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ONE CHAPEL PLACE

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YOUR REF: 17/02896/FUL

OUR REF: J0010581

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12 September 2018

Dear Mr Fox

## **PLANNING APPLICATION FOR CLASS A1 (RETAIL) STORE YEOVIL ON THE OLDS GARAGE SITE, SHERBORNE ROAD, YEOVIL (REFERENCE: 17/02896/FUL): FURTHER REPRESENTATIONS ON BEHALF OF BE YEOVIL BV**

1. This letter has been prepared by Carter Jonas ('CJ') on behalf of BE Yeovil BV, the owners of the Quedam Shopping Centre in Yeovil. It should be read alongside our previous letters (submitted to the Council in August 2017 and June 2018) objecting to the full planning application by Marlin Land (Yeovil) Limited (the 'applicant') for a new Aldi store on the former Olds Garage Site off Sherborne Road. The applicant is specifically seeking permission for, a new single-storey retail store in an out-of-centre location<sup>1</sup> with a gross (internal) area of 1,743 sqm (1,254 sqm net), to be served by 104 surface-level parking spaces and a dedicated service yard. This letter seeks to update and reinforce our previous objections, and to help inform the Council's decision-taking in this case.
2. As the Council will be aware, our most recent representations dated 12<sup>th</sup> June 2018 presented robust and comprehensive evidence<sup>2</sup> on behalf of our client, and in support of the advice of the Council's own Spatial Policy Officer (dated 30<sup>th</sup> April 2018), that there are suitable sites/premises currently available in the town centre that could accommodate the application proposal; assuming reasonable flexibility on issues such as format and scale. On this basis we advised the Council that the application clearly fails the sequential test and is contrary to Local Plan Policy EP11 and the NPPF. It should therefore be refused on this basis.
3. Further to this we also advised the Council in our June 2018 letter<sup>3</sup> that the proposed Aldi will have a significant adverse impact on the vitality and viability of Yeovil Town Centre, and specifically on our client's existing and planned investment for the Cattle Market site and the letting of the former BHS unit in the Quedam Centre. Allowing Aldi would effectively remove a potential key tenant for both sites, and would undermine the overall viability and deliverability of the Cattle Market site for a foodstore-led mixed use

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<sup>1</sup> By way of clarification the 2018 NPPF (Annex 2) defines edge-of-centre for retail purposes as a location that is well connected to, and up to 300 metres from, the primary shopping area (PSA). Out-of-centre is defined as a location that is not in or on the edge of a centre, but not necessarily outside the urban area.

<sup>2</sup> Refer to paragraphs 10-29 of CJ's letter dated 12 June 2018.

<sup>3</sup> Refer to paragraphs 30-44 of CJ's letter dated 12 June 2018.

scheme. The application should therefore also be refused by the Council on the basis of its significant adverse impact on existing and planned investment in the town centre.

4. Since we submitted our representations in June 2018 the Government has issued an update of the *National Planning Policy Framework* ('NPPF') in July 2018. Although the revised NPPF replaces the 2012 NPPF, it maintains and strengthens the '*town centre first*' policy approach that has been in place since the mid-1990s. Furthermore the changes to the wording in Section 7 of the NPPF aimed at '*ensuring the vitality of town centres*' provide even stronger justification for the refusal of the application proposal on both sequential and impact grounds. The new NPPF is therefore highly material to the Council's overall review, assessment and determination of the Aldi application.
5. Against this background the following is intended to provide further information, where we consider it is needed, to help inform the Council's decision-taking in this case.

### Sequential Test

6. In terms of the sequential test, paragraphs 86 and 87 of the 2018 NPPF state:

*"Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.*

*When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored." (text underlined represents new wording and did not appear in the 2012 NPPF).*

7. The 2018 NPPF therefore differs from the 2012 NPPF in a number of respects that are highly material to the Council's assessment and determination of the application proposal.
8. Firstly, paragraph 86 allows for greater flexibility in assessing the **availability** of sites than the 2012 NPPF (paragraph 24) as it clarifies that only if suitable town and edge-of-centre sites are not available "or expected to become available within a reasonable period" should out-of-centre sites be considered. The reference to a "*reasonable period*" means that sites/buildings do not need to be available "*immediately*" for occupation/development (i.e. at the time the application is made). This is also supported by the Tollgate decision where the Inspector concluded that: "*...depending on the circumstances of the case, having to be immediately available for occupation seems somewhat too restrictive*" (IR, para 17)<sup>4</sup>. This interpretation was further underlined by the Inspector at the recent Hull appeal inquiry<sup>5</sup>.
9. Secondly, and as highlighted above, although paragraph 87 maintains the need for applicants and local planning authorities to demonstrate **flexibility** on issues such as format and scale (as was stated in paragraph 24 of the 2012 NPPF), it now goes on to clarify that this is "*...so that opportunities to utilise suitable town centre or edge of centre sites are fully explored*". This revised wording, and the specific reference to the consideration of sites (plural) rather than site (singular) confirms the view that "*disaggregation*" remains an important part of the sequential test and should be applied on a case-by-case basis. This view is underlined by recent appeal and call-in decisions. For example, the Tollgate

<sup>4</sup> 'Tollgate Decision' - (S78) relating to new retail, leisure and mixed use scheme on land at Tollgate Village, Tollgate West, Stanway, Colchester, Essex (APP/A1530/W/16/3147039) (4th August 2017).

<sup>5</sup> 'Hull Decision' - (S78) relating to new Class A1 retail and A3/A5 totalling 11,148 sqm GIA on land at Kingswood, Hull (APP/V2004/W/17/3171115). See Inspector's Decision, paragraphs 58-59.

(Colchester) Inspector concluded that there “...is nothing in the PPG that suggests that sub division is not to be considered. Indeed, sub division was considered in the Dundee case itself” (paragraph 12.3.10). The Hull Inspector also concluded that although disaggregation is not explicitly referred to in current national policy (i.e. the 2012 NPPF at the time of his decision), neither is it explicitly excluded (paragraph 54). This more flexible approach is also supported by other decisions, including Exeter<sup>6</sup>, where the SoS agreed with the Inspector’s conclusion and refused the application for a mixed use development. In this case the appellant had argued that the alternative site could not accommodate the proposed access road, parking or the drive-through aspect of the proposed restaurants. In his conclusions the Inspector found that the configuration of floorspace needed “would be no more than showing reasonable flexibility” (para 11.32) and it would be “unreasonable” to insist on the same requirement for parking and access in a town centre, as the town has ample parking, service roads and excellent links to public transport (para 11.33). Furthermore, in the often quoted Rushden Lakes decision the Inspector in this case also concluded that it was reasonable when assessing “flexibility” to consider: “...flexibility in a business model, use of multi-level stores, flexible car parking requirements or arrangements, innovative servicing solutions and a willingness to depart from standard formats” (para 8.49)<sup>7</sup>.

10. Therefore, based on the 2018 NPPF and recent inquiry decisions, it is clear that the consideration of sites in town and edge of centre locations as part of the sequential test does not depend upon their ability to accommodate surface level parking, or the exact ground floor (‘single storey’) footprint proposed. Applying reasonable flexibility in this case would therefore allow for a reduction in the overall site area and footprint to be assessed. It would also negate the need for dedicated surface-level car parking to directly serve the proposed store, as it is assumed that this need can be met by existing parking capacity across the town centre.
11. The potential for greater flexibility to be applied in this case is further underlined by the fact that foodstore operators, including Aldi, are actively applying different store business models and formats to different locations to secure representation. For example, Aldi has recently taken on the former Waitrose store in Camden, London, which comprises 1,115 sqm (12,000 sq ft) at ground floor and 279 sqm (3,000 sqft) at first floor; and has also taken a c.840 sqm (9,000 sq ft) former Poundland store in Archway, London<sup>8</sup>. Aldi also operate similar stores from other high street locations across the UK, including in Kilburn and Kingston, as do Lidl.
12. The key point to be made with regard to the Council’s assessment and determination of the out-of-centre Aldi proposal on the former Olds Garage site is that there are currently two available, suitable and viable sites in the town centre in this case that could accommodate the proposed store assuming some flexibility is applied in compliance with the 2018 NPPF (paragraphs 86-87) and the PPG.
13. The first site is the **Cattle Market** site. As we explained in our June 2018 representations, our client secured a 5-year option on the Cattle Market site on 18<sup>th</sup> June 2018 after a period of protracted negotiations with the landowners. This means that our client, for the first time, is now in full control of the site and is therefore able to manage, plan and deliver its comprehensive regeneration and development alongside their longstanding plans for the Vincent Yard site. Together the regeneration of these sites will help to extend the range and quality of the Quedam Centre’s offer and environment to the benefit of the town centre’s overall vitality and viability, and in accordance with the Council’s local plan policies and the recent Town Centre *Refresh* strategy prepared by the Council in February 2018. The site is therefore clearly available.

<sup>6</sup> ‘Exeter Decision’ – (S78) Honiton Road, Exeter (30th June 2016) (ref: APP/Y1110/W/15/3005333)

<sup>7</sup> ‘Rushden Decision’ – (S77) LXB (Rushden) Limited, Northampton Road, Rushden (11 June 2014) (APP/G2815/V/12/2190175).

<sup>8</sup> <http://news.costar.co.uk/en/assets/news/2018/July/Aldi-swoops-again-in-London-as-expansion-continues/>

14. Over the Summer months, since securing the option on the Cattle Market site, the project design, transport, planning and commercial teams working with the client has been preparing detailed options and plans for the both the Cattle Market and Vincent Yard sites comprising a mix of retail, leisure, residential and employment uses. Following recent discussions with the Council these plans have been further refined and a formal pre-application submission is now scheduled for the end of September. Our client's stated objective is to work in partnership with the Council to submit a planning application by Spring 2019, with the aim of securing planning permission by Autumn 2019. Even if the site was not currently available – which it clearly is - this timescale represents more than a “*reasonable period of time*” in this case in the context of paragraph 86 of the NPPF and recent inquiry decisions.
15. Our previous representations have also clearly identified that the Cattle Market site represents a suitable and viable sequentially preferable location to accommodate the proposed Aldi store. As the Council is aware from our recent discussions, the emerging plans clearly show the potential for the Cattle Market site to accommodate a Class A1 retail unit of approximately 4,650 sqm (50,000 sqft) with associated access, servicing and parking. Subject to sub-division in this specific case, the proposed retail unit would therefore more than meet the needs of Aldi for a store of at least 1,743 sqm gross, and this is even before assuming some flexibility in terms of format and scale as required by the NPPF and PPG. Our client's emerging plans for the Cattle Market are also fully in accordance with the Council's own aspirations for the site, as articulated through local plan policy, the *Yeovil Town Centre Refresh* (February 2018) and the *2017 South Somerset Retail and Town Centre Uses Study* (SSRTCUS 2017).
16. Turning to the **former BHS store**, our letter of June 2018 (paragraph 29) provided an unequivocal response and rebuttal to the additional information presented by Mango in their letter to the Council dated 13<sup>th</sup> March 2018. Our response clearly explains that the former BHS retail unit is available and suitable to accommodate the proposed Aldi store, assuming reasonable flexibility is applied in terms of format and scale normally associated with town centre developments and business models (see above). We are also aware of a subsequent email to the Council from Mango dated 14<sup>th</sup> June 2018. This mainly repeats the points Mango raised in their earlier correspondence dated 13<sup>th</sup> March, which we addressed in full in our letter of 12<sup>th</sup> June 2018. For avoidance of doubt, and by way of clarification, our client has confirmed the following with regard to the availability and suitability of the former BHS unit:
  - The store is suitable for sub-division in-line with the footprint proposed by the Aldi application.
  - The Centre has significant parking available, and dedicated free car parking spaces could be made available given the capacity. Our client has recently initiated a specific customer discount/free hours scheme with a gym operator who has recently taken a unit within the Quedam Centre; thus demonstrating their flexibility with regard to competitive parking options for specific customer groups.
  - At grade customer parking could be provided by creating a rear entrance to the adjacent open car park deck.
  - There are a range of servicing options, including a new bay leading from the Quedam's main service area, suitable for all vehicles, rather than the smaller one serving only the former BHS store.
  - The vacant store has prime high street frontage and benefits from strong passing footfall in a highly sustainable location. An Aldi store in this prime town centre location would draw a significantly higher proportion of shoppers who do not have access to a car, and would generate multi-purpose linked trips to the benefit of other shops, businesses and facilities in the town centre, thereby resulting in a significant positive impact on the town's overall vitality and viability in accordance with national and local planning policy objectives.
  - Subject to occupier interest, the store can be available with vacant possession within a few months by way of a surrender of the existing lease. Whatever the passing rent is, our client is seeking a longer term use that would benefit the shopping centre and the town as a whole, and thus their substantial investment. The viability of the subdivision is driven by long term asset management considerations.

17. Mango also state in their email of 14<sup>th</sup> June that the former BHS unit is not financially viable, as the reported rent and service charges on the unit amount to £500,000, whereas a typical Aldi store is under £300,000. In response our client is clear that it is irrelevant what BHS were previously paying, and a budget for rent and service charges of circa £300,000 in the current market could form the basis for a deal.
18. On this basis, and as far as our client is concerned, there are no insurmountable barriers preventing Aldi from taking space in the former BHS unit. As set out in our June 2018 letter, the only conclusion the Council can reach in this case is that the former BHS unit is also available and suitable for the proposed Aldi, assuming reasonable flexibility is applied in terms of format and scale.

### Impact Test

19. Our objections to the application proposal on impact grounds are set out paragraphs 30-44 of our 12<sup>th</sup> June letter to the Council. Impact is clearly a material consideration in this case; notwithstanding that Aldi falls below the default threshold of 2,500 sqm. As the Council will be aware, paragraph 89 of the revised NPPF also carries forward the impact 'tests' set out in paragraph 26 of the 2012 NPPF which requires assessment of:
  - a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and
  - b) the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme).
20. We do not intend to repeat our previous submissions here for the sake of brevity, but we do need to restate our client's fundamental concern that although Yeovil's retail and town centre economy is "*holding up*", it is highly fragile and vulnerable to impact from the growth of both out-of-centre shopping and leisure uses, and the internet. As we highlighted on our June letter, the town suffers from a high vacancy level compared against national averages, and its ranking has fallen from 118<sup>th</sup> in 2007 to 160<sup>th</sup> in 2016. This is before taking account of the closure of BHS which will have increased vacancy levels and reduced the town's ranking even further.
21. It is against this background that the impact on our client's existing investment – the Quedam Centre – and their planned investment to extend the town's shopping and wider offer on to the Vincent's Yard and Cattle Market sites has to be considered against paragraph 89 of the 2018 NPPF, and ultimately afforded significant weight by the local planning authority. In this case allowing the out-of-centre Aldi store would clearly have a significant adverse impact on our client's plans to either deliver a new foodstore anchor in the planned Class A retail unit that will form part of the regeneration of the Cattle Market site, or alternatively fill the still vacant BHS unit in the Quedam Centre.
22. Apart from the impact on our client's investment in the town centre, the potentially significant adverse impact on existing, planned and committed public sector investment in the town centre should not be under-estimated. The Council's own recent *Refresh* study (February 2018) has identified a 5-year strategy aimed at delivering '*quick wins*' and projects as part of the longer term transformation of the town centre. Key to this will be Council-led and funded improvements to the public realm and spaces, that will help to engender business and investment confidence in the town centre. Clearly allowing new out-of-centre retail floorspace would be at odds with the Council's own strategy for its town centre, as it would potentially harm the delivery of a number of the key initiatives and projects set out in the *Refresh* strategy. For the Council's information the impact on public sector investment in town centres – ranging from improvements to the



public realm to new development projects – was a key issue taken into account by the Inspector at the recent Hull inquiry<sup>9</sup>.

23. In summary, if the Council was to grant permission for additional retail (food and non-food) floorspace at this point in time there can be no doubt that it will result in a significant adverse impact on existing and planned retail investment in Yeovil Town Centre, including on already limited operator demand and, it follows, the town's overall vitality and viability.

### Conclusion

24. In conclusion paragraph 90 of the 2018 NPPF repeats the wording of paragraph 27 of the 2012 NPPF stating: "*Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the considerations in paragraph 89, it should be refused*".
25. We have clearly demonstrated in all our representations to the Council that the Aldi proposal fails to satisfy the sequential test and is likely to have a significant adverse impact on existing, committed and planned (private and public sector). The application is therefore contrary to the NPPF and Local Plan Policies EP11 and EP12. It is also contrary to the Council's *Yeovil Town Centre Refresh* (February 2018), which is seeking to deliver substantial positive change to the town centre through new development (including support for the regeneration of the Cattle Market site), improvements to the public realm and better transport and parking provision.
26. Finally, in terms of any potential economic and employment gains from the application proposal, these do not outweigh the fact that there are sequentially preferable sites/premises currently available and suitable in the town centre that could accommodate the Aldi application. Any benefits would be further outweighed by the significant adverse impact on our client's planned investment in the town centre. The likely loss of footfall and expenditure, reduced market share, increased store closures and vacancies, loss of jobs, etc., arising from the failure to secure a key tenant for the Cattle Market site will further damage the overall vitality and viability of the town centre at a time when it is facing up to significant challenges from online and out-of-centre shopping, and the wider dynamic changes in the retail property and occupier sector.
27. We trust that our further representations on this application proposal are helpful to the Council in their decision making. Should you require any further information please do not hesitate to contact Dr Steven Norris. In the meantime, we respectfully request the opportunity to review and comment on any additional information submitted by the applicant and other parties pertaining to this application.

Yours faithfully



**Dr Steven Norris, Head of Regeneration**  
**Prepared for and on behalf of CARTER JONAS LLP**

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<sup>9</sup> 'Hull Decision': [S78 Inquiry] relating to new Class A1 and Class A3/A5 floorspace totalling 11,148sqm (GIA) on land North of Ashcombe Road and Barnes Way, Kingswood, Hull HU7 3JX (APP/V2004/W/17/3171115) (December 2018); see paragraphs 118 to 131.