

Bronte Welham

From: Amanda Scholes on behalf of Planning.Responses
Sent: 30 May 2017 09:04
To: Planning Scanning
Subject: FW: Objection A/23/15/OUT
Attachments: Objection A.25.15OUT 26.05.17Final.pdf

From: David Innes
Sent: 30 May 2017 08:18
To: Planning.Responses
Subject: FW: Objection A/23/15/OUT

The objection states the wrong reference but please upload as an objection on A/23/15/out.

thanks

David

David Innes | Planning Consultant , Strategic Development, Arun District Council | Location: First Floor, Arun Civic Centre, Maltravers Road, Littlehampton, BN17 5LF DX 57406 Littlehampton

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Save the environment - think before you print.

Sent: 26 May 2017 22:34
To: David Innes; Planning.Responses
Subject: Objection A.25.15OUT 26.05.17Final

David,

Please find attached further representations in respect of application A/25/15OUT. We wish to maintain our objection to the application and we have provided detailed comments on the two additional reports that have been submitted by the applicant.

We are keen to read the response from your retail advisor in due course.

Please do not hesitate to contact me to discuss.

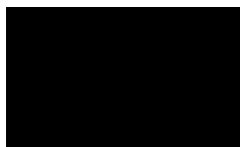
Kind regards,

Serena

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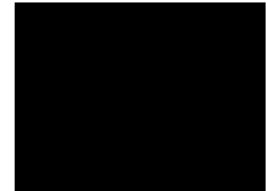
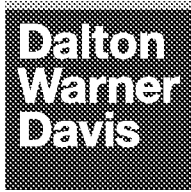


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Date: 26th May 2017
Your Ref: A/11/17/OUT
Our Ref: SP/9349B

Mr David Innes
Arun District Council
Arun Civic Centre
Maltravers Road
Littlehampton
West Sussex BN17 5LF

Dear David

OBJECTION TO A/25/15/OUT – APPLICATION AT LAND SOUTH OF NEW ROAD AND EAST OF BROOK LANE

As you are aware we submitted representations in April in respect of Application A/11/17/OUT in respect of identical retail proposals on this site. For ease of reference for the purposes of this letter we have referred to A/11/17/OUT as the 'Revised' application and A/25/15/OUT as the 'Original' application. In summary, none of the information submitted to support the Original Application addresses the concerns that we raised in our previous objection and therefore we wish to reiterate our concerns regarding this application. As far as we are aware the Council's retail consultant has not yet commented on either application and we would be very keen to read the advice of your retail consultant.

In summary we wish to continue to formally object to the application on behalf of our client Store Property Investments Limited. The application proposes out-of-centre retail development for which there is a sequentially preferable site. The proposals therefore should be refused on this basis. We also have considerable concerns regarding the Retail Impact analysis, and we await the comments of your retail auditors in this regard before providing further comments. For the avoidance of doubt our previous objections to this application remain, the purpose of this letter is to provide comments in particular on the two statements that have been submitted on 28th April 2017 to assist in progressing the original application. These documents are as follows:

Partners

A M Davis FRICS IRRV
N P Draper FRICS IRRV
N M Fennell BSc MRICS

R J Greeves BSc (Hons) MRICS
A R Holden BSc (Hons) FRICS
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- Statement on Behalf of Marks and Spencer plc dated 4th April 2017 prepared by their agents Lichfields;
- Substitute Retail Statement dated March 2017 prepared by Montagu Evans.

Statement by Lichfields

The operator statement provides more details regarding the format that M&S intends to bring to the site. In particular at paragraph 2.7 Lichfields set out a number of key criteria for site selection as follows:

- 1) They require a catchment population with sufficient numbers of higher socio-economic groups who form the majority of M&S customers;
- 2) They require a catchment and a location where there is sufficient scope to increase M&S' market share without impacting significantly on the Company's own stores
- 3) They require stores with a floor area of about 1,400 sq m gross to enable them to provide the range of goods and facilities and shopping environment that M&S customers seek and to enable them to compete with other supermarket/superstore retailers;
- 4) They need good access to sufficient surface level or at grade car parking to enable shoppers to use trolleys. While M&S do not seek to meet bulk convenience shopping needs to the same extent as the major superstore operators they do cater for shoppers wishing to buy a range of products and transport them away easily by car and need to be able to compete successfully with other supermarket/superstore retailers in doing this;
- 5) They need sites whether town centre or retail park, where the combination of the prominence, location and proximity to other retailers provides a critical mass of attraction and the opportunity for M&S to benefit from linked trips to other retailers and 'pass by' trade;
- 6) They need good accessibility for customers to complement 5 above.

While we do not disagree with any of the identified requirements of the operator, we do consider that the former Waitrose site in Littlehampton meets all of these objectives, and in many respects, particularly point 5 would better meet the site selection criteria.

We have compared the demographic profile within a 20 minute drive time of both the application site and the Former Waitrose site using Experian. The results are tabulated below for reference, however, unsurprisingly the profiles of the catchments are very similar. However, we would argue that the Former Waitrose site would better perform against the first two criteria on the basis that the site benefits not just from people living in the catchment area, but would also benefit from expenditure from workers and visitors/tourists. Were Marks and Spencer to locate in Littlehampton it would be unlikely to result in cannibalisation levels that are significantly different from the application site, and so again the town centre site is considered to pass this criteria.

Demographic Indicator	Proposed Marks and Spencer	Former Waitrose, Littlehampton
Population within 20 minute drive catchment area (persons)	242,825	219,171
Total number of households (persons)	108,737	97,943
Social Grade (persons and %)		
AB Higher and Intermediate manage/admin/prof	15,476 (21.74%)	13,618 (21.33%)
C1 Supervisory, cleric, junior manage/admin/prof	24,309 (34.16%)	21,452 (33.60%)
C2 Skilled manual workers	15,858 (22.28%)	14,152 (22.17%)
DE Semi-skilled/unskilled manual workers; on state benefit, unemployed, lowest grade workers	15,522 (21.81%)	14,623 (22.90%)
Economically Active (persons and %)		
Employed	90,954 (53.18%)	81,692 (52.94%)
Dwelling Types (dwellings and %)		
Detached	17,688 (18.06%)	16,581 (18.90%)
Semi-detached	17,611 (17.98%)	16,392 (18.39%)
Bungalow	18,221 (18.61%)	15,717 (17.63%)
Terraced	23,888 (24.40%)	20,612 (23.12%)
Flat, maisonette or apartment	20,520 (20.95%)	19,587 (21.97%)
Housing Tenure (%)		
Owner Occupied	72.11	71.94
Social Rented	9.74	9.29
Private Rented	18.15	18.77

Household Income (households and %)		
£14,999 or less	15,546 (15.87%)	14,481 (16.65%)
£15,000 - £19,999	7,847 (8.01%)	7,465 (8.37%)
£20,000 - £29,999	20,139 (20.56%)	18,518 (20.77%)
£30,000 - £39,999	16,507 (16.86%)	15,373 (17.24%)
£40,000 - £49,000	14,141 (14.44%)	12,352 (13.85%)
£50,000 - £59,000	8,400 (8.58%)	7,278 (8.16%)
£60,000 - £69,999	5,529 (5.65%)	4,962 (5.65%)
£70,000 - £99,999	6,935 (7.10%)	6,292 (7.06%)
£100,000 - £149,999	2,373 (2.42%)	2,034 (2.82%)
£150,000 or over	512 (0.52%)	405 (0.45%)
Top Three Mosaic UK 6 Groups		
E Senior Security	19.76%	19.58%
H Aspiring Homemakers	13.58%	12.51%
B Prestige Positions	8.86%	9.13%
<i>NB: Mosaic 6 UK classifies all consumers in the United Kingdom by allocating them to one of 15 groups and 66 different types. The 15 groups are different profiles using data for adults aged 16+ in the catchment areas. The groups, types and the supportive descriptive information paint a detailed picture of UK consumers in terms of their socio-economic and socio-cultural behaviour.</i>		
Population Growth (persons and %)		
Population Projection 2020	253,011	228,455
Projected Change from 2015	10,186 (4.19% increase)	9,284 (4.24% increase)
Population Projection 2025	263,524	238,113
Projected Change from 2015	20,699 (8.52% increase)	18,941 (8.64% increase)
Population Projection 2030	273,491	247,394
Projected Change from 2015	30,666 (12.63% increase)	28,223 (12.88% increase)
Population Projection 2035	283,207	256,523
Projected Change from 2015	40,382 (16.63% increase)	37,352 (17.04% increase)

In respect of requirements 3-6 it is clear that the Former Waitrose site could be adapted to facilitate the desired floor area and as a consequence M&S would be able to provide the range of goods and facilities and shopping environments that they desire. The store has access to adequate surface level car parking and there is also sufficient space for trolley parking facilities. By virtue of the location of the site within the town centre, the former Waitrose benefits from the prominence, location and proximity to other retailers which in turn provides a critical mass of attraction. We would argue that the linkages to other retailers in the town centre are better for the former Waitrose site, than the out of town location proposed. Finally the former Waitrose site benefits from good accessibility levels, both by private vehicle and sustainable modes of transport and therefore is considered to

perform well against these locational criteria also. At paragraph 2.9 Lichfields state that the proposal for Rustington falls within their target category location as follows 'smaller towns where there is no existing M&S non-food or food representation and there is the potential for a successful Foodhall store'. Littlehampton fulfils this remit in full and so again there is nothing within the Operator Statement to suggest that the Former Waitrose site would be unsuitable.

The Lichfields statement then proceeds to outline in more detail the employment and training benefits of the proposed M&S Foodhall. Whilst we do not disagree with the important planning benefits of retail jobs, we consider that these jobs could easily be accommodated within the town centre of Littlehampton, which would then have further planning benefits in terms of enhancing the vitality and viability of the town centre.

In summary we consider that there is nothing within the Lichfields statement that suggests that the Former Waitrose site is not a suitable or available alternative. On the contrary, the report clearly sets out a series of locational requirements which the town centre site is able to meet in full.

Updated Retail Statement by Montagu Evans

We do have substantial concerns with the content of the report by Montagu Evans. At paragraph 1.5 the consultants consider that there has not been a material change in circumstances locally since permission was granted that should lead the Council to reach a different conclusion in respect of the Proposal. This is a misleading statement. The decision making leading to the grant of permission was flawed and as a result of which the permission was quashed. It is not relevant to refer to the conclusion reached in relation to the Original Application. We also disagree with the view that there has not been a material change in circumstance since the previous Retail Statement. As explained later in this letter there has been a number of changes since the initial retail assessment was undertaken, and changes in case law relevant to the assessment.

For the avoidance of doubt we agree that the 2016 Retail Study is a further material consideration. However, it is clear that this retail study was commissioned by ADC in order to answer specific issues

raised by the Local Plans process and did not constitute a full update, which would potentially resolve a number of the deficiencies in the impact assessment presented by the applicant in the Original and Revised application. Both applications should be accompanied in our view by a new retail impact assessment which takes account of relevant changes to shopping patterns in the intervening period. For a scheme of this scale and importance it is surprising that the applicant has not sought to update their retail impact assessment in full, not least because the Council's review highlighted that the previous retail model was itself questionable in terms of its reliability owing to the expanse of time since the last household survey and the changes that have occurred in the town centres. It follows that the level of detail provided by Montagu Evans in their update is not considered sufficient to assess the acceptability of the retail floorspace proposed.

Below we have sought to separate our critique of the report in terms of the sequential assessment and retail impact.

Sequential Assessment

At paragraph 3.4 the consultants are clear that any permission would not be personal to M&S, and therefore it is important that the sequential test is undertaken fascia blind. Yet in spite of that the report continues to report in considerable detail the specifics of Marks and Spencer and their format requirements. A good deal of the Lichfields report is replicated in the Montagu Evans report, and we have not sought to replicate our comments above in respect of the site requirements for an M&S Foodhall.

In spite of referencing the Aldergate case at paragraph 6.5, Montagu Evans has not provided any detailed consideration of the case or its implications for the consideration of the proposal. Particularly given the relevance to the legal challenge of the Original decision, the lack of engagement with the implications of the Aldergate decision¹ is considered to be a serious omission.

¹ Aldergate Properties Ltd v Mansfield District Council and Regal Sherwood Oaks Ltd [2016] EWHC 1670 (Admin)

This decision confirms the priority to be accorded to properly understanding, interpreting and applying the sequential test in making decisions in respect of retail proposals outside of existing town centres. In particular the Judge's analysis of 'suitable' and 'available' are particularly relevant as follows:

".....In my judgment, "suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer. The area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content. Nothing in *Tesco v Dundee City Council*, properly understood, holds that the application of the sequential test depends on the individual corporate personality of the applicant or intended operator."

At paragraph 37 of the case *Ouseley J* stated "NPPG cannot therefore be interpreted as requiring 'suitability' and 'availability' simply to be judged from the retailer's or developer's perspective, with a degree of flexibility from the retailer, and responsiveness from the authority." Paragraph 38 goes on to say:

"....still less can it be interpreted as envisaging that the requirement or preferences of an individual retailer's trading style, commercial attitudes, site preferences, competitive preferences whether against itself or greater competition should dictate what sites are 'suitable' or 'available' subject only to a degree of flexibility. NPPF [23] and [24] are simply not couched in terms of an individual retailer's corporate requirements or limitations. That would be the antithesis of planning for land uses and here its default policies..."

At paragraph 6.38 Montagu Evans suggests that they have concerns over the genuine availability. We clearly disagree with this view for reasons that we have previously discussed. The applicant should in accordance with the NPPF provide an assessment and provide a firm view in this regard. Subjective concerns are not appropriate for this type of assessment. Secondly it is clear that the

former Waitrose site (in Littlehampton) is vacant, on the market, and that there has been numerous attempts to offer the unit to M&S to accommodate the proposed trading format. Agents for the landlords commented on the 'Original Application:

"we duly request that the Council gives consideration to our client's willingness to work with, and provide a realistic proposition for M&S to accommodate the retailer within Littlehampton, in a location where it would provide a positive contribution to the overall vitality and viability of the town centre in accordance with the objectives of the NPPF."

The former Waitrose site is clearly, and without doubt available for the use proposed. Arun District Council will be aware from the previous application that the landlord had objected to the proposal, clearly indicating that the site is available for occupation. In summary, there is no indication that the site is not available to Marks and Spencer. It would seem very difficult in our view to sustain an argument that the site is unavailable on the basis that it is:

- a) Vacant;
- b) Actively marketed; and
- c) Attempts have been made to contact Marks and Spencer about the opportunity that exists at the site

We are also disappointed to note that at paragraph 6.39 the consultants are still maintaining the view that there 'are significant viability issues relating to the trading location'. Waitrose has themselves confirmed in respect of the revised application that their former site is a viable one for a food store operator. For ease of reference the Waitrose comments to the Revised application were as follows:

"We strongly disagree with the comments that Waitrose in Littlehampton 'failed to operate successfully' or that the store was 'not viable' and was 'a failure' whilst it was open there. That is simply not correct. Waitrose invested a considerable sum in fitting out and moving into the Littlehampton store in 2011. The store was purpose built as a food supermarket so was physically suitable and trade well for us during this time, being connected to the Town Centre and with its own adjoining level car park. The decision to relocate to Rustington was

triggered by a significant and commercially generous incentive package from the Landlord of the Rustington Store, and was not due to performance of the Littlehampton store. We remain concerned that the proposed Simply Food store will have a significant and detrimental impact on the Rustington Waitrose store and Rustington Town Centre as a whole.”

We are pleased to see that relative to the retail evidence for the revised application, the applicant has refined their consideration in respect of the trading characteristics of the former Waitrose site. However, the report continues to suggest that Waitrose’s relocation is an indication of failure which is not the case, and this has been emphasised by Waitrose in their response to the revised application. It is also clear from the Waitrose objection to the Original Application that their trading position in Littlehampton was a viable one, in their representations, agents for Waitrose wrote to Arun District Council to emphasise the former Waitrose site as a sequentially preferable site for example:

“we share their [Ropemaker’s] concern that the applicant has failed to properly assess the suitability for the former Waitrose store in accordance with the sequential test as set out in the NPPF, particularly as the letter demonstrates that the unit is capable of being subdivided and highlight the fact that no evidence is presented to demonstrate that the unit is unviable for convenience retailing”.

This is furthermore underlined by the Council’s retail study which in its analysis of trading patterns did not contain any concerns about the future trading performance of the then Waitrose in Littlehampton. An element of under-trading compared to benchmark figures was acknowledged, however Waitrose was not singled out as significantly under-trading, and in fact was performing better compared to company averages relative to other food operators in the town centre. However, using bench-marks to assess the relative performance has limitations as acknowledged by DPDS in their study, and it is notable in this regard that the Co-Op in Rustington was shown to be under-trading to a greater extent than Waitrose. The site’s relatively long history of foodstore use is evidence of one thing, that the site is suitable for a foodstore. The lack of demand cannot be used as

evidence of the site not being suitable. Marks and Spencer appear to be the only operator with a requirement for a store of the floorspace proposed. The former Waitrose site in Littlehampton meets all of the operator requirements set out in the March 2017 Retail statement and therefore it is very easy to demonstrate that the site is suitable for the trading format proposed.

At paragraph 1.4 of the Retail Statement the applicant considers that matters of retail policy were fully considered by the Council as part of the 'Original' application. This paragraph goes on to state that "In granting planning permission the Council accepted that there are no sequentially preferable sites for the proposed foodstore..." This is plainly not the case. Arun District Council clearly acknowledged that this aspect of the application had not been properly assessed. As a consequence the Original Application' is once again a pending application and does not benefit from planning permission.

In spite of the revised Retail Statement and the statement on behalf of Lichfields, the application continues to rely on a dated board decision, and therefore cannot be said to have been taken retailer blind. The previous advice of the retail expert DPDS stated that *"it should be noted that this conclusion on sequential test only applies if M&S is the occupier and a condition restricting the occupier accordingly might be appropriate."* The sequential test continues to rely heavily on the fact that M&S had the opportunity to acquire the Littlehampton unit in 2011 and did not do so. We consider that this is not an adequate measure from which to conclude that the site is unsuitable for foodstore development.

It is clear from the Applicant's submission that the Waitrose site has not been considered seriously by M&S for at least 6 years (when the site was last available), this clearly runs contrary to the application of the sequential test. The fact that a site was discounted by a board 6 years ago, should not mean that in planning terms it is unsuitable for food retailing. It merely serves to show that insufficient flexibility and rigour has been shown in the assessment. There is no indication that the site has been re-considered, it has merely been discounted because another operator has moved to an alternative site in the same catchment area. Furthermore the evidence presented in the March 2017 report is most certainly not tenant blind. In the real world the site has been occupied by food

retailers consistently and for a long period of time and is perfectly capable of accommodating the proposed development. There would need to be considerably more evidence in our view to demonstrate that the site is not 'suitable'.

Locating a Food Hall within Littlehampton town centre would be an excellent opportunity for the centre to enhance its vitality and viability. The landowners for the site have demonstrated a desire to adapt the unit to M&S' specifications. There is strong policy support at the national and local level to direct M&S to this town centre site, and the applicant has not shown sufficient flexibility and properly considered more central sites. Furthermore the NPPG Guidance states that the potential suitability of alternative sites should be discussed between the developer and the local planning authority at the earliest opportunity. This has not been undertaken for either the 'Original' or the 'Revised' application. In the case of the 'Original' application, a number of parties with an interest in the former Waitrose site sought to engage with M&S, their agent and the Local Planning Authority regarding the site. The responses to the letters and representations were short and certainly did not represent a meaningful engagement.

At paragraph 7.3 of the Substitute Retail Statement the applicant claims that Retail Impact of 'the Original Proposal was thoroughly assessed and deemed not to be significant'. We do not agree that the strength of the retail auditor's response was so strong, in fact it was clear from the auditors response then that the cumulative impacts of the development were of cause for concern. In the overall conclusions for the 'Original' application DPDS stated:

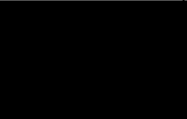
"there would be some advantages in producing a new retail impact assessment from scratch, because many of the assumptions about trade draw go back to impact assessments carried out some time ago and based on assessments which should be reviewed in the context of changes since....a new household survey which would include the trading patterns following implemented planning permission is becoming necessary to that the developments can be omitted from the cumulative impact assessment."

Importantly DPDS were not able to conclude that the cumulative impacts would be acceptable, nor that the proposed development would have a significant impact on planned investment in Rustington. On the basis of all of the contextual changes to town centres in the District, the applicant should be required to provide a full assessment of the retail impact of the proposal based on best available information, including a new household survey. There have been dramatic changes in circumstances since the assessment was first undertaken by Montagu Evans, and it is not clear why, the applicant has not sought to model the impacts of the proposal in light of the current retail context. The updates to the retail model are very limited, extending to the base and design years and the turnover of commitments. This is wholly unsatisfactory in the context of the changes in the town centre. The survey derived turnover that the applicant refers to are entirely unreliable in the current context because they were undertaken prior to a number of changes in town centres, and the opening of a number of out of centre retail facilities.

Conclusion

We would urge Arun District Council to refuse the application. The application proposals continue to be contrary to the NPPF and the development plan, and therefore our objections to the previous application continue to be relevant to this application. At the very least we would urge Arun District Council to require a revised Retail Statement to be submitted, with considerably more evidence to support their claim that the Former Waitrose site is unsuitable and unavailable for development, and with a considerably revised retail assessment based on an updated household survey. We would be grateful if you could keep us updated on the progress of this application, and also for the 'Revised Application.'

Yours sincerely,



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Partner
Dalton Warner Davis LLP

