



## 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.**

#### APPLICANT

Thorpe Park  
Developments Ltd

#### DATE VALID

24/9/12

#### TARGET DATE

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