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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

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.

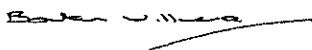
Please note that the above points also apply to the proposed conditions set out in the related applications in Appendices 2-4 of the officer's report to the Panel and these conditions should also be amended.

#### *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

## Thorpe Park, Leeds: proposed revised conditions

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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)*

