

Rebuttal from Barton Willmore on behalf of applicants

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**TOLLGATE VILLAGE (PLANNING APPLICATION REF: 150239)  
RESPONSE TO NLP RETAIL & EMPLOYMENT CRITIQUE**

1. This note sets out our response to the Retail and Employment Land Critique (prepared by NLP, October 2015) in respect of the mixed use planning application known as Tollgate Village (LPA Ref: 150239).
2. It focusses on NLP's comments on the Retail Assessment (February 2015) & Supplementary Information (June 2015) prepared by Barton Willmore, the Employment Land Study (January 2015) prepared by Regeneris Consulting and sets out our views on the acceptability of the scheme against the following planning policy tests:
  - Sequential approach;
  - Impact on Town Centre vitality and vitality;
  - Impact on Town Centre investment;
  - Loss of employment land; and
  - Other matters.
3. We then set out potential conditions / S106 obligations which we wish to discuss with Officers along with our conclusions on the acceptability of the scheme in retail and employment terms.

**Sequential Test**

4. NLP provide an assessment of the proposed development against the sequential test. Part of the application site sits within the defined Urban District Centre with the remainder in an edge-of-centre location. The application proposals would therefore represent a logical enhancement and extension to the existing District Centre and the retail and leisure offer in the Stanway growth area. The applicant has promoted the site through the August 2014 Call for Sites exercise and the Local Plan Issues and Options consultation in February 2015.
5. Whilst NLP refer to the Core Strategy hierarchy of centres, they surprisingly fail to recognise that the Inspectors Report into the Local Plan Focussed Review (May 2014) found the Council's retail hierarchy to be at odds with the NPPF (paragraph 17 of the Inspector's Report). We therefore believe that the NPPF provides the appropriate basis against which to assess the scheme.
6. Against this background, NLP's assessment of potential alternative sites can be summarised as follows:
  - *Vineyard Gate*: NLP conclude the site is not available and not suitable for the proposed development.
  - *Cowdray Centre*: notwithstanding that in our view the site does not benefit from a preference under the NPPF sequential test, NLP find that the site is too small to accommodate the proposed development (i.e. it is not suitable).
7. NLP has not identified any further sites which require assessment. On this basis, the proposed development **complies with the sequential test** under NPPF paragraph 24 and in turn the relevant part of NPPF paragraph 27.

### Impact Assessment – Base Data and Assumptions

8. Before assessing whether the scheme is considered to comply with the impact test, we comment below on the key inputs to the quantitative impact assessment:

- *Base & Design Years:* NLP agrees with the base year of 2015 and design year of 2019 set out in the Retail & Leisure Assessment.
- *Population Data:* Whilst at pre-application stage we requested from CBC / NLP the population data it considered appropriate, this was not forthcoming and has resulted in NLP using different data to us in its assessment. However, as noted by NLP (paragraph 2.70), this is unlikely to be significant in terms of the resultant analysis/assessment.
- *Expenditure Data:* NLP agrees with the expenditure data used to inform the assessment. Whilst there are some differences in available expenditure NLP note that these are relatively small and do not affect the overall impact conclusions (paragraphs 2.12 and 2.13).
- *Scheme Turnover:* NLP agrees with the potential convenience goods turnover of the scheme. NLP however suggests that the comparison goods sales density will be greater than set out in the Retail & Leisure Assessment and therefore assesses two potential scenarios based on i) a mixed scheme (bulky and non-bulky comparison goods) and ii) a fashion led scheme. The scheme has always been promoted as a mixed scheme across comparison goods sectors, as set out in the Assessment and reflected in our own turnover assumptions. We comment on NLP's scenarios in more detail below.

In respect of the net comparison goods floorspace, NLP suggest this would be greater than set out in the Retail & Leisure Assessment. Given the split level nature of the floorspace and requirement for greater servicing / circulation areas as a result, in our view the net to gross ratio of 70% is appropriate. In any event the net sales floorspace can be conditioned (as we have previously suggested) and it is therefore inappropriate for NLP to consider a higher sales floorspace.

- *Shopping Patterns:* NLP accept the existing market shares used to inform the assessment.
- *Commitments:* NLP is critical of the inclusion of Vineyard Gate as a 'commitment'. It should be noted here (and as we have expressed on a number of occasions), this was included explicitly at NLP's request during pre-application discussions. Our view has been consistently stated that it is not a commitment. NLP's assessment therefore excludes this 'scheme'. NLP also excludes some convenience goods commitments which will now not come forward.
- *Trade Draw:* NLP consider our trade draw approach to be appropriate.

### Impact on Town Centre Vitality and Viability

9. It is important to note at the outset that the NPPF impact test sets out that applications should only be refused where there is likely to be 'a significant adverse impact' on Town Centre trade, turnover and vitality and viability (NPPF paragraph 26, 2<sup>nd</sup> bullet).

10. Before considering the potential for Town Centre impact, it is important to consider the health, or vitality and viability, of Colchester Town Centre. Our Retail & Leisure Assessment included a detailed assessment of the Town Centre and concluded that it is vital and viable. Whilst NLP has not undertaken its own health check assessment, they agree that it is healthy, and there are no particular vitality and viability concerns (paragraphs 3.60 and 9.6).



11. Against the background of a healthy Town Centre, we set out the key findings of NLP's assessment and the scheme's compliance with the NPPF impact tests.

Class A1 Floorspace

12. NLP does not raise any concerns over the potential convenience goods component of the scheme, concluding that *"the impact on this food and grocery sector is **not expected to be significant**"* (paragraph 9.2).
13. In respect of comparison goods, NLP assesses two scenarios, based on:
- i) a 'mixed scheme'; and
  - ii) a fashion led scheme.
14. Under the 'mixed scheme' scenario, NLP concludes that *"Comparison goods trade diversion from the town centre is **not expected to have a significant adverse impact on the vitality and viability** of existing facilities within the town centre..."* (paragraph 3.62). NLP does however suggest that future investment would be discouraged which is a separate part of the impact test and is considered below.
15. Under the 'fashion-led' scenario, NLP again conclude that *"Comparison goods diversion from the town centre is **not expected to undermine the vitality and viability** of existing facilities within the town centre..."* (paragraph 3.65). NLP suggest that choice may not be improved, but this is not a requirement or test under the NPPF.
16. NLP then present combined convenience and comparison goods impact figures which show a 9.8% impact on the Town Centre under the 'mixed scheme' scenario and a 13.2% impact under the 'fashion led' scenario.
17. It is clear that, as recognised by NLP under either scenario, the scheme would not result in a significant adverse impact on the vitality and viability of Colchester Town Centre. Whilst NLP believe that the Town Centre could 'stagnate' and that choice may not be improved, these are not identified as significant adverse impacts and there is no requirement for proposals to improve in-centre choice.
18. Notwithstanding that the proposed development is considered acceptable by NLP under either scenario, conditions have been proposed to control the overall sales area of the scheme and the range of goods to be sold. These are discussed further in paragraphs 49-50 of this note.
19. On this basis, the Class A1 component of the scheme complies with this part of the impact test under NPPF paragraph 26 (2<sup>nd</sup> bullet) and the relevant part of paragraph 27.

Class A3-A5 Floorspace

20. NLP raise concerns over the potential effect of the Class A3-A5 floorspace on the Town Centre. It should however be recognised that if all of the proposed Class A3-A5 floorspace was implemented, this would be at the expense of the equivalent Class A1 comparison goods floorspace (which NLP concludes would not result in a significant adverse impact on the Town Centre). Under such a scenario, the potential impact effects on the Town Centre as a whole would be offset.
21. Notwithstanding this, NLP suggests restricting the overall quantum of Class A3-A5 floorspace to a maximum of 2,100 sq m gross, as the potential growth in leisure expenditure would offset the potential impact effects of this quantum of floorspace. The Applicant is willing to accept such a condition which in our view reinforces the acceptability of the scheme in impact terms. This is reaffirmed at paragraph 49 of this note.

22. On this basis, the A3-A5 component of the scheme (as controlled by condition), would not result in a significant adverse impact on Town Centre vitality and viability.

Class D2 Floorspace

23. NLP incorrectly suggests that this component of the scheme has not been assessed. The assessment is clearly set out at paragraph 6.83 and 6.100 of the Retail & Leisure Assessment. NLP does not however suggest that the leisure component of the scheme would result in a significant adverse impact on Town Centre vitality and viability.
24. Further, we are surprised that NLP suggests that i) impact on leisure development at Northern Gateway has not been assessed and that ii) that 'scheme' should be taken into account in a cumulative assessment (paragraphs 2.69 and 9.15).
25. The Northern Gateway 'scheme' is on land owned by CBC and has been publicised recently by them. It is understood that a developer has been selected to promote a scheme that is to include a circa 4,400 sq m cinema as well as other leisure floorspace of 7,440 sq m along with a range of restaurants.
26. NLP incorrectly suggest that the proposed leisure floorspace at North Gateway is 'permitted', by virtue of an outline planning permission reference: O/COL/01/1622. This permission was granted in 2006 and will expire in April 2016. NLP fail to recognise that the permitted D2 leisure floorspace at Northern Gateway relates only to a 'health and fitness centre' and no other use within the D2 class. Part of the permitted health and fitness centre floorspace will be taken up by David Lloyd following reserved matters approval in September 2015 (CBC ref: 151216).
27. As a result, the outline permission offers no support for a cinema or alternative leisure uses on the site. Should CBC and their selected developer wish to promote such a scheme it will need to be through a new planning application. If a new planning application is forthcoming it will need to be assessed against the relevant planning policy tests. In this regard it is worth noting that the site is out-of-centre in policy terms and is allocated for employment use. Indeed, NLP consider it to be the highest rated employment site in Colchester.
28. The Northern Gateway site does not benefit from any protection in planning policy terms from competing development and is sequentially inferior to the Tollgate Village site. There are no live planning applications relating to the site and there is no requirement to include it in a cumulative assessment. There is certainly no need to assess potential impact on it.
29. It is however worth noting in relation to the potential cinema and leisure uses proposed at Northern Gateway, the Minutes of the Council's Revolving Investment Fund Committee Meeting on 16<sup>th</sup> September 2015. These included comments from CBC's Strategic Director - Commercial and Place and its Economic Growth Manager, who explained to Members that *"...the development would complement the town centre. Many of the uses proposed would not be appropriate for a town centre location. The development would draw more people to Colchester, some of whom would also visit the town centre or other attractions such as Colchester Zoo..."*.
30. Clearly, these comments could equally be applied to the cinema at Tollgate Village which incidentally is located in a sequentially preferable location. The only reasonable conclusion that can be drawn is that the leisure component of the Tollgate Village scheme would not result in a significant adverse impact on Town Centre vitality and viability.

Other Centres

31. NLP conclude that the scheme does not raise concerns in relation to the vitality and viability of District Centres. We are however surprised that NLP does not consider the potential positive effects on Tollgate District Centre. These are detailed in Planning Application and



which should be fully taken into account in considering the merits of the scheme particularly given the sites in/edge of centre location (see paragraph 4).

#### **Impact on Town Centre Investment**

32. NLP refer to two potential 'schemes' against NPPF paragraph 26 (1<sup>st</sup> bullet) that it considers could potentially be significantly adversely impacted upon. These comprise Vineyard Gate and the Curzon Cinema as set out below detail below.

##### *Vineyard Gate*

33. The background potential for impact on this scheme has been set out in detail in both the Retail & Leisure Assessment and Supplementary Information. We note that since this time the 'scheme' has still not progressed and that Heads of Terms are still yet to be agreed, or even presented to Cabinet / Full Council for discussion.
34. NLP has provided no new evidence on the progress of the scheme as part of its assessment and we therefore maintain our position as set out in the above documents. The fact that NLP (who are acting for CBC) themselves are unclear on the potential uses within the proposed 'scheme' (paragraphs 2.26 and 2.69), demonstrates and reinforces our view that there is no scheme to actually assess.
35. Further, and somewhat confusingly, NLP provide a capacity 'assessment' in its critique to assess whether the Tollgate Village application will impact on town centre investment. The demonstration of need / capacity is not a requirement under the NPPF in a development management scenario (such as this). It therefore has no relevance to the appropriate planning policy tests. Even if this were the case, very limited weight can be attributed to the NLP assessment because:
- NLP adopt a new base year of 2015 and assume that stores are trading at equilibrium at this point.
  - The approach to a new base year assumes the capacity identified in its 2013 Study (i.e. from 2012-2015) will simply fall away. By constantly changing the base year and applying the equilibrium approach, there will always be limited capacity in such circumstances. For the assessment to be accurate, NLP should apply a consistent assessment based on its 2013 study in order to accurately reflect the capacity for additional floorspace in Colchester in line with CBC's evidence base.
  - The market share assumptions and potential increase for retention in Colchester are not explained.

36. It is also unclear, how this assessment relates to the findings of their own Retail and Town Centre Uses Study Update prepared on behalf of CBC and published in March 2013, which identified significant comparison good capacity at 2016 (13,119 sq m), 2021 (25,283 sq m) and 2026 (47,749 sq m). [Source: Table 10c of CBC Retail and Town Centre Study Update 2013 excluding Vineyard Gate assumption].
37. Given that no new evidence has been provided by either NLP or CBC in relation to Vineyard Gate, we remain very firmly of the view that the Tollgate Village application will not result in a significant impact on Town Centre investment.

##### *Curzon Cinema*

38. As set out above, and contrary to NLP's assertion, the potential impact on the Curzon Cinema scheme is detailed at paragraph 6.83 of the Retail and Leisure Assessment. There has been no change in circumstance since that time and a planning application is still yet to be submitted. Our position therefore remains unchanged.
39. Whilst NLP do not suggest that there would be a significant adverse impact on this 'investment', we are surprised that NLP raise the potential for concern. As set out above,

CBC is likely to promote a cinema at Northern Gateway which will require the submission of a planning application. As an allocated employment site and out-of-centre location that scheme will also need to demonstrate that it is acceptable in impact terms.

40. The Council has made its position clear on the potential impact of an out-of-centre cinema (and the potential benefits) via the comments of CBC's Strategic Director on 16<sup>th</sup> September 2015 (set out in paragraph 29). Such comments are equally applicable to the Tollgate Village proposals.
41. For the reasons set out above in respect of vitality and viability of the leisure component, the only reasonable conclusion that can be drawn is that the proposed cinema would not result in a significant adverse impact on in-centre investment against NPPF paragraph 26 (1<sup>st</sup> bullet) and in turn the relevant part of paragraph 29.

### **Employment Land**

42. NLP provide an overview of the employment land position in Colchester, drawing on their own Employment Land Needs Assessment ("ELNA"), published in January 2015.
43. This is discussed further in both the Planning Statement and Employment Land Study submitted with the Planning Application. Based on the two most robust scenarios, the NLP Assessment identifies an oversupply of between 47.1ha to 54.9ha of employment land. As set out by NLP, the reduction of 9.1ha of employment land would still leave between 38ha and 45.8ha of surplus employment land in Colchester.
44. The Application Site comprises two of the joint 10<sup>th</sup> best ranked sites in the Borough as set out in the ELNA. NLP state (paragraph 8.48 of the ELNA) that *"it would be difficult to justify retaining the full extent of undeveloped employment allocations at Stanway from both a quantitative and qualitative market perspective. In this respect, it is recommended that the Council adopts a selective approach to safeguard these undeveloped allocations for future development, by retaining those sites with the best intrinsic qualities and greatest prospect of coming forward for employment development in the future."*
45. Higher ranked sites in Colchester would more than meet the employment land requirements set out by NLP and still result in an oversupply in the Borough. This would include the higher ranked sites in Stanway as identified by NLP and which would account for 23.6ha of employment land. The release of the Tollgate Village sites, comprising 2 of the 3 lowest ranked sites at Stanway, must be considered acceptable.
46. No new evidence has been presented on employment matters and we therefore maintain our position as set out in the Planning Application submission, that there is no justification to retain the Site in B Class employment use.

### **Other Matters**

47. NLP (paragraph 8.27 to 8.29) suggest that the scheme could be premature and pre-determine future decisions on retail and leisure floorspace in Colchester. Whilst we are surprised that NLP has been asked to comment on prematurity, as this is a matter for CBC as decision maker, we wish to point out that the PPG states:

*"Refusal of planning permission on grounds of prematurity will seldom be justified where a draft Local Plan has yet to be submitted for examination..." (PPG Paragraph: 014 Reference ID: 21b-014-20140306).*

48. Given the emerging Local Plan has not progressed beyond Issues and Options stage, it is not considered that the proposed development raises prematurity issues that would justify refusal of the application.



### **Potential Conditions / Obligations**

49. Arising from NLPs findings, our client is willing to accept the following restrictions which in our view reinforces the acceptability of the scheme in impact terms:

- Restricting the quantum of Class A3, A4 and A5 floorspace to a maximum of 2,100 sq m gross.
- Restricting the net sales area of the convenience goods floorspace to a maximum of 1,394 sq m.
- Preventing the convenience goods floorspace being used for any other purpose within Use Class A1.
- Restricting the net sales area of the comparison goods floorspace to a maximum of 14,920 sq m. For the avoidance of doubt this includes comparison goods floorspace within the flexible Class A1-A5 component of the scheme.
- Restricting the maximum net sales area for unrestricted Class A1 comparison goods to 65% of the net sales floorspace (i.e. 9,698 sq m net). The remaining comparison goods floorspace shall not be permitted to sell fashion clothing or footwear.

50. We also maintain our offer of a 'no poaching clause' within the S106 agreement which would prevent certain retailers from occupying floorspace within the development. This was set out in full in our Retail & Leisure Assessment Supplementary Information document dated June 2015.

51. We would again reiterate our willingness to discuss these potential restrictions and the detailed wording of conditions / obligations in more detail with Officers.

### **Summary and Conclusions**

52. NLP conclude that the scheme complies with the sequential test and does not identify a significant adverse impact in terms of Town Centre vitality and viability. NLP does however raise concerns over potential impact on in-centre investment in terms of Vineyard Gate. For the reasons set out above, we disagree with NLP and maintain our position that the scheme complies with the NPPF sequential and impact tests (paragraphs 24 and 26) and in turn paragraph 27.

53. Further, no new evidence has been presented on employment land matters which would justify the retention of the application site.

54. Against this background, we maintain our position that the application proposals comply with the Development Plan and National Guidance. In the absence of harm and considering the numerous tangible benefits arising from the proposal, it represents 'sustainable development' and should therefore be granted planning permission.