

PINS REF: APP/W1905/W/22/3292367

LPA REF: 07/21/0519/F

APPEAL BY ALDI STORES LTD

LAND AT STURLAS WAY, WALTHAM CROSS, EN8 7BF

CLOSING SUBMISSIONS ON BEHALF OF THE APPELLANT

Introduction

1. The determinative issues in this case are comparatively straightforward. This is a proposal to make better use of an existing retail building in an existing town centre in an accessible location, which will generate jobs and investment just at a time when both are needed. The counter proposition is to resist such, otherwise obviously beneficial development, because someday in the future the site might come forward for a better use. Some cases are finely balanced, and some cases present an obvious answer – respectfully it is submitted that this falls full square into the latter category.
2. Thus, the Appellant proposes sustainable refurbishment, extension and external alterations to an **existing** ‘Use Class E’ non-food retail unit currently occupied by Homebase, to enable it to be used more efficiently and to trade as part foodstore (Aldi)

and part non-food retail unit (Homebase)¹. The appeal scheme² is modest in nature, simply the conversion and extension of existing retail unit to make way for an additional retailer in space no longer required by the existing operator, whose floorspace will half in size but will better meet their needs.

3. At the end of this inquiry, it is very difficult to discern what land use harm the LPA are seeking to avoid by resisting the Scheme. The Appellant's position, on the other hand, is crystal clear. In the medium to long-term, the proposed physical changes to the building and site are relatively minor and could not sensibly be said to prejudice a future redevelopment of the site. But, in the immediate, the appeal scheme will provide a range of obvious benefits and significant investment to the town centre.
4. It should also be noted that Aldi have expressed, through their planning witness Dan Brown ('DB'), a willingness to work with the Council to explore medium to long-term options for the Site. Sensibly, there has been no challenge to Aldi's statement of intent and co-operation which is of course in their commercial interest – ie if one day a redevelopment of the site becomes feasible, and a large scale residential redevelopment of the site is promoted with a foodstore at ground floor level – then it is in Aldi's commercial best interests to be that foodstore. If that occurs in 15 years time (as the LPA speculated in evidence) then that will be towards the end of Aldi's likely lease period of 20 years and there would be yet another strong reason for them to be involved.
5. The Council's somewhat confused approach, however seeks to promote a de facto moratorium on development and/or investment at this site, and instead assesses the appeal scheme against an unknown hypothetical mixed-use redevelopment of the site, rather than assessing the proposals against existing local and national policies which at their core seek improvement or enhancement of the existing property. This is in the context of known viability problems regarding both the hypothetical mixed-use redevelopment and other redevelopment sites

¹ Alongside works to the building itself, the scheme involves modifications to an existing external 'garden centre' (outdoor sales area), the current car parking layout, and other associated site works.

² *"Refurbishment, extension and external alterations to existing non-food retail unit to enable it to trade as part foodstore and part non-food retail unit, alongside modifications to existing external garden centre, car parking layout, landscaping and other associated site works"*.

within the town centre. A review of individual sites included in the Framework has found that the new-build residential market in the town centre faces considerable ongoing viability, ownership, availability and technical challenges³. Indeed despite the LPA's optimistic eyes, DB explains that only one modest residential scheme⁴ is actually being brought forward in Waltham Cross TC at the moment and this is on a site which has been vacant for several years and has been subject to applications for alternative uses prior to residential.

6. Site Layout Rev K makes further minor adjustments and has been accepted by the LHA and appellant in the Highways SOCG. Thus, it is accepted that the internal layout of the car park promotes safe and legible routes, to those arriving on foot, by bike or by bus, or making a linked trip to other parts of the TC. This site is unquestionably an accessible one which will be made more accessible by the improvements that will be generated by the appeal proposals.

7. The following 'big points' are worth stressing by way of initial overview:
 - (i) The conversion of buildings is more sustainable than knocking down and rebuilding;
 - (ii) Through the refurbishment of the elevations, the car park reconfigurations and additional planting the application will deliver significant improvements to the character and appearance of the building, the site, and surrounding area, viewed from the key gateway of the Sturlas Way Roundabout;
 - (iii) Through the modifications of the existing vehicle access and introduction of a new pedestrian/cycle access the application will deliver significant connectivity improvements to the means of access by car, by foot and bicycle from the surrounding area;
 - (iv) The appeal scheme will deliver a second retailer, which will generate significant additional footfall on a Town Centre site significantly increasing opportunities for linked trips (and therefore increased V&V) across the Town Centre;

³ Appx J DB

⁴ The scheme being constructed would deliver 98 units (88-102 High Street, former Embassy Cinema site).

- (v) Refusal Reason 3 related to insufficient non-car connectivity. The Council is no longer defending this;
 - (vi) Data from three separate surveys and using multiple methods of analysis which shows the proposed parking is sufficient; and
 - (vii) Refusal Reason 4 is based on the proposed parking provision being less than the local guidelines, predicated on the alleged insufficient non-car connectivity but as the council are no longer contesting non-car connectivity, they must agree that non-car connectivity is satisfactory which entirely undermines RR4.
 - (viii) Introducing increased footfall in the Northern End of the Town Centre which for years has been identified as needing improvements to achieve precisely that eventuality.
8. S38(6) of the 2004 Act, requires an overall judgment regarding whether the proposal is in accordance with the development plan taken as a whole (s.38(2)(b)). The Appellant's firm submission in closing is that this scheme is in accordance with the development plan when read as a whole and the appeal proposal should be approved without delay and the substantial planning benefits realised as soon as possible⁵.

Reasons for Refusal

9. Permission was refused for five reasons. The LPA now only defends three reasons for refusal⁶.
10. The Council's decision not to defend RfR 3 was emphatically the right decision as Tim Britton's ('TB's') evidence establishes that the appeal site is without doubt highly accessible for pedestrians, cyclists and those using public transport, given its town

⁵ As per para. 11 NPPF.

⁶ The LPA confirmed, prior to exchange and following submission of a revised noise impact assessment, that the noise impact upon the amenity of neighbouring occupants could be addressed by way of appropriately worded condition (RfR 5). This is documented in a signed Noise SoCG (CD4.5). The LPA confirmed, following exchange of proofs of evidence, that it would no longer defend reason for refusal three.

centre location and that the scheme enhances that connectivity. Data from recent surveys of pedestrian movements in and out of the existing Homebase site (TB PoE at 5.3.1- 5.3.10) clearly demonstrates that the site location and the existing internal and external connectivity appears to be attractive to pedestrian use and generates linked trips elsewhere within the Town Centre. The fact that there are presently few people walking to and from the site from the North is unsurprising, given firstly that the store is a DIY store whose trade in bulky goods makes it tricky for pedestrians to shop for other than small items and secondly, that there is presently no access to the NE point of the site onto Sturlas Way – an issue which is resolved by the appeal proposals.

11. Mr Tim Britton (TB) gives the Appellant’s highways and transport evidence, Mr Justin Griffiths (JG) gave the architectural and design evidence. Mr Daniel Brown (DB) addresses the planning evidence and the overall planning balance.

Reason for Refusal 1/ Main Issue 1: Undermining Mixed Use Comprehensive Development⁷

12. As noted in opening, the Appellant considers that three interrelated matters arise under this main issue: the interpretation of policy WC2, whether the proposal would prejudice future development and the Council’s vision for the Northern High Street Area.
13. Underlying all these points is one fundamental (and for the Council’s case, fatal) truth: there is no adopted masterplan. The Waltham Cross Town Centre Strategy (2015) is not the masterplan (MP XX). As such it follows logically, there is nothing against which to compare the appeal scheme, favourably or otherwise (MP XX and ML XX). There can be no prejudice to a masterplan which does not exist (MP XX and ML XX).

⁷ The proposed development would undermine the Council’s ability to pursue a comprehensive mixed-use development at the allocated site contrary to policies WC2, DS1, PM1, RTC2 and DSC7 of the Broxbourne Local Plan 2018 - 2033 and the Waltham Cross Town Centre Strategy (2015).

14. The Council's position is that all proposals within the Northern High Street allocation must conform to their 'vision' for residential-led mixed-use development, without qualification and irrespective of ownerships. This despite there being no adopted masterplan to guide this, no evidence to judge its realism, and no timescale for its delivery. This is not sensible and is in direct conflict with the evidence of constraints before this Inquiry and indeed before the Waltham Cross Town Centre Framework consultation.
15. DB's evidence explains that following the participation of Homebase in the Local Plan process, policy WC2 and its explanatory text were modified, at Homebase's instigation. The resultant wording recognises the Council's aspiration but explicitly requires the sort of flexibility in terms of future development of the Site that would include investing in the existing building. The other way of judging the 'flexibility' introduced into the policy is that in its rewritten form, it introduced realism that the existing building may be retained. It is the anti-thesis of the Council's stance that inward investment into the site now should be resisted because it would make the delivery of their vision harder in some unparticularised and unevicenced way.
16. The supporting text (at §11.5 of Policy WC2 (CD6.1)) requires ongoing engagement with the landlord and longstanding tenant as well as alluding to potential barriers that may prevent redevelopment (long lease constraints, for example). This engagement has taken place and will take place in the future, as DB confirmed Aldi's intention to continue engaging with the Council. But it also confirms that the intention of landlord, tenant and prospective tenant is the same – invest in the current building now, and make most efficient use of it for the foreseeable future, but remain open minded as to any future potential town centre scheme when one is realistically on the table.
17. The Town Centre Planning Framework, which is still in draft form, is evidence of this engagement. LCP and Homebase object to the framework in its current form but support the appeal scheme. In relation to the location to which the Council presently envisage relocating Homebase and Wickes – Park Plaza North (policy PP2), the site

owner, their consultants and the prospective purchaser all object to this as a proposition – a fact which disappointingly emerged in evidence rather than being led by the Council. However, this fact too seriously undermines the realism of the Council’s position that the appeal site should remain in its current state because it would affect its ability to relocate Homebase and promote its redevelopment.

18. It will be recalled that the comparator drawn up by the Council for its comprehensive redevelopment point (appx H, CD9.3) was a case involving an appeal by Sainsburys in Northwich which was said to prejudice a town centre redevelopment scheme. However, the differences between that case and this are obvious and telling. There the proposal was to create a new build extension, here it is to reuse an existing building in retail use; there, there was a draft masterplan, here there isn’t even a clue as to when a draft might be published; there, there was a development partner who had been appointed, here there isn’t any evidence of viability, let alone a procurement process to secure a development partner. In that case the scheme was much much further down the line, and yet tellingly it seems to have foundered. Here the scheme which is said to be prejudiced is little more than a ‘good idea’ to minimise green belt release, with no proper evidence of realism or deliverability. Far from making the Council’s case – that example perfectly underscores that of the Appellant.

19. The only sensible conclusion is that the site remaining in retail use trading from the existing building is the most realistic short to medium term option. The representations from IKEA to the Waltham Cross Town Centre Framework Consultation Draft (prepared by Lichfields and produced after MP XX) only serve to emphasise the point: *“We understand that Homebase has confirmed its full intention to the Council to remain at its current location at Sturlas Way in Waltham Cross town centre. Homebase fully support the Aldi appeal, as does Homebase’s landlord, London Cambridge. Homebase consider a new downsized store on its existing site the best solution to continuing its 30+ year commitment to Waltham Cross. Critically, we understand Homebase propose to remain in situ even if the appeal fails”*.

20. The draft Town Centre Planning Framework, (which is *not* the masterplan) cannot be afforded significant weight in this appeal determination as it is at a very early stage and subject to several substantive significant objections. This draft was not subject to examination at the local plan and, taken at its highest, could only ever amount to a material consideration of the most limited weight. It follows that the local policy context for the appeal site is therefore the same as the application's determination (August 2021), with no scrutinised and agreed 'masterplan' in place (DB EIC).
21. DB has, notwithstanding this, reviewed the ambitious housing growth envisaged by the draft Framework. The housing growth is not reflected in past residential completions. Further, the latest housing trajectory data (November 2021) for Waltham Cross town centre shows the pipeline of permissions is equally well below the Council's residential growth aspirations. Planning for considerable growth is a hollow exercise if there is not the market demand to facilitate viable delivery (DB EIC). Review of individual sites included in the Framework demonstrates that the new-build residential market in the town centre is not a buoyant one and faces considerable ongoing viability, ownership, availability and technical challenges (DB EIC). Even sites classified as 'medium term' have a particularly complex set of circumstances surrounding them.
22. The draft Framework's suggested time horizons for delivery are far too optimistic and not supported by any market, viability or technical evidence. The appeal site is the largest identified site in the document and would yield almost the twice the number of units as any other. The challenges associated with its delivery are therefore only magnified. It will be of course remembered that the Council had originally ascribed 300 units of delivery to the appeal site and wider WC2 allocation in the draft plan which was dramatically reduced following main mods which were needed in order to make the plan sound.
23. The 'preferred scheme' in the Framework corresponds with a mixed-use proposal presented to the Council by the LCP as part of a pre-application enquiry in early 2019. However, LCP have written to clarify that the pre-app scheme was no more than an exploration of options and was not viability tested. They are not supportive of mixed-

use development, and have been fairly forthright that they do not consent to their pre-app material being used by the Council in this way.

24. In any event, and with a large dose of irony the draft Framework recognises that the site is appropriate for a convenience store, as this is expressly identified in the 'preferred option' section. It even names Aldi as the prefeed retailer!
25. There is a difference between saying 'not now' and 'not ever'. The site might very well achieve the Council's long-term 'vision' at some point in the future. Policy WC2 allows for market forces to influence this and for the unit to remain in retail use where, as paragraph 11.5 states, this is shown to be the "*most sustainable future for the site*". Crucially, no witness for the Council was able to identify how the appeal scheme would in fact prejudice a future scheme coming forward at some later date, other than vague notions of it being 'more difficult'. This was because, as the Appellant's witnesses confirmed (JG and DB) there is nothing in this scheme which would actually prevent or prejudice a comprehensive mixed-use redevelopment in the future were such a development to become viable. The Aldi store could trade for a decade or longer before the appeal site is in a position to be redeveloped in the manner preferred by the Council, should market circumstances change.
26. It must be recalled that the physical development proposed for which planning permission is sought involves works which are minor development in nature. They involve the reconfiguration and more efficient use of an existing building. The proposal does not redevelop the entire site. The current building will continue to be beneficially occupied for retail purposes and the building will remain in retail use. The overall quantum of floorspace will be almost identical. Whilst external changes will be a significant benefit to the building's appearance, these are (much-needed) cosmetic improvements not substantial building works.
27. Homebase will continue to trade at the premises in its current form, remaining open and trading whilst works are carried out if permission is granted. Homebase benefit from a protected tenancy to extend their lease and will be doing so irrespective of appeal outcome.

28. The fallback position is also key to understanding the overall position. The building can be sub-divided without planning permission. Consent already exists for unit to sell an unrestricted range of non-food goods. It is realistic to assume that Homebase and their landlord will look to introduce second non-food retailer through internal works not requiring planning permission should the appeal scheme not proceed. Thus the fallback scenario is in reality little different for the future delivery of the WC2 regeneration vision than Aldi's introduction to the site.
29. The Council have made much of WC2's statement that *'incremental development will be resisted'*. However, as DB explained in EIC, the draft TC Planning Framework indicates that there is no objection to different applicants bringing forward different sites at different times within the WC2 allocation. The key consideration is whether a scheme would *'prejudice'* delivery of future phases. This is the planning harm that policy seeks to avoid. The Council have not articulated how minor works to existing floorspace with no impact beyond the site are, on this basis, incremental development in conflict with WC2. There is simply no prejudice.
30. Overall, there is no conflict with WC2 as the policy promotes flexibility for future development options based on engagement with landlord and tenant. The appeal proposal sits comfortably with this approach. Delivering significant residential development on the appeal site is not some 'medium-term' opportunity that with a fair wind might be delivered in the next five to ten years. All indicators point to it being a far more complex, much longer-term opportunity which, given its scale, would surely be one of the final pieces of a town centre jigsaw (DB EIC).

Reason for Refusal 2/ Main Issue 2: Connectivity, Layout and Character and Appearance⁸

⁸ The proposal presents a layout that is not considered to integrate with the town centre and fails to enhance the character and appearance of the wider area. The proposal would not support the Council's aim of

31. As an in-centre retail investment, Aldi's proposal is strongly supported by the Government's longstanding town centre first principle. Foodstores within town centres are obviously well placed to foster linked shopping trips which will in turn drive footfall and spin off trade for wider businesses in the town centre. Indeed, the Council themselves have consistently envisioned the delivery of a foodstore at the northern end of High Street through the draft Town Centre Strategy (2013). The draft Town Centre Planning Framework (2022) also shows a foodstore forming part of a residential-led development on the appeal site. The logical inference is that the Council recognises the value of such an offer to the vitality and viability of the town centre in this location. The Site is a short distance from other shops and services which comprise the pedestrianised heart of the town centre, fostering a considerable number of future linked shopping trips and spin-off trade for local businesses.
32. Indeed, the Site's '*in-centre*' location is rightly not disputed by Council. It is agreed the site is an appropriate location for a food store and that there is no breach of the sequential or impact test (ML XX). If Aldi were to try and seek permission for an out of settlement site or edge of settlement site, the inquiry was told that the Council would resist that approach. The Site is therefore a policy compliant location for the Aldi store and there is nowhere else for Aldi to go which would be policy compliant.
33. In EIC JG explained that the appeal site forms part of the town centre. The site and its proposals are integral to the town centre. The question is therefore the extent to which the proposals will enhance integration between the site and other parts of the town centre. Once the scheme is built out there will be a greater association of retail with Sturlas Way (JG Re-Ex).

improving the connectivity of the northern High Street area with the rest of the town centre. The proposal is considered contrary to policies WC2, PM1, DSC1, DSC3, DSC7 and DSC8 of the Broxbourne Local Plan 2018 - 2033 and the Waltham Cross Town Centre Strategy (2015).

34. The appeal proposals will enhance the level of integration with other parts of the town centre compared to the existing position. The site is already used as a town centre car park. JG's evidence explains that the appeal proposals will enhance integration between the appeal site and the rest of the town centre. The enhancement will provide a clearer and safer arrangement for visitors than the existing situation. Underpinning this argument is one robust premise: foodstores in town centre locations have a far greater propensity to generate linked trips and spin off trade than DIY operators.
35. The Scheme will *add* another activity point in the northeast corner of the site that also encourages sustainable modes of transport (JG EIC). It will act as an anchor in the north, just as Lidl does in the South of the town centre. The only difference being that the appeal proposals provide for a far more generous TC car park than does Lidl.
36. ML agreed in XX that the scheme offered a high-quality choice of materials designed to modernise the appearance of the building. ML's answer in XX that the appeal scheme enhances the building but not the site is, frankly, bizarre. JG's images at appendix 13 make the position very clear.
37. As JG explained in XX and EIC, buildings are static and people create movement, the appeal scheme's introduction of glazing⁹ generates activity and improves on the existing inactive quiet street frontage. The introduction of render panels increases the understanding of the building. The existing prominent northern elevation is 'dead' devoid of movement, activity or visual interest. The gateway, which is presently not inspiring or welcoming, will be improved.
38. JG's evidence also demonstrates that the application proposals enhance the building and wider site in almost every respect. The design modifications represent an improvement, as was agreed in the OR (para. 8.14, CD 3.1). The loss of embedded carbon in the built form of the building will be minimised and the repurposing and upgrading of the building will improve sustainability. The LPA proof has only really

⁹ 27m in total – as opposed to the current 9m which is barely visible from the edge of the site at present, hidden behind an ill designed conservatory style entrance, much in vogue 20 years ago.

considered one approach from the south ignoring approaches from the north, west or east (JG EIC).

39. The suggestion that people will be unable to navigate the appeal scheme shows little respect for the intelligence of visitors. The scheme will be entirely legible with clear signage and coloured paving. As the appeal scheme is built Homebase will remain operational giving people an opportunity to learn the locations of the entrance and exit. In any event, if this problem were to arise it would only be a problem for a first visit. Thereafter a visitor would know the layout.
40. In answer to XX, JG explained how the service yard was designed to meet the needs of both operators (Homebase and Aldi). In a line of questions that began to look like an overly optimistic fishing expedition (albeit without a hook at the end of the line) and did nothing to improve the quality of the Council's case it was suggested that alternative layouts ought to have been explored. As JG explained clearly, the layout is informed by the Aldi delivery model and the need to accommodate a ramp which can connect to the warehouse via a loading pod. There is nothing in this point.

Reason for Refusal 4/ Main Issue 4: failure to Address a Shortfall in Car Parking Spaces¹⁰

41. The LPA and Appellant agree that proposed site layout Revision K is accessible and connected to the rest of the town centre. The Appellant is willing to accept a planning condition based on Site Layout Plan Revision K. Further, it is agreed at paragraph 3.1 of the SoCG with HCC that location of the site will be accessible by walking, cycling and bus travel on the basis that the southbound bus stop outside 250 and 252 High Street (north of the site), will be improved with raised kerbing, the existing public footway at the north-eastern corner of the site will be widened to 3 metres, and the

¹⁰ The proposal does not adequately address the shortfall in car parking spaces at the site and is therefore contrary to policy TM5 of the Broxbourne Local Plan 2018 – 2033.

remainder of the existing public footway along the site frontage onto Sturlas Way will be widened to 2 metres, as shown on site layout plan Revision K.

42. Revision K includes:

- i. 6no. cycle hoops for Homebase (increase from 3no.)
- ii. Existing pedestrian access retained in the centre of the Sturlas Way frontage (as per Revision D) in addition to the proposed new pedestrian access at the northern end of the Sturlas Way frontage (as per Revisions D and F), and enhanced legibility of the pedestrian routes within the site.
 - i. Vehicular access width reduced (Revision K proposes 10.7m).
 - ii. The reduced width of the vehicular access results in the need for a different manoeuvre by delivery vehicles before exiting the site, a manoeuvre which is accommodated by the removal of four parking spaces (Revision F provides 155 spaces; Revision K provides 151 spaces).
 - iii. The delivery vehicle route through the site also involves a reverse manoeuvre within the car park in order to turn before exiting the site in a forward gear, via the car park aisle closest to the building.
 - iv. The manoeuvres of the delivery vehicle will be overseen by a pedestrian marshal via the Delivery and Servicing Management Plan, to be secured by condition.

43. The Council is no longer defending RfR3. The Council is therefore satisfied that the proposal *does* have the ability to encourage alternative modes of transport through enhancing connectivity to the wider town centre. As RR4 is predicated on an alleged lack of non-car accessibility and connectivity, an allegation which has now been resolved following the compromise reached under RR3, the ability to defend RR4 should also have fallen away (TB EIC and RPoE at 2.2.9 – 2.2.13).

44. The Broxbourne Local Plan parking ratios are described as “Guidelines”, rather than “Standards”, and no mention is made of maxima or minima which are sometimes present in Parking Standards documents elsewhere. The fact that they are referenced

within policy TM1 does not mean that they are to be treated as anything other than guidelines to inform the development management process from which variations supported by evidence are permissible. Under Revision K, the proposed car park of 151 spaces will have spare capacity for at least 73 vehicles (TB EIC). The guideline is 98 spaces and so there are 25 fewer spaces than the guideline number.

45. As was observed in opening, the evidence here demonstrates that a variation from the guidelines is patently justifiable.

- i. the proposed reduction in floor area of the Homebase store will itself result in a subsequent reduction in car parking demand. A pro-rata reduction would mean that the proposed 151 car parking spaces of Revision K would be 3 short of the guideline 98.
- ii. Adding the observed peak Homebase parking to the agreed TRICS-based peak Aldi parking results in a total well within the proposed parking provision.
- iii. Adding the daily parking accumulation profiles of Homebase and Aldi results in a combined accumulation well within the proposed parking provision.
- iv. More recent surveys indicate that the peak Homebase parking has reduced since the 2021 surveys on which the calculations are based; if this trend continues, there will be more spare capacity within the car park.

46. Overall, the data and analysis presented shows that a sensible balance of car and cycle parking spaces based on the nature of the proposal site context and wider surrounding area, and accessibility of shops, services and sustainable transport infrastructure, with the overall aim of reducing private car use has been proposed (as per Local Plan Policy TM 5).

47. In XX TB was challenged about his analysis of the 'Reduced Homebase Parking + Local Plan Guideline for Aldi' scenario in which TB had worked on the assumption

that 15% of the parking is for non-Homebase customers (and no linked trips between the two stores). Using the highest end of the observed pedestrian movements, which was 26.5% of the parking being non-Homebase as suggested by Mr Parkinson in XX, ultimately makes very little difference resulting in only 3 fewer spaces spare for Aldi customers. Based on the 2021 highest Homebase occupancy of 78 and on the highest observed pedestrian percentage of 26.5%, the proposed 151 spaces would have 92 spare spaces, which is 6 short of the guideline 98 (3 fewer spare spaces than calculated in TB PoE)¹¹. Based on the 2022 highest Homebase occupancy of 70 and on the highest observed pedestrian percentage of 26.5%, the proposed 151 spaces would have 98 spare spaces, which matches the guideline 98¹². This is 3 fewer spare spaces than stated in TB RPoE at 2.3.27.

48. In any event all of this analysis goes nowhere. The harm the LPA identify is overspill car parking somewhere else in the town centre notwithstanding the fact that the Council's highway department have not objected to the appeal scheme on the basis that there would be dangerous parking on the highway, or on any other rational basis. The evidence presented by TB demonstrates that there is no realistic prospect of overspill parking, but even if there was then frankly so what? The jointly prepared town centre car park plan demonstrates that in the unlikely situation where customers find the Aldi/Homebase carpark full there are several reasonably priced nearby alternatives at their disposal – the Town Centre Strategy in 2015 said that there was plentiful reasonably priced car parking in the town centre and the Council's witness said in terms that he had no reason to think that this had changed since then. These alternative car parks are within the town centre and only a short walk from Aldi. There is plentiful parking nearby at a reasonable price and there is simply no good reason to conclude that overspill parking on the road in a manner which is anti-social or dangerous, will occur. AP's point that the Appellant hadn't led evidence to the effect that such car parking would actually be available was both in defiance of his own witness' concession as

¹¹ See TB PoE paras 6.5.9 – 6.5.15.

¹² See TB RPoE paras 2.3.20 – 2.3.27.

well as common sense. As with so much of the Council's case AP was left to construct forensic bricks from a rather bedraggled pile of evidential straw.

49. Ultimately, even on the 'worst case scenario' put in XX of TB, there is simply no parking issue that would come close justify a reason for refusal for bringing a town centre use into a town centre.

Overview of the RfR

50. The reasons for refusal have not stood up to scrutiny once the evidence has been tested at inquiry. They are not well founded.

51. To be clear, the Appellant considers that the Council has behaved unreasonably in defending these poorly substantiated reasons for refusal. The decision to continue defending reason for refusal 4 which is predicated on inadequate car parking provision in a context of alleged non-car connectivity whilst not defending reason for refusal 3 (alleged insufficient non-car connectivity) stands out as a particularly problematic approach. The Council has not been able to articulate any proper case about harm from overspill parking. The Council's approach to WC2 is unreasonable in that it is not founded on evidence, a proper interpretation of policy and would act to stymie development in the town centre. Perhaps the best indication of the difficulty of the Council's approach was when in XX MP was forced to accept that all of the significant benefits of the appeal scheme were an insufficient basis upon which to conclude that permission should be granted. This was, of course, in the absence of any objectively reasonable belief that the aspiration of a mixed-use residential scheme was to be realised any time soon or at all and in the face of clear evidence that such an aspiration was not viable. The best guess that could be offered was perhaps 10 to 15 years time, which simply underlines that this scheme should have been embraced and not resisted.

52. Thus, whilst the Appellant is of the view that there is a solid basis for a substantive costs application in the present case, no such application is made. This decision has

been made because the Appellant wants to foster a good working relationship with the Council going forward and as a gesture of goodwill.

Identification of Benefits/ Harms

53. As noted in opening and now emphasised in closing, the significant benefits of the Scheme are central to the Appellant's case for the grant of planning permission:

Town Centre Benefits

- i. As a popular brand, Aldi offers a new retail anchor at the northern end of Waltham Cross town centre in a 'gateway location' visible to those on foot and using the highway network, bringing new visitors / spend.
- ii. All key metrics suggest that this is a location that will foster linked trips (i.e. in-centre location, ease of linkages, ped movement data, Aldi offer, academic research, etc.)

Consumer Choice / Competition Benefits

- iii. The UK is currently facing a '*cost of living crisis*', the long-term economic effects of which are unclear. Aldi is a LAD retailer and the UK's lowest-priced supermarket. A new Aldi will increase consumer choice in the town centre.
- iv. The town centre Lidl and Sainsbury's are 'overtrading'. This means that there is no current incentive for these retailers to be competitive with their local pricing structures. Aldi will help to reduce 'overtrading' and redistribute to another, accessible town centre location. This will increase competition in the town centre.
- v. The presence of a new Aldi should promote fresh investment by Lidl / Sainsbury's in their existing town centres stores and / or more competitive local pricing structures to avoid losing market share to Aldi. This will benefit local consumers by keeping costs low in context of an uncertain economy.

Job Creation/ Retention

- vi. The creation of 40-50 quality full and part-time jobs at Aldi. Aldi is the UK's highest paying supermarket with rates of pay that exceed the national and 'real' living wage.
- vii. The retention of existing, important local jobs at the Homebase store (30 jobs).
- viii. The scheme would also support construction jobs, albeit only for a temporary period.
- ix. Indirect jobs through services supporting the new store.

Economic Investment

- x. The Appeal Scheme will boost the local economy and will assist in attracting further investment to the settlement.
- xi. The overall economic value of Aldi's investment in Waltham Cross is anticipated to be in the order of £4.5m.
- xii. The retailer's introduction will also facilitate a considerable investment by Homebase by relaunching their existing store.

Sustainability/ Environmental Benefits

- xiii. The Appeal Scheme is consistent with NPPF principles supporting the use of suitable brownfield land in existing settlements and in promoting a more efficient use of land / buildings, particularly in sustainable locations such as town centres.
- xiv. Aldi will offer provision of four car parking spaces that are equipped with EVCPs. Below ground infrastructure will be put in place to add up to a further 16 EVCPs in the future.
- xv. The Appeal Scheme will provide proportionate and sufficient internal and external connectivity improvements for cyclists and pedestrians, alongside improvements to promote the use of public transport.

- xvi. The proposed customer car park will operate as a town centre car park (where linked shopping trips can start and end).

Planning Balance

54. The appeal scheme complies with the development plan and should be approved without delay. The suggestion that the scheme is preventing mixed use comprehensive redevelopment of the Site is not credible. The works cannot predetermine future outcomes because the town centre's development strategy remains indeterminate. There is no masterplan let alone one which has the buy in of key stakeholders and landowners and is backed by a development partner. Residential-led form of development on the appeal site, if achievable, is at best many many years away.
55. The minor form of works proposed to an existing retail unit will result in no identifiable 'harm' to much longer-term Local Plan development aspirations.
56. In any event, as DB set out in EIC, the immediate-term social and economic benefits of the application proposals for the town centre should be given substantial weight (in-centre location, linked trips, consumer choice benefits, jobs (new and retained), site improvements, connectivity improvements, free TC car park, etc.). These significant social, economic and sustainability/ environmental benefits demonstrably outweigh any harm asserted by other parties.

Conclusion

57. The planning balance is clearly in favour of granting consent for this sustainable scheme and it is firmly submitted that this should be the outcome of this appeal.

Paul G Tucker QC

Constanze Bell

25th July 2022

KINGS CHAMBERS

MANCHESTER – BIRMINGHAM – LEEDS