

**SUPPLEMENTARY DOCUMENT FOR  
DEVELOPMENT MANAGEMENT COMMITTEE  
Wednesday 26 October 2022 at 7.30 pm  
Council Chamber, Civic Centre**

The attached document is due to be considered at the meeting listed above and was unavailable for circulation when the agenda for the meeting was published. The agenda item to which the document relates is noted below.

**AGENDA**

4. HW/OUTAM/21/00251 - West Gate on Market (Stone Cross) Square, Broad Walk, West Gate, East Gate, Harlow (Pages 2 - 7)

## **Supplementary Report - 26.10.22 Development Management Committee**

### **Item 4**

#### **HW/OUTAM/21/00251 – West Gate on Market (Stone Cross) Square, Broad Walk, West Gate, East Gate, Harlow**

##### **Correction to Officers' report**

Page 63:

Proposed separation distances across the east – west boulevard are at *16m*, not 15m.

### **CONSULTATIONS**

- **Stansted Airport (Manchester Airports Group - MAG) 21.10.22**

The consultee response referred to in the report asked the Council to apply planning conditions on airport flightpath safeguarding. This necessitated completion of an Instrument Flight Procedure (IFP) Assessment.

Results have now been received and Stanstead MAG updated their consultation response as follows:

The assessment has revealed that there will be an infringement of the Minimum Obstacle Clearance Altitude (MOCA) of 100ft, for which we now have the CAA's agreement that we can deal with via a NOTAM (aviation advice notice). This is a very good outcome for all the stakeholders.

Therefore, our remaining concerns with this development can be dealt with via the conditions previously requested in our response dated 27 September, plus a requirement for the building to be lit with a steady red omnidirectional obstacle warning light'.

##### Officer Comment:

Condition 16 to be amended (amendments highlighted in italics):

#### **16. Exterior lighting**

Prior to commencement of above ground works (excluding demolition and enabling works) of each development block, a lighting design, installation and management plan for all exterior lighting installations for that development block must be submitted to, and approved in writing by, the Local Planning Authority.

*To ensure Stansted Airport flight safety the plan shall include provision for a steady red omnidirectional obstacle warning light on parts of the buildings permitted that exceed airport safeguarding guideline heights (the two towers in Blocks A and C1) and demonstration that all exterior lighting will be permanently capped at the horizontal with no upward light spill and no lighting directly beneath any roof lights that will emit light upwards. Only downward facing ambient lighting is to spill from the roof lights upwards and if necessary automatic blinds are to be fitted that close at dusk. These lighting requirements must be assessed and applied in consultation with the operator of Stansted airport and the Civil Aviation Authority in the interests of flight safety, to warn and prevent distraction and confusion to pilots using Stansted Airport.*

The development shall be carried out *and maintained* in accordance with the approved details.

**Reason: To allow for practical, phased, preparation and approval of exterior lighting details and to secure satisfactory exterior lighting in accordance with Policies PL1, PL2, PL10 of the Harlow Local Development Plan (2020) and to assist in ensuring Stansted Airport flight safety.**

Additional informative as follows (highlighted in italics):

*Applications for discharge of Conditions 8. Demolition management, 9. Construction management, 14. Full building external design details and materials, 16. Exterior Lighting, 37. Airport safeguarding – bird strike risk (in relation to Condition 14 discharge), will be subject to consultation with Stansted MAG (and potentially Civil Aviation Authority), to ensure that airport flightpath safeguarding requirements are appropriately met in decisions on the final approved details of the development. The applicant is advised to consider airport safeguarding requirements directly with Stansted MAG before submission of discharge applications and to demonstrate reasonable compliance in the submission.*

**ECC, Growth and Development Manager 05.10.22**

Further comments updating infrastructure financial contribution requests to take account of the reduced scale of development (summary extracts below):

‘this proposal needs to be considered in-combination with the other development proposals that have been approved or are proposed within the town centre. Taken all together, developments across the town centre result in significant residential growth, and the cumulative impact of substantial growth within the town centre needs to be carefully considered and (it should be) ensured that appropriate proportionate approach(es) to supporting infrastructure requirements (either through physical provision or financial contributions) are secured.

ECC notes that it is still stated there are viability constraints and that no financial contributions are proposed (subject to early and late review clauses). It is for Harlow Council as decision-maker to do a thorough and robust review of the viability assessment submitted, and Harlow will need to be satisfied that the scheme is acceptable when considering the overall planning balance.

ECC is requesting financial contributions (index linked to Q1- 2020).

- Additional EYCC (early years) capacity £237,780.36
- Post 16 education £277,000.72 (potential, subject to further assessment)
- Additional library provision £44,968.40
- Additional waste management capacity £52,020.00

(Officer Note - mainstream education contributions are not required – see earlier comments included in main report)

If sufficient contributions are not secured then there is risk that the right infrastructure will not be delivered in the right place and at the right time to meet the needs of our residents. This can impact on the inclusivity and sustainability of the proposed development and the wellbeing of residents if they are unable to access appropriate local services and facilities when needed’.

Officer Comment:

The assessment in the report remains unchanged. The scheme is unviable and cannot deliver contributions.

• **Flood Risk and Drainage Lead Local Flood Authority (LLFA - ECC) 20.10.22**

Do not object to the granting of planning permission based on conditions (potential detailed conditions).

Officer Comment:

Condition 7. Surface Water Drainage as recommended is sufficient to address detailed drainage requirements in a future condition discharge submission.

**NEIGHBOURS**

• Ghadami Family / Blackraven Developments Ltd / Xfit24 Ltd / Serex Ltd (sent direct to Members, but also reproduced below)

‘Due to the scale of the proposed development and volume of letters of objection we feel it would be helpful to outline in bullet points our key objections and why we think it is in the best interest of the town to refuse or adjourn planning permission at this stage.

For your reference, letters of objection were lodged from our agent on 29th October 2021, 27th January 2022 and 27th September 2022, and from Blackraven Developments Ltd (BDL) on 31st May 2021, 26th January 2022, 14th February 2022 and 27th September 2022. A portion of which can be found on pages 39-47 of the officers report.

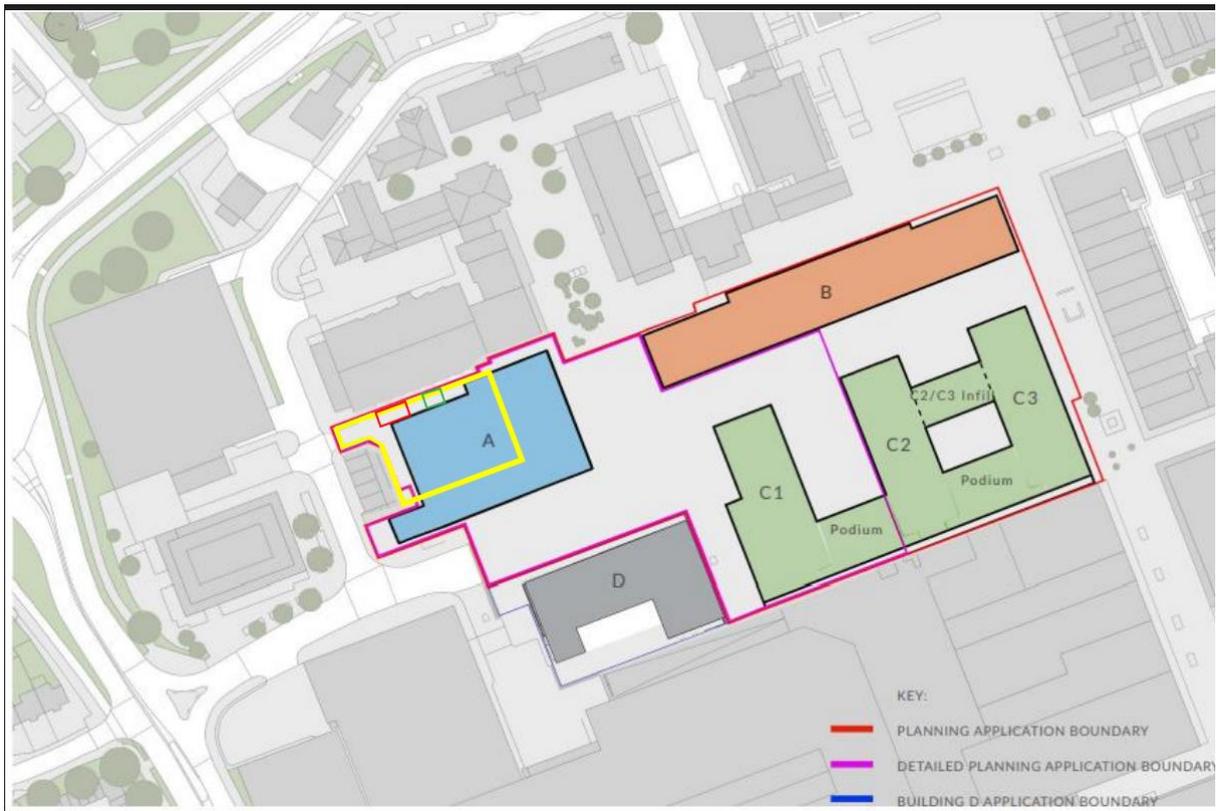
Please note that for some reason the letters of objection dated 27th and 26th January and agent’s letter of 27th September were not published on the planning portal.

They key objections are as follows:

- The planning issues raised by our agent have not been fully reviewed or taken into consideration. The report by the planning officer fails to adequately cover these topics in the report and needs additional scrutiny.
- Our group of companies has rights of access over the service courtyard that makes up a majority of the proposed Block A. The applicant has yet to acknowledge such rights

exist and are currently blocking us out of this area. No development can take place on the area outlined yellow on the attached plan without our prior consent, which has not been given.

- Our company has access to car parks numbers 35 and 36 for emergency use and unobstructed access from them to the rest of the service courtyard and beyond. These spaces are outlined green on the attached plan.
- Our company has a 999 year licence on car park numbers 29, 30 and 31. Whilst we agree that these spaces can be relocated as per the licence, that is on the basis that any relocation is like-for-like. The proposed relocation reduces the size of each space, adds height limits, obstructs access to emergency exits (car park numbers 35 and 35) and the remaining service courtyard.



None of these issues have been acknowledged, discussed or remedied by the applicant, despite us notifying them in 2019. In fact, the applicant only made contact with us on 11 October 2022 when we raised the issue with them again.

As such we have taken advice that the only option to ensure our rights over the land are protected is to pursue legal action in the event that this application is approved. As the committee and applicant are aware it would be this Council and not the applicant who will be the main defendant to any court action. This will mean at the very least delaying the development, or worse, frustrating the benefits arising from the development altogether.

As a last ditch effort to enable the development to proceed, we have generously offered the applicant an interim agreement whereby we will withhold any legal action if they acknowledge our rights as set out in various deeds, leases and licences and act accordingly. This offer has been ignored by the applicant since the person we were dealing with has left the company due to apparent lack of funding.

Despite what the committee may have been advised, the Deliverability of a scheme like this is a material planning concern. We point you to advice from the local government association that states "the likelihood that the development will be delivered" is a relevant material concern. This application, as it stands, simply isn't deliverable.

Furthermore, the government advises that local authorities take the planning history of a site into account when determining an application for planning permission in particular when considering applications for major development involving the provision of housing and when an earlier grant for a similar development on the same site did not start. Two successful applications were not started, one due to a High Court order in 2004 brought forward due to the same issues as listed above.

We don't wish to see history repeat itself and therefore request that this application be refused or at least adjourned until such a time that the issues raised by us are resolved and the scheme is deemed deliverable'.

Officer comment:

This further representation further highlights matters already noted in the report. There have been a series of representations from these parties as the application was amended. The report notes: 'Only the most recent letter on the current amendments is detailed here as it updates objections made at each stage of application and amendments'

The applicant has provided a detailed response to the representations (regularly updated as the application has been amended. This is published on application case file (Public Access). It includes reference to what the applicant considers to be an appropriate re-provision of access and parking space rights in favour of the Odeon site.

From the Council's point of view as Local Planning Authority (LPA) most of the matters raised relate to land ownership and rights. They are not planning considerations and cannot legitimately prevent the grant of planning permission for a proposal that is acceptable in planning / physical terms.

The applicant has, as far as the council can ascertain, undertaken statutory planning application landownership notifications correctly and certainly the neighbour has comprehensive knowledge of what is proposed, so the Council cannot in anyway be held responsible for the private dispute.

If it is ultimately proven that there is an unresolved land ownership constraint, this can be addressed by a private legal / financial means and / or dispute resolution. The landowners / applicants can of course come forward with amended proposals as necessary. If ultimately there is a need to work around unresolved land ownership constraints, then from the planning point of view it would appear quite possible to amend the ground floor design of Block A accordingly. If the land ownership position is not so resolved this could indeed affect deliverability of the Block A part of the development, as designed. However, that is not a matter the LPA can be expected address. Deliverability is only relevant to planning if there is a planning strategy dependence on successful implementation and that is not the case here.

The wider planning concerns expressed on the application are covered in the normal way in the report, albeit not point by point in direct relation to the representation. In brief:

- Scale of development is appropriate in context of the Council's policies

- Means of access are included for both the outline and full parts of the application (Kitson Way, Westgate / West Square and controlled vehicular access to the new boulevard)
- The flank relationship between the Odeon site / building and Block A is specifically considered (report pages 63/4)
- The 5.2m minimum ground floor set back of Block A from the Odeon boundary allows for access to the flank of the Odeon building, including for pedestrian fire escape. Emergency vehicle access is from the rear and frontage (Kitson Way and West Gate / Square respectively)