



Dacorum Borough Council  
Planning and Regeneration  
Civic Centre  
Marlowes  
HEMEL HEMPSTEAD  
HP1 1HH

16 December 2015

Dear Sirs

**PLANNING APPLICATION: 4/01132/15/MOA**  
**LUCAS AEROSPACE LTD, MAYLANDS AVENUE, HEMEL HEMPSTEAD**

I refer to the above planning application that is to be considered at the Development Control Committee on 17 December 2015 and wish to object to the application on behalf of Tesco Pension Fund/Ediston Properties Ltd.

Members should recall that a planning application, submitted by Tesco Pension Fund/Ediston Properties Ltd, for 10,305sq.m of retail development at Jarman Park was refused permission by the Development Control Committee on 28 May 2015 (4/00424/15/MOA).

Despite the application being recommended for approval, there being an extant retail consent on the site and the site being allocated for retail purposes in the Development Plan, the Committee decided to refuse the application. It is of particular note that not one councillor of the committee offered to support the application/recommendation.

This application is now at appeal and is due to be considered in January 2016. The Jarman Park appeal is clearly a material consideration in the assessment and determination of the Maylands Avenue application. This is clear from the numerous references and cumulative and comparative exercises that accompany the committee report.

Indeed the weight to be given to the retail proposals at Jarman Park has recently been confirmed by the Council as Planning Authority.

Since the Jarman Park application was determined and appeal was lodged the Site Allocations Document has been subject to Focused Changes. The Cabinet approved these on 21 July 2015, thereby setting out the Council's position as Planning Authority.

The Council's Site Allocations Focused Changes document (August 2015) includes the Jarman Fields site as Proposal S/1 on the 'Schedule of Retail Proposals and Sites'. The following development is proposed:

"Acceptable uses are retail and leisure uses. Approximately 7,000 sqm (gross) of retail floorspace is acceptable, except for the sale and display of clothing and footwear, unless ancillary to the main use of an individual unit"



The Focused Changes represents the Council's views on what the adopted Site Allocations document should propose on the S/1 site. The only objection to the Focused Changes document regarding S/1 came from Tesco Pension Fund (the appellant) seeking the floorspace figure increase to approximately 10,000 sq. metres and for 'bulky' to be deleted from Table 1 in the Site Allocations document.

In the context of the above within the Statement of Common Ground submitted to the Jarman Park appeal (signed by the Council as Planning Authority), it is agreed that in relation to the Jarman Park site that *"it is highly likely that S/1 will be included in the adopted Site Allocations document, possibly with a higher floorspace (if the Inspector recommends in favour of Tesco Pension Fund's objection). Consequently, considerable weight should be given to the S/1 proposals."*

In this regard, the proposals at Jarman Park should be treated as committed development for the purposes of cumulative considerations.

In this policy context, the planning appeal at Jarman Park is a key material consideration and the main point to our objection. Whilst consideration has been given to a number of aspects of the appeal by officers and commissioned consultants, no consideration has been given to the position of the 'Council as Planning Authority'.

In this regard I specifically make reference to the Council's Statement of Case lodged on 11 November 2015 to the Planning Inspectorate in relation to the Jarman Park planning appeal. It should be understood that this Statement of Case does not represent the view of officers, it represents the view of the Council as Planning Authority and more accurately the view of the Development Control Committee. This document has been lodged to the Planning Inspectorate as the Council's stated evidence in the appeal. Its terms are therefore binding and relevant.

In particular, paragraph 2.1 of the Councils Statement of Case in relation to the Jarman Park proposal states;

*"The application proposes 10,305 square metres of retail space and this represents an increase of more than 50% of what was previously permitted at the site. This is considered to be unsatisfactory as the scale and impact of the new development is considered to potentially have a negative impact on the Town Centre, contrary to Policy CS16 of the Core Strategy."*

The Council as Planning Authority seeks to oppose the Jarman Park proposal on scale and impact on the town centre. As noted the Jarman Park proposal was for 10,305sq.m whereas the Maylands application is for 12,503sq.m. This represents an increase of over 20% over the Jarman Park proposal. As a consequence, the Maylands Avenue proposal is predicted to have a higher impact on Hemel Hempstead Town Centre than the Jarman Park proposal as confirmed by the Councils retail consultants, Peter Brett Associates (PBA).

The Council's evidence contained in its Statement of Case goes on to state at paragraph 2.8;

*"The council accept that the PBA have suggested a number of conditions to restrict the range of comparison goods sold from the development and other conditions that control the manner in which the development functions."*

*However, the proposed restrictions are not considered to be sufficient to mitigate the potential harm to vitality and viability of the Town Centre; especially considering the scale of the development."*



Further comment on the proposed conditions relating to the Jarman Park proposal are set out in paragraph 2.10;

*“In addition to this the proposed conditions restricting the scale of the sales area, the floor area and the type of goods sold, could prove difficult to enforce in practice and could be difficult to monitor and detect a contravention.”*

The Council concludes the matter with the following statement;

*“This is considered to be contrary to paragraph 206 of the National Planning Framework and fails to meet all of the six tests which states that planning conditions should only be imposed when they are enforceable and precise.”*

The above statements represent the Council’s (and in particular the Development Control Committee’s) up to date position as set out in evidence to the Planning Inspectorate. This evidence is a significant material consideration.

It clearly states that the conditions recommended by PBA and officers are not sufficient to mitigate the potential harm to the vitality and viability of the town centre. In this regard this is qualified by reference to ‘especially considering the scale of the development’.

In relation the Maylands application, PBA and officers recommend that same range of conditions as those relevant to the Jarman Park proposal but they relate to a development of larger scale.

Of most relevance is that fact that the Council as Planning Authority consider the proposed conditions to be contrary to the six tests as set out in NPF.

This statement of evidence by the Council as Planning Authority has significant legal implications in relation to the determination of the Maylands Avenue application.

Officers are asking the committee to consider accepting a retail proposal of 12,503sq.m when the committee (acting as the Planning Authority) has already stated in a public forum and as formal evidence to a planning appeal that a development of 10,305sq.m, due to its scale, will have an unacceptable impact on Hemel Hempstead Town Centre. As a result, the committee has compromised its position to accept that recommendation even if they wished to.

The conditions recommended in the committee report do not assist this situation. The conditions recommended by PBA and officers are constructed in the same way as those considered by the Council to be contrary to NPF. The Council are also in print stating that the conditions are not actually sufficient to mitigate the impact of the scale of development proposed. Again, the committee has compromised its position to accept the recommendation.

If the committee choose to refuse the application then this would be consistent with the previous decision and would be in line with their stated evidence to the Planning Inspectorate.



The committee could also choose to continue the determination of the application to await the outcome of the Jarman Park appeal. This would determine if the position adopted by the Council as Planning Authority relating to the impact on Hemel Hempstead Town Centre is supported by the Government.

In the context of the above, the committee is requested to either refuse the application, consistent with the Jarman Park decision or continue the application until the Jarman Park appeal has been decided.

Yours faithfully

A handwritten signature in black ink, which appears to read "Alex Mitchell". The signature is written in a cursive, flowing style.

**ALEX MITCHELL MRTPI**  
**Director**