

# Public Document Pack

Supplementary Information Item No. 6 – City Plans Panel (Additional Meeting) 26<sup>th</sup>  
September 2013

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Appendices Attached

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**Report of the Chief Planning Officer**

**CITY PLANS PANEL**

**Date: 26<sup>th</sup> September 2013**

**Subject: APPLICATION 12/03886/OT – OUTLINE APPLICATION FOR MIXED USE DEVELOPMENT COMPRISING OFFICES (BUSINESS PARK) (B1A), (B) AND (C), RETAIL AND BAR/RESTAURANT (A1, A2, A3, A4, AND A5), HOTEL (C1), LEISURE FACILITIES (D1, D2), MULTI-STOREY CAR PARK, TOGETHER WITH INTERNAL ROADS, CAR PARKING AND DRAINAGE AT LAND BETWEEN BARROWBY LANE AND MANSTON LANE, THORPE PARK, LEEDS.**

<b>APPLICANT</b>	<b>DATE VALID</b>	<b>TARGET DATE</b>
Thorpe Park Developments Ltd	24/9/12	21/5/13

**Electoral Wards Affected:**

**Crossgates and Whinmoor, Garforth and Swillington, Temple Newsham**

Yes    Ward Members consulted

**Specific Implications For:**

Equality and Diversity   

Community Cohesion   

Narrowing the Gap   

**RECOMMENDATION:**

To agree the two specific issues as reported below and refer the application to the Secretary of State for the Department of Communities and Local Government as a Departure from the Statutory Development Plan and for consultation under the Town and Country Planning (Consultation) (England) Direction 2009, and delegate approval to the Chief Planning Officer subject to the updated conditions as reported in appendix A of this report and others which he might consider appropriate) and the completion of a Section 106 Agreement to cover the following matters should the Secretary of State decide not to call the application in for determination:

- No non-B1 development, nor any B1 office development of 37,000sqm or greater shall be first brought into use until all land (currently identified for indicative purposes in the Expansion Layout) reasonably necessary to deliver

the best strategic route through the development to accommodate both strategic (ELOR) traffic while also serving the development including the associated junction alterations has been dedicated as public highway.

- Delivery of the playing pitches and changing rooms at Green Park prior to first occupation of any development and further phased (index linked) contributions for the delivery of the remainder of Green Park.
- Ecological mitigation contribution of £5,000 at first occupation of any development and every subsequent year for 9 years (total of £50,000 index linked).
- Delivery of agreed Public Transport Strategy (including provision of 2 x bus shelters with associated Real Time Information)
- Public Access to Thorpe Park and the provision of 50 parking spaces within Thorpe Park to be utilised by visitors to the playing pitches within Green Park.
- Compliance with the Local Employment Strategy.
- At first occupation of any retail development and for two subsequent years a contribution of £20,000 that can be used to mitigate against any adverse retail impact in designated local centres.
- Ensure compliance with the Travel Plan and secure a Travel Plan Review Fee of £20,000.

## **1.0 INTRODUCTION:**

- 1.1 As Members will recall, this application was considered at last week's special City Plans Panel meeting along with four associated applications (3 x relating to the detailed alignment of the Manston Lane Link Road (MLLR) and a further application relating to Green Park). Members resolved to defer and delegate approval of the MLLR and Green Park applications to the Chief Planning Officer.
- 1.2 With respect to the main outline application for the alternative mix and quantum of uses at Thorpe Park itself, the officer report advanced an approval in principle recommendation which subsequently needed to be deferred and referred to the Secretary of State for the Department of Communities and Local Government as a departure application and then delegated to the Chief Planning officer for approval subject to conditions and the completion of a Section 106 Agreement. This recommendation was agreed in principle subject to further consideration of two specific matters. The first relates to the recommended conditions in so far as they relate to retail uses/restrictions at the site and the second concerns reaching agreement on the Public Transport Contribution/Strategy for the development. As part of this referral back to the Panel, it was also agreed that third party objectors who were concerned about the scheme's impact on the vitality and viability of the City Centre (including any planned investment) would be provided with an opportunity to comment on the suggested retail conditions as originally advanced by officers.

## **2.0 PROCESS SINCE THE LAST MEETING:**

- 2.1 Following consideration of the Thorpe Park application by the Panel, officers made contact with a number of planning agents who represent the interested third parties and requested a coordinated response to the suggested retail conditions be

provided. A formal response has been provided by Barton Wilmore and is attached as Appendix B to this report. A summary of the main points made is included as part of this report.

2.3 Since receipt of the Barton Wilmore letter, officers have considered the comments made and taken further advice from the Council's appointed advisors (England & Lyle in respect of retail issues and Jones Lang LaSalle regarding viability). A further meeting with the applicant and his representatives has also taken place, the outcome of which is reported in the appraisal section of this report.

2.4 Concurrent to the work undertaken in respect of the suggested retail conditions, a round table meeting regarding the Public Transport Contribution for the development has been held with officers, METRO, the applicant and his highway advisors. Again, the outcome of this meeting and all further discussions is reported in the appraisal section of this report.

### **3.0 THIRD PARTY COMMENTS ON RETAIL ISSUES:**

3.1 A letter has been received from Barton Willmore which contains the combined views of the following interested parties:

- Hammerson UK Properties Plc
- John Lewis Partnership
- Aviva and the Crown Estate
- Royal London Asset Management

3.2 An objection to the proposed development is still maintained in principle but the following comments are made in respect of retail matters:

#### **Section 106 Agreement**

3.3 Given the weight Officers and Members have given to the regeneration and employment benefits of the scheme in terms of setting aside retail policy, it is considered appropriate for a significant element of the proposal (and therefore some of the benefits) to be required before the retail element is opened. The S106 should be revised to:

*Secure the MLLR and 37,000sqm of B1 offices prior to first occupation of any non-B1 office development.*

3.4 Delivery of Victoria Gate should be protected and encouraged to proceed first, before other less central retail proposals come forward. A further S106 obligation should therefore be provided to:

*Allow phase 1 of the Victoria Gate scheme to be completed and have traded for 1 year prior to first occupation of any non-B1 office development (with a longstop date of January 2017).*

#### **Suggested Conditions**

3.5 The following additional controls/revisions are also advanced:

- *Control over net sales area in addition to gross floorspace within the A1 retail units (Point A in the explanatory note)*

- *A minimum unit size of 929sqm for all A1 retail units (Point B)*
- *A1 retail units (excluding permitted foodstore component) shall not be used for the sale of convenience goods. (Point C)*
- *Restriction on goods sold from A1 units to a traditional bulky goods/DIY restriction (Point D)*
- *Specifies the total foodstore floorspace and net sales area for convenience and comparison goods (Point E)*
- *Restriction of uses permitted within the foodstore (Point F)*
- *Removal of Permitted Development Rights for sub-division and mezzanine floorspace (Points G & H)*

3.6 A request to delete three conditions is also made. The first relates to the ability to provide small retail units at Thorpe Park (condition No. 25) – the concern being it could become a ‘one stop’ retail destination. The second (No.26) and third (No.27) relate to excluding named retailers from Thorpe Park unless their existing presence in a local centre is retained for 5 years. The concern being the conditions are ultra vires and unenforceable – accordingly the application should be refused.

3.7 Reference is also made to a number of recommended conditions which include the phrase ‘unless otherwise agreed in writing with the Local Planning Authority’ as this approach is unlawful. This same issue applies to various conditions on the other associated Thorpe Park applications.

3.8 A copy of the Barton Willmore letter and explanatory note is attached in full for completeness as Appendix B.

#### **4.0 CONSULTATION RESPONSES:**

4.1 LCC Retail consultant:

The Council’s Retail consultant has commented on the these latest proposals as follows:

- The introduction of a net sales area in addition to specifying a gross floorspace is acceptable.
- List of uses excluded from the foodstore is acceptable including preventing future sub division.
- The introduction of restrictions to prevent sub division of units and the creation of additional floorspace via mezzanines also have merit if it would increase the total floorspace beyond the maximum set out in other conditions.
- The amendments to con No. (which reverts to a specified floorspace rather than named retailers) is agreed including the need for a 5 year presence to be retained if considering locating in Thorpe Park.
- Controlling the retail floorspace in the non-food retail units to a minimum of 7,000sqm in units of no less than 500sqm with a maximum size of 4,000sqm is necessary to prevent the scheme attracting larger department stores.
- Suggested minimum size limit of 929sqm is unacceptable as it is not relevant to the control of potential competition with the units in the Victoria Gate scheme. The condition seeks to protect nearby centres. The Thorpe Park proposal have been assessed in terms of their impact on nearby centres, based on a range of sizes of units that is considered would not harm the vitality and viability.

- Restricting convenience floorspace other than in the foodstore is not acceptable and would unreasonably prevent convenience retailing in the smallest units which could accommodate the needs of people working in the business park e.g. deli, baker. However, food retail uses should only be allowed in units of less than 100sqm to prevent occupation by larger convenience stores which could compete with nearby local centres.
- The suggestion of limiting non-food retail uses to bulky goods and DIY relating goods is not acceptable as the proposals have been assessed on the basis of turnover in non-bulky comparison goods concluding it would not have a significant adverse impact. There is no justification for restricting the scheme to bulky goods.
- Condition which restricts the amount of small retail units to a maximum of 800sqm with no single units of more than 100sqm is appropriate to protect local centres.
- Controls relating to the amount of convenience and comparison sale floorspace in the foodstore is not necessary as already logically specified separately.

#### 4.2 LCC Viability consultant:

This adviser has been asked to comment on the impact of the proposed suggestions by Barton Willmore on the viability of the scheme and has commented as follows:

The proposals by third parties suggest there should be amendments to the S106 agreement and the conditions attached to the planning permission. The effect of these would be to impose a requirement to delay the retail/leisure element until further offices are constructed, or until the proposed Victoria Gate scheme has been built and established. The effect on the cashflow within the development appraisal would be to impose the cost of the enabling works in the immediate short term, but with the compensating capital receipts from the retail/leisure uses delayed until a later date. Therefore, there would be a greater funding shortfall in the development for this period and it may be more difficult to source this finance. Assuming it can be obtained then there would be an increased borrowing cost and this would detrimentally affect the viability of the scheme.

#### 4.3 Highways & Transportation:

For sites meeting accessibility standards the Public Transport SPD requires developer contributions based on their scale and impact. The Thorpe Park application would require a contribution of £3.8m using this approach. Ignoring the B1 office element of the proposal (i.e. having regard to the extant permission) the contribution would reduce to £2m.

However, the Public Transport SPD is clear that where a site does not meet accessibility standards the expectation of the developer is that they improve service / infrastructure such that standards are met.

Notwithstanding the developers current public transport offer, the approach preferred by the highway authority and Metro, and which is consistent with the SPD and emerging Core Strategy would be for the applicant to fund a 15 minute service to the City Centre via Cross Gates. This would provide a frequent and direct service to Leeds City Centre, which itself is a major interchange, and also Cross Gates. It is considered that this would be an appropriate minimum level of service given the scale of development proposed. Metro have given advise on how such a service could be delivered.

With reference to Metro correspondence dated 12th September it would be preferable if Intervention 1 (extending service 844 into the peak hours) is provided for 10 years and that Intervention 3 (extending an existing service from the city centre to Thorpe Park) is delivered for 5 years following first occupation of the foodstore. The cost of this is estimated to be around £2m. If Intervention 1 is

funded for 5 years and Intervention 3 for 5 years the estimated cost would be around £1,775,000.

4.4 METRO:  
Endorse the comments made by the Council's highway officers.

## 5.0 APPRAISAL:

### Retail Conditions:

5.1 The Barton Willmore letter proposes a number of amendments to the retail related conditions originally recommended. Having carefully considered the comments made, officers are pleased to report that many of the points raised are acceptable to both the Council and the applicant. The areas where agreement has been reached are summarised below and the recommended conditions have been amended accordingly:

(a) Points of Agreement:

1. *Control over retail net sales area in addition to gross floorspace* within the A1 retail units. The introduction of a net sales area restriction provides greater control in terms of overall retail provision at Thorpe Park and is accepted. Condition No.23 is affected by this change. (Point A)
2. *Specifies the total foodstore floorspace and net sales area for convenience and comparison goods.* The amendments proposed relate to condition No.28 as originally proposed and provide further clarity by introducing reference to a net sales area. Suggested change agreed - now condition No. 9. (Point E)
3. *Removal of Permitted Development Rights for sub-division and mezzanine floorspace.* The previous officer presentation made reference to a requirement for an additional condition to cover these matters. Condition No. 27 is therefore recommended but is worded such that sub-division or mezzanine floorspace is permissible provided it does not create additional floorspace beyond the restrictions imposed by other conditions. This approach is considered more appropriate than a blanket restriction as it provides future operators with some flexibility in terms of adopting different unit formats but still ensures the overall quantum of retail floorspace provided does not exceed that already assessed which is the substantive concern. (Points G & H)
4. *Restriction of uses permitted within the foodstore.* The condition wording suggested by Barton Willmore is similar to that originally advanced by officers and includes the same list of excluded uses within the foodstore, namely a post office, pharmacy, travel agent, dry cleaner or opticians. The recommended wording is therefore agreed (condition No. 30) with the exception of the words 'or any other use' as this is considered unnecessary. (Point F)
5. *Request to delete conditions excluding named retailers from Thorpe Park unless their existing presence in the local centre is retained as they are ultra vires and unenforceable.* The requirement for these controls is accepted and the Barton Willmore letter also appears to accept this point by suggesting the application should be refused if the controls which they seek to exert cannot be applied.



The wording of these conditions has been revisited and has resulted in a single replacement condition (No.26) which specifies a 500sqm unit size rather than identifying named retailers. This change, in conjunction with the 6 month time period achieves the same basic aim which is to ensure the retailers occupying the larger units in a named town centre do not relocate to Thorpe Park therefore resulting in a greater impact on that centre's overall vitality and viability.

6. *Unlawful use of the phrase 'unless otherwise agreed in writing by the Local Planning Authority' in various conditions.* The use of this wording within conditions is not unlawful per se, but it is accepted that its scope is limited, and that such wording should be restricted to matters which do not comprise key elements of the planning permission. For example, any conditions which relate to matters which go to the heart of the permission and therefore the basis of the Environmental Impact Assessment and other supporting documents should not include such flexibility but others which cover issues which do not fundamentally affect the assessment of the scheme e.g. condition No. 38 which secures CCTV can include this phrase to provide limited flexibility. A full review of the conditions has therefore been undertaken and it is proposed the words 'unless otherwise agreed in writing by the Local Planning Authority' is deleted from the majority of the conditions which currently so provide, which are confirmed as follows: Nos. 6, 23, 24, 25, 27, 28, 33, 38, 41, 47. (NB. The numbering reflects the original schedule of conditions as set out in the original appendix 1 to the report to Panel 19 September. Notwithstanding this and for the reasons specified, it is considered reasonable for the phrase to be retained for condition Nos. 18, 21, 36, 37, 39, 45, 46.

(b) Points of Disagreement:

5.2 With respect to the matters which are not agreed, these are specified below including a short explanation as to the reason(s) why.

1. *Section 106 alterations.* The starting point is that a S106 obligation can only be taken into account when considering whether to grant planning permission where it satisfies 3 statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010. Namely:
  - It is necessary to make the development acceptable in planning terms
  - It is directly related to the development
  - It is fairly and reasonably related in scale and kind to the development

Members would therefore need to be satisfied that the additional S106 obligations proposed by the objectors meet each of the 3 tests if they decided to impose these additional obligations upon the development.

The proposal to alter the heads of terms for the S106 to include a requirement to deliver 37,000sqm of B1 office accommodation in addition to the MLLR before occupation of any non-B1 development would have a serious adverse impact on cashflow within the development appraisal as the cost of the enabling works would not be off-set in the short term through the receipt of capital receipts. The Council's viability consultant has indicated that "there would be a greater funding shortfall in the development for this period and it may be more difficult to source this finance. Assuming it can be obtained then there would be an increased borrowing cost and this would detrimentally affect the viability of

the scheme.” Members have already considered and accepted the position regarding the scheme’s overall viability and for this reason the proposal cannot be recommended to Members as it will undermine the regeneration and infrastructure case for the proposed development.

The second proposed S106 amendment to delay occupation of any non-B1 office development to after phase one of the Victoria Gate development has traded for one year would have a clear impact on the applicant’s ability to meet the Network Rail agreement (expires in March 2015) due to the requirement to commit significant capital towards the cost of the MLLR but without the prospect of receiving any capital receipts in return. This would also have an adverse impact on the scheme’s viability and deliverability such that the proposal cannot be recommended to Members.

In concluding on the above points, it is important to note that the Panel’s consideration of the application at its meeting on 19 September acknowledged the public benefits that would flow from delivering the MLLR early and achieving the timescales imposed by the Network Rail agreement commencing works to bridge the Leeds to York railway line. The resulting employment opportunities to be created within Thorpe Park itself were also acknowledged but the role the scheme plays in terms of facilitating housing development north of the railway line (including sites along Manston Lane), and in due course, East Leeds and the southern part of the East Leeds Orbital Road were also important considerations. Whilst the need to protect the City Centre is understood, in these circumstances these needs have been carefully balanced against the scheme’s overall viability and all the wider benefits which flow from the enabling development. The suggested S106 amendments if accepted would impact adversely upon the prospect of the development to deliver the public benefits. To return to the statutory tests for the Section 106 obligation as set out above, it is the officer view that neither proposed alteration would comply with the statutory requirements so are not therefore supported.

2. *A minimum unit size of 929sqm for all retail (A1) units.* This amendment seeks to almost double the existing minimum retail unit size from the 500sqm currently advanced by officers in condition No. 23. This increase in unit size is not considered necessary as these smaller units are intended to fulfill some of the more day to day requirements. As such uses would in no way compromise the City Centre the proposed increase is not supported. In addition, the revised wording included as part of the Barton Willmore response deletes reference to a minimum proportion of the total retail floorspace to be provided within the specified thresholds. As such, officers consider the 7,000sqm reference should be retained as it limits the overall floorspace which is given over to the smaller units which themselves are also to be limited by condition in terms of the type of goods which can be sold (no sale of clothing/fashion and footwear goods) to ensure the retail offer focuses on meeting the day to day needs of Thorpe Park. These controls, when combined are therefore considered to afford appropriate protection to local centres and would also limit the competition for new occupiers considering locating in phase one of the Victoria Gate development. The condition is worded accordingly. (Point B)
3. *A1 retail units (excluding permitted foodstore component) shall not be used for the sale of convenience goods.* The suite of retail conditions already advanced is considered appropriate and as the sale of food is linked to the smaller units to

serve the day to day needs of the Thorpe Park development e.g. deli, bakers Accordingly the proposed introduction of this new condition is not supported as such units are unlikely to impact on City Centre viability. (Point C)

4. *Restriction on goods sold from A1 units to a traditional bulky goods/DIY restriction.* Restricting the type of goods sold to bulky/DIY goods would have a serious impact on viability as it is a depressed market for these types of uses. This impact on viability would and in turn affect the deliverability of the scheme and its associated infrastructure. Furthermore, the scheme has already been assessed in both retail and viability terms and its impact is considered acceptable on the basis such restrictions would not be imposed. Accordingly it is not considered appropriate to attach these further restrictions. (Point D)

- 5.3 In addition, the previous Panel meeting considered 3 further conditions relating to mezzanine floors (as discussed in para 3.1 – issue No. 3 of this report), a limitation preventing food retailing taking place from the larger retail units and a condition relating to highway adoption. These conditions are therefore reported in Appendix A.

#### **Public Transport Contribution/Strategy:**

- 5.4 The applicant accepts the overall need to ensure the site is as accessible as possible by public transport and to meet the Council's policy requirements.
- 5.5 The accessibility requirements outlined within the draft Core Strategy and adopted Public Transport SPD indicate a high frequency (i.e. every 15 min or better) bus service should be provided to a major public transport interchange (Leeds City Centre) between 07.00 hours and 18.00 hours weekdays with a minimum 30 min frequency outside these hours up to 23.00 hours and at weekends. Highway officers and Metro consider these requirements are appropriate and their latest comments reflect this position.
- 5.6 A detailed Public Transport Strategy (PTS) has now been provided by the applicant and comprises of the following measures and infrastructure:
  1. A 15 min service (a combination of a new local loop service and extending the operating hours of the 844) on weekdays from 07.00 hours and 18.00 hours.
  2. Outside of the above hours, a service would operate at 30 min intervals until 23.00 hours (The 844)
  3. A 30 min service at the weekend between 07.00 hours and 23.00 hours (The 844)
  4. All services to stop at Crossgates station and the 844 to link directly to the City Centre at 30 min intervals
  5. A £40,000 contribution to new bus stops and Real Time Information to be delivered as part of the development.
  6. Bus laybys and raised accessibility kerbs would be delivered as part of the road and a condition has been agreed.

Trigger points will be linked to the opening of the MLLR and delivery of uses if appropriate. The loop service will be funded for a minimum of 10 years and the 15 minute service would be retained for at least 5 years.

- 5.7 In considering the acceptability of the suggested PTS, the scheme meets the accessibility requirements as set out in the SPD and Core Strategy with the exception that only a 30 min service is provided to the City Centre rather than the 15 min service normally expected. Having considered this matter in detail and noting the 15 min service links in with City Centre bound rail and bus connections at Crossgates Station, officers are of the opinion the overall PTS can be accepted as a reasonable public transport alternative exists. In coming to this conclusion, an acknowledgement that the delivery of the MLLR itself opens up other public transport options in the future has been given as have issues surrounding viability.

**Other Matters:**

- 5.8 The Barton Willmore letter makes reference to the need to amend various conditions due to the use of the words 'unless otherwise agreed in writing' both on the main outline application for Thorpe Park but also its associated MLLR and Green Park applications. The necessary amendments for this application have already been undertaken and officer will review the recommended conditions for the other applications as part of the agreed defer and delegate recommendation.

**6.0 CONCLUSION:**

- 6.1 Following the receipt of the combined comments from various third party objectors concerning the suite of retail conditions originally advanced in the report presented to Members at the 19<sup>th</sup> September meeting, officers have sought further advice from both its retail and viability consultants. Having carefully considered the points made, agreement has been reached on many issues but not all suggestions have been adopted as they are not considered to be reasonable, justified or necessary. Where suggestions have not been adopted a clear explanation as to the reason why has been provided.

- 6.2 With respect to the Public Transport Strategy for the development, further detail has now been provided and advice has been sought from both highway officers and Metro in terms of its acceptability. Although both highways and Metro hold the view the full requirements as set out in the Public Transport SPD and Core Strategy are appropriate, officers are of the opinion the detailed scheme as advanced in para. 5.6 would provide good public transport penetration into the site and that the absence of a 15 min service into Leeds City Centre (since only a 30 min is secured) is compensated by the connections available at Crossgates where the high frequency service would pass. The Public Transport Strategy for the site including the associated commitments towards infrastructure is therefore supported.

**7.0 BACKGROUND PAPERS:**

Application file 12/03886/OT

Notice has been served on Leeds City Council, Network Rail regarding 12/03886/OT

# Appendix A

## Conditions 12/03886/OT

- 1) Applications for approval of all reserved matters for the first phase of development shall be made to the Local Planning Authority before the expiration of three years from the date of this permission. Thereafter, applications for approval of all subsequent reserved matters relating to all additional phases shall be made to the Local Planning Authority before the expiration of two years from the date of approval of the reserved matters of the preceding phase.

The development of the first phase shall be begun within five years of the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be agreed for that phase, whichever is the later. All further phases shall be commenced within two years of the approval of the last reserved matters consent for that phase.

Imposed pursuant to the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

- 2) Approval of the following details (hereinafter referred to as the reserved matters) shall be obtained from the Local Planning Authority, in writing before the each development phase is commenced.

Layout

Scale

Appearance

The landscaping of the site

Plans and particulars of the reserved matters shall be submitted utilising a planning application form and shall be carried out as approved.

Because the application is in outline only and as no details have been submitted of the reserved matters, they are reserved for subsequent approval by the Local Planning Authority.

- 3) The development hereby permitted shall be carried out in accordance with the approved plans listed in the Plans Schedule.

For the avoidance of doubt and in the interests of proper planning.

- 4) The development hereby permitted shall not exceed the total quantum of developments as listed below (all Gross External Area (GEA)).

B1 - 101,290sq m.

A1 (food store) - 9,000sq m.

A1 not within the food store - 9,000sq m.

A2, A3, A4 and A5 - 4,200sq m.

C1, D1 and D2 - 16,340sq m. Of which no more than 14,050sq m shall be in C1 hotel use and 2,290sq m shall be in D2 gym use.

For the avoidance of doubt and because the highway and retail impacts have been assessed on that basis in accordance with UDPR policies T2, S1 and S2.

- 5) Within 6 months of the date of this decision a revised indicative masterplan shall be submitted to and agreed in writing by the Local Planning Authority. Any variation to the approved masterplan or parameter plans shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of the phase of development to which the variations relate. The development shall then be carried out in accordance with the approved plans.

To allow an appreciation of the possible layout of the development proposed and delivered to date in accordance with UDPR policy N12.

- 6) The development shall be carried out in accordance with the approved parameter plans and Design Code.

In the interests of visual amenity in accordance with adopted UDPR policies GP5, N12 and LD1.

- 7) The total occupied gross external floor area shall be limited to 85,000sq m until such time as an approved assessment of traffic conditions in the Study Area (to be submitted no sooner than the occupation of 75,000sq m of the total occupied gross external floor area) has been submitted to and approved in writing by the Local Planning Authority. Any mitigation measures deemed necessary by the approved assessment shall be implemented prior to exceeding 85,000sq m of development (or another figure identified in the assessment) and be retained and maintained thereafter.

To ensure that the level of development can be accommodated within the safe operation of the highway network in accordance with adopted UDPR policy T2.

- 8) Typical detailed 1:20 scale (or other appropriate scale) working drawings of the following elevational features shall be submitted to and approved in writing by the Local Planning Authority prior to their construction on a phase:

- (a) Sections through external windows and door reveals;
- (b) External entrance areas at ground floor level;
- (c) Junctions of materials;
- (d) Changes in plane to the building elevations; and
- (e) Details of roof parapets, eaves line and soffits to the buildings.

The works shall be implemented as thereby agreed.

In the interests of visual amenity and providing a high quality design in accordance with adopted UDPR policy N13.

- 9) The construction of any external finishing materials for a phase shall not commence until full details of the siting, design and external appearance of all external plant, flue pipes, external vents, roller shutters, lighting, solar panels or other excrescences to be located on the roof or sides of the buildings within that phase have been submitted to and agreed in writing by the Local Planning Authority. The agreed details shall be implemented and retained thereafter.

In the interest of visual amenity in accordance with adopted UDPR policies GP5 and N13.

- 10) The construction of external facing materials for each phase shall not take place until details and samples of all external walling, window, door and roofing materials for that phase have been submitted to and approved in writing by the Local Planning Authority. Such materials shall be made available on site prior to the commencement of their use, for the inspection of the Local Planning Authority who shall be notified in writing of their availability. The building works shall be constructed from the materials thereby approved.

In the interests of visual amenity in accordance with adopted UDPR policy N13 and GP5.

- 11) No external surfacing works for a phase shall take place until details and samples of all surfacing materials for that phase have been submitted to and approved in writing by the Local Planning Authority. The surfacing works shall be carried out in accordance with the approved materials prior to first occupation of that phase and be retained and maintained thereafter.

In the interests of visual amenity in accordance with adopted UDPR policy GP5.

- 12) Development of a phase shall not be occupied until all areas shown on the approved plans to be used by vehicles within that phase have been fully laid out, surfaced and drained such that surface water does not discharge or transfer onto the highway. These areas shall not be used for any other purpose thereafter.

To ensure the free and safe use of the highway in accordance with adopted Leeds UDP Review (2006) policy T2 and Street Design Guide SPD (2009).

- 13) Notwithstanding the details shown on Pell Frischman drawing W50002/MP/211 D, full details of the proposed public rights of way affecting the whole application site shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development of each phase. Any changes to existing public rights of way required as part of that phase shall be implemented prior to first occupation of that phase and be retained and maintained as such thereafter.

To ensure appropriate public rights of way are provided across the site in accordance with adopted UDPR policy N10.

- 14) Dust generated by vehicles on roads, haul routes and circulation areas within the site in dry weather conditions shall be suppressed by the use of equipment able to deliver sufficient volumes of water and provided on site for this purpose. Immediate preventative action, including the suspension of operations shall be taken if dust generated by machinery on site becomes airborne and can be seen being carried by the wind beyond the site boundary.

In the interests of general amenity and the amenity of occupants of nearby premises and public spaces in accordance with adopted UDPR policy GP5.

- 15) No works shall begin on a phase until full details of the methods to be employed to prevent mud, grit and dirt being carried onto the public highway from the development of that phase, have been submitted for the approval in writing of the Local Planning Authority. The methods thereby approved shall be implemented at the commencement of work on site, and shall thereafter be retained and employed until completion of works on site.

To ensure that mud is not deposited on nearby roads in accordance with adopted UDPR policy GP5.

- 16) No works shall take place on a phase until full details of provision to be made for the storage, parking, loading and unloading of contractors' plant, equipment and materials, routing of contractors vehicles to and from the site during construction and the parking of vehicles of the workforce for that phase, has been submitted to and approved in writing by the Local Planning Authority. Such facilities shall be provided for the duration of the development works for that phase.

In the interests of the free and safe use of the highway in accordance with adopted UDPR policies T2 and GP5.

- 17) Prior to the commencement of development of a phase full details of the location and number of parking spaces allocated to the development within that phase plus details of any car share spaces and any parking charges to be introduced shall be submitted to and agreed in writing by the Local Planning Authority. The parking shall be introduced as agreed prior to first occupation of that phase and be retained and maintained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.

To ensure appropriate parking is provided across the development in accordance with adopted UDPR policies T2 and T24.

- 18) Unless otherwise agreed in writing by the Local Planning Authority, no development in a phase shall take place until a plan showing details of an oil interceptor for that phase has been submitted to and approved in writing by the Local Planning Authority. Such oil interceptor as may be approved shall be designed to intercept all surface water from areas to be used by vehicles and any other areas likely to be subject to contamination. The phase shall not be brought into use until the oil interceptor has been provided, and it shall



thereafter be retained and maintained in a satisfactory condition. Roof drainage should not be passed through an oil interceptor.

To prevent pollution of the any watercourse and protect the environment in accordance with adopted UDPR policy GP5.

- 19) Prior to the occupation of a phase, a scheme detailing the method of storage and disposal of litter and waste materials, including recycling facilities for that phase, shall be submitted to and approved in writing by the Local Planning Authority. The details shall include a description of the facilities to be provided including, where appropriate, lockable containers and details for how the recyclable materials will be collected from the site with timescales for collection. The approved scheme shall be implemented before the development hereby permitted is brought into use and no waste or litter shall be stored or disposed of other than in accordance with the approved scheme.

In the interests of amenity and to promote recycling in accordance with adopted UDPR policy GP5.

- 20) Development of a phase shall not commence until details of the cycle/motorcycle parking and facilities for that phase have been submitted to and approved in writing by the Local Planning Authority. Details shall include the method of securing the cycles and motorcycles and their location, provision of showers and storage lockers. The approved cycle/motorcycle parking and facilities shall be provided prior to occupation of that phase of development and thereafter be retained for the lifetime of the development.

In order to meet the aims of adopted Leeds UDP Review (2006) policy T2 and T7A and T7B.

- 21) Prior to the commencement of development of a phase, full details of the sound insulation and management measures to be incorporated into that phase shall be submitted to and agreed in writing by the Local Planning Authority. The details shall highlight how future occupiers of that phase will be protected from noise from other occupiers within the phase and adjacent developments and from external traffic noise. The agreed details shall be implemented prior to first occupation and be retained and maintained thereafter.

In the interests of amenity in accordance with adopted UDPR policy GP5.

- 22) Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification) planning permission shall be obtained before any change of use of the A2, A3, A4, or A5 premises referred to in this permission, to any use within Use Class A1 as detailed in the Town and Country Planning (Use Classes) Order 2010 (or any Order revoking or re-enacting that Order with or without modification).

In order that the Local Planning Authority can retain control over further uses which it considers could be harmful to the vitality and viability of the designated centres in accordance with adopted UDPR policies S1 and S2.

- 23) The approved retail floorspace (excluding the foodstore) shall not exceed 9,000 sqm GEA and 7,200 sqm net sales area, within which there shall be a minimum of 7,000 sq.m GEA (5,600 net sales area) of A1 retail floorspace which is to be provided within units of no less than 500 sq.m GEA (400 sqm net sales area) and no more than 4000 sqm GEA (3,200 sqm net sales area).**

**To reduce the potential impact upon designated local centres which mainly contain relatively small units and to prevent larger department stores locating at Thorpe Park that the Council would prefer to see located within the City Centre in accordance with adopted UDPR policies S1 and S2 and the NPPF.**

- 24) Any retail units below the 500 sq.m threshold referred to in condition no. 23 shall not to be used for the sale of clothing/fashion and footwear goods.

To allow the Local Planning Authority to exercise control over the use of the smaller units for fashion and footwear to ensure such units do not have an adverse impact on existing fashion and footwear retailers in the nearby designated local centres in accordance with adopted UDPR policy S2 and the NPPF.

- 25) There shall be no more than 800sq m (GEA) of 'small' retail units with no single unit having a floorspace of more than 100 sq.m (GEA).**

**To protect the vitality and viability of designated local centres in accordance with adopted UDPR policy S2 and the NPPF.**

- 26) Otherwise than in the circumstances set out at (ii) below, no retail floorspace hereby approved shall be occupied by any retailer who at the date of such occupation or within a period of 6 months immediately prior to occupation, occupies retail floorspace which exceeds 500 sqm (GEA) within the following designated town centres:**

- **Cross Gates**
- **Garforth**
- **Rothwell**

**ii) Such occupation will only be permitted where a scheme which commits the retailer to retaining their presence as a retailer within the relevant designated town centre for a minimum period of 5 years following the date of their occupation of retail floorspace within the development, or until such time as they cease to occupy retail floorspace within the development, whichever is sooner, has been submitted to and approved in writing by the local planning authority.**

To ensure that those retailers which presently occupy the largest units in local centres (Cross Gates, Garforth and Rothwell) cannot open stores at Thorpe Park in the initial occupation phase in accordance with adopted UDPR policy S2 and the NPPF.

- 27) **Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any order revoking and re-enacting that Order with or without modification) and sections 55(2) and 55(2A) of the Town and Country Planning Act 1990 (as amended), no part or parts of the A1 units may be subdivided, if such a subdivision would contravene the floorspace limits established in Conditions 23, 25 and 30. Furthermore no additional floorspace may be created within the A1 retail units if such floorspace would contravene the floorspace limits established in Conditions 4, 23, 25 and 29. Within these floorspace limits no mezzanine floorspace may be created unless otherwise agreed in writing by the Local Planning Authority. Outside of these floorspace limits no mezzanine floorspace may be created.**

To prevent subdivision and mezzanine development from resulting in more net retail floorspace than approved and to ensure such floorspace is within permitted unit size limitations in order to protect the vitality and viability of the designated local centres and planned city centre investment in accordance with adopted UDPR policy S2 and the NPPF. Furthermore, restrictions have been placed upon mezzanine development, to ensure that the Local Planning Authority can accurately monitor the provision of retail floorspace at the site.

- 28) With the exception of the A1 food store, no retail unit over 100 sqm (GEA) will be permitted to sell convenience goods.

To protect the vitality and viability of designated local centres in accordance with adopted UDPR policy S2 and the NPPF, and to protect planned city centre investment, in accordance with the NPPF.

- 29) **The Gross External Area (GEA) of the retail foodstore hereby permitted shall not exceed 9000 sqm. In addition, notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order with or without modification), the net sales area of the foodstore shall not exceed 5,400 sqm and, of this the net convenience floorspace shall not exceed 3,618 sqm and the net comparison floorspace shall not exceed 1,782 sqm.**

As these figures reflect the retail assessment carried out and to protect the vitality and viability of designated local centres in accordance with UDPR policy S2 and the NPPF.

- 30) **Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) or any order revoking and re-enacting that Order with or without modification), the foodstore hereby permitted shall not include any post office, pharmacy, travel agent, dry cleaner, optician operations or be subdivided for those uses.**

**In the interests of the vitality and viability of local centres in accordance with the adopted Leeds UDP (2006) policy S2 and the NPPF.**

- 31) Development shall not commence until a Phase I Desk Study has been submitted to, and approved in writing by, the Local Planning Authority and:
- (a) Where the approved Phase I Desk Study indicates that intrusive investigation is necessary, development shall not commence until a Phase II Site Investigation Report has been submitted to, and approved in writing by, the Local Planning Authority,
  - (b) Where remediation measures are shown to be necessary in the Phase I/Phase II Reports and/or where soil or soil forming material is being imported to site, development shall not commence until a Remediation Statement demonstrating how the site will be made suitable for the intended use has been submitted to, and approved in writing by, the Local Planning Authority. The Remediation Statement shall include a programme for all works and for the provision of Verification Reports.

To ensure that the presence of contamination is identified, risks assessed and proposed remediation works are agreed in order to make the site suitable for use in accordance with national and Leeds City Council's planning guidance.

- 32) If remediation is unable to proceed in accordance with the approved Remediation Statement, or where significant unexpected contamination is encountered, the Local Planning Authority shall be notified in writing immediately and operations on the affected part of the site shall cease. An amended or new Remediation Statement shall be submitted to, and approved in writing by, the Local Planning Authority prior to any further remediation works which shall thereafter be carried out in accordance with the revised approved Statement.

To ensure that any necessary remediation works are identified to make the site suitable for use in accordance with national and Leeds City Council's planning guidance.

- 33) Remediation works shall be carried out in accordance with the approved Remediation Statement. On completion of those works, the Verification Report(s) shall be submitted to the Local Planning Authority in accordance with the approved programme. The site or phase of a site shall not be brought into use until such time as all verification information has been approved in writing by the Local Planning Authority.

To ensure that the remediation works are fully implemented as agreed and the site has been demonstrated to be suitable for use in accordance with national and Leeds City Council's planning guidance.

- 34) Prior to the commencement of construction of a phase an updated Sustainability Statement following the guidelines of the Supplementary Planning Document (SPD) 'Building for Tomorrow Today', shall be submitted for that phase which will include a detailed scheme comprising
- (i) a proposal to use the Waste and Resources Programme's (WRAP) Net Waste Tool kit and an appropriate Site Waste Management Plan (SWMP),
  - (ii) a pre-assessment for each phase of development using the BREEAM assessment method to a minimum of an 'Excellent' standard, and
  - (iii) an energy plan showing that a minimum of 10 percent of on-site energy will be produced by Low and Zero Carbon (LZC) technologies and a carbon reduction plan including a target of 20% above Current Building Regulations,
- The Statement shall be approved by the Local Planning Authority and the phase of development shall be carried out in accordance with the detailed scheme; and
- (a) Prior to the occupation of each phase of the development a post-construction review statement for that phase shall be submitted by the applicant including a BRE certified BREEAM final assessment and associated paper work and approved in writing by the Local Planning Authority.
  - (b) The development and buildings comprised therein shall be maintained and any repairs shall be carried out all in accordance with the approved detailed scheme and post-completion review statement or statements.

To ensure the adoption of appropriate sustainable design principles in accordance with Policies GP5, GP11 and GP12 of the UDPR.

- 35) Prior to the commencement of development a programme of archaeological work including a Written Scheme of Investigation shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:
1. The programme and methodology of site investigation and recording.
  2. The programme for post investigation assessment.
  3. Provision to be made for analysis of the site investigation and recording.
  4. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  5. Provision to be made for archive deposition of the analysis and records of the site investigation.
  6. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- No development shall take place other than in accordance with the Written Scheme of Investigation approved under this condition and the development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

To ensure appropriate archaeological recording in accordance with adopted UDPR policy ARC6.

- 36) Development of a phase shall not commence until a scheme detailing foul and surface water drainage works for that phase has been submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme for that phase shall be implemented in accordance with the approved details before the development is brought into use.

To ensure sustainable drainage and flood prevention in accordance with policies GP5, N39A of the adopted Leeds UDP Review (2006).

- 37) The development shall be carried out to generally accord with the UK Police 'Secured by Design' and Crime Prevention through Environmental Design (CPTED) principles.

In the interests of public safety in accordance with UDPR policy GP5.

- 38) Prior to the commencement of development of a phase a CCTV strategy for that phase (to include details of the location of cameras and type of system) shall be submitted to and approved in writing by the Local Planning Authority. The agreed details shall be implemented prior to first occupation of that phase and be retained and maintained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.

In the interests of public safety in accordance with adopted UDPR policy GP5.

- 39) Prior to the commencement of each phase, a report to demonstrate that the opportunity to recover any coal present within each phase boundary has been considered, shall be submitted to and approved in writing by the Local Planning Authority. The report shall set out whether any coal present should be removed prior to or during development unless:
- a. it can be shown that it is not economically viable to do so, or
  - b. it is not environmentally acceptable to do so, or
  - c. the need for the development outweighs the need to extract the coal, or
  - d. The coal will not be sterilised by the development.

If the approved report recommends that coal is present and should be removed, an implementation strategy shall be submitted to and approved in writing by the Local Planning Authority. Subsequent actions or works shall then be carried out in accordance with the approved implementation strategy.

In order to accord with Leeds Natural Resources and Waste DPD Policies Minerals 3 and 9, and the NPPF.

- 40) No mechanical ventilation or air conditioning system or any other plant machinery shall be installed or operated until details of the installation and operation of the system have been submitted to and approved in writing by the Local Planning Authority. The system shall thereafter only be installed and operated in accordance with the approved details.

In the interests of amenity in accordance with adopted UDPR policy GP5.

- 41) Prior to the commencement of development of a phase, details of any extract ventilation system for that phase, including details of a filter to remove odour, and the methods of treatment of the emissions, shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the works approved in accordance with this condition have been completed. Such works shall thereafter be retained.

In the interests of amenity and visual amenity in accordance with adopted UDPR policy GP5.

- 42) No site clearance, demolition or removal of any trees, shrubs or other vegetation shall be carried out during the period 1 March to 31 August inclusive unless otherwise agreed in writing with the Council.

To ensure the protection of wild birds during the breeding season in accordance with UDPR policy N49.

- 43) Prior to the commencement of development of a phase, an Ecological Protection & Enhancement Plan for that phase shall be submitted to and agreed in writing by the Local Planning Authority. The Plan shall be based on the mitigation measures proposed in Table 7.16 of Section 7.9 of the Thorpe Park Developments Ltd. Environmental Statement by Arup dated 10 September 2012 Job number 217349 and will include a programme of ecological monitoring to inform the long-term management of the site. The Plan will include an Annual Work Programme with clear timelines for each mitigation measure to be carried out for the upcoming 12-month period. The mitigation measures shall be implemented in accordance with the timescales set out in the agreed plan.

To ensure the protection and retention of biodiversity in accordance with adopted UDPR policies N49 and N51.

- 44) Development of a phase shall not commence until full details of both hard and soft landscape works for that phase, including an implementation programme, have been submitted to and approved in writing by the Local Planning Authority. Hard landscape works shall include
- (a) proposed finished levels and/or contours,
  - (b) boundary details and means of enclosure,
  - (c) car parking layouts,
  - (d) other vehicle and pedestrian access and circulation areas,
  - (e) hard surfacing areas,
  - (f) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc.),
  - (g) proposed and existing functional services above and below ground (e.g. drainage, power cables, communication cables, pipelines etc., indicating lines, manholes, supports etc.).
- Soft landscape works shall include
- (h) planting plans

(i) written specifications and arboricultural method statement (including soil depths, tree pits (including the load bearing root zone volume), cultivation and other operations associated with plant and grass establishment) and  
j) schedules of plants noting species, planting sizes and proposed numbers/densities.

k) details of the consideration given to the transplantation of existing stock, from Brown Moor, to areas of Central Park.

All hard and soft landscaping works shall be carried out in accordance with the approved details, approved implementation programme and British Standard BS 4428:1989 Code of Practice for General Landscape Operations. The developer shall complete the approved landscaping works and confirm this in writing to the Local Planning Authority prior to the date agreed in the implementation programme.

To ensure the provision and establishment of acceptable landscape in accordance with adopted Leeds UDP Review (2006) policies GP5, N23, N25 and LD1.

- 45) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the development. The landscape management plan shall be carried out as approved.

To ensure successful aftercare of landscaping, in accordance with adopted Leeds UDP Review (2006) policies GP5 and LD1.

- 46) a) No works shall commence on a phase until all existing trees, hedges, bushes shown to be retained on the approved plans within the scope of that phase of development are fully safeguarded by protective fencing and ground protection in accordance with approved plans and specifications and the provisions of British Standard 5837 (2012) Trees in relation to design, demolition and construction, unless otherwise agreed in writing by the Local Planning Authority. Such measures shall be retained for the duration of any demolition and/or approved works.

b) No works or development shall commence on a phase until a written arboricultural method statement for a tree care plan for that phase has been submitted to and approved in writing by the local planning authority. Works or development shall then be carried out in accordance with the approved method statement.

c) No equipment, machinery or materials shall be used, stored or burnt within any protected area. Ground levels within these areas shall not be altered, nor any excavations undertaken including the provision of any underground services, without the prior written approval of the Local Planning Authority.



d) Seven days written notice shall be given to the Local Planning Authority that the protection measures are in place prior to demolition and/or approved works, to allow inspection and approval of the works.

To ensure the protection and preservation of trees, hedges, bushes and other natural features during construction works, in accordance with adopted Leeds UDP Review (2006) policies GP5, N23 and LD1.

- 47) If within a period of five years from the date of the planting of any tree/hedge/shrub that tree/hedge/shrub, or any replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree/hedge/shrub of the same species and size as that originally planted shall be planted in the same location as soon as reasonably possible and no later than the first available planting season, unless otherwise agreed in writing by the Local Planning Authority.

To ensure maintenance of a healthy landscape scheme, in accordance with adopted Leeds UDP Review (2006) policies GP5 and LD1.

- 48) Prior to the commencement of development a phasing plan for the works to Central Park shall be submitted to and agreed in writing by the Local Planning Authority. The plan shall include details of the works to create the levels, SUDS basins and any public rights of way and the provision of early cultivation and seeding. The agreed details shall be carried out in accordance with timescales set out in the phasing plan.

To ensure an appropriate temporary landscape is provided within Central Park in accordance with adopted UDPR policy LD1.

- 49) The development hereby permitted shall not include a school, cinema or concert venue.

As these uses are significant traffic generators that have not been assessed as part of this application and could cause significant highway safety issues to ensure compliance with UDPR policy T2.

- 50) No non-B1 development, nor any B1 office development of 37,000sqm or greater shall be first brought into use until the highways works detailed in planning application 12/03887/FU and either 12/03888/FU or 12/05382/FU (whichever of the two alignments is pursued) or such further planning permission(s) as may be agreed with the Local Planning Authority have been practically completed and opened to traffic (subject to any further maintenance period).**

**To ensure the delivery of adequate highway infrastructure to address the highway and accessibility implications of the proposed development and to facilitate the wider long term strategic benefits associated with the**

**expanded road proposals in accordance with adopted UDPR policies GP5 and T2**

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## Appendix B

Phil Crabtree  
Planning Services  
Leeds City Council  
Leonardo Building  
2 Rossington Street  
Leeds  
LS2 8HD

### VIA EMAIL

18798/A3/PN/cc

23<sup>rd</sup> September 2013

### WITHOUT PREJUDICE

Dear Mr Crabtree

### PROPOSED MIXED USE DEVELOPMENT, THORPE PARK, LEEDS

### PLANNING APPLICATION BY THORPE PARK DEVELOPMENTS LTD (LPA REF: 12/03886/OT)

We write in respect of the above planning application which was considered by Members of the City Plans Panel on Thursday 18 September. At the meeting, Members resolved to approve planning permission subject to referral of the application to the National Planning Casework Unit, completion of a S106 Agreement, and importantly further consideration in respect of the proposed controls put forward to restrict the retail and town centre floorspace within the scheme.

In this regard, it was suggested that officers liaised with the applicants and objectors to establish whether additional controls would be acceptable to overcome their concerns. In preparing this letter we have liaised and agreed its content with:

- Hammerson Uk Properties Plc;
- John Lewis Partnership;
- Aviva and the Crown Estate; and
- Royal London Asset Management.

As you will be aware all parties had significant reservations in relation to the acceptability of the applications on a number of different grounds. For the avoidance of doubt this letter responds directly to the request from members and does not in any way remove the concerns the objectors have expressed, and does not prejudice any action that they may wish to take in the future.

### *Panel Resolution*

It is evident from the officers report to the Panel that great weight is placed on the delivery of the Manston Lane Link Road (MLLR) and the potentially significant number of job opportunities that may



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be created by the proposal.

It was also evident from the report and the members' debate that concerns remained over the potential impact of the retail and town centre uses proposed, and the impact that they may have on the delivery of Victoria Gate and further investment within the City Centre. As we set out in our earlier objections (on behalf of Hammerson), it is important to protect this City Centre investment to ensure its continued regeneration and given the significant policy protection it is given by the NPPF, the adopted UDP and emerging Core Strategy.

With this in mind, we set out below the controls that we believe are necessary to ensure that the Thorpe Park proposal does not impact the delivery of this important City Centre investment.

### *Section 106 Agreement*

The draft Heads of Terms are as set out in the officer's report to Panel (page 2).

The only obligation of any real magnitude relates to the provision of the MLLR prior to the first occupation of any non-B1 office development or prior to occupation of 37,000 sq m of any B1 office development. Given the weight both officers and members gave to the regeneration and employment benefits of the scheme in their decision to set aside established retail policy, we believe it would be appropriate for the applicant to be required to provide a significant element of the proposal (and thereby some of the benefits) before the retail element is opened. As currently suggested the applicant could provide the MLLR and the retail element only without any further development. This would not deliver the benefits set out in the officer's report.

We therefore believe the obligation should be re-worded to state:

*"Delivery of the MLLR and 37,000 sq m of any B1 office development prior to the first occupation of any non-B1 office development."*

Only then will the benefits of the scheme be ensured and delivered.

Further, as you will be aware the delivery of the first phase of Victoria Gate is at a delicate stage and Hammerson and John Lewis remain concerned over the potential impact of the Thorpe Park scheme. We are strongly of the view that the delivery of Victoria Gate should be protected and encouraged to proceed first, before other retail proposals in less central locations come forward. This is made clear in the emerging Core Strategy and in the retail evidence base. We therefore believe a further obligation should be included within the S106 Agreement along the lines of:

*"Phase 1 of the Victoria Gate scheme [as shown on the attached plan] should be completed and have traded for 1 year prior to the first occupation of any non-B1 office development."*

This would allow the first phase of the scheme to come forward and be allowed to establish itself prior to the opening of the retail element at Thorpe Park. We appreciate that this obligation should also be time limited so suggest that 1 January 2017 would be an appropriate longstop given the anticipated programme for the delivery of the Victoria Gate scheme.

### *Conditions*

We set out on the attached schedule prepared by CBRE our suggested changes to the proposed

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conditions to provide additional control. However, in summary we would like to see:

- A minimum unit size of 929 sq m for all retail (A1) units
- Removal of Permitted Development Rights for sub-division and mezzanine floorspace
- A restriction on the goods that could be sold from the A1 units to a traditional bulky goods restriction.
- Control over the net rather than gross floorspace within the A1 retail units
- Control over the convenience and comparison split within the proposed foodstore.

The detailed wording is set out in the attached note.

In addition, we have identified a number of conditions which are also unlawful due to the use of the words "unless otherwise agreed in writing with the Local Planning Authority". Specifically, varying or adding proposals to development (particular in the context of EIA development) outside the relevant statutory procedures is unlawful and this wording should be deleted. In this respect see conditions 6, 19, 21, 23, 24, 25, 27 and 28 (however see CBRE's proposed amendments/comments), 33, 36, 38, 39, 41, 45, 46 and 47.

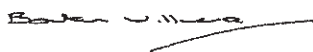
Please note that the above points also apply to the proposed conditions set out in the related applications in Appendices 2-4 of the officer's report to the Panel and these conditions should also be amended.

#### *Conclusion & Next Steps*

We trust that these proposals are constructive and seen as a pragmatic way to move matters forward. We understand that you are due to meet the applicants shortly and will discuss these additional controls with them. We look forward to receiving your feedback in order that there is hopefully positive news to report to members on Thursday.

In the meantime, we would be grateful if you could acknowledge receipt of this letter and revert to Paul Newton of this office with any comments or additional queries you may have.

Yours sincerely,



#### **BARTON WILLMORE**

cc. J Swindells Esq. – Hammerson  
 C Stanwell Esq. – Nabarro  
 I Anderson Esq. – CBRE (acting for John Lewis)  
 D Symonds Esq. – RPS (acting for Royal London Asset Management)  
 R Frudd Esq. – Indigo Planning (acting for Aviva and the Crown Estate)

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## Thorpe Park, Leeds: proposed revised conditions

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### WHAT WE ARE SEEKING TO ACHIEVE

Our aim is to prepare a set of conditions which, as far as possible, will minimise the potential for diversion of trade from Leeds city centre and, therefore, to minimise the impact on its vitality and viability and on investment (including the letting of new units at Victoria Gate).

As they stand, the conditions proposed by Leeds City Council do not offer adequate protection for the city centre, either because they do not go far enough or because they are poorly worded and do not achieve what is intended. In addition, some of the conditions are arguably ultra vires and/or unenforceable.

We set out below possible revisions to the conditions intended to deal with the retail element of the proposed development. We also propose deleting three conditions.

### PROPOSED APPROACH

#### Revised conditions

#### **Proposed new condition A (replaces existing condition 23 – part)**

The approved A1 retail floorspace, other than that which falls within the foodstore, shall not exceed 9,000sqm GEA and 7,200sqm net sales area.

#### Reason:

*Informative: Net sales is defined as the area within the walls of the shop or store to which the public has access or from which sales are made, including display areas, fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer services areas, and internal lobbies in which goods are displayed; but not including cafes and customer toilets.*

#### **Proposed new condition B (replaces existing condition 23 – part)**

The approved A1 retail floorspace, other than that which falls within the foodstore, shall be formed of individual units of no less than 929sqm GEA (743sqm net sales area) and no more than 4,000sqm GEA (3,200sqm net sales area).

#### Reason:

*Informative: Net sales is defined as the area within the walls of the shop or store to which the public has access or from which sales are made, including display areas, fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer services areas, and internal lobbies in which goods are displayed; but not including cafes and customer toilets.*

## Thorpe Park, Leeds: proposed revised conditions

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### Proposed new condition C

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order with or without modification), the approved A1 retail floorspace (other than part of the foodstore specified in condition F) shall not be used for the sale of convenience goods.

Reason:

### Proposed new condition D (revises existing condition 24)

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order with or without modification), the range of goods that may be sold from the approved A1 retail floorspace, other from than that which falls within the foodstore, shall be limited to bulky goods and DIY related goods.

Reason:

*Informative: Bulky goods are those falling with the furniture and floor coverings COICOP category (not the larger furniture, floor coverings and household textiles group) and DIY goods (repair and maintenance materials, tools and equipment for house and garden, gardens plants and flowers, cleaning materials and furniture and floor coverings*

### Proposed new condition E (revises existing condition 28)

The Gross External Area GEA of the foodstore hereby permitted shall not exceed 9,000sqm. In addition, notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order with or without modification), the net sales area of the foodstore shall not exceed 5,400sqm and, of this, the net convenience sales floorspace shall not exceed 3,618sqm and the net comparison sales floorspace shall not exceed 1,782sqm.

Reason:

*Informative: Net sales is defined as the area within the walls of the shop or store to which the public has access or from which sales are made, including display areas, fitting rooms, checkouts, the area in front of checkouts, serving counters and the area behind used by serving staff, areas occupied by retail concessionaires, customer services areas, and internal lobbies in which goods are displayed; but not including cafes and customer toilets.*

### Proposed new condition F (revises existing condition 29)

Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 (as amended) (or any order revoking and re-enacting that Order with or without



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modification), the foodstore hereby permitted shall not include any post office, pharmacy, travel agent, dry cleaner or optician operations or be subdivided for those uses or any other use.

*Reason:*

### **Proposed new condition G**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any order revoking and re-enacting that Order with or without modification), no part or parts of the A1 retail units may be subdivided.

*Reason:*

### **Proposed new condition H**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (or any order revoking and re-enacting that Order with or without modification), no additional floorspace may be created within the A1 retail units.

### **Conditions to be deleted**

#### **Condition 25**

Condition 25 provides for smaller units, which are likely to increase Thorpe Park's ability to become a 'one stop' retail destination, increasing its impact. It should therefore be deleted.

#### **Conditions 26 and 27**

Conditions 26 and 27 are arguably ultra vires and unenforceable. If conditions of that nature are required the position is simple: the application should be refused.

*CBRE Planning*

*Draft v1.2 (23 September 2013, 1030)*

