residential offer at this location due to its proximity to the Metrolink stop and other services. Furthermore, in the years immediately following the development of "*The Hornet*" public house, a number of nearby residents did express concerns about the extent of the commercial development on the remainder of Plot U due to potential adverse impacts to their amenity. Whilst the masterplan remains very high level, particularly in respect of Plots U and V, it is our view that Plot U2 would be preferable for the delivery of retail development provided that it can satisfy all other relevant development management requirements.

Notwithstanding, whilst not formally designated as a local centre, saved UDP policy S/6 seeks to support the development of shops, financial and professional services, food and drink outlets, offices, community and cultural facilities and other uses appropriate to a district or local centre will be permitted provided that:



- a) It will be of a scale and character appropriate to the size, role and function of the centre or area; and*
- b) It will be compatible with surrounding land uses and will not harm local residential amenity.*

The draft proposals split the vast majority of the site between the commercial uses and their associated surface car-parking and highway infrastructure. The inclusion of a food store, together with two drive-through units would suggest that the nature of the proposals more closely resemble that of a small retail park. That is not to say that it would not be capable of serving nearby residential areas for convenience shopping, but it would clearly go beyond that purpose.

The proposals sit at the edge of the Kingsway Business Park, which has seen a significant proportion of the masterplan implemented to date, particularly the residential and industrial components. It is appreciated that a number of elements are yet to come forward, including the local centre. Given the scale and nature of the proposals, it must be questioned whether a local centre on an adjacent site covered by the masterplan would be likely to come forward if the pre-application proposals were to come forward.

The application of simple logic would indicate that these proposals would have a significant adverse impact on the potential for investment in a local retail centre within the Kingsway area. Although no detailed proposals have yet been developed for the delivery of a local centre at the northern extent of Kingsway Business Park, it remains a long-standing aspiration to deliver such facilities to serve local residents and employees of the business park and is considered to be a key component of the masterplan.

The Council have not been presented with any such evidence to demonstrate that the delivery of a local centre is undesirable in the context of the masterplan, or is unfeasible, and as such, there remains a strong preference for any commercial development in the north of Business Park to deliver such facilities. The inhibition of the local centre would be damaging to the intentions of the overall Kingsway Business Park masterplan and would attract weight in the determination of any future planning application.

Notwithstanding, in light of the proposed quantum of retail and leisure development, the sequential and impact tests are engaged.

Sequential Test

The requirements for a sequential test for the proposals would be reduced where there is a clear provision of facilities which are of a scale and nature which would meet the needs of local residents, as there is a longstanding intention to provide such facilities at this location.

The proposals include a number of uses which appear to be able to operate



independently and do not depend on co-location to function as a profitable enterprise. There is evidence to suggest that the proposals as submitted within this request for pre-application advice are themselves inherently disaggregated through the discernible division of the site into three distinct areas each comprising a building and associated parking/curtilage.

It is noted that when the NPPF did supersede PPS4, it removed the mention of disaggregation. Notwithstanding, NPPG is clear that the application of the sequential test will need to be proportionate and appropriate for the given proposals. The NPPF is also clear at paragraph 88 that when considering edge and out of centre proposals, applicants and local planning authorities should demonstrate flexibility on issues such as format and scale. It goes on to note that preference should be given to accessible sites which are well connected to the town centre. Disaggregation is a matter of planning judgement to be addressed on a case-by-case basis. As such, it is important to consider the particular circumstances of each case and the flexibility which can realistically be applied to the proposals.

The wording of Policy E1 is such that out of centre development will only be considered where there are *'no suitable sites in, or on the edge, or well connected to, the town centre, district centres or local centres'* and does not exclude the possibility that a development might be split between different buildings or even different locations in order to be accommodated in a town centre, or a more sequentially preferable location otherwise. As aforementioned, the consideration of disaggregation is not explicitly referred to within the NPPF or PPG but neither is it specifically excluded.

Based upon the proposals provided, it would not appear that there is any particular evidence to suggest that it would be commercially or functionally necessary to accommodate this variety of uses within a single site, especially as no end occupier is known for two of the units.

Additional flexibility should be considered in the format of any unit, where town centre sites may present opportunities for smaller format stores with reduced parking requirements, or are physically incapable of accommodating a drive-through, instead relying on higher levels of pedestrian footfall.

1. Minimum search criteria:

- a. Minimum site threshold to deliver the proposed development (also taking account of opportunities for disaggregation);
- b. Car parking provision no more than the relevant maximum standard (CS Appendix 5):
 - i. >135 spaces for the food store
 - ii. >33 spaces for the hot food drive-through
 - iii. >24 spaces for the Starbucks drive-through
- c. Appropriate servicing and access arrangements.

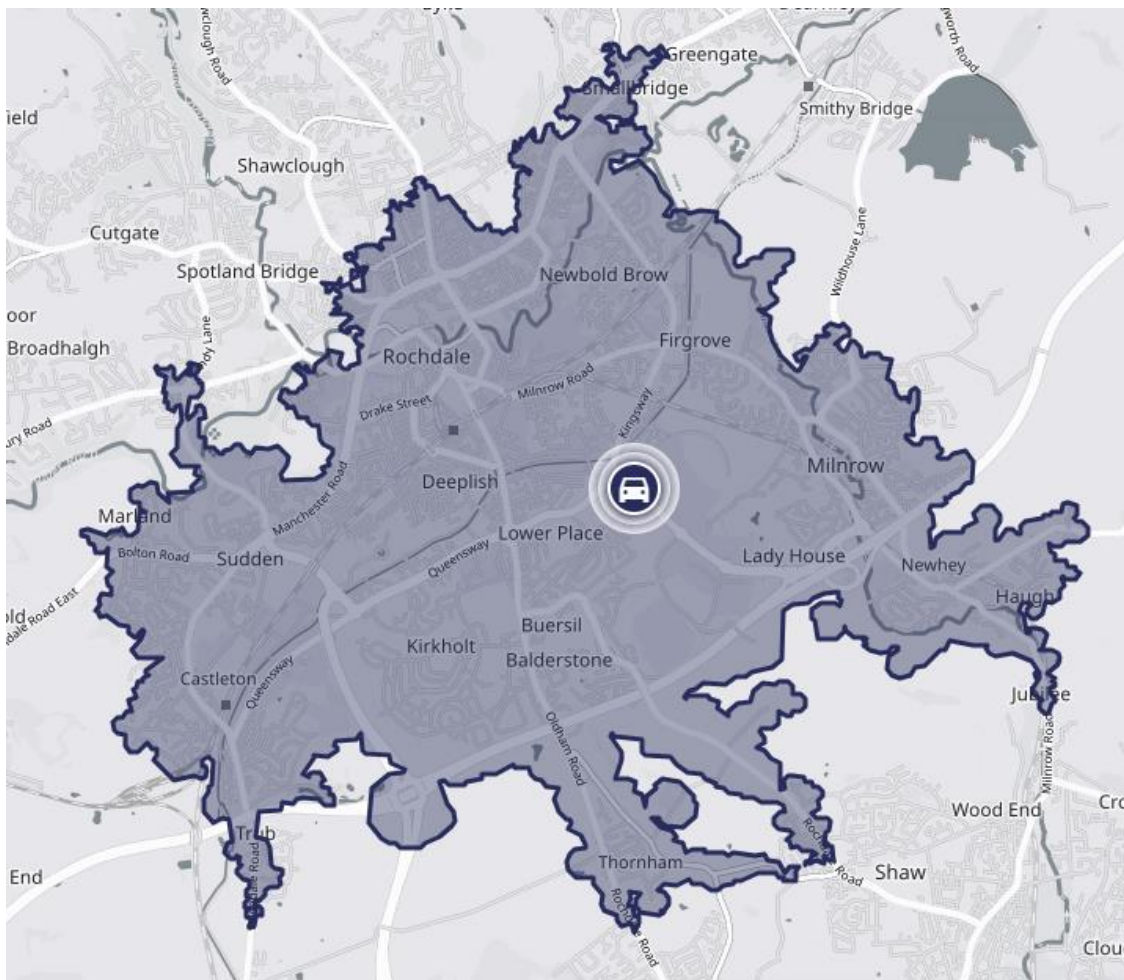
2. Catchment area:



The sites to be assessed are based on an 8-minute driving catchment, this will include all in-centre, edge and sites well-connected to:

- a. Rochdale Town Centre;
- b. Kingsway Retail Park;
- c. Central Retail Park, Rochdale;
- d. Milnrow District Centre; and,
- e. Well I'th Lane.

A map showing the extent of a 10-minute driving catchment in normal traffic conditions is shown below.



10 Minute Drive Catchment Area – Source Travel Time: <https://app.traveltime.com/>

3. Recognition of any market or locational requirements of the uses concerned.
4. Demonstration of flexibility in terms of scale and format and whether more central sites have been fully considered.

Impact Test

Assessment against the following impacts:

- The impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal;



and

- The impact of the proposal on Town Centre vitality and viability, including local consumer choice and trade in the Town Centre and wider area, up to five years from the time the application is made.

In terms of the impact of the proposals on existing, planned and committed schemes, then these are:

- Rochdale Riverside (Phase 1 and 2);
- Rochdale Town Hall Square improvements;
- Rochdale Town Hall restoration and improvement;
- Rochdale Railway Station public realm improvements;
- South Parade public realm improvements; and,
- Central Retail Park Residential Development

In considering the impact of the proposal on Town Centre vitality and viability, the following must be considered for the **retail** elements only:

- Study Area:
Catchment area includes Zones 1, 2, 3 and 6 on the basis that the *Rochdale Retail and Leisure Study* identifies that the majority of Rochdale Town Centre's convenience goods turnover is drawn from residents in these four zones.
- Assessment Period:
Five years from the time the application is made, adopting a base year of 2023 and a design year of 2028.
- Population and Expenditure and Turnover of Existing Facilities:
Commission primary household survey and retail expenditure data in order to provide an up-to-date picture of shopping patterns within the study area.
- Sales Densities of Proposal:
The retail floorspace will be for a food store. At present, the development is speculative, however it was discussed that EG's other food store developments are typically occupied by ASDA or Marks and Spencer, with EG also beginning to deliver their own brand retailing. In the absence of current data held by the Council, a robust justification for the sales density used must be provided with any future submission.
- Health Check Assessments:
Required for all Rochdale town centre.

Should a scheme evolve which includes leisure uses, in considering the impact of the and **leisure** elements on Town Centre vitality and viability, a qualitative assessment only is required; it should consider the leisure patterns within the retail study, assess market share and look at comparables.

Drive-Through Restaurant

SO2 of the CS seeks to create successful and healthy communities with Policy DM1 expecting development proposals to demonstrate that they do not have an adverse impact on health, through its impact. Policy C6 further seeks to improve people's health and wellbeing by creating an economic, physical and social environment which promotes and supports healthy lifestyles by not allowing the over concentration of takeaway food premises where they may impact adversely on the amenity of residents



and/or encourage unhealthy eating habits.

To support the assessment of the principle of development for fast/hot-food takeaways, the Council has produced the [Guidelines and Standards for Hot Food Takeaways SPD](#) which includes a section on schools.

It recognises the impact that hot-food takeaways can have on health and wellbeing, and notes that the Department for Health advises that local authorities should limit the opening of new outlets, particularly in sensitive areas such as around schools, where fast food outlets are often a barrier to secondary school children eating healthily, a habit which often continues into adult hood and a major contributor to obesity.

The SPD seeks to restrict the development of hot food takeaways outside of a defined centre and within a 400m buffer (representative of a 10-minute walk taking account of physical barriers) of any secondary school with the measurement taken from the boundary of the site.

In applying this, the proposed drive-through restaurant would fall within 110m of the boundary of Kingsway Park High School, and as such, would be unlikely to be accepted in principle due to the potential significant adverse impact to the health and well-being of local young people.

It is noted that the drive-through Starbucks would also fall within this radius. Starbucks menu includes a vast number of hot and cold beverages which would not ordinarily be considered part of a balanced diet whilst being attractive to young people. Additional justification will be required within any future planning application as to the suitability of the proposed use in the context of the site.

Design and Layout

The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities

The National Planning Policy Framework (NPPF) state that good design is a key aspect of sustainable development and that planning policies and decisions should ensure that developments function well and add to the overall quality of the area and are visually attractive as a result of good architecture, layout and appropriate and effective landscaping. This is largely reflected within Policies DM1 and P3 of the Council's adopted Core Strategy, which requires development proposals to demonstrate high quality design.

The revisions to the NPPF in July 2021 establishes very clearly that development which is not well designed should be refused, and conversely, significant weight should be given to development which reflects local design policies and government guidance on design. In support of this, the Government have produced a suite of guidance



documents including [Building for a Healthy Life](#) (BHL) , the [National Model Design Code](#) (NMDC) and the [National Design Guide](#) (NDG) which form a material consideration in the assessment of the design of development proposals, and aid Local Authorities and developers alike in understanding if development proposals are well-designed.

The importance of using a sound understanding of the features of the site and surrounding context to inform well-designed development proposals is well-documented within the NDG; new development should be able to respond positively to the physical and non-physical context of the site, this may include:

Physical	Non-Physical
Existing built development, including layout, form, scale appearance, detailing and materials	Social characteristics, including demographics
Landform, topography, geography	Economic factors
Landscape character	The aspirations, concerns and perceptions of local communities
Access, movement and accessibility	Future perceptions in changing lifestyles e.g. facilitating modal shifts in the population
Views inwards and outwards	
Patterns of uses and activities, including community facilities and local services	

Well-designed places do not need to copy their surroundings in every way. It is appropriate to introduce elements that reflect how we live today, to include innovation and to incorporate new sustainable uses, features or systems. To communicate the benefits of a scheme, it is important to explain how the design of a development relates to context and local character.

The proposals are sited at the northern extent of the business park, and therefore an opportunity exists to create a high-quality gateway into the park which clearly identifies as an entrance to the site. The partially completed Kingsway Business Park is an environment comprising a cluster of medium-sized warehouse and business units with larger scale storage and distribution units with suburban residential development set to the periphery of the site. The overall vision of the Park's masterplan is to gradually reduce the grain size of buildings to better integrate with surrounding residential development.

Plot U2 should therefore seek to create a legible and attractive entrance to the park in its design, reflecting some of the design principles replicated across other areas in the Park. This includes creating a landscape-led, visually cohesive development to avoid the further dilution of character by virtue of conflicting forms of architecture which are poorly related.

Layout & Appearance



In respect of the layout of the proposals, the NDG establishes the layout of development proposals as a key component of well-designed places, where well-designed new development is integrated into its wider surroundings physically, visually and socially; demonstrating an understanding of the existing patterns of built form. BHL states that the use of positive characteristics such as street types, landscape character, urban grain, plot shapes and sizes, building forms and materials being used to reflect local character are features which contribute to well-designed places, which would largely reflect the contents of the NMDC.

At present, the site is a relatively unremarkable but unobtrusive parcel of land affording views into Kingsway Business Park and the dwellings at Plot U1. Structural landscaping set to the boundary of the plot provides a degree of visual integration with the rest of the park and masks the typically unkempt appearance of the land – The site is not overtly perceived as clearly being urban as such.

The overall layout of the site has been clearly designed to facilitate access by private vehicles which is reflected in the central parts of the development being dominated by hard-surfacing for car parking and vehicular circulation. What little space remains would be infilled with landscaping which appears to be considered late in the overall hierarchy of the design of the proposals and even if these areas were to be filled with high quality trees which could reach maturity (which I am not convinced of due to the constrained area of the site), it would do little to mask the monotony of the hard-standing.

The Aldi at Poynton, Stockport (London Road South, SK12 1NJ) is a reasonable example within Greater Manchester of how a food store could be co-located with smaller scale retail more typical of a local centre, with a clear division of pedestrian and vehicular spaces to improve the overall pedestrian experience. Units within this development have a cohesive design language and parking provision is masked by the buildings from the main public vantage points. However, it is clear that the proximity of the frontage to the classified road is restricting the full potential for use by hospitality uses given the disturbance and lack of defensible space. The proposals should look to include appropriate boundary treatments to define defensible spaces to the front of buildings, in addition to a well-considered set-back from the highway to ensure a suitably high quality pedestrian experience.

The proposals would place the food store towards the north of the site, parallel to the frontages of dwellings on Wallis Avenue. Without full details of elevations it is difficult to comment on the visual relationship shared between the unit and adjacent residential development, however it would be assumed that there would be a stark contrast in scale, form, massing, materiality and detailing between the surrounding built environment and these proposals which would provide a very conspicuous and visually harmful juxtaposition, with very little space reserved for landscaping to soften the visual impact of the extensive rear elevation of this unit. I would direct you to the recently approved Lidl food store at Mauldeth Road West/Nell Lane (Manchester CC ref. 135647/FO/2022) to see what would be expected in terms of the level of



articulation and detailing of any new building, however do wish to stress the significance of considering the orientation of any new building in appropriately positioning the entrance and any other active frontages.

It is noted that drive-through units are often single storey structures which could be comparable in height to the nearest dwellings. However, similar to the above, in the absence of any detailed elevation drawings, the detailed design of drive-through units is imagined to provide a harmful the character of adjoining areas if the units proposed to be constructed are to be of the standardised architecture across the operator's portfolio. Notwithstanding, even if the buildings were to be of an excellent design quality, it is unlikely that this would be able to overcome the impact of the scale of the development together with the parking, servicing and circulation areas proposed.

Pedestrian Movement

The NPPF seeks through paragraph 92 to promote social interaction through street layouts that allow for easy pedestrian and cycle connections within and between neighbourhoods, among other things. The NDG seeks to prioritise pedestrians and cyclist movements, creating routes that are safe, direct, convenient and accessible for people of all abilities. It sets out that a well-designed and connected network gives people the maximum choice in how to make their journeys. This includes by rail, other public transport, walking, cycling and by car.

Well-designed places should no need to rely on the car for transport; well-designed developments will make it more attractive for people to choose to walk or cycle for short trips helping to improve levels of physical activity. The NDMC seeks to promote connected places through the creation of well-overlooked, permeable networks, and the provision of public transport stops within good proximity to services. Active travel should be encouraged for all developments by promoting cycling and walking, and balancing the needs of pedestrians and cyclists and those with vehicles.

The site's position would mean that most visitors would approach from Sir Isaac Newton Way, from the north or south. Currently, there is a singular vehicular access to the site from Wallis Ave, with no alternative options provided for pedestrians and cyclists despite the extensive investment in such infrastructure across the Business Park. Movement through the site follows along a single route which gives rise to a number of conflict points which would discourage active travel to the site; junctions and crossing are expected to be safe, convenient and attractive for all users. It is noted that the nearest bus stop is at Sir Isaac Newton Way, which provides a logical place to provide an alternative pedestrian access into the site, however regard must be had as to whether off-site highways improvements should be included within any proposals due to the existing network of Public Rights of Way which span the site and its vicinity, as they present a sensible solution for connecting the site with surrounding residential areas.

The expanses of hardstanding would also fail to make for an attractive route for pedestrians. The movement around and across the site should take into account wider



movements of pattern, and how the development can enhance these to create a well-connected network; Accessibility needs to be designed in from the start, as a 'golden thread' running through the scheme.

Cycle parking is also a critical component of new development in encouraging active travel. Cycle parking should be in close proximity to the buildings which it serves, it should be conveniently placed in a well-lit, well-overlooked location to discourage crime and promote the feeling of safety amongst users.

Further to the above, development should ensure that Public Rights of Way are protected, enhanced and well-linked into the wider network of pedestrian and cycle routes. PROWs exist within the site, and along the western boundary. Regard will need to be had to them both post-development, but also to ensure minimal disruption throughout the construction phase.

Summary

Overall the proposals demonstrate a number of shortcomings in their design. Any future proposals should be informed by the 10 Characteristics of Well-Designed Places contained within the National Design Guide, which should be clearly communicated within a Design and Access Statement. The Building for a Healthy Life document provides an easy to use and easy to understand checklist which can demonstrate the design merit of development proposals.

Amenity

Policy DM1 of the Core Strategy requires that proposals do not adversely affect the amenity of residents or users through visual intrusion, overbearing impact, overshadowing or loss of privacy. Also, impacts including noise, air, dust, light and odour pollution are required to be mitigated where necessary.

Policy G9 of the Core Strategy sets out that the Council will require that development does not have impacts that lead to an unacceptable increase in air, water, noise, light or other pollution. Paragraph 185 of the NPPF sets out that planning decisions seek to ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment.

To aid the assessment of these matters, the Council's [Guidelines and Standards for Residential Development Supplementary Planning Document](#) provides guidance which all new residential developments should accord with in order to provide a satisfactory standard of amenity for existing and future occupiers in respect of light, outlook and privacy.

The SPD sets out separation distances between existing dwellings and new development which should be adhered to in the interest of preserving adequate amounts of natural light and outlook, which the proposals broadly adhere to. However,



given the width of the rear elevation of the food store, the relationship between the unit and facing dwellings on Wallis Avenue is not considered to be acceptable due to the significant impact to the outlook of these dwellings.

Concerns are also had in respect of the noise and, during the hours of darkness, the light from headlights associated with vehicles using the development and any street lighting. Whilst delivery and opening hours would go some way to mitigating this impact, it is still likely the development would still be in use for a considerable period each day. Any impacts will need to be thoroughly investigated through the production of a Noise Impact Assessment and Lighting Assessments.

Highways and Refuse Storage/Collection

Policy T2 of the adopted Core Strategy seeks to improve accessibility by locating development where good access to public transport is available or can be provided and in all circumstances, prioritises the safety, accessibility and amenity of those who live or have business in the area. Policy DM1 also states that all development proposals should provide satisfactory vehicular access with adequate parking, manoeuvring, and servicing arrangements taking into account of the proposed use and location. Paragraph 111 of the National Planning Policy Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Paragraph 112 (d) of the NPPF states that application for development should allow for the efficient delivery of goods, and access by service and emergency vehicles. The *Guidelines and Standards for Residential Development SPD* states that bin storage areas that require excessive movements from the storage area to the street should be avoided and any bin storage areas and access arrangements, including access routes for collection vehicles, should be provided in accordance with all relevant legislation and guidance, such as any relevant local planning documents, Building Regulations and Highways requirements.

The comments of the Highways Authority on the scheme are as follows:

The application includes a pre-application scoping note provided by Dynamic Transport Planning which will be the basis of our comments we would expect a full Transport Assessment(TA) to be provided to support any future application..

Kingsway Business Park has had numerous planning permissions which have been supported by approved TA's and any future TA must reference these approvals particularly in term of changes in trip generation and potential impact on the adopted highway network.

Taking into account the location of the development any future TA must provide a realistic trip rate for the development as a whole with the food store in



particular generating single trips. At this stage we are not likely to agree that the development would generate a “low level of primary trip rates” as stated in the scoping note, therefore we would expect a more robust trip rate to be included within any future TA.

The site will be accessed via priority junctions from Michael Faraday Avenue and we would expect that the impact on these junctions is fully assessed within the TA.

Parking provision for the development and its different uses must reflect current Council Parking Standards.

The servicing arrangements must reflect each use within the proposed development and be supported by swept path analysis, this should include a 16.5 metre articulated vehicle for the food store.

We would expect that any future application is supported by a Travel Plan.

Arboricultural and Ecological Impacts

Paragraph 131 of the NPPF states that trees make an important contribution to the character and quality of urban environments, and can also help mitigate and adapt to climate change. Paragraph 174 of the NPPF states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity, providing net gains where possible, and contributing to the Government’s commitment to halt decline. CS Policy G6 expects development proposals affecting green infrastructure to avoid the loss of existing features such as trees unless suitable alternative provision is made or they have limited value. CS Policy G7 requires that no development should result in a net loss of biodiversity and geodiversity.

Any submission should include proposals in respect of gains for biodiversity via species enhancement as guided by the NPPF (July 2021, paragraph 174d and 179 b)) to achieve demonstrable net gain for biodiversity. The Environment Bill has now received Royal Assent (November 2021) and enabling legislation is in formulation. This signals a purposeful direction of travel with respect to the adoption of Biodiversity Net Gain. The planning authority will require any new proposals to deliver Biodiversity Net Gain and it is expected that 10% net gain will become mandatory through being written into legislation from November 2023. Net gain should be sought to be delivered on site unless there is a robust justification as to why this would be inappropriate. As already discussed, the current provide very little space for landscaping and as such, would unlikely be able to deliver on-site net gain. Much of the Business Park has been designed with high-quality structural landscaping and as such, this site should be landscape-led in its approach.

The Greater Manchester Combined Authority ([GMCA](#)) has adopted [guidance](#) on the format of the submission of information in relation to Biodiversity Net Gain.



As part of the pre-application service, GMEU have been consulted and identified a need for a full ecological appraisal as they have records of various protected species nearby.

Local Planning Authorities have a duty to protect, conserve and restore European Protected Sites under the Habitats Regulations (2017). The site falls within a Site of Special Scientific Interest (SSSI) Risk Impact Zone for the Rochdale Canal which lies 150m to the north of the site. Each zone sets out various forms of development for which a Habitats Regulations Assessment (HRA) will be required to be produced in order to test whether a proposals could significantly harm the designated features of a European site. In this instance, large infrastructure such as warehousing exceeding 1,000m² in floor area is required to be supported by a HRA in order to assess the impact of a development.

Air Quality

Core Strategy Policy G9 states that all forms of pollution will be reduced by focusing on measures that reduce air pollution in Air Quality Management Areas, and other areas where pollution levels are unacceptable, particularly around motorways and main roads.

The site is not located within an Air Quality Management Area, however sections of the M62 and surrounding road network lie within the Greater Manchester Air Quality Management Area.

An Air Quality Assessment was required to establish the principle of development on plot V. As the development seeks to add to the expected air quality impact, a revised assessment will be required.

Floodrisk and Drainage

The site is within Flood Zone 1, having a less than 1 in 1,000 annual probability of flooding. Given the proposals would comprise major development, a Flood Risk Assessment and a Sustainable Drainage Statement will be required with any future application. The site will be paved over for and the existing greenfield area will become impermeable. Attenuation with the Kingsway Business Park has been designed such that up to the 1 in 100 year event can be accommodated with the existing ponds – It will be necessary to consider if the proposals can be accommodated in light of the increase in developable area.

In respect of surface water drainage proposals, the site should be drained in the most sustainable method in accordance with the hierarchy set out within the National Planning Practice Guidance. Additional advice on Sustainable Urban Drainage for major development is available on the Council's website, and guidance is provided by United Utilities on their respective website.

United Utilities provides a free water and wastewater pre-development enquiry service.



You are strongly encouraged to contact them directly to discuss your proposals in detail. Note also that it is the applicant's responsibility to demonstrate the exact relationship between any United Utilities' assets and a proposed development.

Guidance on soakaway suitability can be found in BRE digest 365, available online or from the Authority's Drainage & Flooding Engineer (stephen.mccann@rochdale.gov.uk). The LLFA's response is appended in full to this letter.

Contamination/Land Stability

The application should be accompanied by at least a Phase I Site Investigation or Preliminary Risk Assessment to provide an initial assessment of potential land contamination within/adjacent to the site. If an initial assessment identifies a need for further intrusive investigations or remediation strategy to be required, these would be required as part of pre-commencement conditions on any permission unless provided as part of the main application. Core Strategy policy G9 is relevant.

Public and Stakeholder Consultation

The Council has an adopted [Statement of Community Involvement](#) which sets out that any applicant contemplating the submission of a major application should contact the Local Planning Authority at pre-application stage to discuss and agree a consultation procedure that reflects the scale and significance of the proposal. The agreed procedure should include arrangements for reporting the information obtained from the consultation exercise and production of a document that explains how that exercise has influenced the detail of the application.

It will be necessary to ensure that developers engage with surrounding residents and, where appropriate, undertake consultation with ward councillors - the site lies within Kingsway Ward.

The method of consultation undertaken, detail of where any consultation event was held and details of how the development has been presented to the local community should be outlined within a Statement of Community Involvement to be submitted with the application – this can be incorporated within the Planning Statement. This statement should also include details of the feedback received, including if any amendments have been made as a result of comments received.

Planning Performance Agreements

Planning Performance Agreements are a project management tool which the local planning authorities and applicants can use to agree timescales, actions and resources for handling particular applications. Planning performance agreements can be particularly useful in setting out an efficient and transparent process for determining large and/or complex planning applications. They encourage joint working between the applicant and local planning authority, and can also help to bring together other parties



such as statutory consultees.

If you are interested in entering into a Planning Performance Agreement, please do get in touch and arrangements can be made for a PPA to be drafted.

Summary and Making an Application

There remains a number of considerations to be demonstrated to establish the principle of development for these proposals, where the preference of the LPA remains commercial development to meet the needs of local residents. The proposals as submitted demonstrate a significant number of shortcomings in respect of their design both visually and functionally and any future development will be expected to exceed the threshold of being 'well-designed'.

Validation Requirements

The Council has adopted a Local Validation List which sets out the expectations of what supporting information should be submitted with a planning application. In respect of the proposed development, the following supporting information should be provided, at a minimum:

- Location Plan to scale 1:1250 showing the direction of north, with the application site clearly edged in red,
- Existing and Proposed site plans to scale 1:200/1:500;
- Existing and Proposed Elevations in full to scale 1:100/1:50;
- Existing and Proposed Floor Plans in full to scale 1:100/1:50;
- Existing and Proposed Street Scene Drawings to scale 1:100/1:50;
- Compliance with National Information Requirements;
- Planning/Design & Access Statement
- Air Quality Assessment;
- Biodiversity Statement including BNG 3.0 matrix;
- Community Involvement Statement (integrated to Planning Statement);
- Crime Impact Statement;
- Design & Access Statement (this may include a Building for a Healthy Life checklist);
- Drainage Strategy/SUDs assessment;
- Energy & Climate Change Adaptation Statement;
- Flood Risk Assessment;
- Habitats Regulations Assessment;
- Landscaping Proposals;
- Noise Impact Assessment;
- Phase I Site Investigation Report/PRA;
- Planning Statement;
- Preliminary Ecological Appraisal AND any subsequent reports recommended;
- Retail Impact Assessment;



- Sequential Assessment;
- Transport Statement; and,
- Tree Survey & Arboricultural Impact Assessment;

Please note that any advice provided above is an informal opinion only and is made without prejudice to any formal determination which may be given in the event of an application being submitted. In particular, it does not constitute a formal decision of the Council with regard to any future planning applications, which will be subject to wider consultation and publicity, and provides no guarantee of a future decision.

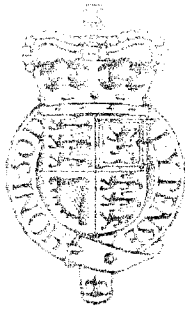
I hope this is of assistance. However, if you have any questions or wish to discuss more detailed proposals prior to formal submission of an application then please do not hesitate to contact me using the details contained at the top of this letter.

Yours Sincerely,



Ryan Killeen
Principal Planning Officer



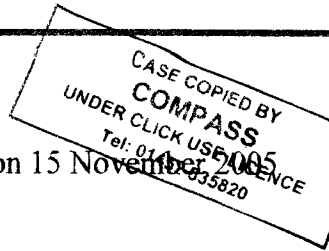


Appeal Decision

Inquiry held and site visit made on 15 November 2005

by **Chris Anscombe** BTP DMS MRTPI

an Inspector appointed by the First Secretary of State



The Planning Inspectorate
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Date

23 NOV 2005

Appeal Ref: APP/Q0830/A/05/1182303

Land at Treloggan Road, Lane, Newquay TR8 4QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Kingsley Developers Limited against the decision of Restormel Borough Council.
- The application Ref 05/00077, dated 14 January 2005, was refused by notice dated 11 March 2005.
- The development proposed is the erection of a drive-through restaurant (Class A3) and the construction of a new access.

Summary of Decision: The appeal is allowed, and outline planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. The application was made in outline with all matters reserved for future approval except for siting and the means of access.
2. On 21 April 2005 the Town and Country Planning (Use Classes) (Amendment) (England) Order 2005 came into force and substituted Classes A3, A4 and A5 for Class A3 in the original Order. At the Hearing it was agreed that the use of the proposed development, for both the sale of food and drink for consumption on the premises and the sale of hot food for consumption off the premises, would be a mixture of Classes A3 and A5 (as amended) and therefore *sui generis*. In the circumstances the reference to Class C3 in the description of the proposed development should be deleted.

Main Issue

3. I consider that the main issue in this case is whether the appeal site, which is out-of-centre and on the edge of the town, would be a suitable location for the proposed development with particular reference to both local and national planning policies and its allocation as employment land.

Planning Policy

4. The development plan includes the Cornwall Structure Plan 2004 and the Restormel Local Plan 2001-2011 (adopted in June 2001). In the Structure Plan Policy 1 sets out principles for sustainable development. Policy 11 seeks to encourage employment by, amongst other things, prioritising the regeneration of urban areas and town centres as a focus for retail, commercial and business activity. Policy 12 requires a range of marketable and quality sites for employment to be made available and sets out a number of criteria against which local plans should review existing or new sites. Land for employment should be retained,

and sites in local plans should be reviewed for alternative uses where development for employment is no longer likely to be appropriate or feasible. Policy 14 states that retail, office and leisure development should be in or adjoining town centres. Elsewhere, such development should be limited to circumstances where particular needs could not reasonably be met in such a location, having taken account of the existing provision available and further development opportunities.

5. In Newquay Structure Plan Policy 19 requires development to support and sustain the tourism industry and the restructuring of the economy to provide more balanced employment opportunities. Priorities for new business and employment will be in relation to a planned urban extension (the "Growth Area" identified in the Local Plan on the eastern edge of the town) and opportunities arising from the expansion of services at Newquay (Cornwall International) Airport. Policy 28 requires consideration of the overall impact on travel patterns and the availability of alternative locations for development in order to minimise the need to travel and to increase choice of travel by walking, cycling and public transport.
6. In the Local Plan Policy 1 identifies the Newquay urban area as a focus for development and there is no dispute that the appeal site lies within that urban area. Policy 9 seeks to reduce the generation of private car movements by not permitting new development away from the key towns and villages or established public transport networks. Policy 52 proposes 15ha of employment land in Newquay. Of that Policy N10 allocates a 1.45ha site at Treloggan Road (including the 0.5ha appeal site) and an 11ha site within the proposed Growth Area. Policy 58 deals specifically with shopping development outside town centres, rather than a leisure use as proposed. Policies 80 and 81 relate to traffic safety and the need to cater for cyclists and pedestrians.
7. I have also had regard to Government planning policy and advice, in particular Planning Policy Statement 6: *Planning for Town Centres*, which includes drive-through restaurants as a leisure facility and one of the main town centre uses to which this policy statement applies. Promoting and enhancing existing centres by focussing development in such centres and encouraging a wide range of services in a good environment, accessible by all, is one of the two means by which the Government's key objective to promote the vitality and viability of town centres will be met. Chapter 3 sets out the considerations which should be taken into account by local planning authorities in determining planning applications for all proposals relating to main town centre uses.

The Appeal Site, its Location and Planning History

8. The appeal site is located adjacent to the southern edge of the Newquay urban area, here defined by the line of the A392, the main route into the town as signed from the A30 Trunk Road. Treloggan Road runs north-west from a roundabout on the A392, just to the west of the Kings Head Inn which stands alone on the south side of the road. The appeal site lies on the eastern side of Treloggan Road and is the western part of the allocated employment site. Access would be gained from a proposed mini-roundabout constructed about half way between the A392 roundabout and an existing mini-roundabout serving a Morrisons superstore and petrol filling station on the western side of Treloggan Road.
9. Immediately to the north of Morrisons there is a McDonalds drive-through restaurant, a Lidl supermarket and a Booker Cash and Carry store. To the west of those premises is a large

residential area linked to Morrisons by a public cycle route and footpath. On the eastern side of Treloggan Road, to the north of the appeal site, is the Treloggan Industrial site, which includes a furniture and carpet retail warehouse in one of its units.

10. The appeal site is presently overgrown and it is difficult to distinguish it from the scrubland separating it from an estate of some 70 dwellings at Lane, about 180m to the east. This larger area, together with the appeal site extending to about 3.1ha, was the subject of two earlier applications by Asda for the erection of a retail food outlet and drive-through restaurant. The first application was refused on 26 September 2002. The second application for an identical proposal was submitted on 31 October 2002. Although this application was also recommended for refusal by the planning officer, on 26 June 2003 Members resolved to grant outline planning permission giving seven reasons, the last being that the proposal would result in the creation of a significant number of jobs on land that has not come forward for employment purposes.
11. In reaching their decision the Members took account of evidence provided by a local firm of chartered surveyors, Scott, Burridge and Chick (the SBC evidence), that demand at that time did not justify development of this allocated employment site for such purposes. This evidence contradicted that provided earlier for the Council's Strategic Development Officer by local estate agents and valuers, May, Whetter and Grose (the MWG evidence), concluding that there was a demand for employment land in Newquay, that none was currently available, that this allocated site was suitable and, unlike the employment element within the proposed Growth Area, could be delivered relatively quickly.
12. Following the resolution to grant outline planning permission the second application was "called in" by the First Secretary of State as a departure from the development plan. However, it was then withdrawn.

Reasons

The Sequential Test

13. The publication of PPS6 earlier this year has confirmed that a drive-through restaurant should be considered as a main town centre use. Both national and local planning policies direct such uses, in the first place, to a town centre location. All options in the town centre should be thoroughly assessed before less central sites are considered. If there is no suitable town centre location the sequential test requires that edge-of-centre locations are then considered before out-of-centre sites. The appeal site is some 2km to the south-east of the town centre.
14. Although no sequential test assessment was submitted with the application, one was prepared in connection with this appeal. That appraisal identified one site within the primary shopping area of the town centre and a number of others either in secondary frontages or edge-of-centre locations. It was common ground that these identified sites provided an exhaustive list of alternative sites for consideration before the appeal site. The appellants gave reasons why each site was unsuitable, unviable or unavailable.
15. The Council's witness agreed that the town centre site was unsuitable but suggested that others, namely Manor Road, Station Parade or Bucklands Hotel, could accommodate a drive-through restaurant if the appellants were flexible about the format of the proposed development, as required by PPS6. It is difficult to envisage how a developer could be

flexible in respect of the format of a drive-through restaurant. Unlike a conventional restaurant, which could relatively easily be accommodated on any of the identified sites, a drive-through, by definition, requires vehicular access and circulation through or around the building.

16. The Manor Road and Station Parade sites have both been identified amongst a number of key regeneration sites for the town. In 2002 the Council and the South West of England Regional Development Agency together formed what is now the Surf Capital Steering Group to produce a vision for the town. Following public consultation the Newquay Action Framework (NAF) was produced to co-ordinate and prioritise development within the town. The key regeneration sites identified have now been included in the Preferred Options for a Newquay Action Plan (one of the proposed Development Plan Documents in the emerging Local Development Framework) published by the Council for public consultation in May 2005.
17. The Manor Road site is allocated in the Local Plan (Policy N16) as a mixed-use area for shopping, commercial, leisure and community uses. However, I am advised that the development brief for the site indicates that it is of unknown title and unlikely to be available for at least 5-10 years. The NAF has recommended an alternative mix focussing on a high quality, high density residential development with public gardens and a multi-storey car park. This was carried forward in the Preferred Options consultation. The proposed development of a drive-through restaurant would appear incompatible with this emerging proposal, but in any event it is clear that the site is unavailable at present.
18. The Station Parade site was also included in the Preferred Options consultation document. It has potential for a mixed use redevelopment, to include shopping, public transport interchange facilities, community facilities, parking, employment and an improved public open space. Whilst this is seen as a priority site, part of it is presently developed and occupied and in multiple ownership. As a whole it could not be considered available at present and to develop part of it, if a site were available, could compromise the comprehensive redevelopment of this area, which is clearly of great importance to the regeneration of the town.
19. The former Bucklands Hotel site is located on the coastal edge of the town on Cliff Road and may be affected by the adjacent Station Parade redevelopment, which could include the pedestrianisation of part of Cliff Road. The site lies within areas of scientific and architectural and historic value. It is a prominent and sensitive site which could be considered unsuitable for a drive-through restaurant format. The Council has not challenged the appellants' assertion that the site attracts considerable costs associated with demolition and clearance. In my view this site is unsuitable and unviable for the proposed development.
20. None of the key regeneration sites identified depend upon the inclusion of a drive-through restaurant for their implementation. There is no reference to such a format in any of the proposals. In my opinion the proposed development would be unlikely to affect the provision of a conventional restaurant on any of these important sites in the town centre. Many of the major chains operate both formats within the same town elsewhere. In the circumstances I consider that the erection of a drive-through restaurant on the appeal site would have no significant effect on the regeneration of the town centre.

The Need for the Proposed Development

21. Having satisfied the sequential test it is necessary to consider the need for the proposed development. This was not referred to in the Council's reasons for the refusal of planning permission but at the Inquiry it argued that the demand for food in the area around the appeal site was met by the existing McDonalds drive-through, the café in Morrisons and the nearby Kings Head Inn. Whilst those establishments all provide food, only McDonalds specifically caters for take away hot food and that is the only drive-through facility in the town.
22. It seems to me that this is a qualitative need assessment and in this respect a key consideration is to provide for consumer choice. The sequential test has already shown the difficulty of providing an alternative location for the proposed development. However, an advantage of the appeal site location is the potential to provide for linked trips. The site is close to a bulky goods retail outlet and adjacent to a superstore, a supermarket, a cash and carry and the main signed route in and out of the town, which clearly will be well used by tourists throughout the main season. The opportunity for passing trade is significant and I consider that the likelihood of linked trips would be high in this location. Therefore the proposed development of the appeal site would provide the opportunity for genuine choice between competing fast food operators without necessarily resulting in a significant increase in the number of car journeys.

Accessibility

23. In terms of accessibility generally, there are footpath links from the adjacent residential areas, both to the west and east, to the appeal site. The walking or cycling distance from each would be about 400m with no significant gradients. Whilst that would not be considered an easy walking distance, neither is it excessive. The site would be equally accessible by workers on the industrial estate to the north. There are bus services on the adjacent A392 and Treloggan Road and a bus terminus within the Morrisons site opposite.
24. A drive-through restaurant is clearly intended mainly for access by car. In that respect it could be considered incompatible with planning policies seeking sustainable development, and therefore an outmoded form of development as suggested by the Council's witness at the Inquiry. Nevertheless, it is a form of development for which there is consumer demand and its inclusion in PPS6 indicates that provision should be made for it. Although it is likely that most customers would come by car the appeal site does offer the opportunity for walking, cycling and the use of public transport.

The Employment Allocation

25. The remaining matter to be considered is the allocation of the land including the appeal site for employment purposes in the Local Plan. The appeal site would contribute 0.5ha of this particular allocation of 1.45ha. Overall the employment allocation for Newquay amounts to some 15ha, most of which is within the proposed Growth Area. Whilst there have been delays in bringing that area forward for development, which is dependant on the construction of a new by-pass, I was advised at the Inquiry that an application for outline planning permission was anticipated early in 2006.
26. There has been no application for the development of the Treloggan Road allocation for employment purposes and it would appear that the main part of the allocated site is still

owned by Asda. The allocated site is a relatively small area of land to develop but requires the construction of a new roundabout at a cost of some £150,000. With these ownership and infrastructure constraints it would seem that this site is no more available than the Growth Area.

27. There has been conflicting advice in the past about the demand for employment land and the need for the Treloggan Road site to be developed for such purposes. At the Inquiry the Council's witness conceded that it was difficult to choose between the SBC evidence and the MWG evidence provided in 2003. However, there has been a more recent test of demand and the need for this allocation to be retained.
28. The Preferred Options for a Newquay Action Plan (referred to in paragraph 16 above) asked at Question 17 whether the Action Plan should identify alternative locations outside the Growth Area to provide for immediate short term employment needs; what locations would be appropriate; and should the Treloggan Road allocation for employment use be retained? In the following section on shopping this site was suggested instead as a possible location for bulky goods retailing. The Council's witness stated at the Inquiry that this question had not resulted in any significant representations during the consultation period, which ended in July 2005.
29. In my view that suggests that the SBC evidence is to be preferred and there is no demonstrable need for the appeal site to be developed for employment purposes. Furthermore, with the retention of the major part of the allocated land by Asda and the possibility of its reallocation for bulky goods retailing, in my view it is unlikely to become available for employment purposes in the foreseeable future.

Conclusion on the Main Issue

30. On the main issue I conclude that the appeal site would be a suitable location for the proposed development. In the absence of a suitable alternative site within or on the edge of the town centre and the apparent lack of need for this particular allocation of the land for employment use the proposed development would not conflict with Structure Plan Policies 1, 11, 12, 14, 19 or 28, Local Plan Policies 1, 9, 80 or 81, or the advice in PPS6.

Other Matter

31. At the Inquiry I asked for further information about the objection raised by the Health & Safety Executive (HSE) at the application stage due to the proximity of the site to a hazardous installation on an adjacent industrial site. I was advised by the Council that discussions had taken place with the HSE but they had decided not to provide evidence to the Inquiry to support their objection.

Conditions

32. The Council suggested conditions relating to the submission and approval of details and the implementation of the access roundabout, a sustainable urban drainage system, a foul drainage system and a Green Travel Plan. I have considered these in the light of the advice set out in Circular 11/95: *The Use of Conditions in Planning Permissions*.
33. The local highway authority has raised no objection in principle to the proposed development but the current design of the proposed roundabout is not considered acceptable and requires amendment. Further details are clearly required for approval and the access

needs to be completed before the development is first brought into use in the interests of highway safety and accessibility. Details of the proposed surface and foul drainage systems are also required to ensure satisfactory disposal. A Green Travel Plan was provided for the earlier Asda proposal but a new one would be required for this proposal.

Conclusion

34. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should succeed.

Formal Decision

35. I allow the appeal, and grant planning permission for the erection of a drive-through restaurant and the construction of a new access at Land at Treloggan Road, Lane, Newquay TR8 4QB in accordance with the terms of the application, Ref 05/00077, dated 14 January 2005, and the plans submitted therewith, subject to the following conditions:

- 1) Approval of the details of the design and external appearance of the building and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained in writing from the local planning authority before any development begins.
- 2) Plans and particulars of the reserved matters referred to in condition 1 above, relating to the design and external appearance of the building to be erected and the landscaping of the site, shall be submitted to and approved in writing by the local planning authority and shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
- 4) The development hereby permitted shall begin either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
- 5) Development shall not begin until details of the proposed access roundabout on Treloggan Road have been submitted to and approved in writing by the local planning authority and the development shall not be brought into use until that access roundabout has been constructed in accordance with the approved details.
- 6) The development hereby permitted shall not be brought into use until details of a Green Travel Plan, including how it is to be implemented, monitored, reviewed and enforced, have been submitted to and approved in writing by the local planning authority. The approved Green Travel Plan shall be implemented at the commencement of the use hereby permitted and thereafter monitored, reviewed and enforced in accordance with the approved details unless otherwise agreed in writing by the local planning authority.
- 7) The development hereby permitted shall not be brought into use until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the local planning authority.
- 8) Development shall not begin until an assessment has been carried out into the potential for disposing of surface water by means of a sustainable drainage system

(SuDS) in accordance with the principles of sustainable drainage systems set out in Appendix E of PPG25, and the results of the assessment provided to and approved in writing by the local planning authority. Where a SuDS scheme is to be implemented no development shall take place until details of the scheme have been submitted to and approved in writing by the local planning authority. The submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. specify the responsibilities of each party for the implementation of the SuDS scheme, together with a timetable for that implementation;
- iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker or any other arrangements to secure the operation of the scheme throughout its lifetime.

The SuDS scheme shall be implemented, maintained and managed in accordance with the approved details.

Information

36. Attention is drawn to the requirements of section 76 of the Town and Country Planning Act 1990 concerning provisions for the benefit of the disabled.



INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr A Clemens, Solicitor

Assistant Solicitor, Restormel Borough Council

He called

Mr M Stephenson
BA(Hons) MA MRTPI

Senior Planning Officer,
Restormel Borough Council

FOR THE APPELLANT:

Mr N J Hall, Solicitor
Instructed by Kingsley Developers Limited

Ralph & Co, 20 Cliff Road, Newquay TR7 1SG

He called

Mr K Hudson MICE

Divisional Director, Jacobs Babbie,
Renslade House, Bonhay Road, Exeter EX4 3AY

Mr A Hughes BSc(Hons)
LLB(Hons) DipEngLaw MRTPI

Associate Partner,
The Development Planning Partnership,
14 Windsor Place, Cardiff CF10 3BY

DOCUMENTS

- Document 1 List of persons present at the inquiry
- Document 2 Council's letter of notification and list of persons notified
- Document 3 Written representations of the local highway authority
- Document 4 Statement of Common Ground
- Document 5 Appendices 1-8 to the Statement of Common Ground
- Document 6 Transport Assessment submitted by Mr Hudson
- Document 7 Appendices 1-12 attached to Mr Hughes' proof of evidence
- Document 8 Appendices 1-8 attached to Mr Stephenson's proof of evidence
- Document 9 Newquay Action Framework (May 2002) submitted by Mr Stephenson
- Document 10 Preferred Options for a Newquay Action Plan (May 2005) submitted by Mr Stephenson
- Document 11 Delegated report (October 2005) on application 05/01449 for mixed use development at land off West Road, Quintrell Downs submitted by Mr Hall
- Document 12 Committee report (January 2002) on application 01/00623 for non-food retail development off Treloggan Road (to rear of Morrisons) submitted by Mr Hall
- Document 13 Committee report (April 2002) on application 01/0368 for larger Lidl foodstore replacing original at Treloggan Road submitted by Mr Hall
- Document 14 Green Travel Plan submitted in connection with earlier Asda proposal submitted by Mr Hudson

PLANS

- Plans A1-A3 Plans submitted with the application

Appeal Decision

Inquiry held on 8-10 September 2015

Site visit made on 10 September 2015

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 November 2015

Appeal Ref: APP/W1525/W/14/3001905

Land at Fenn Roundabout, Burnham Road, South Woodham Ferrers, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by George Martin Limited against the decision of Chelmsford Borough Council.
 - The application Ref 14/00984/FUL, dated 6 June 2014, was refused by notice dated 2 October 2014.
 - The development proposed is a petrol filling station, to include a sales building, canopy, fuel pumps, boundary treatments, and fuel tanks.
-

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 28 October 2015

DECISION

1. The appeal is allowed and planning permission is granted for the development of a petrol filling station, including a sales building, canopy, fuel pumps, boundary treatments, and fuel tanks, on land at Fenn Roundabout, Burnham Road, South Woodham Ferrers, Essex, in accordance with the application Ref 14/00984/FUL, dated 6 June 2014, subject to the conditions set out in the attached Schedule.

PRELIMINARY MATTERS

2. The Council's refusal reason No 2 (RR2) relates to the impact on the amenity of No 1 Willow Grove, by reason of noise and disturbance, and light pollution. In so far as the latter is concerned, the Council now no longer seeks to pursue the issue of lighting in terms of its effects on residential amenity. However, I have still considered the development's effects on the property in question, with regard to the remaining issues covered by RR2 and the other representations before me.
3. At the Inquiry an application for costs was made by the appellants against the Council. That application is the subject of a separate Decision.

THE APPEAL SITE AND PLANNING BACKGROUND

4. In the 1980s, South Woodham Ferrers was expanded by Essex County Council from a village into a small town. At around the same time, the A132/B1012 Burnham Road was realigned to form a bypass around the town's northern side. To the east, this route serves Burnham-on-Crouch and the Dengie

Peninsular, and to the west it connects with the main strategic network at the A130, near Battlesbridge.

5. The appeal site lies on the north side of Burnham Road, adjacent to its roundabout junction, known as the Fenn junction, with Ferrers Road and Willow Grove. Ferrers Road is a local distributor road providing access into the town centre, and Willow Grove is a country lane connecting with the small villages to the north.
6. The site itself comprises a small, wedge-shaped remnant from the land acquired by the County Council for highway purposes when the new road system was laid out. Planning permission for a petrol station on it was sought in 1994, but was refused on appeal in 1995¹. Since then the site has remained undeveloped and unused.
7. Along the site's rear boundary there is a belt of well-established trees. Some of these are part of the original field boundary, and the rest were planted as part of the highway works. The remainder of the site is overgrown scrub.
8. To the north, along Willow Grove, is an electricity sub-station and a row of houses and bungalows. To the west, along Wickford Road, are some larger individual houses and the 'Tropical Wings' Zoo. To the east, on the opposite side of Burnham Road, is the listed Shaw Farm pub and restaurant, and a Kingdom Hall place of worship.

RELEVANT PLANNING POLICIES

The Development Plan

The Site Allocations Development Plan Document (adopted February 2012)

9. The SADPD proposals map defines an urban area boundary around South Woodham Ferrers. The boundary runs along Burnham Road and Ferrers Road, excluding the appeal site. For the purposes of planning policy therefore, the site is within the countryside beyond the green belt (also referred to as the rural area beyond the green belt).

The Core Strategy and Development Control Policies (CSDCP) adopted February 2008); and Focused Review (FR) adopted December 2013

10. In the FR, Policy CP5 states that urban growth will be contained by defining the limits of the urban area. Within the rural areas beyond the green belt, the Council will protect the countryside's intrinsic character and beauty, whilst also supporting rural communities. Paragraph 3.4 of the accompanying text states that character and beauty will be judged on a site-by-site basis.
11. In addition, FR Policy DC2 relates states that within the rural area beyond the green belt, planning permission for development will be granted, provided certain conditions are met. One of these is that the countryside's character and beauty are not adversely affected. Another is that the development falls within one of a number of specified purposes; one of these is for local transport infrastructure that can demonstrate a requirement for a location in the rural area.
12. Policies DC4 and DC29 of the CSDCP seek to protect residential amenity.

¹ Appeal ref T/APP/W1525/A/95/249326/P7

National policy and guidance

The National Planning Policy Framework (NPPF)

13. The purpose of the planning system is to secure sustainable development. In practice that means development that complies with the policies in the NPPF, taken as a whole (paragraph 6). There is also a presumption in favour of sustainable development. Amongst other things, this means that where the development plan is absent, silent or out of date, permission should be granted unless the adverse impacts would significantly and demonstrably outweigh the benefits (14).
14. The core planning principles include: plan-led growth; proactively driving and supporting sustainable economic development; high-quality design; a good standard of amenity; taking account of the particular roles and character of different areas; recognising the countryside's intrinsic character and beauty; conserving and enhancing the natural environment; and managing patterns of growth (17).
15. With regard to economic growth, the NPPF states that the planning system should do everything it can to encourage such growth, and not act as an impediment. Significant weight should be placed on the need to support economic development throughout the planning system (19). In rural areas, policies should support the sustainable growth of all types of business and enterprise, including well designed new buildings (28).
16. In terms of transport, authorities should develop strategies for the provision of viable infrastructure necessary to support sustainable development, including roadside facilities for motorists. The primary function of such facilities should be to support the safety and welfare of road users (31).
17. With regard to the natural environment, the planning system should contribute to and enhance the natural and local environment. This should include protecting and enhancing valued landscapes (109).

Other guidance

18. Relevant national guidance is found in the Planning Practice Guidance (PPG), and in Department for Transport Circular 02/2013, *'The Strategic Road Network and the Delivery of Sustainable Development'*.

THE MAIN ISSUES

19. In the light of all the submissions made at the inquiry, and those made in writing, I consider that the main issues in the appeal are:
 - i) Whether the proposed development complies with the development plan policies identified above, with particular regard to:
 - The development's effects on the character and appearance of the countryside;
 - Whether the development would fall within the description of 'local transport infrastructure';
 - And whether it requires a rural location.
 - ii) The effects on the occupiers of No 1 Willow Grove.

REASONING

i) Compliance with development plan policies

The effects on the character and appearance of the countryside

20. The aim of FR Policies CP5 and DC2, and the relevant provisions of the NPPF, is to protect the countryside's character and beauty. Looking generally at the countryside to the north and west of the appeal site, the landscape comprises a gently rolling topography of large arable fields, interspersed with small woodlands, with wide, open views. In the past, much of this area was designated as an area of great landscape value, and although that designation no longer exists, it is easy to see why in general terms the local landscape should be regarded as something to be valued.
21. However, the appeal site has little in common with this attractive landscape, and little connection with it. Physically and visually, the site is a small sliver of land, separated from the surrounding farmland by roads, houses and gardens, the sub-station, and the existing tree belt. Although it can be seen to varying degrees from the surrounding roads, it is viewed only at close or close-medium range, and in none of those views does the site have anything more than a tenuous connection to the wider landscape.
22. Instead, the site's primary visual context is the A132/ B1012 highway corridor, which is essentially a self-contained landscape compartment, enclosed by buildings on one side and trees on the other. Although this corridor is included in the countryside for planning purposes, the section which encircles South Woodham Ferrers is clearly different in character from the wider countryside beyond; not only because it is dominated by the road itself and its traffic, but also because of its managed appearance, with planted landscaping and mown verges, more similar to an urban area. As such, to my mind, this part of the road corridor does not contribute to the beauty or character that the relevant planning policies seek to protect.
23. In this context, the appeal site's condition and appearance are at odds with its surroundings. Having been left over from the road construction, the site has evidently been effectively abandoned for the last 25 or 30 years, and its appearance now is overgrown and unkempt. This seems unlikely to change, given its lack of any apparent prospect of beneficial use. Its size, shape, severance, and position clearly militate against any agricultural use. As a result of these circumstances, the appeal site now contributes nothing to the character or beauty of the countryside, and indeed in my view it has a negative impact on its surroundings and the town's setting.
24. The development now proposed would replace the site's present unmanaged vegetation with hard surfacing, a canopy, a sales building, and a substantial area of landscaping. The site's present openness would be partly lost. But, for the reasons set out above, this seems to me to be a quality that provides little of any value on this particular site. Whereas, the development would also bring a more managed appearance to the site, which to my mind would be consistent with the site's immediate surroundings and the road corridor in general. Overall, it seems to me that the proposed development would be in keeping with the site's character as part of a main road corridor, and thus would not detract from the countryside's character and beauty.

25. In coming to this view, I have taken account of the concerns expressed regarding the likely need for lighting and illuminated advertising. But the Council accepts that the site's zone of visibility is limited, and any such lighting and advertising would be seen in the context of an already well-lit road junction and other lighting in the adjoining built-up area. And in any event, these matters would be controllable by means of planning conditions and advertisement consents.
26. I appreciate that the Inspector in the 1995 appeal found harm to the character and appearance of the area. But that was almost 20 years ago. At that time, the highway landscaping would still have been relatively young, and the site had yet not stood idle for two more decades, as it has now. Policies have also changed; the emphasis then was on protecting the countryside for its own sake, rather than specifically its character and beauty.
27. I note the contents of the Landscape Character Assessment (LCA) report², in which the East Hanningfield Wooded Farmland character area is seen as having a high sensitivity to change. But that refers to a much larger area, where the key characteristics include a sense of tranquillity, away from major roads. The appeal site is not representative of that characteristic. The LCA report also expresses general concerns about development on the fringes of South Woodham Ferrers. But the LCA is not policy, and does not override the FR or the NPPF. Neither of these supports an approach of giving across-the-board protection to landscape character areas, except where development would harm the countryside's intrinsic character or beauty.
28. Here, for the reasons explained, I conclude that the proposed development would have no significant adverse effects on the character or appearance of the countryside. In this respect therefore, the development would not conflict with the relevant policies of the FR, Policies CP5 and DC2, nor with NPPF paragraphs 17 or 109.

'Local transport infrastructure'

29. Where the requirement relating to the impact on the countryside is satisfied, Policy DC2's criterion (v) provides that one of the types of development for which planning permission will be granted in the rural area is for *'local transport infrastructure'*.
30. This phrase is not defined in the FR. Dictionary definitions of *'infrastructure'* vary, and are not relied on by either of the parties in this case. However, NPPF paragraph 31 gives examples of *'infrastructure necessary to support sustainable development'*, and it is common ground that these are relevant.
31. The examples given in that paragraph include *'roadside facilities for motorists'*. The Council argues that this is qualified by the words *'large scale'*, and points out that the other examples cited are larger in scale than the present appeal proposal. But the paragraph in question relates specifically to plan-making and joint working between authorities, and in that context it is only to be expected that the advice should focus on larger facilities. What is clear from paragraph 31 is that the NPPF regards motorists' facilities as capable of being transport infrastructure. I can see nothing in the NPPF that prevents this from including a facility that is similar but smaller, where the context makes that scale more appropriate, as in the appeal proposal. In the present case, Policy DC2

² Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessments, September 2006

expressly refers to '*local transport infrastructure*', and to my mind the addition of this word acknowledges that it may include facilities of a smaller scale.

32. Department for Transport (DfT) Circular 02/2013³ states at paragraph B2 that roadside facilities perform an important road safety function, by providing opportunities for the travelling public to stop and take a break in the course of their journey. The Circular itself relates specifically only to the strategic road network, which does not include the A132 or B10212, but I can see no logical reason why similar facilities on other main roads should not perform an equally important function. In my view, this supports the view that roadside facilities should be considered as transport infrastructure. I am not aware of any official policy or guidance to the contrary.
33. I conclude that, for the purposes of Policy DC2, the development now proposed falls within the provision for local transport infrastructure.

The requirement for a rural location

34. The provision in Policy DC2 criterion (v) which allows for local transport infrastructure is also linked to being able to demonstrate '*a requirement for a rural area location*'.
35. In the present case, the proposed development would serve a catchment area that includes the town of South Woodham Ferrers and the A132/B1012 route. The Council agrees that no suitable location for the development exists within the town. It follows that if such a facility were to be provided anywhere in the catchment area, it would have to be on land designated as countryside, and thus in the rural area. To this extent, it seems to that the requirement for a rural area location, in accordance with criterion (v), is not in dispute.
36. The Council contends that this is not enough to satisfy the policy criterion, because a need must also be demonstrated for the proposed development itself. Although this interpretation was initially challenged by the appellants, that is not now the case, and it is not my intention to create divisions where none already exist. But nevertheless, in determining the appeal, I must come to a view as to whether there is compliance with the development plan. And to do that, I cannot avoid having to decide what I consider to be the policy's proper meaning.
37. To my mind, the need for the development and the need for a rural location are two different things, and the wording of criterion (v) makes it quite clear that what is sought here is the latter. Nothing in the policy or its explanatory text, nor anything that has been brought to my attention in any other policy, or in the NPPF or PPG, substantiates a requirement to prove a need for the development itself. Furthermore, if the proposed development were not a petrol station, but some other form of local transport infrastructure, it is by no means clear that the same test would be applied.
38. Based on the above reasoning, my view is that the second part of criterion (v) is satisfied by having established the need for a rural area location, without further consideration of the issue of need. But be that as it may, evidence as to the need for the development was presented to the inquiry. I have therefore considered that evidence, with a view to whether it would have led me to any different conclusion.

³ Circular 02/2013, 'The Strategic Road Network and the Delivery of Sustainable Development'

39. The inspector in the 1995 appeal found that South Woodham Ferrers had a lack of motorist facilities, which could have justified an exception to the policies then in force. Since then, the evidence shows that no new petrol stations have opened in South Woodham Ferrers or on the A132 or B1012, but one has closed in Burnham-on-Crouch, and there has been a net loss of four in the A130 corridor, which connects the A132 to Chelmsford. To some extent this decline may reflect a national trend towards fewer, larger sites, but that does not necessarily mean that the trend is driven by the needs of consumers. I accept that vehicles have become more efficient over the last 20 years, but they have also become far more numerous. In any event, there is no evidence that the need for filling stations in the area has diminished since the previous appeal decision.
40. In South Woodham Ferrers itself there are two petrol stations. Beyond the town, there are no other filling stations within about a 5-7 km radius, taking account of the actual road distances. Purely in quantitative terms, this existing provision is probably adequate for the town's own needs. But equally, it could fairly be said that it is not enough to provide a good level of choice or competition. In this context it is certainly true that both of the existing facilities have significant shortcomings. The South Woodham Garage is small and antiquated, with limited opening hours, a limited range of fuels, and no HGV facilities. At the Asda site, although the food supermarket is close by, the petrol forecourt has no shop or sales kiosk, no facility for paying by cash, and no on-site staff presence for assistance or security purposes. To my mind, these are all symptoms of the lack of competition in the local market. On its own, it seems to me that the situation within South Woodham Ferrers itself does not amount to an overriding need, but it is nonetheless a relevant factor that should be taken into account in assessing the adequacy of the existing provision overall.
41. More critical, in my view are the needs of travellers on the A132 and B1012. Although this route is not classified as strategic, I saw on my visit that it is an important and well-used local route. It is included in the County Council's 'Priority 1' schedule, which is defined as carrying large volumes of high-speed traffic, through and around the County. Whilst this designation was evidently devised primarily for the purposes of highway maintenance, it does also seem to me to be indicative of the route's significance in the County context. The section that runs from the A130 to Burnham-on-Crouch has no re-fuelling facilities anywhere along the road itself until Burnham is reached. For those joining to or from the A130, the same is true as far as Chelmsford to the north, and Canvey Island to the south.
42. Travellers who are unfamiliar with the area could not be expected to know of the 'off-line' facilities within South Woodham Ferrers. Nor could they be expected readily to be able to find those facilities; certainly not without assistance, and even then perhaps also an element of luck. This is not a comfortable situation for those who might find themselves needing petrol, refreshment or other facilities during their journey. He NPPF makes it clear that these are matters of welfare and safety, which to my mind indicates the importance of adequate provision. In my view the lack of on-line, roadside motorist facilities on the A132/B1012 route represents a significant unmet need, which could be at least partly relieved by the development now proposed.

43. I note the guidance on spacing contained in Circular 02/2013, but even if that guidance applied to non-strategic roads, nothing in it would prevent the provision of a petrol station in this kind of situation, many miles from any similar on-line facility, as proposed at the appeal site. The Circular also provides further confirmation of the importance that is attached to the provision of such facilities, and particularly on-line sites, in terms of supporting road users' safety and welfare.
44. In the light of all these circumstances, I conclude that the proposed development would go some way to meeting an otherwise unmet, or inadequately met, need for a petrol station and motorist facilities in the area.
45. It follows that, irrespective of whichever interpretation of criterion (v) of Policy DC2 is preferred, the requirement for a rural area location is met.

Conclusions on compliance with countryside policies

46. For the reasons set out above, I conclude that the proposed development would leave the character and beauty of the countryside unharmed, and would constitute local transport infrastructure, with a need for a rural location. The development would therefore comply with both of the relevant development plan policies, CP5 and DC2.

ii) The effects on No 1 Willow Grove

General relationship to the appeal site

47. Although the property at No 1 Willow Grove shares a boundary with the appeal site, the dwelling itself and its domestic garden are well separated and screened from that boundary, and from the proposed development. Firstly there is the sub-station, which occupies part of the frontage alongside the dwelling. Secondly there is the wide tarmac driveway and parking area which lead to the paddock at the rear (whilst this is in the same ownership as the house, it does not appear to be part of the residential curtilage). Thirdly there are various buildings and structures within the paddock, alongside the boundary. And fourthly there is the existing tree belt, on the appeal site, which is proposed to be retained. Consequently, the dwelling and garden are not unduly exposed to any impacts from the proposed development.
48. The proposed petrol forecourt and pumps would be sited towards the further end of the site from Willow Grove. The nearest pump island would be around 50m from the house, and 40m from the nearest part of the garden. The HGV pumps would be around 5m closer, and the sales building and external compound around 10m closer. The closest part of the development would be the circulation route leading to the exit, which would pass about 25m from the house, and 20m from the garden, and alongside this there would be a parking bay for delivery vehicles.

Noise and disturbance

49. The area is subject to a significant amount of ambient traffic noise from the main road and roundabout. With the proposed development, the noisiest area would be the forecourt and pump areas, but these would be well away from the most noise-sensitive areas at No 1 Willow Grove. The sound of moving vehicles on the exit roadway would be similar in character to that of the main road traffic, and would be unlikely to be noticeable against the ambient level.

The appellants' acoustic report shows that the average noise level from the development, including moving vehicles, engines idling, and door closures, would be below this existing level. On this basis, it is suggested that the levels experienced at No 1 Willow Grove and other surrounding properties would not be significantly increased.

50. To my mind, this assessment has some limitations. It does not take account of the potential for a range of less frequent, or sudden, louder noises. These might include car radios, early-morning deliveries, the dropping of tail-gates, the use of metal trolley cages, roller shutters, metal covers, refilling of the fuel tanks, refuse bins, refuse collections, intercom systems, amplified telephones, and all manner of other incidental sounds. Whilst such additional noises would probably be sufficiently infrequent not to affect the average noise level, they could nonetheless cause disturbance and annoyance.
51. However, in the day time, given the separation distances and boundary screening identified above, it seems to me that these additional noises could be mitigated to an acceptable level by installing a 2m-high close-boarded fence. To my mind this would be a necessary precaution, which could be secured by condition. However, I see no need for the fencing to be to 'acoustic' specification, because evidence was presented that one of standard design and construction would be equally effective here.
52. At night, the situation would be rather different. The background traffic noise drops significantly, and any additional noises, such as the examples above, would be especially noticeable. Whilst it is likely that the level of activity at the proposed petrol station would be lower during the night time than in the day, it would be difficult or impossible to rule out the occasional sudden loud noise. On the appellants' own evidence, newspaper deliveries would be made at around 5am, and there is no evidence of any measures to limit the noise on these occasions. Consequently, in my view, none of the evidence currently available demonstrates that the development could take place on a 24-hour basis, as currently proposed, even with 2m-high fencing, without causing unacceptable noise and disturbance to the occupier of No 1 Willow Grove during the night time hours.
53. I accept that at the inquiry the Council's position on this point was somewhat equivocal. But theirs is not the only relevant objection. For these reasons, I consider that a condition should be imposed to prevent the proposed development from operating overnight. But that does not change my view that the proposed development could operate in the daytime without undue harm.
54. It is common ground that a condition would also be needed to control noise levels from any fixed plant or equipment. But this is a straightforward matter, and does not affect my conclusions as to the acceptability of the development or the need for a restriction on the hours of operation.
55. I conclude that there is no basis for any objection on noise grounds, other than at night. Subject to the conditions that I have outlined above, the development would not conflict with Policies DC4 and DC29 in this respect.

Lighting

56. The Council now accepts that, subject to an appropriate condition to control the details of any lighting scheme, the proposed development could be adequately

lit without causing any undue light spillage, light pollution, or other adverse lighting effects on neighbouring properties. I see no reason to disagree.

Physical presence

57. The Council argues that because the appeal site is presently undeveloped, the introduction of the proposed development would change the character of the land and thus have an adverse impact on the adjoining property due to its physical presence. I find no substance in this objection. No further comment seems necessary.

Conclusions regarding effects on No 1 Willow Grove

58. The potential effects on the adjoining property in terms of noise and lighting can be overcome by conditions. These conditions would need to include a restriction on the hours of operation, to prevent night-time operations. Subject to such conditions, no unacceptable impacts would arise. On this basis, the development would not involve any conflict with development plan policies, including Policies DC4 and DC29.

OTHER MATTERS

Highway safety

59. I note the concerns raised by local residents regarding highway safety. Safety is an extremely important matter, and I do not take these concerns lightly. However, the Fenn roundabout is laid out to modern highway standards, and there is nothing in its design that appears dangerous in any way. Willow Grove bends quite sharply at its southern end, but the signpost for the roundabout is clearly visible from a long way off, and this should act as a warning to approaching drivers to slow down. Any issues with excessive speeds or driver behaviour are matters for the Highway Authority and the Police. I can therefore see nothing inherently wrong with the appeal site as a location for a petrol station, in terms of highway safety.

60. The proposed development would have a left-in, left-out entry and exit system. This is a tried and tested arrangement, which it would be difficult to improve on here. The proposed development would be expected to attract a significant number of vehicles to the site, but most of these would be likely to be 'passing trade', and therefore would not add significantly to the volume of traffic on the road network or passing through the junction.

61. The Highway Authority has not objected to the proposed development, and I see no reason to differ.

Design

62. The original development of South Woodham Ferrers was seen at the time as a ground-breaking example of good urban planning and design, based closely on the Essex Design Guide. The design of the development now proposed would not reflect that style. But that does not make it unacceptable, especially as the Design Guide no longer has any formal policy status, in terms of the local development framework for the area.

63. In any event, in this particular location, on the edge of the town, the Guide's influence does not appear to have been strong. Indeed most of the other developments in the vicinity of the appeal site generally pre-date it. In my

view the design now proposed is appropriate to the development's function, and acceptable in its context. The Council does not object on design grounds, and I see no reason to disagree with their view.

Listed building setting

64. The development would be visible from the beer garden of the Shaw Farm pub. But the site is separated from there by the main road and roundabout. In this context the development's effect would be insignificant. The setting of the listed building would therefore be preserved.

The electricity sub station

65. I note the concerns of some residents about the safety aspects of the development in proximity to the existing sub-station and overhead cables, particularly in view of the explosion which apparently occurred there a few years ago. But issues of this kind are within the remit of the Petroleum Licensing Authority, which is a separate regime from the planning system.

CONCLUSION AND CONDITIONS

Conclusion

66. For the reasons explained above, I have concluded that the proposed development would not harm the character or beauty of the countryside, and would comprise local transport infrastructure which requires a rural area location. As such, it is a form of development that accord with, and indeed is encouraged by, FR Policy DC2. The lack of harm to the countryside also means that there would be no conflict with the related FR Policy CP5. I have also found no harm to the adjoining residential property, thus avoiding any conflict with CSDCP Policies DC4 and DC29.
67. The proposed scheme therefore complies with the development plan in all relevant respects. None of the other material considerations identified indicates any convincing reason for determining the appeal other than in accordance with these development plan policies. In these circumstances, planning law requires that permission is granted.
68. In addition, the proposed development would provide social and economic benefits and cause no environmental harm. It would therefore constitute sustainable development of the type that is sought by the NPPF.
69. My decision is therefore that the appeal be allowed. Planning permission is granted subject to various conditions, which are further explained below.

Reasons for conditions

70. The conditions are set out in full in the Schedule of Conditions which follows.
71. Condition 1 defines the time period within which the development must be commenced, to comply with statutory requirements.
72. Condition 2 requires the development to accord with the approved plans. This is imposed for the avoidance of doubt, and in the interests of proper planning.
73. Conditions 3-6 are all imposed to protect residential amenity and living conditions at No 1 Willow Grove. Condition 3 restricts the hours of operation, Condition 4 requires the installation of a boundary fence, and Condition 5 limits

noise emissions from fixed plan and equipment. All of these relate to the need to prevent unacceptable noise. Condition 6 controls the details of the external lighting. The reasons why these conditions are necessary are discussed more fully elsewhere in this decision.

74. Conditions 7 and 8 require the provision of landscaping and the retention of existing trees and hedges, and condition 9 controls the details of the materials to be used. All of these are necessary to ensure a satisfactory appearance. Condition 8 is also necessary, in conjunction with the conditions discussed above, to protect the amenities and living conditions of the adjoining property and its occupiers.
75. Condition 10 secures the provision of the parking and manoeuvring areas shown on the plans, in the interests of highway safety.
76. Conditions 11 and 12 require further details of surface water drainage and the works necessary for the installation of underground fuel tanks. These are necessary to protect the area from flooding and pollution respectively.
77. Condition 13 makes provision for an archaeological watching brief. This is necessary to ensure that any remains are properly recorded.
78. Conditions 14 and 15 prevent changes of use, to ensure that the use of the site remains in accordance with Policy DC2.
79. The other conditions suggested by the Council appear to me unnecessary. Matters relating to parking, loading and storage of materials during construction can be controlled under highways legislation, as can the deposit of mud on the highway. There is no need for further information regarding levels, because the site is flat, and the submitted plans already show the level of the proposed building and canopy in relation to ground level. I have therefore omitted these additional conditions from the schedule of conditions that I have imposed.

John Felgate

INSPECTOR

SCHEDULE OF CONDITIONS

The planning permission to which this decision relates is granted subject to the following conditions.

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall be carried out only in full accordance with the following approved plans: Location plan No 235/158/1_SLP01a; Site layout plan No 649-P001A; Finishes plan No 649-P002A; Elevations plan No 649-P003A; Floor plan No 649-P004A; and Roof plan No 649-P002A.
- 3) The use hereby permitted shall not operate, nor shall the site be open to the public or for deliveries of any kind, outside the hours of 06.00 – 23.00 on any day.
- 4) The proposed development shall not be brought into use until the boundary with No 1 Willow Grove has been fenced with close-boarded fencing to a height of 2.0m. Thereafter, the fencing on this boundary shall be retained and maintained in a good condition, and when necessary shall be replaced with new fencing of the same type and height. No other boundary walls, fences or gates shall be erected other than in accordance with details that shall have been submitted to the local planning authority and approved in writing.
- 5) Noise from any static plant or equipment associated with the development shall not exceed a level greater than 10dB below the background noise level at any off-site noise-sensitive receptor, when assessed in accordance with the guidance contained within BS4142:2014.
- 6) No external lighting to the forecourt, roadways, or other external areas of the site shall be installed or erected other than in accordance with a detailed lighting scheme to be submitted to the local planning authority and approved in writing. The scheme shall provide for lighting levels in accordance with '*Zone E2 (Rural – low district brightness)*', as defined in the Institute of Lighting Professionals' *Guidance Notes for the Reduction of Obtrusive Light, GN01:2011*. The lighting scheme shall also accord generally with the recommended specification set out in the '*Statement of Case – Lighting*', by GW Lighting Consultancy, dated December 2014.
- 7) The proposed development shall not be brought into use until a scheme of hard and soft landscaping has been submitted to the local planning authority and approved in writing. The landscaping scheme shall include details of all new tree and shrub planting, seeding, turfing and hard surfacing materials for the whole of the site, except where surface treatments are already shown on the Finishes Plan (Drawing No 649-P002A). The scheme shall also include a timetable for implementation, and all hard and soft landscaping works shall be implemented in accordance with that timetable. Any new trees or plants which die, become seriously damaged or diseased, or are removed, within a period of 5 years from planting, shall be replaced in the next planting season with others of similar size and species.
- 8) In carrying out the development, no tree or hedge on or adjacent to the site shall be cut down, uprooted or destroyed, other than in accordance with the proposals contained in the submitted '*Tree Survey, Arboricultural Impact Assessment, Preliminary Arboricultural Method Statement and tree Protection Plan*', by Haydens Arboricultural Consultants, dated 17 June 2014. No development shall take place, and no equipment, machinery or materials shall be brought on to the site, until protective fencing and ground protection have been installed around the trees and hedges to be retained, in accordance with those submitted details. The said fencing and ground protection shall be kept in place until all equipment, machinery and materials have been removed from the site. If, during the construction of the development or within 5 years from its first occupation, any retained tree or hedge is removed, destroyed or dies, it shall be replaced with a new tree or hedge, of a size and type to be specified in writing by the local planning authority.

- 9) No construction work relating to the proposed sales building or canopy shall take place until samples of the materials to be used on the external surfaces of these structures have been submitted to the local planning authority and approved in writing. The sales building and canopy shall thereafter be constructed using only the materials thus approved.
- 10) The proposed development shall not be brought into use until the proposed vehicle parking and manoeuvring areas, as shown on the approved plans, have been constructed, surfaced, sealed, marked out and made available for use. Thereafter, the parking areas shall be retained and kept available for use in connection with the development, as approved.
- 11) No development shall take place until a comprehensive scheme of surface water drainage has been submitted to the local planning authority and approved in writing. The scheme shall include details of measures to prevent the discharge of surface water onto the highway. Thereafter, the surface water drainage scheme shall be implemented in accordance with the details thus approved.
- 12) No development shall take place until full details of the proposed fuel tanks have been submitted to the local planning authority and approved in writing. The details to be submitted shall include details of the proposed excavations, tank surrounds, associated pipework, and a monitoring system, and proposals for the future maintenance of these items. Thereafter, the tanks and associated infrastructure shall be installed and maintained in full accordance with the details thus approved.
- 13) No development of any kind, including groundworks or excavations, shall take place until a detailed scheme for an archaeological watching brief has been submitted to the local planning authority and approved in writing. The scheme shall provide for the monitoring of all groundworks and excavations, and the recording of all archaeological observations. The archaeological watching brief scheme shall thereafter be implemented in accordance with the details thus approved.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other Order revoking or re-enacting that order, with or without modification), the proposed sales building shall be used only for retail purposes within Class A1 of the Town and Country Planning (Use Classes) (Amendment) Order 2015, and not for any other purpose. The sales building shall also be used only for a retail use that is ancillary to the use of the site as a petrol filling station, and not for any independent or primary retail use.
- 15) No part of the site shall be used at any time for the purposes of vehicle sales or vehicle washing or cleaning, including any use ancillary to the main use of the site for petrol sales.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Josef Cannon, of Counsel	Instructed by the Solicitor to the Council
He called:	
Ms Julie Broere	Senior Planning Officer
Mr Roger Estop	Design Manager

FOR THE APPELLANT:

Mr Brian Ash QC	Instructed by Ms Herrick
He called:	
Mr Neil Morgan	MLM Consulting
Mr Rupert Lyons	Transport Planning Associates
Mr David Allen	Allen Pyke Associates
Ms Andrea Herrick	Rapleys

OTHER INTERESTED PERSONS WHO SPOKE AT THE INQUIRY:

Mr David Bamber	Local resident
Mr John Frankland	Local resident
Mr Alan Brunning	Local resident
Ms Nichole Newman	Local resident
Ms Rosie Hurrell	Local resident
Ms Maureen Hecek	On behalf of Mrs Creasey, owner/occupier of the adjoining property
Mr Jan Angermann	Local resident
Mr John Smith	Local resident
Mr John Searle	Local resident
Mr Brian Hurrell	Local resident

DOCUMENTS TABLED AT THE INQUIRY

- 1 The appellants' list of witnesses and qualifications
- 2 Mr Ash's opening submissions for the appellants
- 3 Mr Cannon's opening statement for the Council
- 4 Draft conditions list (Including the appellants' comments)
- 5 'A Plan for South Woodham Ferrers' SPD, adopted June 2008 (extracts, tabled by the appellants)
- 6 Set of photographs showing flooding, tabled by Mr Angermann
- 7 Extract from BS4142:1997, Method for Rating Industrial Noise (tabled by the appellants)
- 8 Zone of visual influence and proposed additional viewpoint – tabled by the Council, pursuant to Mr Estop's evidence
- 9 Details of 'Fiberlite' GRP composite covers (tabled by the appellants)
- 10 Copy of comments by ECC Historic Environment Officer, dated 1 July 2014
- 11 Mr Cannon's closing submissions on behalf of the Council
- 12 Mr Ash's closing submissions for the appellants
- 13 Costs application on behalf of the appellants
- 14 The Council's response to the costs application

Costs Decision

Inquiry held on 8 -10 September 2015

Site visit made on 10 September 2015

by John Felgate BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 October 2015

Costs application in relation to Appeal Ref: APP/W1525/W/14/3001905 Land at Fenn Roundabout, Burnham Road, South Woodham Ferrers, Essex

- The application is made under the Town and Country Planning Act 1990, sections 78, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by George Martin Limited for a partial award of costs against Chelmsford Borough Council.
 - The inquiry was in connection with an appeal against the refusal of planning permission for a petrol filling station, to include a sales building, canopy, fuel pumps, boundary treatments and fuel tanks.
-

Decision

1. The application for an award of costs is allowed in part, in the terms set out below.

The submissions for George Martin Ltd

2. The application seeks a partial award of costs in respect of the Council's RR2, which related to noise and lighting.
3. On both of these matters, the appellants argue that full evidence was submitted at the application stage. On both issues, the Council's public health officer was satisfied and raised no objections. There was therefore no evidence before the Council to justify refusal on these grounds. As a result, the appellants contend that the decision to refuse based on RR2 was unreasonable.
4. With regard to noise, it is argued that the evidence produced by Ms Broere was based on a series of misunderstandings: firstly in thinking that the original assessment did not take account of peak noise incidents, and secondly in assuming that the assessment and subsequent officer advice were concerned only with statutory nuisance, not with loss of amenity. And in any event, the Council failed to support their objection on this issue with any substantial or coherent evidence.
5. With regard to lighting, although the Council withdrew their objection in April 2015, in so far as it related to the effects on the amenity of the adjoining property, yet since then they have still persisted in raising lighting as an issue, in relation to the impact on the landscape. Consequently, it is argued, the appellants still had to prepare lighting evidence. Then at the inquiry it became clear that the Council's objection on this ground was mainly about illuminated advertising, which was not a matter for the present appeal anyway.
6. In addition, there was a reference to lighting in Ms Broere's proof, which related back to the amenity issue, and although this turned out to be

unintentional, it was not corrected or clarified until the opening of the inquiry. It is argued that that this created further uncertainty regarding the Council's position, and made it necessary for the appellants' lighting witness to attend the inquiry.

The Council's response

7. The Council contends that both the noise and lighting issues relate to amenity, and thus are matters of judgement. In neither case does the Council accept that its decision was unreasonable.
8. With regard to the noise question, it is argued that Ms Broere demonstrated that she fully understood the issues. However, she gave weight to the physical presence of the proposed development, the provision for HGVs, and that the site would operate for 24 hours a day. On this basis, she considered that the development would be harmful to residential amenity, including by reason of noise. That was a judgement that she is qualified to make. It is therefore submitted that the Council's decision on this issue has been substantiated.
9. In the case of the lighting issues, the Council submits that it made the position clear in its statement of case in April 2015, and in the statement of common ground. It was clear from these that the Council did not intend to pursue the issue in terms of the impact on the adjoining property. Ms Herrick's proof for the appellants makes it clear that this was understood. On that basis, the appellants need not have produced any further evidence on the matter.
10. The reference to this issue in Ms Broere's proof was clearly just an error, being a single reference with no supporting argument. If the appellants were in any doubt, the Council suggests that they could have sought clarification. Attention is also drawn to the Planning Inspectorate's email dated 3 September 2015, which shows that the Council's position was understood by the latter.
11. As regards the question of the lighting's effect on the landscape, the Council regards that as a logical part of their overall landscape case. It is not seen as a separate issue, nor one needing specialist evidence over and above the landscape evidence that was necessary anyway.

Reasons for award

12. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another to incur unnecessary or wasted expense in the appeal process. The PPG gives examples of unreasonable behaviour where planning authorities may be at risk of an award of costs. These include: the withdrawal of a reason for refusal; failing to substantiate a refusal reason on appeal; vague, generalised or inaccurate assertions, unsupported by objective analysis; and refusing permission on grounds which could have been overcome by conditions¹.

Noise

13. With regard to noise, the Council's RR2 stated that the development would result in unacceptable noise and disturbance to No 1 Willow Grove, due to its proximity, 24-hour operations and provision for HGV lorries.

¹ PPG: ID 16-047-20140306 and 16-049-20140306

14. When it took that decision, the Council had available to it the appellants' noise assessment report dated June 2014, the public health officer's memorandum dated 1 July 2014, and the planning case officer's report. The appellants' report concluded that there would be only a minimal impact, subject to controls on fixed plant. The health officer accepted that, provided the report's recommendations were implemented, the development would be able to operate satisfactorily. The planning officer however advised that in her view the development was likely to result in unacceptable noise and disturbance 'during the quiet hours of the night', and recommended refusal on that basis.
15. The planning officer was not bound to accept the conclusions of the appellants' report, nor the advice of the health officer. But her reasons for not doing so were slender in the extreme. Indeed the reasons cited, relating only to traffic and parking, were matters that were explicitly taken account of in the appellants' report. No contrary evidence was available to the case officer, and nothing new or missing was identified that could have justified her disagreement without needing any such evidence. The officer's report did not point out this lack of any firm foundation for the recommendation made. The recommendation and consequent decision were therefore based on vague and generalised assertions, which were unsupported by objective analysis.
16. And in any event, the case officer's recommendation was entirely based on the potential for noise occurring at night. If that was considered to be the only time that the noise would justify refusal, then it should have been obvious that the harm could have been overcome by a condition restricting the hours of operation. The Council clearly failed to consider this option.
17. I appreciate that the applicants were opposed to such a condition, and might still have chosen to pursue the point in any subsequent appeal. But that was a matter for them. It should not have deterred the Council from taking the course of action that its own analysis showed to be the obvious route on planning grounds.
18. In both these respects, the Council's decision to refuse permission on noise grounds was unreasonable, and gave rise to the need to consider an unnecessary issue in the ensuing appeal.
19. In the appeal, the Council's evidence on noise was inconsistent and entirely lacking in substance. Ms Broere in her proof of evidence stated that she accepted the methodology and conclusions of the appellants' noise assessment, but then identified a number of potential noise sources which were not taken into account. She based her evidence on an assumption that the report dealt only with the question of statutory nuisance, to the exclusion of amenity, but this was clearly incorrect. She conflated the issue of noise with that of a general loss of amenity and a change in the character of the land, and concluded that there would be unacceptable harm due to the mere physical presence of the development. This case could not possibly have stood up to the most rudimentary scrutiny. The noise objection was therefore not substantiated or supported with any credible evidence.
20. Throughout the appeal process, the Council again failed to consider the scope for dealing with the issue by means of conditions. Despite prompting on several occasions at the inquiry, the Council failed to acknowledge that their objection could be overcome by a restriction on night-time operation. The Council did acknowledge that if permission were granted, there should be a

requirement for fencing to protect the adjoining property, but they failed to accept that this could mitigate the harm, even during the daytime.

21. For the reasons that I have outlined in my decision on the appeal, the appellants' noise evidence was not entirely without some weaknesses. But in the light of the oral evidence, these were not fatal to the appellants' case. In so far as the Council's evidence dealt with these weaknesses at all, it did so only tangentially, and this therefore does not change my view as to the reasonableness of the Council's position on the issue.
22. In the light of the above considerations, I conclude that the council acted unreasonably in refusing permission on noise grounds, and in persisting with that objection throughout the appeal. In doing so, they caused the appellants to produce additional evidence unnecessarily, and lengthened the inquiry beyond what should have been necessary. An award of costs is therefore due in respect of this issue.

Lighting

23. The Council's objection on lighting grounds was also included in RR2. the objection was that the development would result in unacceptable light pollution to No 1 Willow Grove.
24. This objection was withdrawn, subject to a condition, in the Council's statement of case which was submitted on 8 April 2015 and copied to the appellants the following day. The Council states that the withdrawal was prompted by the further information submitted with the appeal, including a reduction in the number of light sources, and the fact that the lighting could be automatically dimmed when a particular area is not in use. The withdrawal was also subject to the imposition of a condition requiring the approval of further lighting details
25. As the PPG makes clear, the withdrawal of a refusal reason is often a prima-facie indication that the original decision was unreasonable. In the present case the reduction in lighting units was marginal, and the information about the potential for automatic dimming systems could hardly have come as a complete surprise to the authority. In my view, the receipt of this further information did not amount to a significant change of circumstances. If the Council's original objection was so finely balanced, it should have either sought further information before determining the application, or considered whether the objection could be overcome completely by conditions. The condition now proposed by the Council could easily have been imposed at the stage when they made their original decision.
26. It therefore seems to me that the decision to include lighting or light pollution in RR2 was unreasonable. It follows that any costs incurred by the appellants on this issue, up to the date when they received notice of the Council's withdrawal, on 9 April 2015, should be recoverable by way of an award against the Council.
27. Subsequently, Ms Broere's proof erroneously referred to lighting in paragraphs 6.58 and 6.60. This was confusing, because it conflicted with the Council's stated position in its statement of case, and also with the statement of common ground agreed in May 2015. But it would have been a simple matter for the appellants to seek confirmation as to whether the Council was seeking to pursue the issue again. There is little doubt in my mind that, had they done

so, it would have been unnecessary for the appellants' lighting witness to attend the inquiry to respond to that point. The appellants' lighting proof was in any case unnecessary in view of the Council's earlier withdrawal.

28. With regard to the point about the effects on the landscape due to lighting, this seems to me to be an integral part of the Council's case on the wider landscape issue. I accept that the point was not specifically raised until Mr Estop's proof, but it was a reasonable point for him to make in the context of his evidence. Although part of his concern related to advertising which would be subject to a separate application, it was reasonable for him to assume that there would be some general lighting on the site in any event. I accept that the appellants might have considered calling their lighting witness to respond to these matters, but in the event they did not do so, and thus no costs issue arises in this respect.
29. I conclude that the Council's liability for costs in respect of this issue should be limited to the period from the date of the Council's refusal of permission up to the effective date of withdrawal of the relevant part of RR2.

Conclusion

30. I conclude that the Council acted unreasonably in refusing permission on the grounds set out in RR2, in respect of both noise and lighting, causing the appellants unnecessary or wasted costs in respect of these issues. An award of costs should therefore be made in respect of both these matters. In the case of lighting, the award should be limited to the costs incurred between 2 October 2014 and 9 April 2015.

Costs Order

31. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Chelmsford City Council shall pay to George Martin Limited, the costs of the appeal proceedings described in the heading of this decision, limited to those costs incurred in relation to Refusal Reason 2 only; and in so far as those costs relate to the issue of lighting and light pollution, the award shall be limited to the costs incurred during the period 2 October 2014 to 9 April 2015.
32. The applicant is now invited to submit to Chelmsford City Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, an application may be made to the Senior Courts Costs Office for a detailed assessment. A guidance note is enclosed.

John Felgate

INSPECTOR