

# Cheshire West & Chester Council

## Legal Services

Cheshire West and Chester Council  
HQ  
Nicholas Street  
Chester  
CH1 2NP

DX 717531 Chester 15

[cheshirewestandchester.gov.uk](http://cheshirewestandchester.gov.uk)  
[andrew.mcnally@cheshirewestandchester.gov.uk](mailto:andrew.mcnally@cheshirewestandchester.gov.uk)  
Direct line: 01244 972241

Our reference: AMCN/RSN/19173

Date: 22<sup>nd</sup> September 2017

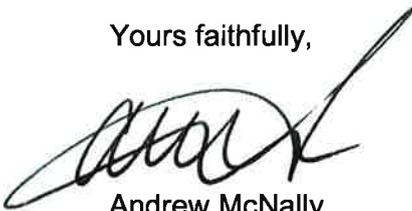
Dear Sirs,

### **RE: LOCAL GROWTH FUND BID – UNLOCKING WINSFORD INDUSTRIAL ESTATE EXPANSION LAND**

I hereby confirm that the attached State Aid Analysis has been determined by Cheshire West and Chester Borough Council Legal Services. It has been prepared in relation the Council's intentions to fund, with the use of Local Growth Fund monies, the unlocking of employment land at Winsford Industrial Estate.

Having had regard to the relevant legislation, case law and European Commission notices, it is our opinion that the transfer of funds for the purpose of this project do not amount to illegal state aid under Article 107 Treaty on the Functioning of the European Union.

Yours faithfully,



Andrew McNally  
For and on behalf of Director of Governance



Cheshire West  
and Chester

## **UNLOCKING WINSFORD INDUSTRIAL ESTATE EXPANSION LAND**

### **LOCAL GROWTH FUND BID**

#### **NOTE ON APPLICATION OF STATE AID RULES TO BID PROPOSALS**

##### **1. Introduction**

1.1. This note sets our view on the application of EU State Aid rules to proposals made in respect of an application by Cheshire West and Chester Borough Council (**the Council**) for a Local Growth Funding bid to fund various enabling works in Winsford to unlock employment land at Winsford Industrial Estate (**the Proposals**).

##### **2. Summary of the Proposals**

2.1. The proposals are expected to involve expenditure by the Council on the following works/activities:

2.1.1. Highways Access Scheme

2.1.2. Upgrading of local road network

2.1.3. New entrance to Industrial Estate

2.1.4. Other necessary enabling works

##### **3. Application of State Aid rules to the Proposals**

3.1. All of the following criteria set out in Article 107 of the Treaty on the Functioning of the European Union (TFEU) need to be satisfied in order for aid to an economic undertaking to be considered unlawful State Aid:

3.1.1. There is a grant of State Aid;

3.1.2. The Aid is granted by a member state or through state resources;

3.1.3. The Aid distorts or threatens to distort competition;

3.1.4. The Aid affects trade between member states.

3.2. In considering whether there is a granting of State Aid, we would conclude that there is a grant of State Aid in the form of Local Growth Fund monies being paid for infrastructure works.

3.3. When considering whether aid is granted by a member state or through state resources it is necessary to evaluate whether there is a transfer of state resources. In this matter, the funds being used are Central Government funds, in the form of the Local Growth Funding, which would be transferred to the Council acting in the capacity of a Local Authority which would release new land to the open market for employment use. It is therefore concluded that the granting of aid is through state resources.

3.4. The Aid which is being granted by state resources is required to confer a selective advantage on a beneficiary which then distorts or threatens to distort competition. The aid which would be

granted in this case, is to assist in the overall development of the Winsford area, which would benefit the local area and infrastructure as a whole. Therefore any advantage which is conferred on beneficiaries who are carrying out the works would be done through procurement competitions complying with the Public Contracts Regulations 2015 and therefore the benefit for the works would not be selective for any particular undertaking and therefore the provision of infrastructure would not be capable of constituting state aid in favour of those aforementioned beneficiaries and would therefore not be distorting competition.

- 3.5. The provision of infrastructure not constituting state aid is consistent with the Commission's decision in the *Terra Mitica* theme park case (2003/227/EC) which regarded the public funding of environmental measures, roadworks and utility infrastructure. In that case the Commission concluded that, provided the infrastructure that was funded benefited the population as a whole, the reason for its construction and whether this was motivated by a desire to facilitate the development of the theme park was irrelevant. A distinction was drawn between infrastructure of benefit to the community as a whole and infrastructure of use to the theme park only. Only the latter needed to be funded by the theme park in order to avoid potential state aid.
- 3.6. In applying the principles as established in *Terra Mitica* to the case before us, the development of land near the Winsford Industrial Estate would not be facilitating the expansion of land for the sole benefit of a particular undertaking, but would be providing infrastructure for the population as a whole. Whether this is motivated to assist the development of local businesses more generally is irrelevant.
- 3.7. In making reference to the Leipzig-Halle judgment, a note from DG Competition at the European Commission to DG Regio on the "Application of state aid rules to infrastructure investment projects (Ref Comp/03/2011), at paragraph 2(7) states that the financing of infrastructure that is not so exploited and is built in the interest of the general public is in principle excluded from the application of state aid rules. Paragraph 8 gives examples, including public roads not operated by concessionaires and open to the general public and public, non-dedicated, parks, playgrounds, etc. In reviewing the Winsford Industrial Estate case, the above would be deemed to cover the infrastructure to be provided.
- 3.8. Further clarification is offered on the application of state aid rules in cases of infrastructure in Commission Notice on "The notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union" (2016/C 262/01).
- 3.9. At paragraph 220, it is stated, roads made available for free public use are general infrastructures and their public funding does not fall under the State aid rules. At paragraph 221,

while the operation of water supply and waste water networks constitute an economic activity, the construction of a comprehensive water supply and waste water network as such typically does not distort competition or affect trade between Member States. At 212, In order for the entire public funding of a given project to fall outside State aid rules, Member States have to ensure that the funding provided for the construction of the infrastructures cannot be used to cross-subsidize or indirectly subsidize other economic activities, including the operation of the infrastructure. Cross-subsidization can be excluded by ensuring that the infrastructure owner does not engage in any other economic activity or — if the infrastructure owner is engaged in any other economic activity — by keeping separate accounts, allocating costs and revenues in an appropriate way and ensuring that any public funding does not benefit other activities.

3.10. In unlocking the land at Winsford, the infrastructure will remain under the ownership of Cheshire West and Chester Borough Council.

3.11. Finally, it is necessary to assess whether the aid is likely to affect trade between member states. Given that the works to be carried out are enabling works, which will support the local area as a whole, and that international investment in such infrastructure is unlikely given the geographical location of where the works are to be carried out, it is unlikely that the works would impact on trade between member states. The implementation of infrastructure would support the potential for future trade between member states.

**Cheshire West and Chester Borough Council**

**Legal Services**

**19<sup>th</sup> September, 2017**