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CHELTENHAM BOROUGH COUNCIL – PLANNING COMMITTEE
FAQ:

Councillor Garth Barnes (chair);
Councillor Jacky Fletcher (vice-chair);
Councillor Paul Baker
Councillor Andrew Chard
Councillor Diggory Seacome
Councillor Bernard Fisher
Councillor Colin Hay
Councillor Adam Lillywhite
Councillor Helena McCloskey
Councillor Andrew McKinlay
Councillor Klara Sudbury
Councillor Pat Thornton
Councillor Louis Savage
Councillor Malcolm Stennett
Councillor Simon Wheeler
Councillor Flo Clucas (reserve)

Your ref: 15/00321/OUT/
Our ref: CBC/CJ/160119

Reserve:

Councillor Matt Babbage; Councillor Jon Walklett; Councillor Wendy Flynn
Councillor Rowena Hay; Councillor Chris Mason; Councillor Chris Nelson;
Councillor John Payne.

SENT BY EMAIL ONLY

20th January 2016

Dear Councillor

PLANNING APPLICATION FOR MIXED USE SCHEME AT COTSWOLD BMW, TEWKESBURY ROAD, CHELTENHAM (REFERENCE: 15/00321/OUT) - FURTHER OBJECTIONS SUBMITTED ON BEHALF OF NFU MUTUAL INSURANCE SOCIETY & CANADA LIFE LIMITED

We hope you do not mind our contacting you directly in advance of the Planning Committee scheduled for this Thursday 21st January on behalf of our joint clients:

- NFU Mutual Insurance Society Limited - owners of The Brewery retail and leisure scheme in Cheltenham Town Centre; and
- Canada Life Limited - owners of Regent Arcade.

As two of the major stakeholders in the town centre our clients wish to restate their strong objections to the application by Hinton Properties (Cheltenham) Limited seeking permission for a major new mixed use retail and leisure scheme of 5,890m² gross on the existing BMW Car Dealership site, located some 1.7km from Cheltenham Town Centre in an out-of-centre location.

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For the reasons set out in our original letters to the Council dated 21st April 2015 and 21st July 2015 (see attached) both NFU Mutual and Canada Life are clear that the application proposal will result in a significant adverse impact on investor/business confidence and market/operator demand in Cheltenham Town Centre and, specifically, on their respective shopping centre assets and investments.

We have consistently advised the Council's planning policy officer - Mr Edward Baker (who we understand left the Council in December) - and their planning adviser (DPDS Consulting) that the application was contrary to paragraph 27 of the NPPF and local plan policy, and should be refused by Cheltenham Borough Council on this basis.

You will therefore understand our clients' surprise to hear through the local press that the Council's replacement planning officer has recommended in his planning committee report that the application be permitted. Our clients are particularly disappointed and frustrated that we have not been provided with the opportunity to respond to the supplementary advice recently prepared by DPDS Consulting; furthermore, we understand from the case officer that DPDS only submitted their advice last week and it has not, as yet, been posted on the Council's website for review and comment.

We are also concerned that the officer's report makes little substantive reference to our previous objections to the application on sequential and impact grounds (apart from in paragraphs 5.2 and 5.3 of his report). For these reasons, subject to Counsel's advice, our clients are seriously considering challenging the Council's decision-taking on this application.

Notwithstanding this, and turning to the key sequential and retail impact issues that you are being asked to consider at the Planning Committee on Thursday, our previous correspondence clearly sets out the reasons why we believe the application should be refused out of hand. Although we know that you will review our previous objections in detail in advance of the Planning Committee, we would nevertheless like to take the opportunity here to draw your attention to some of the key issues and considerations relevant to your assessment and determination of the application proposal.

First and foremost, there can be no doubt that allowing more retail, food and beverage and commercial leisure floorspace outside the town centre will result in a **significant adverse impact** on the overall vitality and viability of the town centre, and on existing, committed and planned public and private investment, including by our clients. In summary:

- The existing and proposed retail and leisure floorspace in this established out-of-centre location competes directly with the town centre for shoppers and trade, and for existing and new occupiers. For example, Gallagher Retail Park has recently let space to Sports Direct and Outfit, which comprises a wide range of high street brands (including Top Shop, Top Man, Warehouse, Dorothy Perkins, BHS, Evans and Wallis), as well as click-and-collect. The Council should be aware that a number of these retailers and brands had previously been identified as potential occupiers for The Brewery Phase 2 development, and their ability to take space outside the town has therefore had a **direct negative impact on our clients' letting and marketing strategy**.
- At the same time other national food and beverage operators have recently opened at Gallagher Retail Park (including Costa Coffee, Subway, Greggs and Patisserie Valerie). This means that **shoppers do not have to visit the town centre** to satisfy their shopping, food and beverage and leisure needs. The addition of new retail floorspace, a gym and food/beverage operators to the critical mass of uses in this location will further increase its attraction and reduce the need for shoppers to travel to the town centre.
- Although our clients welcome competition and choice, you will appreciate that allowing more retail and leisure floorspace outside the town centre is **not a 'level playing field'** in commercial terms. The existing and proposed out-of-centre floorspace benefits from a number of significant competitive advantages over existing and planned town centre floorspace including, for example, free parking, easy access by car and lower overhead costs for operators. As a result, the likely scenario is that retailers and leisure operators seeking space in Cheltenham will choose to locate in the out-of-centre scheme first, ahead of the new space planned for the town centre. In turn,

this will result in a significant adverse impact on operator demand and investment confidence in The Brewery Phase II extension and the town centre as a whole.

- Councillors should also be aware that no account has been taken by the applicant or Council of the **cumulative impact** of the proposal on the town centre, or the **loss of linked trips** and expenditure to other shops and businesses. This includes smaller independent businesses that depend on the footfall and linked trip expenditure generated by the larger shopping centres and national occupiers to help underpin their turnover, profitability and overall viability.
- As a result, and for the reasons set out in our April and July letters to the Council, the application proposal will bring absolutely **no benefits to the town centre in terms of linked trips, expenditure and new jobs**. Any benefits that may arise from the proposed retail and commercial leisure floorspace will flow to the existing out-of-centre facilities in close proximity to the application site; further strengthening the attraction of Tewkesbury Road to shoppers and other car-borne visitors, and increasing the cumulative impacts on the town centre. Furthermore, any jobs created by the new application proposal could be easily outweighed by the loss of jobs in the town centre through the downsizing of existing units and/or store closures.
- As you are aware, Canada Life Limited is investing millions in the **Regent Arcade** shopping centre. This includes improvements to the front entrance to the scheme and the construction of a new unit of circa 1,255m² (13,500 sq ft). TK Maxx is also an important anchor store; attracting customers to the centre and driving footfall, spend and turnover across the shopping centre and town as a whole. The unit has recently been extended by our client to provide a larger modern format unit of 3,112m² (33,500 sq ft) selling a wide range and variety of goods.
- Although we note the officer's report refers to the planning obligation offered up by the applicant to help mitigate the impact of the proposed TK Maxx store, the local planning authority should be aware that there is absolutely **no guarantee in the current rapidly-changing retail market that TK Maxx will maintain their presence in the town centre once the five year time limit expires as proposed**. Furthermore, evidence from similar agreements elsewhere suggests that TK Maxx could simply disinvest in their town centre store over the next five years and exit from the town centre. The Council will also be aware that the future of BHS - which trades from a store of 4,970m² - is also not guaranteed in the current economic climate following the sale of the 171-store portfolio in 2015.

For these reasons we maintain that the application should be refused on impact grounds in accordance with the NPPF (paragraph 27).

Turning to the **sequential test** and the comments in the officer's report, we feel it is important to restate the key issues we have previously raised in our letters of April and July 2015. In summary:

- The **Brewery Phase II** development is clearly available and suitable for the proposed development. It will provide 10,219m² (110,000 sq ft) of new retail and leisure floorspace, with the flexibility to suit a variety of retailer requirements, sizes and business models. The units in Phase II will also benefit from a highly prominent retail frontage, a 4.6 metre floor to ceiling height, with the floorspace arranged over ground and first floor level. There can be no doubt therefore that in planning and commercial terms The Brewery can accommodate the scale, format and type of retail and leisure operators identified for the application proposal.
- The mixed use development opportunity at **North Place** has an extant permission for a large quantum of Class A1 retail floorspace and Morrisons is no longer seeking to deliver a larger superstore on this site. The site is therefore available and suitable for the proposed new retail floorspace, assuming some flexibility in terms of format and scale. This is accepted by the officer's report (para 6.4.16).
- There is also over 4,676m² of **vacant floorspace in The Brewery that is immediately available for occupation**. This could easily accommodate the 3,925m² gross of Class A1 retail floorspace proposed for the out-of-centre Tewkesbury Road site.

In terms of the assessment of "**availability**", we need to correct the Officer's interpretation that it "*means whether a site is currently available*" (para 6.4.2) and their planning consultant's advice that "*retail planning is focussed on the short term*". Both the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (PPG) promote long-term planning and positive strategic visions for centres to help ensure their success and enable sustainable economic growth and provide a wide range of social and economic benefits. Policy should seek to ensure the vitality of town centres and local planning authorities should plan positively to support town centres and promote beneficial competition within and between town centres, and create attractive, diverse places where people want to live, visit and work.

In this context whilst we accept that 'Rushden Lakes' has reduced the timescales for assessing availability, it is nevertheless widely accepted that there has to be a degree of flexibility in considering when other potential sequentially preferable sites are available or likely to become available. On this point recent appeal decisions have provided clarification with regard to the issue of "**availability**", for example:

- **Land at Blackwater Shopping Park, Farnborough, Hampshire (Ref: APP/P1750/A/14/2213117), July 2014:** The Inspector concluded in his assessment of an alternative town centre site that whilst it was not available now, "*...there would appear to be a prospect of it becoming so within a reasonable period, bearing in mind that town centre sites can be more expensive and complicated to assemble*" (para 36). He concluded that "*When push comes to shove I consider that there is a reasonable likelihood of a food retailer going to the town centre site. It may be more difficult, and take longer, to develop than an out of centre site, but that is not a reason for saying that it is not suitable and available*" (para 38).
- **Royal Leamington Spa, Appeal (APP/T3725/A/14/2218334), February 2015:** The Inspector in his consideration of the appeal to sub-divide an existing out-of-centre Homebase unit to create 3/4 new A1 units that "*depending on the circumstances of the case, having to be immediately available for occupation seems somewhat too restrictive*" (paragraph 17).

In our experience the assessment of the availability of a site for development will depend on a number of factors and these have to be reasonably assessed on a case-by-case basis. It also has to be recognised that proposals are rarely brought forward at exactly the same time, and town centre schemes inevitably take longer to plan and deliver than out-of-centre schemes; particularly at the present time following the impact of the longest and deepest economic recession in living memory on developer, investor and business confidence. Given that national and local plan policy supports a 'town centre first' approach – and this has recently been reinforced by the DCLG and Ministers – it is material to the assessment of availability to consider when sites may be capable of delivering development, rather than whether they are necessarily available at the time a competing application is made.

A key consideration is also whether the site is available for the form of development proposed, rather than available to the applicant or operator. In the case, the crux of the applicant's retail planning case appears to be that TK Maxx is not prepared to open a second store in the town centre for "*fear of 'cannibalising' existing trade*" (para 6.4.10). To be clear, this is not a justification for dismissing other sequentially preferable sites out of hand, and allowing the application proposal:

- Firstly, as the Council accept, there is "*nothing within the application to establish that the development would only be viable with TK Maxx, and it is relevant that the permission (if granted) would not, as submitted, be restricted to TK Maxx – they are not the applicant*" (para 6.4.18).
- Secondly, the Council's own planning consultant (DPDS) advised in his more recent report that the Council is "*...entitled to conclude that insufficient flexibility has been demonstrated*" and "*should show considerable caution in accepting, as a matter of principle, that the requirements of specific, named retailers should attract great weight in the sequential test*" (para 6.6.3).

- Thirdly, allowing a second TK Maxx store in Cheltenham will not increase competition and choice for existing customers, as they are already served by the existing (policy-compliant) town centre store. Allowing a second store will inevitably strengthen the critical mass and attraction of out-of-centre retailing on Tewkesbury Road. It will also impact 'like-against-like' on the existing town centre store, which is also an important anchor to Regent Arcade, resulting in a reduction in trips, footfall and expenditure to the shopping centre and across the town centre.
- Fourthly, and for the reasons set out above, there is no guarantee even with the proposed agreement in place that TK Maxx will maintain their presence in the town centre after the stated 5-year period once they have secured permission for a new out-of-centre store. This has serious implications for the long term future, planning and management of Regent Arcade and the town centre as a whole.

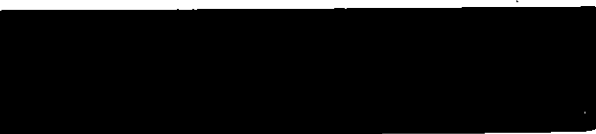
We maintain that that **DPP's sequential approach is fundamentally flawed**. They have not demonstrated sufficient flexibility when considering the potential availability and suitability of alternative sites in Cheltenham Town Centre. Our clients are clear that The Brewery (Phase I and II) is capable of accommodating the scale and type of floorspace proposed for the application site, as are other town centre development sites.

As we stated in the introduction to this letter, you can imagine our clients' surprise and frustration to hear that officers' are satisfied the proposal "passes" both the impact and sequential tests.

It is clear to our clients that any "balancing" exercise as part of the decision-making process can result in only one conclusion; namely that the application fails to satisfy the sequential test and is contrary to local and national planning policy objectives, and should be refused by the local planning authority on this basis.

Finally, NFU Mutual Insurance Society Limited and Canada Life Limited would like to thank you in advance for carefully considering their on-going objections to the application proposal, which you will understand reflect their overriding objectives to ensure the vitality and viability of the town centre and their key shopping centre assets against the increasing competition from out-of-centre and internet shopping.

Yours sincerely



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for and on behalf of Carter Jonas

cc. Tracey Crews – Head of Planning, Cheltenham Borough Council
Martin Chandler – Senior Planning Officer, Cheltenham Borough Council