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Dear Mr Easton

**REPRESENTATION TO PLANNING APPLICATION 161429/PPP - MAJOR DEVELOPMENT MIXED USE COMMERCIAL (UP TO 30,000 SQM) INCLUDING RETAIL (CLASS 1), FOOD AND DRINK (CLASS 3), OTHER ANCILLARY USES (SUCH AS OFFICES) AND ASSOCIATED LANDSCAPING, INFRASTRUCTURE AND ACCESS WORKS - SITE AT OP40 PRIME FOUR BUSINESS PARK, KINGSWELLS, ABERDEEN**

We write on behalf of BMO Real Estate Partners (BMO REP) who is the asset manager for the owners of Bon Accord and St Nicholas Shopping Centres, Aberdeen and 20 smaller properties situated on Schoolhill, Upperkirkgate, George Street and St Andrews Street in Aberdeen city centre (which we will refer to collectively as Bon Accord), to object to the above named planning application by Drum Property Group Ltd at Prime Four Business Park, Kingswells, Aberdeen. We note that this representation is submitted prior to the deadline for comments on 13 November 2016.

The applicant seeks planning permission in principle (PPP) for a major mixed-use development at Prime Four Business Park (Phase 5) providing up to 30,000sqm of commercial floorspace. The schedule of development is summarised as follows:

- up to 26,013 sq.m (gross) of Class 1 comparison retail, with a likely focus on clothing and footwear sales;
- up to 3,716 sq.m (gross) foodstore and ancillary food and drink premises;
- other ancillary uses and associated demolition, infrastructure and access works.

**BACKGROUND**

BMO REP and the owners of Bon Accord are committed to delivering significant investment in Aberdeen city centre and successfully gained planning consent in 2014 to develop a new leisure hub, incorporating a high-end 700-seat cinema, plus additional food, drink and leisure space, and are now finalising their plans in this regard. Furthermore, they are currently undergoing pre-application consultation for a substantial retail-led mixed-use development proposal within an allocated site around the George Street / Loch Street / Crooked Lane area of the Bon Accord Shopping Centre in Aberdeen city centre, with a view to submitting a planning application early in 2017 (LDP2, OP102).

The redevelopment proposals at Bon Accord will significantly contribute towards meeting a number of key policy objectives both within the current Development Plan and emerging Local Development Plan. In particular, these relate to providing significant new retail floorspace in the city centre to meet the identified shortfall; improving a key city centre site; and safeguarding the primacy of the city centre as the regional focus for retail and town centre uses.

Maintaining and enhancing the primacy of the city centre, together with associated development plan policies which have been purposefully conceived to achieve this, are of the utmost importance to BMO REP and the owners of Bon Accord. This policy context was material to our client's decision to originally invest in Aberdeen city centre and remains so. In light of this and following a review of the above application and available supporting information, it is apparent that the application raises significant issues that are of concern to our client and the city centre, in terms of the scale and impact of the proposed retail development on its vitality and viability and impact on its ability to deliver the objectives and aspirations contained within the prevailing development plan. We therefore submit this representation objecting to the application.

### **DEVELOPMENT PLAN POLICY BACKGROUND**

Consideration of this application should be made taking full cognisance of the relevant policies set out within the development plan, which comprises the Aberdeen City and Shire Strategic Development Plan (2014) and the Aberdeen Local Development Plan (2012). Other relevant material considerations include the Proposed Aberdeen Local Development Plan (2015) and the reporters' examination report dated 23 September 2016. Aberdeen City and Aberdeenshire Retail Study (2013), the Aberdeen City Centre Masterplan (2015), the Bon Accord Quarter Masterplan (2006) and Scottish Planning Policy (2014) are also relevant.

#### ***Scottish Planning Policy (2014)***

SPP sets out the Scottish Government's policy on land use planning matters and establishes that the planning system should apply a town centre first policy when planning for uses which attract significant numbers of people, including retail and commercial leisure, offices, community and cultural facilities. SPP outlines the sequential approach with town centres as the preferred location for development, including retail and that planning authorities, developers, owners and occupiers should be flexible and realistic in applying the sequential approach, to ensure that different uses are developed in the most appropriate locations.

SPP sets out that out-of-centre locations should only be considered for uses which generate significant footfall where (in part): all town centre, edge of town centre and other commercial centre options have been assessed and discounted as unsuitable or unavailable; the scale of development proposed is appropriate, and it has been shown that the proposal cannot reasonably be altered or reduced in scale to allow it to be accommodated at a sequentially preferable location; the proposal will help to meet qualitative or quantitative deficiencies; and, there will be no significant adverse effect on the vitality and viability of existing town centres.

#### ***Aberdeen City and Shire Strategic Development Plan (SDP)***

The SDP seeks to protect the vitality and viability of town centres within the region and reaffirms the sequential approach when identifying new retail development across the region. A key aim of the SDP is to protect Aberdeen City Centre as the regional centre and remain one of the top-20 retail areas in the UK.

The SDP places particular emphasis on continuing to support the regeneration of Aberdeen city centre and making sure that this 'key regional asset' fulfils its potential by improving its shopping, leisure, commercial and residential environment as well as its visitor experience. The SDP also references the City Centre Development Framework and the Business Improvement District, which have been brought about to help deliver these objectives.

#### ***Aberdeen Local Development Plan (2012)***

The adopted LDP (2012) confirms the role of the City Centre as a regional centre and reinforces the sequential approach (through policies C1 and RT1) for the direction of proposals for new retail, commercial, leisure and other city centre uses. The Adopted LDP primarily allocates the application site under policy OP40. Policy OP40 comprises a Land Release Policy / Green Space Network provision for an allocation of up to 50 ha of development of business land to attract high quality business or be suitable for company headquarters between 2007 and 2023 and is subject to the requirement of a masterplan.

Policy RT2 (Out of Centre Proposals) is applicable and states that retail, commercial and leisure development proposed at out-of-centre locations will be refused planning permission if it does not satisfy all of the stated requirements, including (in part): compliance with the sequential approach set out in policy RT1; no significant adverse effect on the vitality or viability of a retail location; qualitative or quantitative retail deficiency; accessible location; and, would have no significant adverse effect on travel patterns and air pollution.

#### ***Proposed Aberdeen Local Development Plan (2015)***

Although not yet adopted, the Proposed LDP is a significant material consideration in the consideration of this planning application. The Proposed LDP confirms the role of Aberdeen city centre as a regional centre and reinforces the sequential approach (through policies NC2, NC4 and NC5) for the direction of proposals for new retail, commercial, leisure and other city centre uses. The Proposed LDP allocates the site under policy OP29, which comprises an Employment Area / Green Space Network Opportunity site to provide for up to 50 ha development of business land up to 2026 to attract high quality businesses or be suitable for company headquarters.

Policy NC5 (Out of Centre Proposals) is applicable and states that retail, commercial and leisure development proposed at out-of-centre locations, will be refused planning permission if it does not satisfy all of the stated requirements, including (in part): compliance with the sequential approach set out in policy NC4; no significant adverse effect on the vitality or viability of a retail location; qualitative or quantitative retail deficiency; accessible location; and, would have no significant adverse effect on travel patterns and air pollution.

#### ***Aberdeen City Centre Masterplan (2015) & Bon Accord Quarter Masterplan (2006)***

The Aberdeen city centre masterplan (2015) outlines a 20 year development strategy for Aberdeen City Centre. It identifies a series of ambitious projects that will support future economic growth and will secure more benefits and opportunities for the communities of Aberdeen City and Shire. A key part of the masterplan (in part) is to stitch together a distinctive retail offer that enhances the role of the city centre as the dominant regional shopping centre.

The masterplan subsequently provides a range of projects which seek to confirm and enhance its position. Projects include (but are not limited to): introduction of a mixture of uses (including retail) at Aberdeen Indoor Market (Project CM06); expansion of the Bon Accord Centre (Project CM07) (also included within the 2006 Bon Accord Quarter Masterplan); promoting greater independent city centre retail offer (Project CM08); improvement of space at the St. Nicholas Centre (Project CM09); enhancement of existing retail offer at the Trinity Centre and redevelopment of Atholl House (Project CM10); improvements to Union Street Conservation Area (Project CM11); and, expansion of Union Square (Project CM12).

## **GROUNDINGS OF OBJECTION**

### ***Site specific policy***

The Scottish planning system is plan led. As set out above, the site is allocated within both the adopted and emerging LDPs to provide up to 50 ha of development of business land to attract high quality business or be suitable for company headquarters between 2007 and 2023. The LDP states: *"more than 50 hectares of employment land allocations have been made to the west of the city in the Kingswells area which will provide employment opportunities in a part of the city where there is little employment land"*.

It is evident that the application site and this part of the city has been targeted by the Council as a strategic site and key for the Council's vision to deliver sufficient and suitably high quality employment land in an area that has been identified as being deficient of such appropriate uses. The proposed retail development at this location is not only contrary to the LDP allocation; it would occupy part of the business land supply to the west of the city outlined as being key to delivering high quality business development. Considering the existing employment aspirations for this part of the city, we would suggest that the Prime Four Business Park is not an appropriate location for such development.

### ***The Sequential Assessment***

The applicant has prepared a sequential assessment to support their retail capacity study, noting that *"SPP and the development plan establish that the first preference for the proposed development would be Aberdeen City Centre and consequently this is where we have focussed our search"*. The applicant identified and discounted 8 potential sequentially preferable city centre locations in their assessment.

The applicant relies upon the Supreme Court's Judgement in the case of *Tesco Stores Ltd v Dundee City Council* (2012) to justify their position that there are no suitable sites within town centres or edge-of-centres large enough to accommodate their development proposals (i.e. 30,000sq.m mix of Class 1 comparison retail floorspace, a foodstore and ancillary food and drink uses).

We are of the view that reliance on this judgement is overly simplistic. The judgement relies on the premise that a developer (in this instance Asda) should not be forced to alter its business model on the basis that it could accommodate a smaller site within a town centre location. In the case of the current Prime Four Business Park development proposal, the applicant has confirmed within their Retail Capacity Study that the development proposals:

*'Involve the development of up to 26,013 sqm (gross) of Class 1 retail floorspace which would be occupied by a range of comparison goods retailers, with a likely focus on clothing and fashion retailers in response to confirmed market demand. In addition, the proposals would be complemented by a 3,716 sqm (gross) foodstore and ancillary food and drink premises' (Retail Capacity Study para 2.1).*

At paragraph 6.10 of their Retail Capacity Study, they elaborate that this 'confirmed market demand' comprises a range of UK multiple retailers that have 'requirements for new retail units in the order of 2,500 to 20,000 sq.ft GFA' (230 – 2,000 sqm GFA).

The applicants have simply discounted sequentially preferable sites on the basis that none are suitable or available or large enough to accommodate a standalone development providing up to 30,000sqm of additional floorspace. The methodology and parameters underpinning the sequential assessment predetermine the outcome of the exercise. Although various sites have been examined, the basis on which the assessment has been undertaken leads inevitably to the elimination of alternative locations. This approach is not robust and the conclusions are based on a rigid and inflexible interpretation of policy. The sequential approach is designed to direct development to town centres in the first instance so that they benefit from available spending and investment. It not intended to operate in this constrained and artificial way.

Given the type of development proposed (i.e. retail units ranging in size from 230 – 2,000 sqm GFA), it is our view that at least some of the development, if disaggregated, could be accommodated on alternative and sequentially preferable locations within existing town centre locations, as identified in their supporting Retail Capacity Study. In the retail market it has been demonstrated that, in some cases, certain forms of business model are sometimes more suited to an out-of-centre location, including for example, large bulky goods operators and large format food superstores. In this case, however, the proposals at Prime Four Business Park includes a number of individual units designed to accommodate non bulky comparison goods operators, and, taking a flexible approach, could undoubtedly be accommodated instead on clearly identified city centre sites.

The applicants have not demonstrated any degree of flexibility or evidence as to why a smaller site or sites could not meet a similar need in this regard, and have provided no evidence to demonstrate that the scale of the proposed development is appropriate and required for the commercial viability of the scheme.

Furthermore, there can be no weight attached to the statement at paragraph 7.6 of the applicant's retail capacity study that the requirements of retailers seeking dual representation in the city somehow justifies setting aside the 'town centre first' policy principle in SPP and related requirement to address the sequential test.

The retail proposals are essentially speculative. There would be no justification for granting a personal permission in this instance going by the terms of circular 4/1998 ('The use of conditions in planning permissions'), specifically paragraph 92 of annex A. Similarly, the terms of the application do not include any form of commitment by any of the retailers (none of which are named) seeking dual representation to maintain a presence within the city centre.

In which case, the applicant's approach to addressing the sequential test is flawed. As already noted above, they have not demonstrated any flexibility in proving that the development cannot be accommodated within the city centre, being the most appropriate location according to SPP.

As noted above, the policy framework focuses on protecting Aberdeen City Centre as a regional shopping centre and consolidating its position within the top 20 centres in the UK. The strategy set out in the Local Plan and associated Masterplans identifies a series of key development opportunity sites with which to support future economic growth and an improved retail offer that enhances the role of the city centre as the dominant regional shopping centre. It is clear that the identified retail expansion areas within Aberdeen city centre are sequentially preferable and will meet identified deficiencies. This alone provides a basis for refusal of the application at Prime Four Business Park.

The proposals at Prime Four Business Park will form a competing destination in a sequentially less preferable location, detrimentally impacting upon the city centre and the ability to deliver city centre opportunity sites in the future. We discuss this further below.

### **Deficiency & Retail Impact**

The Aberdeen City and Aberdeenshire Retail Study (ACARS) undertaken by Hargest Planning Ltd in 2013, commissioned by Aberdeen City Council and Aberdeenshire Council, identified additional capacity for approximately 30,000 - 35,000 sq.m of additional gross retail floorspace to support retail growth within the City Centre by 2022. The report subsequently identifies a range of sites to accommodate this capacity.

The ACARS recommendation of 30,000 - 35,000 sq.m of additional floorspace was based on the recommended 'Scenario 3' which was identified to address deficiencies and support retail investment in the City Centre and minimise potential adverse impacts on existing centres. This recommendation was taken forward into the Proposed LDP and has subsequently been ratified by the reporter in the recently published Proposed LDP examination report dated 23<sup>rd</sup> September 2016.

Two of the largest development opportunities within Aberdeen city centre are located at George Street North/Crooked Lane (Bon Accord Centre) and Union Square. Both are currently progressing through the planning system and propose to provide for a combined Class 1 comparison sales floorspace of approximately 20,000 - 25,000 sq.m. These developments, in addition to other identified and allocated sites within the emerging LDP will meet this potential and will help prevent expenditure leakage and maintain the city centre as the primary retail area in the North East.

Furthermore, the ACARS recommendation of 30,000 - 35,000 sq.m of additional floorspace was based on expected growth figures available at the time that the report was prepared, and, crucially prior to the on-going downturn within the oil and gas industry (and associated job losses and economic impacts on the region). BMO REP would therefore encourage ACC to take a precautionary approach when considering the level of expected retail floorspace deficiencies for the region.

The proposals at Prime Four Business Park will clearly impact upon the ability of the city centre to consolidate and enhance its position as the regional shopping centre. The applicant themselves acknowledge existing competition from other Scottish centres and other forms of retailing, and adds that the resilient city centre catchment is due in part to the fact that out-of-centre retail competition is limited (paragraph 4.2-4.3, LSH Retail Capacity Study).

As set out earlier in this letter, the Scottish planning system is plan led. Neither the emerging LDP nor the ACARS identify the application site at Prime Four Business Park as an appropriate location for retail development. Based on the above and the progress currently being made at allocated sites within Aberdeen city centre, we would again suggest that the scale of development being proposed at the Prime Four Business Park is not appropriate and the applicant has not demonstrated how the proposals would address a quantitative or qualitative deficiency that could not otherwise be met within the city centre.

We note that the applicant has sought to assess the direct retail impacts on the city centre within supporting retail tables submitted as part of the 'Retail Capacity Study'. The figures for direct impact presented appear relatively modest (5.2%), albeit we would question the transparency and soundness of the assessment presented. Based on a detailed analysis of Appendix 1 (LSH Retail Capacity Study, final table) we note the following points:

- High levels of trade diversion are expected from key city centre retail areas, notably Bon Accord (£16m / 9% impact), St Nicholas (£9m / 18% impact) and Union Square (£23m / 11% impact). This raises concerns in respect of the level of impact on these core shopping areas.
- The impact assessment assumes that £55m of the total comparison goods turnover of Prime Four (£110.29m) will be derived from Aberdeen city centre. This equates to just 50% which would seem conservative given the proximity and competing nature of the two destinations.
- The remaining trade draw is assumed to come primarily from Glasgow (£12m), Edinburgh (£6.75m) and Berryden retail park (£7m). We would question these figures given the distance of both Edinburgh and Glasgow, and the lack of competition from Berryden which comprises a different form of comparison retailing than that expected at Prime Four.

Based on the factors set out above, the LSH Retail Capacity Study under-estimates the level of quantitative trade diversion from Aberdeen city centre and potential quantitative implications on turnover. Of equal concern to our client are the associated qualitative impacts for allowing the proposals at Prime Four Business Park, which we consider would place it in direct competition with Aberdeen city centre as a shopping destination. This would be wholly contrary to development plan policy and strategy.

Indeed, the potential loss of spin-off consumer expenditure to the city centre through shopping and other associated linked trips is far more significant than simply assessing the direct expenditure loss to the new proposals. It is misleading and insufficient to restrict the consideration of retail impact issues to those set out in the related supporting material.

Often referred to as 'secondary' (or 'indirect' impacts), the report into Town Centre and Retailing Methodologies (2007) by Hargest & Wallace Planning Ltd and Donaldsons, for the Scottish Government, offers relevant commentary on these matters in the context of retail impact assessments. The report confirms that the assessment of secondary impacts is to be encouraged in the retail impact assessment of proposals, however such an assessment is absent from the planning application submission.

The application proposals would seriously undermine the strategic development planning objectives for the city centre. They would undermine vitality and viability of retailing in the city centre, and therefore threaten other relative economic activity and the ability to maintain its competitiveness for the benefit of the wider city region.

Furthermore, it would send out a concerning message to investors and operators alike, if the city centre's role as the regional centre for a wide range of higher order retailing was in any way being undermined. Our client is of the view that allowing the application proposals to proceed would send out such a message.

Planning matters, including decisions taken in respect of planning applications, can be relevant to the investment decision making process. If approved, the resulting development could weaken investor confidence within Aberdeen city centre. As such, we do not believe that the City Council should risk casting any doubt over its commitment to the development plan objectives of promoting investor confidence in the city centre.

The provision of substantial comparison retail floorspace with a focus on clothing and fashion retailers and a significant food and beverage offer at Prime Four Business Park would deliver a significant quantitative and qualitative retail offer in the west of the city that will overlap with the offer of the city centre and pose a serious threat to its role and primacy in the network of centres.

It therefore stands to reason that the proposals would adversely impact on the strategy and objectives for enhancing the vitality and retail attractiveness of the city centre, particularly when there is specific development plan policy in place to support these objectives preventing out-of-centre development proposals on unallocated sites and promoting further retail and town centre based uses within the city centre.

It is essential that Aberdeen City Council continue to support the principles of the development plan and maintain investor confidence for the delivery of investment in Aberdeen city centre. Whilst it might be easier for a developer to deliver a new retail development on a greenfield site at Prime Four Business Park; the more challenging development proposals, such as those within the city centre, require a greater level of confidence in the certainty of development plan policy in order to deliver them.

As a final point, many of the grounds of objection referred to above, in particular those relating to the sequential test and indirect retail impact, were particularly relevant in the decision to refuse, including at appeal, proposals to create a Debenhams department store at Fort Kinnaird Retail Park on the outskirts of Edinburgh (appeal reference PPA-230-2113). Whilst every planning application is determined on its own merits, we do believe there are sufficient grounds, in this case, to refer to the full terms of this appeal decision, as a material consideration in the determination of the planning application.

### **Transport**

We have concerns regarding the potential impact that the development proposals will have on the surrounding road networks. The Transport Assessment which accompanies the planning application (dated 19/10/16) does not appear to address the points raised by Transport Scotland in their Transport Assessment Scoping Statement response dated 14/10/16 (Transport Assessment, appendix A, page 139). We would therefore question the validity and robustness of the accompanying Transport Assessment.

As set out earlier in this letter, BMO REP are currently preparing for the submission of a planning application seeking PPP for a retail-led mixed-use development around the George Street / Loch Street / Crooked Lane area of the Bon Accord Shopping Centre in Aberdeen city centre. The PPP will

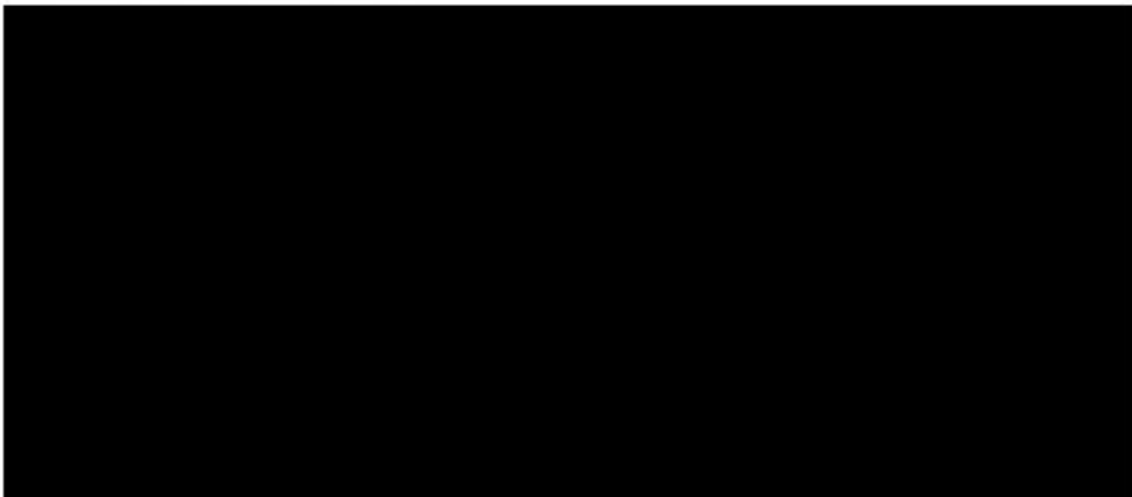


be accompanied by a retail assessment in support of the proposals. As we continue to prepare for the submission of the PPP, we reserve the right to further expand on our clients concerns highlighted in this letter of representation, particularly in relation to retail capacity, transport and the impact that the development proposals at Prime Four Business Park would have upon Aberdeen city centre.

On the basis of the arguments set out above, we find strong reasons to suggest that this speculative application seeking planning permission in principle should be refused.

We trust that our comments shall be taken into consideration in the determination of this planning application.

Yours sincerely



**Chris Miller**  
**Associate**  
**For and on behalf of GVA Grimley Limited**