

Your ref:

Our ref:

19 January 2017

Intan Keen  
Dacorum Borough Council  
Civic Centre  
Hemel Hempstead  
Herts  
HP1 1HH



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Dear Intan

**RE: Land at Maylands Avenue, Hemel Hempstead (4/03157/16/MFA)  
Review of retail planning policy issues**

Thank you for your instruction to undertake a review of the retail planning policy issues connected with a recent planning application at the above site submitted by Aviva Life and Pensions UK Limited. The application is for:

*“Hybrid application comprising: (1) A full application for the construction of 12,503 sq. m of retail (Class A1) floorspace, 545 sq. m of café/restaurant (Class A3/A5) floorspace, 180 sq. m of cafe/restaurant (Class A1/A3) floorspace, a car park with 557 spaces and associated access and landscaping works. (2) An outline application for the construction of an office (Class B1) building measuring 2,787 sq. m”*

The application is accompanied by a Planning Statement (PS), dated November 2016, and prepared by Savills (UK) Limited (‘Savills’). The PS includes the planning policy justification for the proposed retail and town centre uses. Subsequently, the applicant requested via their agents for a further relaxation of the expected controls on the goods that can be sold from the development, as set out in an email dated 15<sup>th</sup> December 2016.

The application site benefits from outline planning permission (extant permission) for ‘Construction of Retail Floorspace (Use Class A1) Measuring 12,503 sq. m, Office Floorspace (Use Class B1) Measuring 3,004 sq. m, Restaurants Measuring 650sq. m, and Associated Car Parking, Access and Landscaping Works’ (reference 4/01132/15/MOA) granted on 1<sup>st</sup> April 2016 (following a resolution to grant permission by planning committee in December 2015).

The application now under consideration by the Council is a fresh application, rather than a variation of the extant permission. Therefore, the application needs to be addressed on its own merits, although the Council should recognise when determining this application that there is an extant permission capable of implementation subject to approval of reserved matters and discharge of the necessary planning conditions. The weight attached to the extant permission will be addressed by the Council.

The extant permission is subject to a series of controls on the operation of the retail floorspace, as summarised in paragraphs 2.21 and 2.22 of the PS falling within planning conditions and a Section 106 agreement. As summarised in paragraph 5 of the Executive Summary of the PS, the key changes between the extant permission and the new application, in terms of the retail provision and anticipated controls on operation, are as follows:

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- An increase in number of retail units from six to nine
- An increase in the net sales area and the area permitted to be used for the sale of convenience goods (from 1,414 sq.m to 1,950 sq. m)
- An increase in the amount of Class A3 space from 650 sq. m to 725 sq. m
- An extension to the permitted retail use to include the sale of baby and children's clothing and maternity wear from one unit
- An extension to the permitted retail use to include the sale of pharmaceutical goods, toiletries, beauty and healthcare products from one unit (as summarised from the email dated 15<sup>th</sup> December 2016)

Irrespective of the final point, it is noted that condition 7 attached to the extant permission states that *'no retail unit shall contain a dedicated in-store post office, pharmacy, photo shop or financial services'*. The applicant has not requested for this condition to be removed or amended if planning permission is granted for the new application. This matter is addressed when this request is considered below.

Furthermore, since this is a new application, the Council is also obliged to consider all changes in circumstances. Therefore, as well as the changes to the scheme, the Council need to take into account the fact that permission has been granted on another out of centre site at Jarman Park for the *'construction of class A1 retail development (to include convenience and comparison retail floorpace and ancillary cafe) and class A3 drive-thru cafe/restaurant unit (with ancillary takeaway) together with access, car parking, service yard and associated works'*. This permission was granted on appeal on 4<sup>th</sup> March 2016. Therefore, at the time of the committee's determination of the extant permission (December 2015), the Jarman Park scheme was awaiting determination by the Planning Inspectorate.

At the time that the previous scheme at Maylands Avenue was considered by the Council, it commissioned PBA to undertake a cumulative impact assessment of the proposed retail schemes in the area, including both the extant permission on the Maylands Avenue site and, at the time, the appeal application at Jarman Park. This advice, dated November 2015, concluded in paragraph 6.3.5 that *'The results of the cumulative assessment exercise demonstrate that DBC should only support either Jarman Fields or Aviva. This is a finely balanced view and DBC will need to weigh this into the planning balance'*. Clearly, at the time, it was not within the Council's gift to determine the Jarman Park application, although it was defending a refusal at appeal on the grounds of retail impact.

It is appreciated that the potential for the Jarman Park application being granted at appeal was taken into account by the Council in its resolution to grant the extant permission in December 2015 (and included a reliance on advice on market demand from Chase & Partners). However, we would strongly advise the Council to carefully consider the situation on cumulative impact once again when determining this application, taking into account the weight it attaches the extant permission.

The applicant has chosen not to address cumulative impact in the comparison sector within the PS and instead at Appendix 14 of the PS has re-attached the original retail impact model that accompanied the application for the extant permission. It should be noted that impact exercise at Appendix 14 is not the equivalent of the cumulative impact assessment undertaken by PBA in November 2015 on behalf of the Council. Furthermore, it is understood that the decision not to address cumulative impact is due to the very small reduction in overall comparison retail floorspace compared to the extant permission. This reason does not take into account the nuances of retail impact assessment, particularly professional judgements on trade draw and diversion which are necessarily influenced by the likely retail profile of the development, which in turn is influenced by the controls and conditions which the development will operate under.



The applicant's decision not to address cumulative impact in the comparison sector is taken despite the fact that this is a new application that needs to be determined on its own merits, the fact that the Jarman Park application has now been granted and there are changes in the composition of the comparison retail floorspace proposed, which would result in different trade draw, turnover and trade diversion assumptions. Similarly, new per capita expenditure is available, as are forecast expenditure growth rates and forecasts for special forms of trading. All these factors could result in difference conclusions on retail impact and, as you are aware, PBA has always advised that the applicant should re-examine cumulative impact and omitting this analysis means that we are unable to reach judgements on whether the cumulative impact of the development, with the additional changes, is acceptable.

Furthermore, the applicant's evidence on retail impact and cumulative impact is highly misleading since in paragraph 7.19 of the PS, footnote 10, it is stated that *'the potential trading impacts of committed schemes (i.e. Jarman Park) are factored in as commitments so this does not effect the baseline data'*. This is wrong. We accept that the base shopping patterns are appropriate to use. However, the commitment modelled was in fact the previous extant permission for a bulky goods scheme at Jarman Park (now expired) and not the more recent development granted on appeal. This is misleading to the reader.

However, at this stage, the Council has instructed PBA to address only the changes in the application from the extant permission as justified within the submitted PS and subsequent email exchanges. Therefore, it is understood that the Council will consider the implications of cumulative impact in the comparison sector within its committee report, taking into account weight it attaches to the extant permission as a material consideration and its likelihood of being implemented taking into account the applicant's desire to widen the goods that can be sold in order to attract tenants.

Section 38 (6) of the Planning and Compensation Act 2004 Act states that *"If regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise"*. The development plan comprises the Dacorum Local Plan (DLP), adopted in 2004 and the Dacorum Core Strategy (DCS), adopted in 2013. An important material consideration comprises the National Planning Policy Framework (NPPF), published in 2012.

In terms of retail planning policy matters, given that the site is 'out of centre' a sequential test is required for applications for main town centres (including retail) that prioritises sites within and on the edge of designated centres. This is required by Policy 44 of the DLP, Policy CS16 of the DCS and paragraph 24 of the NPPF. The application also requires an assessment of retail impact, as required by the two policies referenced above in the development plan, as well as paragraph 26 of the NPPF. As explained by paragraph 27 of the NPPF, failure of the sequential test or evidence that there is a likelihood of a significant adverse impact on a town centre would warrant a refusal.

Addressing the sequential test first and taken into account the assessment of alternative sites as provided in Section 6 of the RS, we can agree that at the time of writing (January 2017) that the application site is sequentially preferable for the uses proposed. Therefore, the sequential test has been met.

Turning to the impact assessment, the changes to the scheme compared to the extant permission are more connected to assessments of retail impact, rather than the sequential test. Taking into account our concerns above over the lack of a cumulative impact assessment, each of the changes are addressed in turn with reference to the key passages in the PS (re-ordered so it is consistent with the order of the arguments in the PS). At the Council's request, we have also provided advice on the relevance of named retailers, before a conclusion is presented.



## **Increase in number of retail units**

The number of units will increase from six as permitted in the extant permission, to nine (representing a net increase of three units). The PS makes it clear in paragraph 7.27 that the total amount of floorspace will remain consistent and in 7.29 that the minimum unit size will remain as per the extant permission (650 sqm). Surprisingly, the PS states in paragraph 7.28 that there will a '*small net increase in the number of operators*'. Although arguably small in number, it represents a 50% increase and would result in three additional businesses. However, it is recognised that increasing the number of units does not automatically lead to an increase in turnover, since the turnover calculations are based on floorspace rather than unit. However, subject to the eventual tenant line up, the increase in number of units could result in a higher turnover than the extant permission.

The justification in the PS requesting that the Council does not include this control when determining the new application is rather limited. It appears to be contained in the analysis within paragraphs 7.30 and 7.31 setting out the scale and range of units in Hemel Hempstead and Berkhamsted town centres, with a mix of retailers. However, there is no analysis of the breakdown of the uses, the size of the units or the likely overlap in retail property offer. Furthermore, as explained above, the applicant has chosen not to update the comparison retail impact assessment. Increasing the number of units could result in different assumptions on trade draw and diversion, with a larger number of units presenting greater choice and therefore increased dwell time at an out of centre location.

It is considered that the additional units and therefore choice would have some harmful impact on the Hemel Hempstead town centre on the grounds of increasing the attractiveness of an out of centre detail destination from a qualitative perspective. Taking into account the evidence it is considered that, on its own, this harm is not so great to justify insisting that the six unit limit remains, particularly since the 650 minimum sqm threshold will not be breached and thus ensuring that the development retains its characteristics that distinguish itself from the town centre. However, the Council need to take into account all proposed changes to controls when judging whether the impact is significantly adverse or not.

## **Increase in the amount of floorspace used for the retail sale of convenience goods**

Before the increase in floorspace used for the sale of convenience goods is addressed, it is noted that in paragraph 7.33 of the PS, it is claimed that the reduction of 48 sq.m of comparison floorspace would reduce the turnover of the proposed development by approximately £0.3 million, reducing its impact on defined town centres. We advise the Council to give very limited weight to this claim.

On this basis of a £4,000 per sqm net turnover, the reduction in turnover would be £192,000 annually, somewhat lower than the £300,000 claimed by the applicant. However, at this level of difference, the changes in turnover are within the margins of a sensitivity analysis and may well be offset by, for example, the increased attractiveness of the scheme vis-à-vis the town centre due to the increased number of units, as above.

Turning to the increase in convenience floorspace, there is an increase of some 486 sqm compared to the extant permission, resulting in a total of 1,900 sqm over two units. The units in question are 1 (1,753 sqm gross) and 5 (674 sqm gross) and would represent 2,427 sqm gross in total (note this is a little higher than the figure quoted in Appendix 15 of the PS). The gross to net ratio for the two units in combination assuming the 1,900 of convenience floorspace is all found in these two units would be about 78%. This is on the high side of what we would expect for a convenience retailer and this assumes that it trades 100% convenience goods. However, if the net to gross ratio was lower, then the net floorspace would also be lower, reducing any financial impact. So this represents a worse case approach in terms of floorspace.



We would expect a foodstore to trade some comparison floorspace, with the quantum subject to the eventual operator. Therefore, when monitoring the controls on floorspace and given the condition wording attached to the extant permission, in a situation where there is comparison floorspace in convenience stores and vice versa, the Council should account for this floorspace within the overall cap for the relevant category for consistency. Given the general broadening of the goods sold by certain retailers in the UK, particularly discounters, this is an important exercise to ensure that the eventual scheme is consistent with the parameters tested within the impact assessment.

In respect of the testing the impact of the uplift in turnover of the additional convenience floorspace, an updated impact assessment has been provided at Appendix 15 of the PS, testing impact at 2021 and 2023. As explained in paragraph 7.36 of the PS, the anticipated operators are a Limited Assortment Discounter and a 'higher order, specialist operator'. Neither operator is named.

Having reviewed the quantitative methodology, we have a number of concerns over the robustness of the analysis as follows:

- It appears (although it is not clear from the PS) that the new convenience analysis has not updated the expenditure base, expenditure growth projections, population projections and simply relies upon the previous base assessment used to justify to extant permission. If we are correct and given this is a fresh application, the approach is concerning. However, the applicant should be invited to clarify.
- The importance of updating the expenditure data is important, given that the latest projections (for example in Experian's Retail Planner Briefing Note 14, November 2016) show the sector's growth either declining or flat until post 2023.
- The reduction in the assumed sales density for the floorspace from £12,000 to £10,000 per sqm net is not justified without naming the retailers. There is a rather general reference to Mintel and Verdict (2016), which is surprising since the applicant have not updated the remainder of the analysis.
- Despite suggesting the turnover would be different, the PS retains the £12,000 per sqm net turnover in Table 1 (Appendix 15) which is then translated into the assessment of impact at Tables 2 and 3.
- In tables 2 and 3, the total trade re-apportioned is 97% of the total turnover. The missing 3% is not accounted for.
- At column D, the table mistakenly entitles the percentages 'trade draw' rather than 'trade diversion'. There is no evidence of the likely trade draw of the scheme; trade draw concerns the geographical area that trade will be generated rather than the diversions from destinations (as set out in the NPPG) and helps verify the expected trade diversion.
- Without this key element of the analysis on trade draw, it is difficult to properly review whether the resultant trade diversions are reasonable. Given this exercise was undertaken in PBA's November 2015 report, it would have been straightforward to update and the differences presented.
- Similar to the approach for the comparison sector, the applicant has chosen not to update the cumulative assessment to take into account the permission at Jarman Park (and it is recommended that this is addressed, either by the applicant or by the Council in their committee report).

It is unfortunate that the applicant has not chosen to properly evidence their application or update their analysis. Given the basis of the analysis has been set out in our report from November 2015, we would have expected this scheme to replicate this approach in order to justify the applicant's changes. Furthermore, based on the evidence that has been provided, we do have some methodological concerns over the applicant's approach to assessing retail impact as outlined above. Therefore, PBA advise that the analysis is updated addressing the concerns above. It is recognised that PBA's November 2015 advice found that there would not be a harmful cumulative impact on the convenience sector from three schemes and this included a Lidl store of



some 982 sqm net of convenience floorspace. The application for this Lidl was refused and an appeal has not been submitted. Therefore, subject to the applicant undertaking the necessary analysis (bearing in mind the changes in convenience forecasts) and taking a proportionate approach to the evidence (bearing in mind it is not our role to justify the scheme), it is expected that the increase in net convenience floorspace could be acceptable.

### **Extension to the permitted retail use**

The applicant is seeking two changes to the permitted retail uses in the extant permission, requesting sale of baby and children's clothing and maternity wear from one unit and the sale of pharmaceutical goods, toiletries, beauty and healthcare products from one unit. The PS addresses only the justification for the first of these two requests, with the second addressed through email exchanges with the case officer. Each request is addressed separately.

#### Baby and children's clothing and maternity wear

Should this application be granted, the applicant is seeking a variation to the legal agreement that would also allow for the primary sale of baby and children's clothing and footwear and maternity wear from one unit at the application site. This is to enable Mothercare to trade from one of the units. It is accepted that other categories of goods sold by Mothercare can be sold from the development under the extant permission. Indeed, Mothercare could presumably lawfully trade from the unit where up to 49% can be used for the sale of clothing etc... although it is assumed an alternative tenant is being targeted for this unit.

The introduction of a second unit that can sell up to 49% clothing to enable Mothercare to trade is understood, although as explained below the Council need to consider how much weight they attach to the identity of the occupier. Irrespective of this point, the Heads of Terms set out a very specific set of clothing goods, which will only be sold by a limited number of retailers (rather than an open ended clothing permission). Furthermore, Mothercare are likely to be the main, or possibly only, candidate to operate from a store under these controls at the current time. An alternative could be Mamas and Papas from one of the smaller units.

Having reviewed the evidence, it is noted that at Table 7.3 the existing retailers within designated centres selling baby and children's clothing are listed. It is understood that both Primark and Marks and Spencer also sell children's clothing, although as part of a wider range of fashion goods. However, there is no equivalent to a Mothercare in Hemel Hempstead (i.e. selling both children's clothing and nursery equipment/toys) and this is a clear qualitative gap in shopping provision locally. It is recognised that Jojo Maman Bébé is located in Berkhamstead, but this is a much smaller store than a Mothercare and there is a price differential in its offer.

There is a suggestion in the PS that Mothercare '*cannot trade from town centre locations*'. We would dispute this point, since no evidence from Mothercare itself has been provided. However, given that Mothercare do not currently trade in Hemel Hempstead town centre, and we understand have previously closed in the town, it is accepted they are unlikely to re-open in the town centre, even if there was a unit available.

The PS also argues that the average turnover of £3,405 per sqm net for the Mothercare would be lower than the turnover assumed for the extant permission of £4,000 per sqm net. This argument is acknowledged and agreed. Therefore, taking into account the qualitative gap for this type of retailer, the fact that the existing children's clothing provision is within existing stores selling other products, the low level of turnover per sqm net vis-à-vis the turnover used in the extant permission means that we can agree that this change on its own would not cause an unacceptable impact on any designated town centres.

#### Pharmaceutical goods, toiletries, beauty and healthcare products



The request for this change is due to an interest from Boots to trade from one of the permitted units, complementing its existing store in the town centre. This request came in after the submission of the PS and therefore the use has been subject to justification through an exchange of emails with the case officer, rather than any evidenced submission. As explained below

The initial justification is rather straightforward as follows:

- The proposed use would not lead to a material uplift in the comparison turnover (an argument that the applicant conceded was incorrect – see below)
- The proposed use does not seek to increase the amount of convenience floorspace and therefore there is no impact on trip generation
- Boots can already trade from the extant permission at Jarman Park and Boots would only operate from one of the two stores

The applicant's argument that Boots could also trade from Jarman Park has little relevance. Jarman Park is a different scheme, where the Council did not determine the application. This application at Maylands Avenue needs to be judged on its own merits, rather than base what theoretically could happen elsewhere. Indeed, it could be argued that the potential for Boots to trade from Jarman Park is all the more reason to retain the control at Maylands Avenue. Furthermore, since the applicant has not decided to look at cumulative impact, the implications of potentially two out of centre stores selling these sort of products has not been examined.

Following a challenge to the turnover argument, the applicant conceded that there would be an increase in turnover per sqm net. Rather than using the published sales density for Alliance Boots, the applicant seeks to artificially deflate the level of turnover to £5,856 sq. m, using the following justification which apparently was apparently agreed at a public inquiry

*'Mintel provides a sales density for 'Alliance Boots UK' of £9,136psm at 2014. Of Boots' total UK revenue of £6.34bn for the year ending March 2014, £2.2bn of this was generated from dispensing medical prescriptions. We have therefore adjusted the published sales density to remove 90% of NHS Prescription income given it does not constitute retail expenditure. This results in a revised 2014 sales density of £5,651psm. This figure is subsequently grown by 1.8% per annum to reach a figure of £5,856psm at 2016.'*

The applicant has declined to reveal where this figure was agreed, which is somewhat surprising since they are seeking for it to be accepted by the Council. Furthermore, we consider that the analysis used to justify the deflation flawed. For example, if making an adjustment as undertaken by the applicant and when calculating a sales density, the removal of the revenue from dispensing medical prescriptions needs to be aligned with the removal of the floorspace associated with this element of Boots stores across its portfolio. Otherwise, when calculating a sales density, the total turnover is being applied to some floorspace that has no revenue associated with it, artificially reducing the turnover per sqm on average. It is somewhat puzzling for the applicant to suggest that their approach is 'worse case' when it plainly is not.

Consumer spending on medical prescriptions is retail expenditure and is spent through retail outlets. However, if we understand the applicant's argument correctly, it is saying that only 10% of expenditure on prescriptions is 'paid for' with the remainder 'free' yet funded by the NHS to Boots. It would be helpful to see the detail of this evidence to verify the claim, although the logic seems sensible and it can be agreed that this 90% (if correct) is not retail expenditure for the purposes of a quantitative retail impact assessment.



The applicant has also suggested that the figure they cite includes VAT at 15%. The percentage figure is appropriate, as some items that Boots sell will not be subject to VAT. However, it seems that the £9,136psm at 2014 cited by the applicant actually excludes VAT according to Mintel. Therefore, we are unclear whether the applicant has included VAT in their calculations to reach £5,651psm. A more detailed explanation of the overall approach to the calculation would have assisted.

In summary, we have some doubts over the validity of the applicant's calculations on turnover for Boots. However, even if they are correct, the applicant acknowledges that the turnover of Boots will be higher than the extant permission tested. Indeed, it will be significantly higher and the type of goods will directly compete with Hemel Hempstead town centre. Furthermore, even where dispensing prescriptions are free and can be discounted from a quantitative exercise, they clearly do attract footfall and represent an important retail service within a town centre. Given the importance of Boots to Hemel Hempstead town centre, we are concerned at the potential impact from loss of trade and footfall.

As explained above, there is a condition attached to the extant permission that prevents a pharmacy and it is expected that the Council will retain this condition should it grant permission for the new scheme. Therefore, Boots could only trade without a pharmacy and in our experience this is unlikely for a large store. Irrespective of this point, Boots remains an anchor in the town centre and its role is an important footfall generator for the town centre. Whilst we understand the concept of dual town centre and out of centre formats, the Council has no control to ensure this scenario happens.

At this stage, given the uncertainties above and lack of robust evidence, it is considered that the introduction of this additional use introduces an uncertainty that leads to a conclusion of a likelihood of a significant adverse impact from the development. Combined with other uses already proposed and the additional impacts above, it is considered that the Council should strongly resist this change and should maintain the ability to prevent the sale of *'pharmaceutical goods, toiletries, beauty and healthcare products'*.

### **Increase in the quantum of A3 floorspace**

There is a small increase in the quantum of A3 floorspace of 75 sqm to allow for a specific operator. Whilst we would not go so far as to suggest that this is 'de minimis', we accept in the context of the application scheme and the size of the town centre, this level of increase of A3 floorspace will not harm the town centre and therefore is not unacceptable.

### **Relevance of named retailers**

The Council have raised a query over the relevance of named retailers, and the weight they should attach to them. A planning permission will run with the land and therefore the consideration should primarily be limited to the type of retailer that could occupy floorspace. However, in certain situations, there are only a limited number of retailers that could occupy a retail unit if tightly worded controls are in place. Furthermore, a retailer's identity can often help inform conclusions on retail impact.

There are situations where a named retailer is relevant and its future intentions are relevant to the Council's judgement on retail impact, for example where that retailer has a town centre store already. Even where there is no named retailer, often the potential for retailers to relocate from the town centre is important. In such situations, there are two options in respect of potential controls. One is a 'keep open' clause to ensure that the retailer in question retains a presence in the town centre. A second is a 'no poaching' condition, where it is agreed that the scheme will not let the space to retailer that already occupies space in the town centre. Both these approaches are acknowledged as lawful planning tools to assist in mitigating retail impact. However, their





effectiveness needs to be weighed in the planning balance. As we understand matters, neither approach is on offer from the applicant.

### **Summary and conclusion**

In summary, it is recommended that the Council satisfy itself over cumulative impact (as explained on page 2 of this letter). It is agreed that the sequential test is met. In respect of retail impact, given that is acknowledged that there will be a retail impact, the question is whether the additional changes will result in the overall retail impact of the scheme being significantly adverse. Subject to the Council being satisfied over cumulative impact, and assuming that the Council is satisfied over all other matters, we conclude as follows:

- The increase in the number of units from six to nine is acceptable
- The increase in convenience floorspace could be acceptable, subject to the applicant updating their analysis as suggested in this letter
- The extension to the permitted retail use to include the sale of baby and children's clothing and maternity wear from one unit is acceptable
- The extension to the permitted retail use to include sale of pharmaceutical goods, toiletries, beauty and healthcare products from one unit is currently not acceptable

If there are any queries, please contact us.

Yours sincerely

For and on behalf of  
**PETER BRETT ASSOCIATES LLP**