

P20-0884/BC/KS

21st September 2020

Ms Jennifer Atkinson
Planning and Borough Department
Manchester City Council
Town Hall
Manchester
M60 2LA

Dear Ms Atkinson

Further Observations to Eastlands Arena Application
Etihad Campus, Manchester
LPA ref. 126431/FO/2020

Further to our letter dated 1st September 2020, we have now had opportunity to review the Committee Report in relation to planning application ref. 126431/FO/2020, on behalf of our client, Manchester Nominee (1) Ltd and Manchester Nominee (2) Ltd, known as Manchester JV Limited (hereinafter referred to as MJV).

Our client continues to have serious concerns with regard to the proposed scheme for the principal reasons previously highlighted and strongly considers that the application **should be refused**. The key issues of concern are detailed further below.

There are a number of relevant associated issues that we wish to make further representations on as follows:

- Sequential Test remains inadequate;
- Requirement to refer the application to Secretary of State;
- Need remains for a separate Impact Assessment to justify the retail component of the scheme;
- Impact of the Covid-19 pandemic;
- Perceived benefits for the City Centre are not sufficiently evidenced;
- Legislative changes to the Use Classes Order are not addressed;
- Lack of control of the proposed Class A1 floorspace; and
- Food and beverage component would be in direct competition with, and adversely impact vitality and viability of City Centre.

These matters are considered in turn below.

Inadequate Sequential Test

At pages 65 and 66, the Committee Report deals with the issue of the sequential test and concludes that *"there are no sequentially preferable in centre sites for the arena and the sequential test has demonstrated that the application site is suitable, available and viable for the proposal."*

However, the Report fails to consider the requirements of Paragraph 87 of the NPPF. This requires applicants to demonstrate a flexible approach on issues such as format and scale.

In this case, there is no evidence that the proposed format, involving 17,451 sqm of A class use, is necessary or fundamental to the primary arena venue operation.

The only justification for such a significant element of A class use detailed in the submission is to encourage dwell time at the arena beyond event times. The market demand information submitted in support of the application relates to the capacity for Manchester to accommodate 2 arena venues. No justification is provided in terms of the quantum of floorspace necessary to encourage dwell-time. Without a requirement to show 'need' the only constraint on the scale of the retail component is impact on nearby centres. The latter has not been considered by the applicant.

On the basis of the above, the submitted sequential test does not demonstrate that due flexibility has been shown in the quantum of retail floorspace proposed, required by Paragraph 87 of the NPPF to fulfil the purpose of ensuring that town centre [City Centre] or edge of centre sites are fully explored.

Requirement to refer the application to Secretary of State

At page 66 of the Committee Report, reference is made to the campus being *"identified as a location for major leisure and recreational offer (policies EC3 and EC7 of the Core Strategy."* Policy EC5 states that Eastlands is expected to provide *"a major leisure visitor destination with ancillary retail and offices"* and Policy EC7 states that development should provide *"predominantly tourism / leisure based, including hotels and food and drink will be appropriate together with ancillary retail required to support the principal uses."*

The proposed retail uses are not wholly ancillary to the proposed arena use for the reasons set out previously.

Support for a significant element of retail use that is evidently not ancillary is clearly a departure under the Town and Country Planning (Consultation) (England) Direction 2009 which requires referral to the Secretary of State should it meet the following criteria under Paragraph 5.1:

*"5.(1) For the purposes of this Direction, "development outside town centres" means development which consists of or includes retail, leisure or office use, and which –
(a) is to be carried out on land which is edge-of-centre, out-of-centre or out-of-town; and*

- (b) **is not in accordance with one or more provisions of the development plan** in force in relation to the area in which the development is to be carried out; and
- (c) consists of or includes the provision of a building or buildings where the floor space to be created by the development is:
- (i) 5,000 square metres or more; or
 - (ii) extensions or new development of 2,500 square metres or more which, when aggregated with existing floor space, would exceed 5,000 square metres" (our emphasis).

The application meets the above criteria in all respects and therefore the recommendation should include reference to the referral to the Secretary of State under the departure procedure.

Need for separate Impact Assessment to justify Retail component of the scheme

Page 67 of the Committee Report states that the retail element "*does not require separate Impact Assessment.*"

The Report clearly dismisses the need for a separate impact assessment and suggests that there will be an overall beneficial impact for the City Centre as a whole. Nonetheless, given the substantial scale of the proposed out-of-centre development, and the amount which could be operated as Class A1 use (up to 7,530 sqm as proposed) the retail floorspace proposed would clearly act as a significant destination, whether that be on an event day or in its own right.

The trading potential and resultant diversion of expenditure (from the City Centre) to the application site has not been assessed. Policy C9 states that "*an assessment of impacts will be required for retail developments of more than local significance.*" The explanatory text at paragraph 10.56 defines this as "*In Manchester's circumstances, the impacts of out-of-centre development will vary across the City and will need to be considered on a case-by-case basis, although the Council considers that development of less than 650 square metres gross will generally be of local significance only.*" Notwithstanding the applicant's description of 'ancillary' retail, the proposed development seeks 6,880 sqm of retail floorspace above the 650 sqm threshold (i.e. 7,530 sqm – 650 sqm) and therefore Policy C9 clearly requires the application to be supported by an impact assessment.

The applicant has sought to rely upon the PwC and Ekosgen Reports which argue that there is sufficient 'capacity' for Manchester to accommodate 2 arena venues. For example at page 69, the Committee Report states "*a market analysis suggests that there would be sufficient market growth overtime to support the introduction of a new arena at the Etihad Campus and to also maintain the current levels of trade at the existing Manchester Arena.*" This is not an impact assessment as required by Policy C9 and Paragraph 89 of the NPPF to justify the retail element.

The omission of an impact assessment to support the retail component is a serious flaw in the application submission and is contrary to the Development Plan (Policy C9).

Impact of the Covid-19 Pandemic

At page 75, the Committee Report alludes to the fact that forecasts suggest that the local economy will *"get back to pre-Covid levels by the end of 2021. The proposed arena would not be fully operational until 2023 when the Bank of England forecasts that growth and recovery would be firmly established to at least pre-Covid levels."*

The short to medium term outlook remains clouded by uncertainty around the EU withdrawal agreement and fears of a potential no-deal outcome. These concerns, exacerbated by the ongoing Covid-19 pandemic, are likely to result in cautious consumer spending. As such, further diversion of trade away from the City Centre must be viewed with caution and the City Centre should be protected in this context.

Perceived Benefits for the City Centre

At page 76, the Committee Report describes that whilst there may be some localised impact within the City Centre, the impacts of these will be limited.

Whilst it is acknowledged there may be spin off economic benefits for the locality in which the proposal is sited, the spin off benefits to the City Centre will be negligible.

The application submission suggests that a significant proportion of additional spending associated with the new arena will be within the City Centre. However this is not evidenced, and the applicant fails to address the consequential loss of existing trade, expenditure and footfall within the City Centre, whereby local people are instead choosing to shop, dine and drink at this new out-of-centre 'destination'. Policy C9 seeks to protect the City Centre by refusing schemes which will have unacceptable impacts.

In addition, whilst jobs created are intended to be filled by local people wherever possible, many of these will go to people who are already employed locally within the leisure and retail sectors within the City Centre; displacing employment from the City Centre to this out-of-centre location. This has the potential to further reduce City Centre spending potential.

At page 77, the Committee Report states *"it is considered that the applicant has extensively and robustly demonstrated, through its detailed market assessment, that Manchester can readily and viably sustain two arenas without undermining either. This is considered central to the requirements of Paragraph 89b of the NPPF."*

Paragraph 89b of the NPPF states that proposals for out-of-centre retail development should include assessment of:

"the impact of the proposal on town centre vitality and viability, including local consumer choice and trade in the town centre and the wider retail catchment (as applicable to the scale and nature of the scheme)."

Again, whilst there is huge reliance on the detailed market assessment submitted in support of the application, which purports to sustain 2 arena venues, this does not address the requirements of Paragraph 89b which requires a detailed retail impact assessment. To suggest that a market assessment is "*central to the requirements of Paragraph 89b of the NPPF*" shows a clear misunderstanding of retail planning policy.

Legislative Changes to the Use Classes Order

Page 77 of the Committee Report acknowledges that the retail/commercial floorspace amounts to a total of 17,451 sqm.

Given the recent amendments to the Town and Country Planning (Use Classes Order) 1987, all the proposed retail, food and drink floorspace would have the ability to be used for Class A1 retail purposes under the new Class E 'Commercial, Business and Service' use class – equating to up to 17,451 sqm. This further raises concerns over the lack of a separate impact assessment.

The true trading potential of this out-of-centre retail and commercial destination has not been properly assessed, whether in the short term (Class A1 floorspace as proposed) or in the longer term (overall Class E trading potential).

Lack of control of the proposed A1 floorspace

At page 78, the Committee Report states "*the arena would not be a freestanding retail destination. There would be no sit down bars or restaurant and the retail offer would be specific to the arena and merchandise linked to performers.*"

However, the only control of the retail floorspace is through Condition 12, which essentially allows a potential open A1 element.

Condition 15 seeks a strategy for use of the retail and commercial spaces on non-arena event days to be submitted to and approved by the LPA. Such a strategy is not proposed to protect the vitality and viability of the City Centre, rather it is "*to facilitate the use of the ancillary spaces on non-arena event days in the interest of natural surveillance and activity at the arena and Etihad Campus as part of supporting the vitality of the campus pursuant to policies SP1, EC7 and DM1 of the Manchester Core Strategy (2012).*"

As previously noted, the overall trading potential of A1 floorspace – whether it be used non non-arena event days or not – has not been considered.

It is perverse for there to be no assessment of the overall retail component on the vitality and viability of the City Centre and instead apply a condition which requires a strategy controlling a small element of the retail use in the interest of natural surveillance and protecting the vitality of the Etihad Campus.

The Food & Beverage Component

At page 106, the Committee Report states that *"the food and beverage offer at the site would also increase dwell time at the arena and manage crowd flows and staggering of arrival and departure times."*

Not only is there the trading potential of the A1 floorspace that has not been assessed, there is also a significant element of food and beverage provision which will be a key attractor for this out-of-centre location. This element would be in direct competition with similar provision located within the City Centre, further disincentivising linked trips with the City Centre.

Food and beverage uses are identified in the Annex 2: Glossary of the NPPF as 'main town centre uses.'

The overall cumulative impact on the vitality and viability of the City Centre is from the arena, retail element and food and beverage component which is seeking to encourage increased dwell time in this out-of-centre location in direct competition with City Centre provision.

The Committee Report at page 77 states the additional benefit to the City Centre would outweigh losses to City Centre trade from events that might otherwise have taken place at the existing arena, primarily from those arriving more than 30min in advance of an event starting. It states *"although great emphasis is placed upon such losses by the objectors, there is no meaningful assessment to evidence what these losses might be"*. To the contrary, it is for the applicant to provide the necessary retail impact assessment including quantitative analysis of trade draw from the City Centre in order to demonstrate that there will be no adverse impact.

Again, the analysis on City Centre impact is woefully inadequate given the fragility of the City Centre's vitality and viability in light of recent events as described above.

Conclusion

Having considered the Officer's Report to Committee, our previous concerns with the proposed development still stand. Owing to its significant scale, out-of-centre location, and the nature of the proposed A class uses (which are not all wholly ancillary), the proposal will result in a significant adverse impact on the vitality and viability of Manchester City Centre, both in terms of reduced footfall and 'out-of-centre' competition for A Class uses.

The trading potential for Class A1 retail use remains significant, and the Report fails to consider and assess the impact of the significant element of proposed retail use on both the vitality and viability of the City Centre in accordance with the requirements of national planning policy and practice guidance. Nor is consideration given to the impact arising from the potential for a significantly greater amount of retail use (up to 17,451 sqm) to be provided under the new Class E use, introduced through recently published amendments to the Use Classes Order.

The sequential test also fails to adequately consider the substantial A class uses element including potential disaggregation of these uses; which are not all ancillary to the arena use as set out above.

The proposed development will have a devastating effect on the retail and leisure market during a time where the City Centre is already competing with other parts of the City for a diminishing number of potential retail, food and beverage, and leisure occupiers.

The current spin off benefits of Manchester Arena for the City Centre as a whole which benefit food and beverage facilities, hotel and retail operators are not acknowledged by the applicant. The operators of Manchester Arena are of the view that two arena venues cannot be supported in Manchester, and in the event Manchester Arena was to close, or indeed its operation considerably reduce as a result of the direct out-of-centre competition, the consequential impact on the City Centre would be significant.

On the basis of the above, the proposed development would result in a significant adverse impact on the vitality and viability of the City Centre and the application does not provide sufficient evidence in accordance with the requirements of the NPPF to demonstrate otherwise.

Finally, the application proposes a significant element of out-of-centre retail use that is evidently not ancillary, and is therefore clearly a departure under the Town and Country Planning (Consultation) (England) Direction 2009 which requires referral to the Secretary of State. Therefore the recommendation should include reference to the referral to the Secretary of State under the departure procedure.

In summary, MJV remains extremely concerned about this proposal. It will create a significant out-of-centre leisure Arena in direct competition with the City Centre provision which will draw footfall and corresponding spend potential from the City Centre. Critically, the application has not been properly assessed, in particular the lack of Retail Impact Assessment is a serious omission from the supporting material.

As such, the application should be **refused** and there is evidently no material consideration which outweighs the long-established policy support for protecting the city centre's vitality and viability.

I trust the above will be given due consideration in the determination of this application.

Yours faithfully

Barry Cansfield
Senior Director