

<b>APPLICATION NO:</b> 20/02089/FUL		<b>OFFICER:</b> Michelle Payne
<b>DATE REGISTERED:</b> 27th November 2020		<b>DATE OF EXPIRY:</b> 26th February 2021 (extension of time agreed until 18th October 2021)
<b>DATE VALIDATED:</b> 27th November 2020		<b>DATE OF SITE VISIT:</b>
<b>WARD:</b> Charlton Park		<b>PARISH:</b> Charlton Kings
<b>APPLICANT:</b>	Lidl Great Britain Ltd	
<b>AGENT:</b>	Plan A (North West) Limited	
<b>LOCATION:</b>	Unit 1 Charlton Kings Business Park Cirencester Road	
<b>PROPOSAL:</b>	Erection of a Class E retail store, car parking and servicing areas, access, landscaping and associated works following demolition of existing buildings	

**RECOMMENDATION:** Permit subject to conditions and a s106 unilateral undertaking



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## 1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site is located on the western side of Cirencester Road (A435) on the southerly approach to the town, just north of the former railway bridge, and is accessed via a private access road owned by Spirax Sarco. The site is located within the Principal Urban Area, and within Charlton Kings parish. The Cotswolds Area of Outstanding Natural Beauty lies to the south.
- 1.2 The site is irregular in shape, some 0.6 hectares, and comprises five vacant, partially inter-linked, light industrial units and associated external areas adjacent to Cirencester Road; the existing buildings provide a total of 2,007m<sup>2</sup> gross floorspace. The site forms part of the wider Charlton Kings Business Park, with Timbercombe House, a large office building also owned by Spirax Sarco, located to the rear.
- 1.3 The site is set down from the Cirencester Road with a substantial retaining wall along the eastern and southern boundary supporting the change in levels with neighbouring land. The site is bound by a large hotel and restaurant complex to the south, with the Lilleybrook Golf Club beyond, and residential properties in Branch Hill Rise and Cirencester Road to the north and east. The adjacent highway verge on Cirencester Road accommodates a number of mature trees and other vegetation together with a bus stop; additional mature planting forms the southern boundary with the hotel.
- 1.4 The application seeks full planning permission for the erection of a Class E retail food store of 1,834m<sup>2</sup> gross floorspace, with car parking and servicing areas, access, landscaping and associated works, following demolition of the existing buildings on site (Units 1-5 Charlton Kings Business Park).
- 1.5 In addition to drawings, the application has been accompanied by the following detailed reports and statements some of which have been revised/addended during the course of the application; and all have been available to view on the Council's website (with superseded documents marked as such where appropriate):
  - Air Quality Assessment
  - Arboricultural Method Statement incl. Tree Survey and Tree Protection Plan
  - Design and Access Statement
  - Drainage Strategy
  - Energy and Sustainability Report
  - Landscaping Proposals
  - Noise Assessment
  - Phase I Site Investigation
  - Phase II Site Investigation
  - Planning and Retail Statement
  - Planting Schedule
  - Preliminary Ecological Appraisal and Bat Roost Survey
  - Statement of Community Involvement
  - Sustainability Checklist
  - Transport Assessment
  - Travel Plan
  - Viability Appraisal
  - Waste Management and Minimisation Plan
  - Flood Risk Assessment
  - Delivery Management Plan
  - Bat Mitigation Strategy
  - Planting Methodology and Aftercare
  - Flood Risk Sequential Test

- 1.6 The application is before the planning committee at the request of Councillor Harvey and Councillor Boyes whose concerns relate to the change of use from Class B1 light industrial to Class E retail; highways impact on an already busy arterial route (A435 Chelt-Cirencester); and the amenity impact on adjacent family homes. Councillor Babbage also asked for the application to be referred to committee given the level of local interest.
- 1.7 At the time of writing the report, 855 representations have been received in response to the proposal; 435 in objection to the proposals, and 407 in support.
- 1.8 In addition, objections have been received from Charlton Kings Parish Council, the Civic Society, and the Architects Panel.

## 2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

### Constraints:

Airport Safeguarding over 45m  
Principal Urban Area  
Smoke Control Order

### Relevant Planning History:

<b>77/00274/PF</b>	<b>PERMIT</b>	<b>8th September 1977</b>
Erection of single storey building for light industrial assembly purposes		
<b>77/00346/PF</b>	<b>PERMIT</b>	<b>19th December 1977</b>
Erection of 3 no. units for light industrial use		
<b>79/00256/PF</b>	<b>PERMIT</b>	<b>16th July 1979</b>
Erection of new canopy and entrance to factory and office units		
<b>79/00693/PF</b>	<b>PERMIT</b>	<b>17th January 1979</b>
Erection of one lettable unit for light industrial use		
<b>80/00035/PF</b>	<b>PERMIT</b>	<b>21st March 1980</b>
Change of use from light industrial to warehouse		
<b>80/00644/PF</b>	<b>PERMIT</b>	<b>29th May 1980</b>
Extension to existing production area office accommodation		
<b>80/00645/PF</b>	<b>PERMIT</b>	<b>25th April 1980</b>
Extension to existing Lilleybrook Culvert and additional paved area for car parking and access to industrial unit		
<b>84/01055/PF</b>	<b>PERMIT</b>	<b>22nd March 1984</b>
Outline application for the erection of 575sq.m light industrial unit with car parking		
<b>86/01161/PF</b>	<b>PERMIT</b>	<b>18th December 1986</b>
Erection of increased area of production space and warehousing and small lobby to offices		
<b>87/00389/PF</b>	<b>PERMIT</b>	<b>21st May 1987</b>
Erection of two storey offices		
<b>89/00428/PF</b>	<b>PERMIT</b>	<b>27th April 1989</b>
Construction of 1st floor office, together with recladding and reroofing of existing premises		
<b>89/00429/PF</b>	<b>PERMIT</b>	<b>27th April 1989</b>
Recladding and reroofing of premises		

**01/00064/FUL**

**PERMIT**

**8th March 2001**

Single storey extension to the rear of the building to house additional plant

**21/00201/DEMCON**

**NO PRIOR APPROVAL NEEDED**

**26th February 2021**

Application to determine whether prior approval is required for the demolition of five partially interlinked former light industrial units, Units 1-5 Charlton Kings Business Park, as identified on the accompanying Demolition Plan

### **3. POLICIES AND GUIDANCE**

#### **National Planning Policy Framework 2021 (NPPF)**

Section 2 Achieving sustainable development

Section 4 Decision-making

Section 6 Building a strong, competitive economy

Section 7 Ensuring the vitality of town centres

Section 8 Promoting healthy and safe communities

Section 9 Promoting sustainable transport

Section 12 Achieving well-designed places

Section 14 Meeting the challenge of climate change, flooding and coastal change

Section 15 Conserving and enhancing the natural environment

#### **Saved Cheltenham Borough Local Plan Second Review 2006 (CBLP) Policies**

RT1 Location of Retail Development

#### **Adopted Cheltenham Plan 2020 (CP) Policies**

EM2 Safeguarding Non-Designated Existing Employment Land and Buildings

EM3 Employment Skills Plans

D1 Design

L1 Landscape and Setting

SL1 Safe and Sustainable Living

GI2 Protection and replacement of trees

GI3 Trees and Development

#### **Adopted Joint Core Strategy 2017 (JCS) Policies**

SD2 Retail and City / Town Centres

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD6 Landscape

SD7 The Cotswolds Area of Outstanding Natural Beauty

SD9 Biodiversity and Geodiversity

SD14 Health and Environmental Quality

INF1 Transport Network

INF2 Flood Risk Management

INF3 Green Infrastructure

INF6 Infrastructure Delivery

INF7 Developer Contributions

#### **Supplementary Planning Guidance/Documents**

Planning Practice Guidance

### **4. CONSULTATION RESPONSES**

**DPDS (acting as Council's Specialist Retail Advisor)**

See Appendix A



**CBC Tree Officer**  
**11th January 2021**

The CBC Tree Section has some concerns regarding this scheme and some changes, assurances and clarifications are required before there is no tree-based objection to this proposal.

- 1) The 5 limes fronting Cirencester Road appear to partially be within the adjacent adopted Highway. Clarification is required that these trees are within the site boundary.
- 2) It is recognised that 2 of the 5 trees are in poor biological condition and will need removal soon. The remaining 3 trees are in good condition (albeit there is strong possibility that these 3 remaining trees will also suffer the same fate as the 2 phytophthora-infected trees within this group. These trees are old pollards and whilst the 3 trees have good vigour and vitality, their retention would not assist in the creation of a really impressive fresh landscape scheme. As such the CBC Tree Section does not object to their removal subject to replanting. Whilst it is noted that the proposed replanting scheme is for 5 semi-mature Norway maple varieties, this species should be changed. Experience has shown that such species is prone to failure at weak forked junctions. It is suggested that the semi-mature replacement tree species should be wild service trees (*Sorbus torminalis*)
- 3) Similarly, the large Corsican pine (T19), CBC Trees Officer agrees with the arb report that the tree has Red Band Needle Blight and the canopy of the tree on closer inspection is sparse. It is anticipated that sadly, this tree will continue to de-foliate if left and the long term prospect for this mature tree is not good. Whilst this tree is very tall and is a landmark being adjacent to the road, unless new planting is undertaken soon, the area will become devoid of significant trees into the future. It is regrettable that the oak whose trunk was approx. 30cms diameter once growing adjacent to this pine has been removed. As such, there is no objection to the removal of the pine on the assumption that 5 new (semi-mature) Scots pines (*Pinus sylvestris*) -or similar are planted to replace this tree. The proposed second group of 5 Norway maple varieties are not acceptable.
- 4) No tree planting is shown within the proposed new car park. There appears to be appropriate size space for new planting within the car parking spaces 1-17 area. An appropriate tree pit (containing fresh top soil) should be created to visually "soften" the adjacent landscape.
- 5) A new and detailed landscape scheme should be submitted and agreed. This should include tree pit details as well as species, size etc.
- 6) Assurances need to be made that there will be no change in level on the southern boundary. It is noted that there are many mature trees on the boundary but outside the site which will have structurally supporting roots within the site. On no account can the existing soil level at the base of these trees be lowered within the site. To remove or sever these roots will likely cause these large trees to either fall or send their biological condition into a sharp spiral of decline. It appears as that no such alteration of levels is proposed but this needs to be confirmed.
- 7) The adjacent (approx. 5 metre) boundary line consisting of "light touch vegetation management" on this southern boundary ranging from T4 to the east as far as T9 to the west should be left intact and in situ. Should this be left intact, the minor incursion of the parking area into the existing Root Protection Area should not have significant impact. The majority of the feeding roots of this tree are considered to be under adjacent soft surfaces rather than under the existing hard surface.
- 8) Other working methods and surveillance etc as detailed within the David Rice Arb report of Oct 2020 must be adhered to.

#### ***24th March 2021 – revised comments***

The CBC Tree Section welcomes the Tree Protection Plan (Drawing no CA/2020/.85 Rev G) and considers no trees should be significantly impacted.

The Revised Method Statement of Feb 2021 is also acceptable. However, please could the initial arb monitoring site visit include CBC Trees Officers to endorse the Tree Protective Fencing.

The Landscape plan drawing is also acceptable and the proposed 5 semi-mature wild service trees and 5 Scots pine to be planted along Cirencester Rd adjacent to the site should mitigate for the loss of the existing limes, large pine and cypress.

Proposed Tree planting is sparse within the carpark, but much of this car park will be in the shade of the adjacent off-site large trees to the south and so the proposed Flowering pear tree planting is acceptable. The proposal to leave the southerly bank adjacent to the car park under 'light touch management' is welcome as is the proposal to plant with further hazel and hawthorn.

Please could the retained arboriculturist be conditioned with any planning permission. Whilst such a role is described within the Jan 2021 Method Statement, it is imperative that such a role is actioned. Placing such a bespoke Condition should help reflect the importance of this and help achieve no significant damage to retained trees within the site as well as adjacent off-site trees.

Provision should be made for the easy removal of fallen leaves, fruit, deadwood etc from nearby trees onto the roof of the proposed supermarket.

#### **GCC Highways Development Management 4th February 2021**

Gloucestershire County Council, the Highway Authority acting in its role as Statutory Consultee has undertaken a full assessment of this planning application. Based on the appraisal of the development proposals the Highways Development Management Manager on behalf of the County Council, under Article 18 of the Town and Country Planning (Development Management Procedure) (England) Order, 2015 recommends that this application be **deferred**.

The justification for this decision is provided below.

The application proposes to replace a commercial building with a discount food retail class E building, the proposed footprint of the building is smaller than the current use but generates a different trip profile.

The proposal has been supported by a Transport Assessment (TA) and Travel Plan. The scope of this assessment has not been agreed in advance of the submission. The TA presents an assessment of impact compared to the current planning use and how that might impact however this does not show the complete picture. Whilst a peak hour review has been provided they do not align with the retail peaks and as such the number of movements suggested does not reflect the totality of the activity.

The TA should submit an assessment of trip movements across the whole day for the extant and proposed uses. This should also be reviewed against the 2019 survey which is absent from the submission. Additionally, the trip distribution analysis should be presented.

The Highway Authority is also unsatisfied with the proposed trip rates for the retail use. The number of donor sites is only 2 due to the narrow range of the floor area reviewed again. A

small alteration to this threshold significantly increases the number of comparable sites and presents a more robust appraisal. A sensitivity test undertaken by the Highway Authority showed that the presented rates are unacceptably low. This has impacts of the net traffic increase, junction capacity appraisal and car parking accumulation. As such the presented impact and car parking levels are not accepted.

The proposal also fails to address access from the nearest bus stops which are to the south of the site. The proposal does not provide a continuous footway to the store entrance, and in practice a footway should be provided to the south of the access road. The access road is not within the red line of the application site, none the less it is important to ensure that high quality walking infrastructure is provided.

There appears to be a discrepancy with the highway limits and this proposal which can be addressed if the other matters are resolved. This would involve the future dedication of land to preserve the visibility splay.

Additionally, the number of electric vehicle charging spaces does not reflect the current document and further explanation and justification is needed for the departure. The number of bicycle spaces appears to reflect the requirements of LTN 1/20 by number, but the spaces are not well located and do not appear to offer any shelter.

The Highway authority has some concern about the manoeuvring arrangements for delivery vehicles within the site. This does not appear to have an immediate access on highway safety but may have implications for the safe use of the. As a minimum position a delivery vehicle management plan is required to limit activities to times of low demand and under banksman control.

The applicant should also ensure that the Travel Plan is updated to provide targets of how mode share and how they are to implement it. The applicant will need to provide a travel plan bond and monitoring fee.

The applicant should submit a TA addendum to address these matters and revise the submitted drawings to ensure that high quality active travel infrastructure is built into the proposals.

The Highway Authority therefore submits a response of deferral until the required information has been provided and considered.

#### ***1st June 2021 – revised comments***

Gloucestershire County Council, the Highway Authority acting in its role as Statutory Consultee has undertaken a full assessment of this planning application. Based on the appraisal of the development proposals the Highways Development Management Manager on behalf of the County Council, under Article 18 of the Town and Country Planning (Development Management Procedure) (England) Order, 2015 has **no objection subject to conditions and financial obligations**.

The justification for this decision is provided below.

The applicant has worked closely with Gloucestershire County Council to address the matters of concerns that were previously expressed. The proposal is now considered to be acceptable, but conditions and planning obligations are required to regulate the development.

The applicant has updated the trip rates and considered what the implications of this would be at the access onto Cirencester road, the appraisal has been considered and the findings agreed. The modelling result concludes that there will not be a significant delay on the Cirencester Road or the site access road. It should be noted that the assessment does not

make adjustment in this assessment to recognise the current planning use, or to consider the number of trips that would be diverted from other retailer or would be pass-by trips, both of which would already exist on the highway network with only a small number of trips being new trips. This is considered to represent a robust assessment.

The proposal now includes a footway on the south side of the access road which connects to the Cirencester Road and bus stop infrastructure. This is a direct and relatively short walk to the store front and provides an import connection which helps to enable sustainable travel. The bus shelter is presently not within the publicly maintained highway but the applicant has offered to dedicate this land to ensure that this discrepancy is resolved which is a welcome offer.

The proposal has demonstrated that suitable number of car parking spaces are provided including accessible spaces and electric vehicle charging. The number of EV spaces is lower than guidance documents required however the applicant's proposal includes charging equipment which will allow for rapid charging which better reflects customer dwell time, as such the proposal will provide a better level of customer service than if it was fully compliant with the guidance, the proposal also includes for a future 14 EV charging spaces. Cycle parking is positioned in a location which is usable and can be observed which helps to preserve safety and security.

The proposal includes for a travel plan, bond and monitoring arrangements which are proposed to be secured through planning conditions and a planning obligation. These measures are consistent with published guidance and will encourage alternative options to single occupancy vehicle trips, particularly for employees.

The Highway Authority has undertaken a robust assessment of the planning application. Based on the analysis of the information submitted the Highway Authority concludes that there would not be an unacceptable impact on Highway Safety or a severe impact on congestion. There are no justifiable grounds on which an objection could be maintained.

### Conditions

#### Conformity with Submitted Details

The Development hereby approved shall not be brought into use until the access, parking and turning facilities have been provided as shown on drawing AD 110\_Rev F.  
Reason: To ensure conformity with submitted details.

#### Electric vehicle charging point

The Development hereby approved shall not be brought into use until 2 rapid electric vehicle charging spaces have been provided.

Reason: To encourage sustainable travel and healthy communities.

#### Employment Travel Plan

The Employment Travel Plan hereby approved, dated October 2020 Version F4 shall be implemented and monitored in accordance with the regime contained within the Plan. In the event of failing to meet the targets within the Plan a revised Plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of travel to and from the site. The approved Travel Plan shall be implemented, monitored and reviewed in accordance with the approved details.

Reason: To reduce vehicle movements and promote sustainable travel.

## Delivery Vehicle Management Plan

The Delivery Management Plan hereby approved, dated 30/03/2021 shall be implemented in accordance with these approved details.

Reason: In the interests of highway safety and to minimise the impact of vehicles servicing the development upon congestion.

## Construction Management Plan

Prior to commencement of the development hereby permitted details of a construction management plan or construction method statement shall be submitted to and approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the demolition/construction period. The plan/statement shall include but not be restricted to:

- Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- Any temporary access to the site;
- Locations for loading/unloading and storage of plant, waste and construction materials;
- Method of preventing mud and dust being carried onto the highway;
- Arrangements for turning vehicles;
- Arrangements to receive abnormal loads or unusually large vehicles; and
- Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

Reason: In the interests of safe operation of the adopted highway in the lead into development both during the demolition and construction phase of the development.

## Informatives

### Travel Plan

The proposed development will require a Travel Plan as part of the transport mitigation package (together with a Monitoring Fee and Default Payment) and the Applicant/Developer is required to enter into a legally binding Planning Obligation Agreement with the County Council to secure the Travel Plan.

### Construction Management Plan (CMP)

It is expected that contractors are registered with the Considerate Constructors scheme and comply with the code of conduct in full, but particularly reference is made to "respecting the community" this says:

Constructors should give utmost consideration to their impact on neighbours and the public

- Informing, respecting and showing courtesy to those affected by the work;
- Minimising the impact of deliveries, parking and work on the public highway;
- Contributing to and supporting the local community and economy; and
- Working to create a positive and enduring impression, and promoting the Code.

The CEMP should clearly identify how the principle contractor will engage with the local community; this should be tailored to local circumstances. Contractors should also confirm how they will manage any local concerns and complaints and provide an agreed Service Level Agreement for responding to said issues.

Contractors should ensure that courtesy boards are provided and information shared with the local community relating to the timing of operations and contact details for the site coordinator in the event of any difficulties.

This does not offer any relief to obligations under existing Legislation.

#### Planning Obligations

Specific Purpose - Travel Plan Bond

Contribution - £10,000

Trigger - Prior to the first opening of the development to the public

Retention Period - 10 Years from first opening of the development to the public

Specific Purpose - Travel Plan Monitoring

Contribution - £10,000

Trigger - Prior to the first opening of the development to the public

Retention Period - 10 Years from first opening of the development to the public.

#### **Charlton Kings Parish Council**

**23rd December 2020**

The Committee does not on balance object to the principle of such a development, but has concerns as to the impact on the surrounding residents and the increase in traffic it will generate.

In particular, the assessment of noise is flawed. The methodology used to assess the impact of noise, BS4142, is intended to assess the impact of continuous noise, such as that created by chillers and other plant by averaging noise levels over one hour periods from 07:00-23:00 and over fifteen minute periods between 23:00-07:00. While this method will accurately assess the noise impact of continuously operating plant, it masks the impact of short discrete noises such as delivery vehicle doors, roller shutter doors, vehicle reversing beacons, food cages rattling and so on.

Such discrete noises will be very audible to residents, particularly those living on Branch Hill Rise that back onto the site.

A more suitable method to assess the impact of discrete noises should be used.

To prevent serious loss of amenity to residents through noise pollution, before consent is granted an enforceable Delivery Management Plan should be created, limiting the hours of delivery to socially acceptable times. In particular, despite Planning Conditions restricting times of delivery to other retail units in the area, newspaper deliveries routinely take place between 04:45 & 05:30.

The Committee is concerned as to the level of visibility to the south for vehicles exiting the site and would ask that the Highway Authority confirm that it is sufficient, given the increase in volumes of traffic this development will cause compared to the site's previous use.

The forecast traffic flows appear unrealistic. For example, the forecast number of visitors on weekdays between 07:00 & 08:00 is three. In the same period of time the existing grocery store 500m to the north of the site, on the same road, generates in the order of twenty vehicle movements.

A more realistic estimate of traffic volumes would enable a more accurate assessment of the impact of traffic on the road and the wider village. Of concern is the increase in traffic cutting through the village to and from the north.

The Committee does welcome the redevelopment of the site as employment land.

**18th February 2021 – revised comments**

The Committee objects to this application on the following grounds:

The Noise Impact Assessment has been expanded to theoretically cover the impact of delivery noises. However, the methodology used (BS4142) is still that to assess the impact of continuously running noises such as chillers and averages noises over a one-hour period for daytime and 15-minute period for night-time. Such an approach results in masking the impact of short duration, loud, discrete noises such as reversing beacons, roller shutter doors being operated and so on, by averaging those short interval noises over extended periods of time. As such, it is a highly inappropriate method to genuinely assess the impact of these noises. The NIA is therefore not an accurate assessment of the true impact on surrounding residents.

The Committee has previously expressed concerns as to the loss of amenity to surrounding residents caused by deliveries at anti-social hours. However, there is a major flaw with the design, resulting in the need for all delivery vehicles having to reverse the full length of the car park, reversing beacons continuously sounding as they manoeuvre. Such movement through a car park being used by the public is clearly hazardous. The solution to this designed-in hazard is to propose in the Delivery Management Plan (DMP) that 'Wherever possible deliveries will be arranged for periods outside of store trading\*', ie before 07:00 or after 22:00. The noise of lorries' reversing beacons sounding while they reverse the length of the car park during these times would clearly have a highly negative impact on the quality of lives of the surrounding residents.

\*Note that since the DMP does not make a categorical statement that all deliveries will take place outside store opening hours, at least some deliveries will still occur during store trading, representing a major hazard to the public using the car park and placing the drivers of such delivery vehicles under the risk of being responsible for causing serious injury or fatality. Such hazards should not be designed in to a scheme.

The DMP states that a typical store delivery profile consists of 1-2 artic deliveries per day. This is somewhat misleading, as while there would be 1-2 deliveries per day from the store owner's Regional Distribution Centre, there would in addition at a typical supermarket be 1 milk delivery and up to 3 bread deliveries direct from those suppliers. There is also a daily newspaper delivery that in Charlton Kings, despite existing Planning Conditions preventing newspaper deliveries before 06:00, routinely take place from 04:30.

In addition to these deliveries there are also collections of general waste (as opposed to packing recycling that returns with the Operator's transport to the RDC), sanitary waste, and food waste.

So, rather than the claimed 1-2 deliveries per day, the actual figure is typically more like 9-10 commercial vehicles per day attending the site, all with reversing beacons operating while reversing the full length of the car park.

Beyond deliveries and collections, window cleaners, store cleaners and maintenance contractors also carry out their operations outside trading hours, to avoid disrupting the store operations, causing further noise disruption to the surrounding residents.

The DMP also make the following claims:

'refrigerator plant must be turned off when waiting to access the delivery bay and once parked in the bay'. This is quite simply not possible. The lorry mounted refrigerator units are thermostatically controlled and cannot be turned off as if the temperature in the lorry rises

above the allowed threshold, the load has to be condemned. There is no manual override for the thermostatic control.

'Vehicle tail lifts to be operated with care to avoid excessive noise'. This cannot be measured and if not measurable, cannot be enforced.

'Goods cages and trolleys used to transfer goods from vehicle to store and back are to be moved without excessive force". Again, this cannot be measured and so is unenforceable.

The Committee debated at length the concerns raised about an increase in traffic levels through the village that would be caused by the development, in particular on East End Road, Church Street, Copt Elm Road, Moorend Road, Greenhills Road, Bafford Approach and Sandy Lane as well as Cirencester Road. It was however recognised that there would be some level of decrease in traffic leaving Charlton Kings on some routes to reach supermarkets elsewhere in the town.

The Committee noted the concerns raised in the DPDS Consulting Letter that the application fails the sequential test for possible retail site locations as laid out in the NPPF. The lack of a Retail Impact Assessment, particularly on the established neighbourhood centres within Charlton Kings, and especially those independent stores that provide local character and service beyond the reach of national or international chains. While the Committee notes from the DPDS letter that the store footprint means that an RIA is not obligatory, it also notes that Lidl and Aldi store proposals do routinely have an RIA and given the concerns as to the viability of the village's independent stores, do not feel that such an assessment would be unreasonable. The strong concern is that if the anchor stores at each neighbourhood centre fail ie Smith and Mann on Lyefield Road and the Co-op in Church Piece and at Sixways, the resultant drop in local footfall may cause the other retail outlets in those areas to fail as well. These independent businesses, including those who have throughout the pandemic have provided free delivery services to sheltering vulnerable parishioners, are part of what makes Charlton Kings a vibrant community to live and work in. In addition, if Smith and Mann were to fail, then the village will lose its last Post Office.

Furthermore, these small supermarkets / convenience stores have a large proportion of their trade coming on foot. If they fail then those walking to these stores are in all likelihood going to drive to the Lidl store, thereby negating some of the carbon reduction in residents driving to this proposed Lidl rather than to supermarkets further afield.

The Committee also notes the concerns raised in the CTC report about the inability of large commercial vehicle movements to the public highway unable to take place without occupying both sides of the carriageway. Such blocking of the highway already results from the Sainsburys development to the north on the same road and has caused several crashes with residents' cars parked on the Cirencester Road.

The Committee also notes the concerns raised in the previous Committee comments on this application and in the CTC report and the Highway Authorities report that the projected traffic volumes stated are not credible.

The Committee is concerned that a combination of these awkward delivery vehicle manoeuvres, the increased volume of traffic, the poor visibility to the south of the junction with the Cirencester Road and the tendency for excessive speed of traffic descending the hill has the potential for this location to become an accident blackspot. We note that there have been some public comments calling for traffic lights or a roundabout, but either of these would have a severe impact on the quality of life of the residents to the east of the Cirencester Road opposite the site with the considerable added noise and air pollution resulting from traffic stopping and starting and the loss of the ability to park on the highway adjacent to their properties.



The Committee agrees with the Architects Panel comment that the design fails to make any connection with the local vernacular and agree that a reflection of the red brick that is common for much of the Cirencester Road, including those opposite the site, would better fit the streetscape.

The size of the illuminated logos visible from the street was felt to be excessive, given the paucity of similar street signage in the area. ie if the street was lined with similarly logoed commercial property then there would be a greater need to stand out, but the only similar signage is at the adjacent hotel and at Sainsburys, 500m to the north. The size of the signage is more in keeping with a large commercial area than a predominately residential area.

In conclusion, while the Committee recognises that there would be some benefits to parishioners in having a larger supermarket within the Parish and welcomes the redevelopment of the site as employment land (although noting that the majority of the jobs created would be low paid), these are, on balance, strongly outweighed by the negative impacts. In particular, the heavy impact on the quality of life of the immediately surrounding residents is completely unreasonable. Given the level of current concerns of traffic volumes on the road network, potential large increases in traffic volumes are unwelcome. The potential loss of the existing retail businesses would be strongly detrimental not only to the parishioners that they serve but also to the wider character of the village with its own distinct centres, differentiating it from the wider Cheltenham area.

#### ***25th March 2021 – revised comments***

##### **Objection:**

The revisions to this application do nothing to address the Committee's previously stated objections to this application (see below for full details).

##### **In particular:**

The hazard of all delivery vehicles needing to reverse the length of the public car park, as has also been noted by the Highway Planning Liaison Officer.

The proposal that 'wherever possible' deliveries would be intended to occur either after 10pm or before 7am. This would maximise disturbance to the surrounding residents.

The Noise Impact Assessment uses a methodology (BS4142) unsuitable to assess the impact of short duration loud noises such as reversing beacons, roller shutter doors, rattling of delivery cages moving and so on. It is therefore not an accurate assessment of the impact on the surrounding residents and masks the true impact. It is disappointing that Environmental Health have not noted this, but the fact remains that BS4142 is designed to assess the impact of continuously generated noise such as that created by chillers and other mechanical plant, not short duration loud noises that are masked by this method.

#### **CBC Contaminated Land Officer 23rd December 2020**

With reference to the above planning application I have reviewed the Post Demolition Phase II Geo-environmental Assessment provided. The report has also identified the possibility of piled foundations on part of the site. In the event of the developers deciding to use piled foundations at this site there will be significant potential for noise and vibration from this operation to affect nearby premises which will require a full pile method statement. In the light of this, I recommend that should permission be granted, the following conditions are attached:

##### **Unexpected Site Contamination Condition**

If, during the course of development, any contamination is found which has not been identified in the original site investigation, additional measures for the remediation of this

source of contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

#### Pile Foundations

Condition: No piling activities shall be carried out at this site until a full pile method statement has been submitted to and been approved in writing by the Local Planning Authority. The method statement must assess and include full details of the noise and vibration impact from the piling operations on the nearest residential property, dates and times of piling and details of monitoring measures.

Reason: To prevent nuisance being caused to residents of neighbouring property due to noise and vibration.

#### **CBC Environmental Health 23rd December 2020**

I have reviewed the documents provided for the above application, there is not enough information provided at this stage regarding delivery noise and lighting, given the proximity of residential properties. Environmental Protection will require further details in order to assess the requirement for any conditions relating to this and request the following:

Lighting: The applicant has provided details of the proposed lighting, internal, external and signage which will be managed via timers and sensors. There is potential for light to affect nearby residential properties, particularly those in Branch Hill Rise, I am concerned that there is not enough information provided at this stage, therefore I would ask that the applicant provides a report detailing the lighting scheme and predicted light levels at neighbouring residential properties for approval.

Delivery Noise: The applicant has provided details regarding proposed delivery times and duration in regards to neighbouring businesses, there are no details regarding the impact of deliveries on neighbouring residential properties. Noise from vehicle manoeuvring, loading / unloading activity can impact on local residents, particularly at times of the day when ambient noise levels are low. I am concerned that there is not enough information provided at this stage regarding delivery noise and request that the applicant provides further details including access and egress, times and any proposed mitigation measures for approval.

With regards to the following I would recommend that due to the proximity of residential properties, should any permission be granted, the following conditions are attached:

Plant Noise: The applicant has provided a suitable Noise Impact Assessment, dated 17th November 2020, with regards to plant equipment. I would recommend that any development shall be carried out in accordance with details specified in the Noise Impact Assessment and thereafter shall be permanently retained. Environmental Protection should be informed of any changes regarding the details specified in the Noise Impact Assessment as these will require an updated assessment prior to consent.

#### Construction Management:

No development shall take place, including any works of demolition, until a construction management plan or construction method statement has been submitted to and been approved in writing by the Local Planning Authority. The approved plan/statement shall be adhered to throughout the construction period. The statement shall provide for:

- o parking of vehicle of site operatives and visitors
- o method of prevention of mud being carried onto highway
- o waste and material storage
- o Control measures for dust and other air-borne pollutants
- o Control measures for noise in regards to both demolition and construction
- o Measures for controlling the use of site lighting whether required for safe working or for security purposes.

Reason: To prevent a loss of amenity affecting surrounding occupiers due to noise and nuisance from construction works.

Informative:

A member of the Environmental Protection Team may carry out a site visit should a mobile crusher be in operation.

#### ***24th February 2021 – revised comments***

I have reviewed the updated documents provided for the above application and recommend the following:

Noise Impact Assessment: The applicant has provided an updated Noise Impact Assessment, dated 25th January 2021. I would recommend that any development shall be carried out in accordance with details specified in the Noise Impact Assessment and thereafter shall be permanently retained. Environmental Protection should be informed of any changes regarding the details specified in the Noise Impact Assessment as these will require an updated assessment prior to consent.

Lighting: The applicant has provided a Proposed Light Layout plan, dated 28th January 2021. I would recommend that any development shall be carried out in accordance with details specified in the Proposed Lighting Layout. Environmental Protection should be informed of any changes regarding the details specified in the Proposed Lighting Layout as these will require an updated assessment prior to consent.

#### ***25th June 2021 – additional comments***

I have reviewed the following reports and offer these comments:

##### **Piled foundations**

The documents provided with the application indicate that piled foundations are likely to be used on at least part of the site. A huge variety of foundations pile types are now available to the construction industry, which have potential to produce a range of impacts on the local community, including noise, vibration and dust. I would therefore request that should permission for this site be granted a condition is attached to ensure that the method of piling is submitted for pre-approval before construction works commence on site.

##### **Air Quality**

The AQ report is comprehensive and indicates that the planned development is unlikely to have any adverse effect on air quality in the neighbourhood.

##### **Noise Report**

The application has supplied a comprehensive report, prepared using British Standard 4142, which is appropriate for long-term noise sources, such as air conditioning, refrigeration units etc. This indicates that the plant assessed will not have an adverse effect, and I would therefore recommend a condition to ensure that the plant identified in the report is used on site.

There remain concerns expressed by other consultees about noise from other sources, mainly linked to deliveries. Some of these concerns hold some weight. I do not share the concern that noise from moving cages stock or operating roller shutters will have a significant adverse effect on nearby residential property, as the shape of the building will effectively screen these properties from the noise source. However, I do share the concern that noise from delivery vehicles will have an adverse effect on properties around the site. This is caused by a combination of 3 factors, all of which are confirmed in the Delivery Management Plan you have provided:

- An excessively long reversing path for articulated vehicles.
- Delivery outside store operating hours where possible.
- Use of an audible reversing beacon on the vehicle.

I appreciate that the 2nd and 3rd factors may be desirable for a number of reasons, including health and safety, but the combination of these factors is likely to lead to loss of amenity at nearby premises. In order to mitigate this impact the applicant / operator would need to control at least one of those factors. This may be achieved by, for example:

- Specifying smaller delivery vehicles which would be able to turn closer to the delivery bay, thus reducing the reverse track length/time.
- Careful scheduling of deliveries to "twilight hours" when the store is less busy and potentially part of the car park can be closed to allow safe access.

I would be willing to consider a suitably amended plan to incorporate these suggestions, or others the applicant may wish to submit, but at this stage I must recommend refusal of the application in this form.

#### ***23rd July 2021 – final comment***

As expected and discussed with their consultant. This is much better than the original long-reverse plan that I was concerned about. As such I have no objection to this application proceeding.

#### **GCC Lead Local Flood Authority (LLFA) 3rd December 2020**

The proposal for a retail unit includes a drainage strategy prepared by Delta-Simons Environmental Consultants. The drainage strategy shows adequate detail that the discharge rate of surface water can be managed on site with a 40% betterment over the existing discharge rate. The strategy concludes with recommendations that can be managed through a drainage condition for detailed design.

The strategy identifies a need to manage pollutant runoff which it is proposed to achieve with a vaguely described separator. There is no detail about how any pollutant management devices will be managed.

A drainage condition will provide an opportunity for the developer to offer suitable detail as to what the separator is and how it will control pollution hazards to the Lilley Brook, where water will be discharged via the Severn Trent sewer.

The LLFA have no objection to the proposal if any consent granted is conditioned as follows:

No building works hereby permitted shall be commenced until surface water drainage works have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. The information submitted shall be in accordance with the principles set out in the approved drainage strategy. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water

by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. include a timetable for its implementation; and
- iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution for the lifetime of the development.

NOTE 1: The Lead Local Flood Authority (LLFA) will give consideration to how the proposed sustainable drainage system can incorporate measures to help protect water quality however pollution control is the responsibility of the Environment Agency

NOTE 2: Future management of Sustainable Drainage Systems is a matter that will be dealt with by the Local Planning Authority and has not, therefore, been considered by the LLFA.

NOTE 3: Any revised documentation will only be considered by the LLFA when resubmitted through [suds@gloucestershire.gov.uk](mailto:suds@gloucestershire.gov.uk) e-mail address. Please quote the planning application number in the subject field.

***20th August 2021 – additional comment***

The additional information submitted against this application published on the planning portal website 19th August 2021 is useful in defining the suitability of the proposed development against the flood risk evidence available on the Environment Agency website.

The LLFA agree with the conclusions presented and continues to have no objection subject to the conditions as described in my response of 3rd December 2020.

**Gloucestershire Centre for Environmental Records  
8th December 2020**

Report in documents tab

**GCC Minerals And Waste  
10th December 2020**

Please accept this correspondence as an initial view from officers acting on behalf of the Minerals and Waste Planning Authority (MWPA) for Gloucestershire. It is concerned with ensuring that due consideration is being given to resource efficiency measures. Attention is particularly focused upon two local development plan policies - Gloucestershire Waste Core Strategy Core Policy 2 | Waste Reduction and Minerals Local Plan for Gloucestershire Policy SR01 | Maximising the use of secondary and recycled aggregates. It is applicable to all major development proposals throughout Gloucestershire that require planning permission<sup>1</sup>.

Supporting evidence on resource efficiency may be included within a wider Environment Statement where this has also been required, or as part of a Planning Statement that sets out how a proposal will accord with the local development plan. The preparation of a standalone Waste Minimisation Statement (WMS) or a dedicated waste reduction section or

chapter within supporting evidence of an application are the best means of effectively complying with the requisite local policy requirements.

A Waste Minimisation Statement (WMS) should contain enough information for decision-makers to make a valued judgement on whether achievable resource efficiency measures can be accommodated into a proposal. Details of how different types of waste will be reduced and managed efficiently and effectively will be crucial. The full lifecycle of a proposed development needs to be considered. This usually involves the three phases of: - site preparation (including any demolition); construction; and occupation. Whilst appreciating that for many proposals it is unknown who the future occupants will be, the ability to support their re-use and recycling practice should not be hindered. Provision for safe and efficient resource management infrastructure aiming at reducing waste and making recycling easier to engage with should be set out. This includes for commercial as well as residential schemes.

1 Major development as defined within The Town and Country Planning (Development Management Procedure) (England) Order 2015.

The increasing use in both volume and proportion of recycled materials in development is actively encouraged within local policy. It is therefore reasonable to seek evidence of this. This could include details of procurement practice / protocols able to demonstrate that the sourcing of materials will achieve a substantial level of recycled content. Collation of this type of Information may also prove beneficial where sustainable construction technical standards / ratings are to be sought. Requirements for high levels of recycled material use are present within the Building Research Establishment Environment Assessment Method (BREEAM) and Leadership in Energy and Environmental Design (LEED) certification.

To assist decision makers and applicants in their consideration of resource efficiency, local guidance has been prepared - Gloucestershire Supplementary Planning Document: Waste Minimisation in Development Projects (WM-SPD).

The minerals and waste policy team is also able to offer some further advice and commentary on how compliance can be achieved and maintained. This could include the use of conditions for applications recommended for approval. Please do not hesitate to contact the team via: - [mwplans@gloucestershire.gov.uk](mailto:mwplans@gloucestershire.gov.uk) quoting the application reference and / or GCC reference of interest.

#### ***14th February 2021 – revised comments***

No objection subject to conditions / informatives.

All of the details set out within this section are made by officers on behalf of Gloucestershire County Council in its capacity as the Mineral and Waste Planning Authority (MWPA): -

Officers acknowledge the submission of a dedicated Waste Management and Minimisation Plan to accompany the proposal dated January 2021. The details of the plan have been reviewed. Officers can confirm that subject to the plan's full implementation, the matters of resource efficiency and waste minimisation will be adequately addressed. Officers have no further comments to make at this time.

#### **Architects Panel 11th February 2021**

Design Concept - The panel had no objection to the principle of this Lidl retail store given the poor quality of existing buildings on the site.

The only concerns raised were over the quality of the architecture which has clearly been influenced by the corporate brand image and resulted in a large bland supermarket building similar to many Lidl supermarkets around the country.

Design Detail - The panel had no objection to the site layout, the footprint or the overall scale of the building. However, the submitted scheme design takes no cues from the special character of the site and its context, which was felt to be a wasted opportunity. The panel would have liked to have seen the elevations articulated more perhaps with visual references to former railway architecture on the site, or by picking up on some of the intricate building details of the houses opposite.

The choice of dark blue engineering brick for the facades is a worry in that the building could appear particularly drab and uninviting. Selecting a lighter red brick similar to the houses opposite would be more appropriate using engineering brick only to highlight features as commonly done with late Victorian early 20th century architecture.

Recommendation  
Not supported

**Cheltenham Civic Society**  
**7th January 2021**

#### OBJECT

The Civic Society Planning Forum strongly objects to the application for a supermarket in this location.

This site should be used for housing, for which there is both the need and the demand in this area. The designation of this site as employment/ industrial land is historical and dates back to the existence of the railway line. It is no longer appropriate. Neighbouring Timbercombe House has already been granted planning permission for change of use from offices to flats.

This site marks the entrance into Cheltenham. As a gateway to the town, it deserves better than this.

In addition, a supermarket in this location is likely to be detrimental to the Charlton Kings local shops, which contribute to the community as well as providing employment and supporting local businesses.

A supermarket, especially one of this size, will create a significant volume of car journeys. The submitted plans make it clear that this is designed for drivers rather than pedestrians. The pedestrian entrance is an afterthought, and there is no pedestrian entrance from the nearby bus stop.

**CBC Urban Design**  
**23rd December 2020**

#### OVERALL

- The development will cause additional noise and carbon emissions to the surrounding area. As stated in Joint Core Strategy Plan, Policy 4.5.11 Table SD4a, the aim is to reduce CO<sub>2</sub> and other harmful emissions and promote healthier lifestyles through encouraging walking, cycling and public transport use where possible.
- JCS Plan, Policy SD4 4.5.5 Development at any scale and location should make a positive contribution to providing better places for communities. The Lidl illuminated signs facing the Cirencester Road and the increased road traffic might not have positive contribution to providing better place for this community.

- In order to ensure development is adaptable to climate change, proposals should have regard to the following non-exhaustive list of requirements: JCS Plan, Policy SD3 4.4.10.

#### EXISTING TREES AND VEGETATION

The existing trees along the Cirencester Road are creating a mature avenue and the visual impact is large as they are on the main road. These trees are proposed to be removed due to diseases and crowns overhanging pavement and road.

- If trees are removed and replaced- how long would it take for new trees to have the same visual and ecological impact?

#### PROPOSED TREE PIT 1500MM SQUARE PIT

Ten proposed tree pits along the Cirencester Rd to replace removed trees. Only one specie proposed 'Acer platanoides Emerald Queen'.

- What is the rationale for the species of the trees chosen for this scheme? Recommendation is to plant trees which can enhance all environments, even urban ones with a wide range of environmental, social and economic benefits. For example, 'Sorbus torminalis's flowers provide pollen and nectar for insects, while the berries are eaten by birds. It is recommended to choose a tree species which will enhance biodiversity and positively contribute towards climate emergency.
- Are there enough new trees proposed? Are they in the right places to perform specific functions (screen, filter screen, landscape setting, break-up hard standing/development, or for habitat?
- JCS Plan, Policy SD4 4.5.5
- JCS Plan, Policy SD3 4.4.10

There are other alternative locations to fulfil the potential for planting new trees on the site. The middle of the car parking area would benefit from extra tree pits providing more shade, and enhancing biodiversity.

#### GRASS AREAS

- Is the proposed seeding mix suitable for this circumstance?
- Have they maximised the eco/landscape benefits? I.e bulb planting, perennials?
- How is it proposed to establish the grass?
- What is the arrangement where grass areas are within Highway or public ownership?

#### PROPOSED PLANTING BEDS

Proposed planting beds are located on the northern and eastern edges of the building and also along the entrance and western corner of the site, along the boundary line. The specification is clear and has a good selection of plants however the recommendation should be to plant a scheme which will support insects, wild birds and other local wildlife with minimal maintenance and water use. The soft landscaping should consist of new planting that will act as a buffer between the surrounding new and existing developments and should provide visual interest and detail along with increased biodiversity.

- Is the species mix appropriate for the situation?

#### BANK AREAS

As mentioned above, there is a wide range of supporting the habitat plants that can be added to the planting plan.

#### ROOT PROTECTION AREA RPA

- How is a root protection area calculated?



#### ROOTS UNDER EXISTING TARMAC WITHIN PROPOSED CARPARK AREA

- What is the methodology to protect the roots during the works?

#### PROPOSED HEDGE

Six different species are proposed to be planted in a double staggered row. Would it provide sufficient screening / privacy on the borders of the development?

- What is the purpose(s) of the hedge?
- What is the ultimate height of the hedge?

#### **25th February 2021 – revised comments**

The revised landscape information is generally acceptable but there is no revised landscape General Arrangement plan provided to accompany this. The drawing should include existing + proposed ground profiles/levels. This needs to be made available for any detailed landscape comments to be made.

From the information which has been submitted;

##### Planting schedule

- reconsider the species list for 'beds 1-7', including more native species or non-natives which support invertebrates - to support local biodiversity improvements helping to offset loss of existing mature soft landscape.

##### Planting methodology & aftercare

- applicant to confirm that the 'geotextile weed membrane' does not contain plastic and is made from biodegradable material - to reduce use of plastics and maximise sustainability.
- the aftercare schedule looks detailed & thorough, applicant to confirm how the activities will be managed and monitored - to ensure the soft landscape is managed to establishment.

##### Proposed site plan

- Provide drawn section details demonstrating the relationship between the existing hard standing levels and new construction and hard standing levels along the southern boundary in relation to the root zone of the existing trees along that edge. Sections should include the underground service run which is located close to this edge - to ensure existing vegetation is not compromised by the development.
- Provide detailed level information at the existing access road/existing speed bump showing how levels relate to the proposed footpath to the proposed 'entrance plaza' area adjacent to the proposed disabled parking bays - to ensure this pedestrian route meets statutory accessibility requirements.
- Consider better pedestrian accessibility by creating an informal foot crossing over the access road - to encourage local customers to consider walking.

#### **27th May 2021 – revised comments**

Thank you for providing the planting information. My additional repeat comments on planting information are:

##### Planting schedule

- Proposed bulbs and wildflower mix, recently added to the planting plan, looks thorough and increases the support for local biodiversity together with the rest of proposed plants for planting beds.

#### Planting methodology & aftercare

- Can you confirm please, that you are not using plastic as per previous comment? The revised planting methodology and aftercare document does not states biodegradable geotextile weed membrane - to reduce use of plastics and maximise sustainability.
- Applicant to include a statement which indicates how the activities will be managed and monitored and by who (client or design team?) - to ensure the soft landscape is managed to establishment.

#### Proposed site plan

- As per previous comment - Can the applicant explain the relationship between the existing hardstanding surface and retained tree root zone (along the southern boundary edge)? Sections should include the underground service run, which is located close to this edge - to ensure existing vegetation is not compromised by the development.

We are waiting for more information in regards to revised site location plan/red boundary area, to understand the changes.

#### **Wild Service (acting as Council's Specialist Ecological Advisor) 2nd February 2021**

I have reviewed the Preliminary Ecological Appraisal (Deltasimmons, November 2020) and my response with regards to Ecology is provided below.

The ecology report highlights that building 1 was deemed as having high potential and building 2 was deemed as having low potential for roosting bats. Three emergence surveys were undertaken, this identified roosts within each building, building 3 was deemed as having negligible potential, therefore no further surveys were required. I am happy with the survey effort carried out on the existing buildings. An EPSL licence will be required in order to proceed with works, mitigation that will inform the licence will be required to be submitted to the local authority prior to determination in order to satisfy the three 'favourable' tests applied by Natural England.

It is noted in the report that building 1 was deemed as having potential for hibernating bats, this requires a survey visit in order hibernating bats (if present) or other evidence of bat occupation. This will be required to be completed prior to determination and this is to be supported with appropriate mitigation. The optimal period to undertake bat hibernation surveys are December to February (inclusive).

#### **1st April 2021 - updated comments**

An updated site survey conclude that the building was largely unsuitable for hibernating bats, timing of the works will be outside of the hibernating season, which is acceptable.

Lighting details have been submitted and these are acceptable.

The mitigation strategy is largely acceptable, however specific mitigation is required for lesser horseshoe bats. A proportionate number of bat features suitable for the species will be required. Lesser horseshoe bats require different features to other bats such as access points allowing for direct access into a roost and room for free hanging, the mitigation proposed is not specific for lesser horseshoe bats. The mitigation is to be updated or can be received as a technical addendum.

Great crested newts were not considered to be a constraint on the site due to the identified ponds being separated from the site by dispersal barriers and that the site itself is predominantly hardstanding.

Sensitive timing has been recommended for nesting birds and a precautionary approach to vegetation clearance in relation to hedgehogs. Enhancements have also been recommended and these are welcomed.

There is currently an ecological objection and a decision cannot be made until the aforementioned details have been submitted and review by the local planning authority.

#### ***11th May 2021 - updated comments***

Further clarification has been provided and the tunnel will act as mitigation for the lesser horseshoe transitional roost.

Great crested newts were not considered to be a constraint on the site due to the identified ponds being separated from the site by dispersal barriers and that the site itself is predominantly hardstanding.

Sensitive timing has been recommended for nesting birds and a precautionary approach to vegetation clearance in relation to hedgehogs. Enhancements have also been recommended and these are welcomed.

Conditions to be attached:

1. Evidence of ecological enhancements are to be submitted to the local authority prior to commencement, this includes but not limited to bird and bat boxes.
2. All mitigation within the report (Deltasimmons, November 2020) is to be strictly adhered to throughout the works.
3. Dawn survey to be undertaken on the day of demolition to further reduce the likelihood of disturbing/injuring bats. If the dawn survey cannot commence due to weather conditions, works will commence once the survey can proceed.
4. Copy of the granted Natural England EPS bat license to be submitted to the local authority prior to works commencing.

National Planning Policy Framework (NPPF) and Local Plan Policy (Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 - 2031) (adopted December 2017)) Context:

- NPPF Para 170 – 177 (Conserving and Enhancing the Natural Environment), National Planning Policy Framework
  - SD9 Biodiversity and Geobiodiversity
  - INF3 Green Infrastructure
- Wildlife legislation context:
- Wildlife and Countryside Act 1981 (as amended)
  - Conservation of Habitats and Species Regulations 2017
  - Natural Environment and Rural Communities Act 2006
  - Protection of Badgers Act 1992

## **5. PUBLICITY AND REPRESENTATIONS**

- 5.1 Letters of notification were sent to 33 neighbouring properties. In addition, a site notice was posted and an advert published in the Gloucestershire Echo. Lidl also undertook their own consultation exercise.
- 5.2 The application has prompted a significant volume of interest. As previously noted, at the time of writing this report, 855 representations have been received in response to the publicity; all of which have been made available to Members separately. The responses comprise 435 objections, and 407 comments in support; with the remainder of the comments making general observations. There have also been a number of repeat and additional objections received from some local residents.

5.3 Spirax Sarco, Tesco and Morrisons have also objected to the proposal.

5.4 The comments received in objection to the development are all very similar and are summarised below:

- No need – community already well-served by a range of stores
- Impact on existing local independent shops
- Loss of post office (within Smith and Mann)
- Lack of retail impact assessment
- Increase in traffic and congestion
- Impact on highway safety
- Impact on character of village and community
- Increased noise and disruption
- Increased light pollution
- Not sustainable development
- No net gain employment in the long term
- Out-of-keeping / visually intrusive
- Devaluation of property
- Loss of employment land
- Flood risk
- Site would be better used for housing or other alternative use
- Impact on air quality
- Impact on AONB

5.5 The reasons given in support of the application include, but are not limited to:

- Good use of a vacant brownfield site which is currently an eyesore
- Would reduce the need to travel by car
- Currently have to travel across town for weekly shop
- The larger stores are not easily accessible by bus
- Existing convenience stores are expensive and have a limited range
- Will still support local stores but not suitable for weekly shop
- Lidl do not have coffee shops, pharmacies or post offices
- Don't agree that village is already well-served
- The plans are sympathetic to the area
- Modern and attractive store
- Would provide additional local job opportunities
- Plenty of parking
- Would provide electric vehicle charging points
- The plans include solar panels on the roof to help meet the store's energy needs

## **6. OFFICER COMMENTS**

### **6.1 Determining issues**

6.1.1 The key issues in determining this application are:

- the principle of redeveloping this brownfield site for retail purposes;
- the retail sequential test;
- impact of the proposed development on the vitality and viability of the town centre and nearby neighbourhood shopping centres;
- the design and layout of the site;
- the access, parking and highway safety impacts associated with the proposed retail use;
- the delivery and service management of the site; and

- the impact of the development on the amenity of neighbouring land users, and in particular, the impact on local residents in terms of noise, disturbance and light pollution.

6.1.2 Other important considerations relate to:

- trees and landscaping;
- flooding and drainage; and
- ecological impacts.

## 6.2 Policy background / principle of retail development

6.2.1 Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

6.2.2 The development plan comprises saved policies of the Cheltenham Borough Local Plan Second Review 2006 (CBLP); adopted policies of the Cheltenham Plan 2020 (CP); and adopted policies of the Tewkesbury, Gloucester and Cheltenham Joint Core Strategy 2017 (JCS).

6.2.3 Material considerations include the National Planning Policy Framework 2021 (NPPF) and Planning Practice Guidance (nPPG).

6.2.4 Paragraph 11 of the NPPF sets out a “*presumption in favour of sustainable development*” which in decision making means:

- (c) *approving development proposals that accord with an up-to-date development plan without delay; or*
- (d) *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
  - i. *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
  - ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in [the] Framework taken as a whole.*

### *Employment Land*

6.2.5 Adopted CP policy EM2 seeks to safeguard existing B class employment land and buildings, but does set out some exceptions. Exception b) permits development where:

*the loss of the site to other uses does not have a detrimental impact on the continuing operation existing businesses in the vicinity (Note 2) and;*

- i. *The proposed use is job-generating with any loss of existing provision being offset by a net gain in the quality and / or the number of jobs provided on the site; or*
- ii. *Development of the site will ensure the relocation of an existing firm to a more suitable location within the Borough (Note 5); or*

iii. *There has been a sustained and long-term absence of economic activity on the land with no reasonable prospect of the land being used for employment (Note 6).*

6.2.6 The notes referred to in the policy read:

*Note 2: 'In the vicinity' refers to adjacent business land and property; and /or business land and property within the same business site or estate; and /or business land and property within the wider neighbourhood. Each case will be considered on the basis of its particular locational characteristics with the overall aim being to maintain and enhance the Borough's employment offer.*

*Note 5: Evidence will be required to demonstrate why the existing site is unsuitable for the current use, why the alternative site is more suitable, and why other uses are considered necessary in order to facilitate the relocation of the current user elsewhere within the Borough.*

*Note 6: Evidence will be required to demonstrate the lack of demand and consider the need for employment land currently or in future. At the heart of the criterion is the need to undertake an active advertising and marketing campaign that has been sustained over an appropriate period of time and has had regard to market characteristics. The amount of time that a campaign should be carried out is likely to vary depending on the scale of the redevelopment proposed and the amount of employment land that will potentially be lost. A period of not less than one year provides a reasonable benchmark.*

6.2.7 Officers are therefore satisfied that a change of use of the land to provide a retail foodstore would clearly meet the requirements of exception b) in that the loss of the site to other uses would not have a detrimental impact on the continuing operation of existing businesses in the vicinity; it would generate jobs; and there is no reasonable prospect of the site being re-used for B class employment use. The existing light industrial units on site have been vacant for a number of years, and a Viability Report submitted with the application states that *"Due to the age and configuration of the buildings and lack of demand for the site from occupiers, there is no prospect for the buildings coming back into use as [a B class] employment site."* The report states that marketing has been carried out in excess of two years.

#### *Class E*

6.2.8 Notwithstanding the above, the applicant's Planning and Retail Statement sets out that the planning history on the site indicates that the existing commercial units on the site were originally permitted for light industrial use, with associated warehousing and office facilities; and that it is reasonable to assume from the evidence available that the lawful use of the existing premises would now fall within Use Class E (formerly Class B1). They corroborate this assumption by the fact that the business park is located in close proximity to a number of residential properties, with Class B2 and Class B8 uses generally less appropriate in such locations. They also note that the existing accommodation is primarily set out as offices and accessed via personnel doors, not large roller shutter doors.

6.2.9 On this basis, the statement asserts that that the lawful existing use of the application site falls within Use Class E; and that there are no known limitations that prohibit the use of the premises for any use within Class E.

6.2.10 It is noted that the objection submitted on behalf of Spirax Sarco disputes this assumption suggesting that the site was also previously used for B8 uses and therefore the fall-back position in relation to permitted development set out by the applicant in their

statement is incorrect; however, notwithstanding this point, the applicant has applied for planning permission in any event, and so it is of no consequence that there would not be any permitted development rights in respect of a change of use. As previously noted, the principle of a retail development on this site is in any case considered to be policy compliant.

#### *New retail development*

6.2.11 Adopted JCS policy SD2 advises that in Cheltenham “*new retail development will be encouraged in accordance with the policies in the saved local plans insofar as they are consistent with national planning policy*” and that “*proposals for retail...that are not located in a designated centre, and are not in accordance with a policy in either the JCS or district plans, will be robustly assessed against the requirements of the sequential test and impact test, as set out in National Planning Policy Framework and national Planning Practice Guidance, or locally defined impact assessment thresholds as appropriate.*”

6.2.12 Saved CBLP policy RT1 sets out the sequential approach for new retail development with the order of preference being the Central Shopping Area, Montpellier and High Street West End, elsewhere in the Core Commercial Area, district and neighbourhood shopping centres and then out of centre sites which are accessible by a regular choice of means of transport. The policy is generally consistent with NPPF paragraphs 87 and 88 which state:

*87. Local planning authorities should apply a sequential test to planning applications for main town centre uses which are neither in an existing centre nor in accordance with an up-to-date plan. Main town centre uses should be located in town centres, then in edge of centre locations; and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered.*

*88. When considering edge of centre and out of centre proposals, preference should be given to accessible sites which are well connected to the town centre. Applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored.*

6.2.13 NPPF paragraph 90 goes on to state:

*When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> of gross floorspace)...*

6.2.14 As the application site is in an out of centre location, the application is accompanied by a Planning and Retail Statement which includes a sequential assessment. The Council commissioned DPDS to act as the Council's independent Retail Advisor, and review the submitted documentation. Following an initial review of the Retail Statement, additional clarification on a number of matters was submitted by the applicant, including a Sequential Test Technical Note and Counsel opinion.

6.2.15 The initial responses from DPDS, their full report, and a subsequent update are attached at Appendix A. It is not intended to repeat the comments here, but the key points arising from their assessment are as follows:

#### *Sequential Test*

6.2.16 The sequential test is required to assess whether there are other preferable sites which are suitable, viable and available; and the applicant has undertaken an extensive

retail sequential test assessment. The DPDS report assesses the sites rejected in the applicant's Technical Note in this regard, and considers whether there are any other potential sites which should be considered.

6.2.17 The DPDS report sets out that having carried out an internet search of vacant retail units, the writer has been unable to identify any other vacant units of sufficient size which merit further investigation. The town centres sites considered in the report include the former Lidl Unit at Grosvenor Terrace, North Place car parks, St. Georges Lane/St. James Street, the Brewery, the former BHS unit at Regent Arcade, and the Municipal Offices. Having considered the reasons for discounting these sites in detail, DPDS in their assessment are satisfied that the applicant *"has demonstrated compliance with the sequential test"* and that there are no sequentially preferable suitable sites available. No other suitable vacant premises in Bath Road or other relevant centres, or suitable sites in or on the edges of the centres, have been identified; and officers are not aware of any additional sites that have not been considered.

6.2.18 Officers therefore agree with the conclusions drawn by the applicant and DPDS, and are satisfied that there are no suitable and available, alternative sites on which to accommodate the proposed store; and that the proposed development passes the sequential test and so accords with CBLP policy RT1.

#### *Retail impact*

6.2.19 The proposal does not meet the threshold for a Retail Impact Assessment (2,500m<sup>2</sup> of gross floorspace) and, as such, the local planning authority cannot insist on one. Nevertheless, the impact of the proposed development on existing neighbourhood shopping centres is of significant concern to a number of local residents and, DPDS advise that retail impact may be considered as a material consideration, and have gone on to assess retail impact within their report. The report considers the impact on a number of stores/sites, including Morrisons at Caernarvon Road, Sainsbury's Local at Cirencester Road, and the Six Ways/London Road, Lyefield Road West, Church Street, Leckhampton and Croft Road centres.

6.2.20 The DPDS report notes that the proposal is likely to have a turnover of about £12m and that whilst a certain amount of trade would be derived from pass-by trade, a large part of this would be on journeys to or from Cheltenham. A substantial part of the proposed store's trade will be main food shopping and will be diverted from the main food supermarkets, the majority of which are out-of-centre and the impact on them is not a material consideration.

6.2.21 In considering the objection from Morrisons at Caernarvon Road, which is in a district centre, the DPDS report states *"It is a considerable distance from the proposal and there is no reason to believe that it would be disproportionately affected by the proposal to the extent of justifying a refusal."* The report also notes that Morrisons' objection *"does not contain any evidence on the likely impact or assert that the proposal would have a significant adverse impact on the store"*.

6.2.22 The report goes on to state that although figures suggest that some £1.4m might be diverted from current top-up shopping visits, these would be diverted from a range of food outlets throughout Cheltenham, including the larger foodstores, and it is reasonable to assume that about one third of this top-up shopping would otherwise have taken place in the large foodstores. Assuming that about £1m will be diverted from smaller shops and convenience stores and, bearing in mind the likely pass-by trade, about half of this will be from the local centres.

6.2.23 The top-up location deemed most likely to be affected would be the nearby Sainsbury's Local on Cirencester Road because it is the nearest store, and on a direct route



from the proposed store, which would likely intercept some of its existing trade, and because it offers some limited parking for car borne shoppers. DPDS estimate that at least half of the local trade diversion is likely to come from this store; however, the loss of about £250,000 from the turnover, or substantially more, would not threaten the viability of this store which, in any case, is not in an identified centre and does not receive policy protection.

6.2.24 With particular regard to the Lyefield Road West neighbourhood centre, as the centre most referred to in the objections, the DPDS report acknowledges that some loss could be expected from the Smith and Mann store, but concludes *"that the impact on the Lyefield Road West and other local centres is not likely to be significantly adverse in terms of the retail impact test and that the Post Office facilities are not likely to be lost. I also think that it would be difficult to adduce evidence to justify a refusal on the basis of retail impact at any appeal."* The writer also states that having visited the nearby centres on a number of occasions, there were no obvious signs of economic distress (with the exception of the Croft Road centre) with trade clearly more walk-in than car based. Officers would reiterate the fact that as the proposal is not likely to lead to any significant adverse impact on the vitality and viability of the Lyefield Road West centre, nor result in the closure of the Smith and Mann store, the Post Office facilities within the store are not likely to be lost as a consequence of this proposal.

6.2.25 Whilst, as previously noted at paragraph 6.2.20, DPDS assume the turnover of the proposed store to be about £12m, the applicant has advised that the turnover would actually be expected to be one third less, between £8.2m and £8.4m, and as such, the store would divert less trade away from existing foodstores and non-food retailers than suggested by DPDS. If that were to be the case, the retail impact would be reasonably expected to be even less than that already deemed not likely to be significantly adverse, with the applicant contending that the store would be *"highly unlikely"* to result in any significant adverse impact.

6.2.26 Subsequent to the DPDS report being published, an objection was received on behalf of Tesco, and an additional representation was received from the owner of the Smith and Mann store, enclosing a letter from their accountants. These submissions were duly considered by DPDS who concluded that there was nothing in the additional correspondence that would lead them to change their earlier advice.

6.2.27 The turnover figures provided by Smith and Mann, indicate that its turnover was reduced by about 21% following the opening of the Sainsbury's Local on Cirencester Road; however, DPDS point out that it was always clear that the Sainsbury's Local would have some impact on the Smith and Mann shop, and that they find the level indicated as might be expected. They also set out a number of reasons why the impact of the current proposal would be less than the impact from the Sainsbury's. Firstly, it is further away; secondly, although the proposed store would be a larger unit, most of its trade would be derived from main food shopping, whereas the Sainsbury's is orientated towards the same local top-up market in the same area as the Smith and Mann shop; and lastly, that much of the trade that would have diverted from the Smith and Mann shop will have already diverted to Sainsbury's.

6.2.28 Overall, DPDS conclude that the proposal is not likely to lead to a significant adverse impact on the vitality and viability of any centre. The

6.2.29 It is acknowledged that some people have commented on the closure of the Nisa store at Croft Road following the opening of the nearby Sainsbury's Local but DPDS identified this at the time, and noted that the impact on the Croft Road centre would be severe and the closure of the Nisa store was likely.

6.2.30 As a whole, officers concur with the conclusions reached by DPDS in respect of the sequential test and the impact of the proposed development on existing neighbourhood shopping centres.

6.2.31 Members should be mindful that, for the purposes of determining this application, an assessment of retail impact upon existing nearby neighbourhood centres must be made on objective grounds only and emotive, non-material issues put aside. A refusal based on retail impact would need to be supported by credible evidence at any subsequent appeal; and officers do not consider that there is sufficient evidence to this effect that could be substantiated.

6.2.32 In light of all of the above, officers are satisfied that the general principle of the proposed development on this site, which is sustainably located within the PUA, would accord with the above mentioned policies.

### 6.3 Design, layout and sustainability

6.3.1 Chapter 12 of the NPPF places great emphasis on the importance of design in decision making, and states at paragraph 126 that *“Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”*.

6.3.2 Adopted CP policy D1 requires all new development to adequately reflect principles of urban and architectural design; and to complement and respect neighbouring development, and the character of the locality and/or landscape. The policy reiterates the requirements of adopted JCS policy SD4 which calls for proposals for development to:

- respond positively to, and respect the character of, the site and its surroundings, and be of a scale, type, density and materials appropriate to the site and its setting;
- create clear and logical layouts;
- avoid or mitigate any potential disturbance, including visual intrusion, noise, smell and pollution;
- ensure that landscaped areas are of a high quality design;
- be designed to contribute to safe communities including reducing the risk of fire, conflicts between traffic and cyclists or pedestrians, and the likelihood and fear of crime;
- provide access for all potential users, including people with disabilities, and ensure the highest standards of inclusive design; and
- be designed to integrate, where appropriate, with existing development, and prioritise movement by sustainable transport modes.

6.3.3 Adopted JCS policy SD3 also requires development proposals to be designed and constructed in such a way as to maximise the principles of sustainability, and to:

- demonstrate how they contribute to the aims of sustainability by increasing energy efficiency, minimising waste and avoiding the unnecessary pollution of air, harm to the water environment, and contamination of land or interference in other natural systems;
- be adaptable to climate change in respect of the design, layout, siting, orientation and function of both buildings and associated external spaces; and
- incorporate principles of waste minimisation and re-use.

#### *Layout*

6.3.4 The existing vehicular access to the site from the private access road will need to be revised and widened to facilitate access and egress into the retail site, with a new pedestrian

entrance adjacent to an existing crossing point across the private access road. A new pedestrian footpath from the Cirencester Road would run alongside the access road.

6.3.5 The proposed building would be located on the eastern part of the site, adopting a similar albeit smaller footprint as the existing buildings. The main entrance lobby to the supermarket would be located in the northwestern corner of the building, with warehousing and other ancillary facilities located to the rear and side of the main retail space. The loading bay, which is covered but not enclosed, would be located to the southeast of the store. A comprehensive Transport Statement and Delivery Management Plan have been submitted with the application, and revised where necessary, and these are discussed in more detail later in the report.

6.3.6 Free customer car parking would be located to the west of the store. The car parking would provide a total of 79 car parking spaces, including 5 disabled spaces, 2 electric vehicle charging spaces, 5 parent and child spaces, and 7 motorcycle spaces. Infrastructure would also be provided for a further 14 electric vehicle charging spaces to be made available as and when required in the future. Cycle parking would also be provided.

6.3.7 Areas of landscaping adjacent to the vehicular access and within the car park would help to soften the development, with the retained landscaping along the southern boundary continuing to provide a substantial green visual buffer between the proposed development and neighbouring AONB.

6.3.8 Officers are therefore satisfied that the general layout of the scheme is acceptable and appropriate for the site. Additionally, the Architects Panel *"had no objection to the site layout, the footprint or the overall scale of the building"*.

#### *Design*

6.3.9 For the most part, the proposed building is single storey with a flat roof, although a small element of first floor accommodation is proposed in the northern corner of the site to provide for a staff canteen, wc and changing facilities, an IT room, and a Manager's office. Whilst the height of the building would clearly exceed the height of the existing buildings, a lesser extent of footprint is proposed and the building would not be as tall as the large office building to the rear.

6.3.10 With reference to the external appearance of the proposed store, the applicant's Design and Access Statement sets out that the building has been designed to *"blend in and strengthen the existing context as much as possible"*. The external elevations will primarily be faced in red brick, which reflects the materials used in the residential properties immediately opposite the site, with limited blue brick detailing *"which is inspired by the local brick patterns of the adjacent former railway bridge"*.

6.3.11 The Architects Panel comments in this regard are therefore somewhat puzzling as, whilst they raise no objection to the site layout, footprint or overall scale of the proposed building, they suggest that the *"design takes no cues from the special character of the site and its context... The panel would have liked to have seen the elevations articulated more perhaps with visual references to former railway architecture on the site..."* They go on to comment that:

*The choice of dark blue engineering brick for the facades is a worry in that the building could appear particularly drab and uninviting. Selecting a lighter red brick similar to the houses opposite would be more appropriate using engineering brick only to highlight features as commonly done with late Victorian early 20th century architecture.*

6.3.12 These comments suggest that the Architects Panel have misinterpreted the proposals; and the agent for the application also questioned the comments, pointing out that *"the primary material already proposed is red brick, with the blue bricks just adding some detail/variation only"* and that the building is of a bespoke design for the site. The applicant therefore requested a discussion with the panel to better understand their concerns; however, disappointingly, the panel did not respond to their request. Nevertheless, officers are satisfied that the proposals generally accord with the Architects Panel's recommendations.

6.3.13 Elsewhere within the scheme, additional materials include white render, grey metal sheet roofing, grey metal flashing, and blue framed windows, glazed shopfront, and doors.

6.3.14 Overall, officers are satisfied that the proposed scheme, whilst designed to meet the applicant's operational needs and is functional in its appearance, is appropriate for the site and its context; represents an appropriate standard of design both in terms of the building itself and the space around it; and will result in an enhancement to the site and its surroundings. Visually, the building would respond far better to its context than the large commercial building to the rear of the site, and the hotel complex to the south.

6.3.15 The detailed design of a number of elements, including external facing materials, can be satisfactorily dealt with via planning conditions to ensure the quality and durability of the individual elements.

6.3.16 Additionally, whilst it is noted that some concern has been raised in relation to the signage shown on the submitted drawings, Members are advised that a separate application for advertisement consent would be required for all advertisements and signage for the store.

#### *Sustainability*

6.3.17 The Energy and Sustainability Report which accompanies the application sets out the sustainability measures that have been incorporated into the scheme; these include the provision of solar PV panels on the large expanse of flat roof, and the use of an Air Source Heat Pump (ASHP) as the main heating and cooling system for the development. The solar PV array will be incorporated into the roof and deliver renewable energy to the development all year round, providing not only environmental benefits of lower carbon emissions and reduced reliance on the grid, but also ensuring lower economical operational costs throughout the building life cycle.

6.3.18 The report sets out that with the inclusion of the ASHP and PV array, *"the estimated reduction in regulated carbon dioxide is approximately 94% below the Part L 2013 compliant baseline scheme which represents a total site wide annual saving of approximately 47 tonnes of CO<sub>2</sub>".*

6.3.19 The application has also been supplemented by a Waste Management and Minimisation Plan (WMMP) which, at this stage, seeks to highlight the principles proposed to be applied to the planning, design, construction and occupation phases of the development. The WMMP has been reviewed by officers at the County Council, in its capacity as the Mineral and Waste Planning Authority, who confirm that *"subject to the plan's full implementation, the matters of resource efficiency and waste minimisation will be adequately addressed."*

6.3.20 Officers are therefore satisfied that the sustainability credentials of the proposed development will reduce their reliance on less sustainable forms of energy, and maximise the energy and carbon savings of the development.

6.3.21 Accordingly, as a whole, the proposed scheme is considered to meet the requirements of CP policy D1, and JCS policies SD3 and SD4.

#### 6.4 Access, parking and highway safety

6.4.1 Adopted JCS policy INF1 requires all development proposals to provide safe and efficient access to the highway network for all transport modes; and provide connections where appropriate, to existing walking, cycling and passenger transport networks to ensure that credible travel choices are provided by sustainable modes. The policy states that planning permission will only be granted where the impacts of the development are not considered to be severe, and requires developers to assess the impact of proposals through a Transport Assessment.

6.4.2 The above policy generally reflects the advice set out within the NPPF at Section 9; however, the following paragraphs of the NPPF set out additional relevant requirements:

*110. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:*

- a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location;*
- b) safe and suitable access to the site can be achieved for all users;*
- c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and*
- d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.*

*111. Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.*

*112. Within this context, applications for development should:*

- a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*
- b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*
- c) create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;*
- d) allow for the efficient delivery of goods, and access by service and emergency vehicles; and*
- e) be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.*

*113. All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.*

6.4.3 From a highways perspective, the access, parking and highway safety impacts associated with the proposed retail use, and the delivery and service management of the site has been fully assessed by the Highways Development Management Team (HDM) at the County Council, as the Highway Authority acting in its role as Statutory Consultee, and their full comments can be read at Section 4 above.

6.4.4 In their initial response, HDM raised concerns in relation to the Transport Assessment (TA) submitted in support of the application, requesting that the TA be updated to include an assessment of trip movements across the whole day for the extant and proposed uses (reviewed against the 2019 survey which was absent from the submission) and the trip distribution analysis.

6.4.5 Additionally, they were dissatisfied with the proposed trip rates for the retail use, suggesting that the presented rates were unacceptably low; and also raised concerns over the lack of a continuous footway from the nearest bus stops to the store entrance, the number of electric vehicle (EV) charging spaces, the location of the cycle parking spaces, and manoeuvring arrangements for delivery vehicles within the site.

6.4.6 Subsequently, the applicant worked closely with HDM to address the above concerns, and no highway objection is now raised subject to a number of conditions. The applicant has updated the trip rates and considered what the implications of this would be at the access onto Cirencester road, and HDM agree with the findings; the modelling result concluding that there will not be a significant delay on the Cirencester Road or the site access road.

6.4.7 The scheme also been revised to incorporate a footway on the south side of the access road which will connect to the Cirencester Road and nearby bus stop infrastructure and help to enable sustainable travel; the walk from the bus stops is direct and relatively short. At present, the bus shelter is not within the publicly maintained highway but the applicant has offered to dedicate this land to ensure that this discrepancy is resolved which is welcomed.

6.4.8 With regard to the EV parking spaces, although the number of spaces is lower than that normally required, the applicant is proposing charging equipment which will allow for rapid charging, and therefore better reflects customer dwell time; as such, HDM are satisfied that the proposal will provide for a better level of customer service than if it were fully compliant with the guidance. As previously noted, the proposal also includes infrastructure for an additional 14 EV charging spaces in the future.

6.4.9 HDM also now accept that the proposed cycle parking is positioned in a useable location; and it would benefit from natural surveillance.

6.4.10 The application also provides for a Travel Plan (TP) to promote and encourage alternative options to single occupancy vehicle trips, particularly for employees. The TP sets out that all new staff at the store will receive a comprehensive travel pack, outlining the objectives of the plan, and an appointed Travel Plan Co-ordinator will be responsible for its implementation.

6.4.11 In addition, a Delivery Management Plan (DMP) has been submitted which sets out the proposed arrangements to control and manage deliveries to the store. The document states that deliveries to the store will be made by 16.5 metre long articulated vehicles and that typically there will be two deliveries per day. The plan has been updated during the course of the application; notably the route and manoeuvring for delivery vehicles entering and exiting the site and accessing the delivery bay.

6.4.12 A recent update to the DMP in response to amenity concerns raised by Environmental Health has been reviewed by HDM and they are agreeable to the revised DMP. The amenity considerations are discussed below at Section 6.5.

6.4.13 Subject to the inclusion of a number of conditions, HDM support the proposed development and conclude that it would not result in an unacceptable impact in terms of highway safety, or a severe impact on congestion, and that *"there are no justifiable [highway] grounds on which an objection could be maintained"*. The necessary conditions relate to the provision of parking including EV charging points, the submission of a Construction Method Statement; and the implementation of the TP and DMP. A Unilateral Undertaking with the County Council is also required to cover the financial obligations relating to the TP (a Monitoring Fee and Default Payment).

6.4.14 Officers have no reason to disagree with the HDM assessment of the proposals and are therefore satisfied that the requirements of JCS policy INF1 and paragraphs 110 – 113 are met.

## 6.5 Impact on amenity of neighbouring land users

6.5.1 Adopted CP policy SL1 states that development will only be permitted where it will not cause unacceptable harm to the amenity of adjoining land users and living conditions in the locality. CP paragraph 14.4 advising that:

*In assessing the impacts of a development including any potential harm, the Council will have regard to matters including loss of daylight; loss of outlook; loss of privacy; and potential disturbance from noise, smells, dust, fumes, vibration, glare from artificial lighting, hours of operation, and traffic / travel patterns.*

6.5.2 Adopted JCS policy SD14 reiterates this advice and also seeks to ensure high quality developments that *"protect and seek to improve environmental quality"*.

6.5.3 The proposal has given rise to a number of objections on amenity grounds which primarily relate to noise and disturbance likely to be generated by the proposed use, including deliveries to the store, and light pollution. The nearest residential properties to the site are those opposite and adjacent to the site on Cirencester Road, and those to the north of the site in Branch Hill Rise.

### *Noise and disturbance*

6.5.4 The application has been supported by a comprehensive Noise Impact Assessment (NIA) and, as previously noted, a Delivery Management Plan (DMP); both documents have been updated during the course of the application to address amenity concerns raised by Environmental Health (EH).

6.5.5 The Parish Council have repeatedly suggested that the NIA is flawed and uses an unsuitable methodology to assess the impact of short duration noises such as reversing beacons, roller shutter doors, rattling of delivery cages, etc.; however, in relation to some of these noise impacts, EH have commented that they *"do not share the concern that noise from moving cages stock [sic] or operating roller shutters will have a significant adverse effect on nearby residential property, as the shape of the building will effectively screen these properties from the noise source"*.

6.5.6 EH did however share the concerns in relation to the adverse effect that noise from delivery vehicles would have on nearby properties, particularly when ambient noise levels are low. The concerns were caused by a combination of three factors set out within the DMP; those being the excessively long reversing path for articulated vehicles; deliveries outside store operating hours where possible; and the use of an audible reversing beacon on the vehicle. The applicant was therefore advised that they would need to mitigate the impact by controlling at least one of these factors.

6.5.7 In response, the applicant has updated the DMP, most notably the route and manoeuvring for delivery vehicles entering and exiting the site and accessing the delivery bay; and this has greatly reduced the need for vehicles to be in reverse gear. Following the updates to the DMP, EH raise no objection to the proposal subject to a number of conditions requiring the development to be implemented in accordance with the agreed details.

6.5.8 The plant proposed for the building has been assessed and it is not considered that it will have any adverse effect.

#### *Opening hours*

6.5.9 The proposed opening hours for the store are between 7am to 10pm Monday to Saturday (including Bank/Public holidays) and for a six-hour period between 10am and 6pm on Sundays. EH have raised no concerns in relation to these opening hours.

#### *Piled foundations*

6.5.10 The supporting documentation submitted with the application suggests that piled foundations will be used on at least part of the site. As such, given that pile foundations have the potential to produce a range of impacts, including noise, vibration and dust, EH have requested a condition be attached to any permission to ensure that the piling method is agreed prior to the commencement of works on site.

#### *Lighting*

6.5.11 In reviewing the initial details submitted in relation to the proposed internal and external lighting, and signage, which will be managed via timers and sensors, EH were concerned that insufficient information had been submitted to address the potential for light to affect nearby residential properties, particularly those in Branch Hill Rise. Additional detail was therefore requested and a Proposed Light Layout plan subsequently submitted. In considering the additional lighting plan, EH are satisfied that the proposed lighting scheme would not result in any significant harm to neighbouring residential properties in terms of light pollution, subject to the development being carried in accordance with the agreed details; and this can be secured via a condition. Modern lighting solutions greatly reduce the potential for light pollution.

#### *Air Quality*

6.5.12 The application has been accompanied by an Air Quality Assessment (AQA) which has been reviewed by EH. The AQA indicates that the development is unlikely to have any adverse effect on air quality in the area.

6.5.13 On balance, officers are therefore satisfied that the development would not result in any unacceptable impact upon the amenities and living conditions of those residential neighbours living close to the site. It is important to recognise that whilst the site has been vacant for some time, it is a brownfield site, on a busy arterial route in to the town, which benefits from a long established industrial use.

### 6.6 Trees and landscaping

6.6.1 Adopted CP policy GI3 advises that the retention of existing trees; the planting of new trees; and measures adequate to ensure the protection of trees during construction works may be required in conjunction with development. This advice is reiterated in adopted JCS policy INF3.



6.6.2 Additionally, one of the requirements of adopted JCS policy SD4 is to ensure that the design of landscaped areas, open space and public realm, in all new developments, are of a high quality.

6.6.3 The Tree Officer has reviewed the application and, having initially sought some changes, assurances and clarification on a number of points, now generally supports the proposals. The 5no. semi-mature wild service trees and 5no. Scots pine proposed to be planted along Cirencester Road adjacent to the site are considered to be sufficient to mitigate for the loss of the existing limes, large pine and cypress. Scots pine trees are evergreen; whilst the wild service trees and flowering pear trees within the car park are good for wildlife. Albeit, it should also be noted that the consent previously granted (21/00201/DEMCON) for the demolition of the existing buildings consents to the removal of the trees along the Cirencester Road frontage with no replacements, and this remains an implementable consent.

6.6.4 In addition, whilst the Tree Officer acknowledges that the proposed tree planting within the car park is sparse, they recognise that much of the car park will be in the shade and so consider the proposed Flowering pear tree planting to be acceptable. They also welcome the 'light touch management' proposed to the southerly bank adjacent to the car park together with the proposal to plant with further hazel and hawthorn.

6.6.5 The proposed landscaping has also been reviewed by the Urban Design Team who initially posed a number of questions; however, many of these have been suitably resolved through the submission of revised/additional landscaping detail.

6.6.6 As such, the landscaping proposals are considered to be acceptable from a policy perspective, and would provide adequate mitigation for the loss of the existing trees along Cirencester Road, and provide for a modest enhancement within the site.

6.6.7 The implementation of the approved landscaping can be secured by condition.

## 6.7 Flooding and drainage

6.7.1 Adopted JCS plan policy INF2 advises that development proposals must avoid areas at risk of flooding, and must not increase the level of risk to the safety of occupiers of a site, the local community or the wider environment either on the site or elsewhere. Additionally, where possible, the policy requires new development to contribute to a reduction in existing flood risk; and to incorporate Sustainable Drainage Systems (SuDS) where appropriate.

6.7.2 The application has been accompanied by a Drainage Strategy (DS) which has been reviewed by the LLFA as a statutory consultee. The strategy sets out that a range of SuDS options have been assessed and that an underground attenuation tank located under the car park within the west of the site is deemed the most suitable approach. The LLFA are satisfied that *"The drainage strategy shows adequate detail that the discharge rate of surface water can be managed on site with a 40% betterment over the existing discharge rate."*

6.7.3 The LLFA accepts that no detail has been provided as to how any pollutant management devices will be managed, but is satisfied that details of the proposed separator, and how it will control pollution hazards to the Lilley Brook (where water will be discharged via the Severn Trent sewer) can be secured by condition.

6.7.4 A recent update to Section 14 of the NPPF in July this year, with regard to planning and flood risk, now require all sources of flooding to be taken into account, with the aim of steering new development to areas at the lowest risk of flooding from any source.

6.7.5 NPPF paragraph 168, whilst noting that applications for some minor development and changes of use should not be subject to the sequential or exception tests, sets out the need to still meet the requirements for site specific flood risk assessments. Footnote 55 provides the following additional clarification:

*A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.*

6.7.6 In response to the revised NPPF, a Flood Risk Assessment (FRA) was subsequently submitted by the applicant which showed the site to be located in Flood Zone 1 and therefore at a low risk of fluvial flooding, but at a medium to high risk of surface water flooding. In light of this, and in order to comply with the following paragraphs 162 and 163 of the NPPF, the applicant also submitted a Flood Risk Sequential Test Technical Note:

*162. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be allocated or permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The strategic flood risk assessment will provide the basis for applying this test. The sequential approach should be used in areas known to be at risk now or in the future from any form of flooding.*

*163. If it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives), the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed, in line with the Flood Risk Vulnerability Classification set out in Annex 3.*

6.7.7 The technical note concludes that it has not been possible to identify any sites that are suitable and available to accommodate the proposed development and there are no alternative sites that are sequentially preferable to it in terms of flood risk.

6.7.8 The LLFA, having reviewed the additional documentation “agree with the conclusions presented and continues to have no objection...”.

6.7.9 A public Severn Trent Water (STW) surface water sewer is proposed to be diverted on site to facilitate the raised development and to ensure maintenance access to the sewer is available. The (DS) sets out that consent for the diversion route was previously granted by STW in 2019, and it is proposed to maintain the same diversion route as that previously accepted. The applicant will need to obtain formal agreement to the diversion route from STW.

6.7.10 Officers are therefore satisfied that the proposed development is acceptable in relation to flooding and drainage, and is compliant with JCS policy INF2 and the relevant paragraphs of the NPPF.

## 6.8 Ecological impacts

6.8.1 Adopted JCS policy SD9 seeks to encourage new development “to contribute positively to biodiversity and geodiversity” and to ensure that protected species are safeguarded in accordance with the law. Where developers are unable to avoid harm to biodiversity, mitigation measures should be incorporated into the design of the development. The policy reflects the advice set out within the NPPF at paragraph 180.

6.8.2 The application was accompanied by a Preliminary Ecological Appraisal (PEA) and Bat Roost Survey, which was reviewed by Wild Service (the Ecological Consultancy for the Gloucestershire Wildlife Trust) acting as the Council's specialist Ecological Advisor (WS).

6.8.3 The PEA identified building 1 as having high potential for roosting bats, with the other buildings deemed as having low or negligible potential. Initially, building 1 was also identified as having the potential for hibernating bats; however, an updated site survey concluded that the building was largely unsuitable.

6.8.4 Prior to any works commencing on site, a licence will be need to be obtained from Natural England that will require adequate mitigation and compensation to be incorporated into the development proposals. WS in their initial review of the proposed mitigation measures set out within the applicant's Bat Mitigation Strategy found the measures to be largely acceptable but advised that additional specific mitigation would be required for lesser horseshoe bats; and therefore an ecological objection was raised.

6.8.5 Subsequently, the BMS was updated to include additional clarification, which adequately addresses the objection raised by WS; a condition will be necessary to ensure that the ecological enhancement and mitigation measures are strictly adhered to. The mitigation and compensation measures include the installation of bat and bird boxes.

6.8.6 Overall, officers are therefore satisfied that the development is compliant with the requirements of JCS policy SD9; the proposals would make a positive contribution to the biodiversity and geodiversity on the site, and any harm to protected species will be adequately mitigated.

## 6.9 Other considerations

### *Setting of AONB*

6.9.1 As previously noted, the site lies adjacent to the boundary with the AONB to the south. As such, in accordance with adopted CP policy L1 and JCS policy SD7, consideration must be given to the setting of the AONB to ensure that the proposed development would not cause harm to views in to or out of the AONB.

6.9.2 In this instance, officers are satisfied that the proposed development would not cause unacceptable harm to the setting of the AONB due to the mature landscape buffer that exists along the southern boundary which is to be retained and enhanced. Additionally, the site is already developed and sits within the context of larger developments to the south and west, and housing to the east. It is also appropriate to acknowledge that the site sits at a lower level than the hotel to the south, and the housing opposite the site.

### *Alternative uses*

6.9.3 It is noted that the Civic Society and a small number of objectors have suggested that the site would be better used for housing, or other alternative use; however, this is not a material consideration in the determination of this application. Members must therefore determine the application before them and consider this proposal on its own merits.

### *Public Sector Equalities Duty (PSED)*

6.9.4 As set out in the Equalities Act 2010, all public bodies, in discharging their functions must have "due regard" to this duty. There are three main aims:

- Removing or minimising disadvantages suffered by people due to their protected characteristics;

- Taking steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people; and
- Encouraging people with certain protected characteristics to participate in public life or in other activities where participation is disproportionately low.

6.9.5 Whilst there is no absolute requirement to fully remove any disadvantage, the duty is to have “regard to” and remove OR minimise disadvantage and in considering the merits of this planning application the planning authority has taken into consideration the requirements of the PSED.

6.9.6 In the context of the above PSED duties, this proposal is considered to be acceptable.

## 7. CONCLUSION AND RECOMMENDATION

- 7.1 Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
- 7.2 The application site is a valuable brownfield site, sustainably located within the PUA, but has been vacant for some time and the existing buildings on site are no longer considered to be fit for purpose. As such, the redevelopment of the site is welcomed.
- 7.3 It is acknowledged that there has been a lot of local opposition to the proposal, and that many of the objections refer to a lack of ‘need’ for another food store within Charlton Kings, and the impact that the store would have on existing shops and services. In this regard, DPDS were commissioned to act as the Council’s independent Specialist Retail Advisor.
- 7.4 Following an initial review of the Retail Statement by DPDS, additional clarification on a number of matters was provided by the applicant including a Sequential Test Technical Note and Counsel opinion. Officers acknowledge that the application has not been supported by a Retail Impact Assessment, but the proposal does not meet the threshold (2,500m<sup>2</sup> of gross floorspace) for such an assessment. Nevertheless, the impact of the proposed development on existing neighbourhood shopping centres is of significant concern to a number of local residents and DPDS have therefore considered the retail impact of the development within their report.
- 7.5 Having assessed the proposed development in relation to the Sequential Test and Retail Impact, DPDS are satisfied that the applicant has demonstrated compliance with the sequential test, and that the proposal is not likely to lead to a significant adverse impact on the vitality and viability of any centre. A refusal based on retail impact would need to be supported by credible evidence at any subsequent appeal, and officers do not consider that there is sufficient evidence to this effect that could be substantiated.
- 7.6 From a highway safety perspective, the proposed development has been fully assessed by the Highways Development Management Team (HDM) at the County Council, as the Highway Authority acting in its role as Statutory Consultee. The applicant has worked closely with HDM to address some initial concerns, and no highway objection is now raised subject to a number of conditions. With particular regard to the access onto Cirencester Road, HDM agree with the applicant’s findings which conclude that there will not be a significant delay on the Cirencester Road or the site access road.
- 7.7 The application has also given rise to a number of objections on amenity grounds from local residents living in close proximity to the site, and these concerns have been carefully considered by officers in conjunction with the Environmental Health Team. The concerns primarily relate to the noise and disturbance likely to be generated by the proposed use, including deliveries to the store, and light pollution.

- 7.8 In this respect, the application is accompanied by a comprehensive Noise Impact Assessment and a Delivery Management Plan; both of which have been updated during the course of the application to address amenity concerns raised by Environmental Health. A supplementary Light Layout Plan has also been submitted. These documents would form part of any planning approval, and officers are satisfied that with sufficient safeguards in place, the proposed development would not result in any significant adverse impact on the amenities and living conditions of residential neighbours living close to the site. It is important to recognise that whilst the site has been vacant for some time, it is a brownfield site, on a busy arterial route in to the town, which benefits from a long established industrial use.
- 7.9 In terms of design and layout, whilst the proposed store has clearly been designed to meet the applicant's operational needs and is relatively functional in its appearance, officers are satisfied that the building is appropriate for the site and its context, and represents an appropriate standard of design both in terms of the building itself and the space around it. Suitable landscaping proposals have been submitted which will help to soften the development and enhance the surroundings. Additionally, the building has been designed to incorporate a solar PV array on the large expanse of flat roof, and the use of an Air Source Heat Pump as the main heating and cooling system for the development, thereby lowering carbon emissions and reliance on the grid; and would also provide for electric vehicle charging points.
- 7.10 Landscaping proposals would adequately mitigate for the loss of the existing trees along Cirencester Road, and provide for an enhancement within the site.
- 7.11 The application has been accompanied by a Drainage Strategy, Flood Risk Assessment and Flood Risk Sequential Test Technical Note which have been reviewed by the Lead Local Flood Authority (LLFA) as a statutory consultee. The LLFA raise no objection to the proposals subject to a condition. The technical note concludes that it has not been possible to identify any sites that are suitable and available to accommodate the proposed development and there are no alternative sites that are sequentially preferable to it in terms of flood risk.
- 7.12 The ecological impacts of the proposed development have been fully considered and found to be acceptable subject to a condition to ensure that the proposed ecological enhancements and mitigation and compensation measures, to include the installation of bat and bird boxes, are fully implemented.
- 7.13 With all of the above in mind, taking into account the economic, social, and environmental aspects of the application, officers have no fundamental objection to the proposed development. The recommendation therefore is to grant planning permission subject to an s106 unilateral undertaking and the schedule of conditions set out below; in accordance with The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, the applicant has agreed to the terms of the pre-commencement conditions:

## **8. SUGGESTED CONDITIONS / INFORMATIVES**

- 1 The planning permission hereby granted shall be begun not later than the expiration of three years from the date of this decision.  
  
Reason: To accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.
- 2 The planning permission hereby granted shall be carried out in accordance with the approved plans listed in Schedule 1 of this decision notice.  
  
Reason: For the avoidance of doubt and in the interests of proper planning.

- 3 Prior to the commencement of development (excluding demolition and site clearance), a Construction Method Statement or Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority.

The approved plan/statement shall be adhered to throughout the development process and shall include, but not be restricted to:

- i) Provision of parking for vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
- ii) Any temporary access to the site;
- iii) Locations for the loading/unloading and storage of plant, waste and construction materials;
- iv) Method of preventing mud and dust being carried onto the highway;
- v) Arrangements for turning vehicles;
- vi) Arrangements to receive abnormal loads or unusually large vehicles;
- vii) Measures to control the emission of noise, dust and dirt during demolition and construction;
- viii) Measures for controlling the use of site lighting whether required for safe working or for security purposes; and
- ix) Methods of communicating the Construction Management Plan or Construction Method Statement to staff, visitors, and neighbouring residents and businesses.

Reason: To minimise disruption on the public highway and accommodate the efficient delivery of goods and supplies during the course of the construction works, and to prevent any loss of amenity to neighbouring land users, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and policies SD14 and INF1 of the Joint Core Strategy (2017). Approval is required upfront because without proper mitigation the works could have an unacceptable impact during construction.

- 4 Prior to the commencement of development (excluding demolition and site clearance), tree protective fencing to BS 5837:2012 shall be installed in accordance with approved Drawing No. CA/2020/.85 Rev G, and subsequently inspected and approved in writing by the Local Planning Authority. All works shall be carried out in strict accordance with the Arboricultural Method Statement Rev 27 January 2021.

Reason: To safeguard the existing tree(s) in the interests of visual amenity, having regard to adopted policies GI2 and GI3 of the Cheltenham Plan (2020). Approval is required upfront to ensure that important trees are not permanently damaged or lost.

- 5 Prior to the commencement of any works above foundation level, surface water drainage works shall be implemented in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. The information submitted shall be in accordance with the principles set out in the approved Drainage Strategy.

Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system in accordance with the principles set out in The SuDS Manual, CIRIA C753 (or any subsequent version), and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii. include a timetable for its implementation; and

iii. provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The approved surface water drainage scheme shall be implemented in full prior to first beneficial occupation of the development.

Reason: To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution for the lifetime of the development, having regard to adopted policy INF2 of the Joint Core Strategy (2017). Approval is required upfront because the design of the drainage is an integral part of the development and its acceptability.

- 6 If, during the course of development, any contamination is found which has not been identified in the submitted Geo-Environmental Desk Study Report, Ref: 20-1255-P-R1 dated October 2020 or Geo-Environmental Investigation Report Ref: 20-1255-P-R2/A dated 15 October 2020, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors, having regard to adopted policy SD14 of the Joint Core Strategy (2017).

- 7 Prior to any piling activities being carried out on site, a full pile method statement shall first be submitted to and approved in writing by the Local Planning Authority. The method statement must assess and include full details of the noise and vibration impact from the piling operations on the nearest residential property, dates and times of piling and details of monitoring measures.

Reason: To prevent nuisance from noise and vibration being caused to the occupiers of neighbouring residential properties, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 8 The ecological enhancements and mitigation measures set out within the Preliminary Ecological Appraisal and Bat Survey Report, Ref: 20-1317.01 dated November 2020, and the Bat Mitigation Strategy Ref: 20-1317.06 dated March 2021, shall be implemented in strict accordance with approved details.

Reason: To conserve and enhance the biodiversity value of the site, having regard to policy SD9 of the Joint Core Strategy (2017), and paragraphs 174 and 180 of the National Planning Policy Framework (2021).

- 9 No external facing shall be applied unless in accordance with:  
a) a written specification of the materials; and/or  
b) physical sample/s of the materials.  
The details of which shall have first been submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of the character and appearance of the area, having regard to adopted policy D1 of the Cheltenham Plan (2020) and adopted policy SD4 of the Joint Core Strategy (2017).

- 10 All landscaping works shall be carried out in accordance with approved Drawing No. CA 2020/86 Rev D dated 26 August 2020, approved Planting Schedule dated 24 February

2021 and approved Planting Methodology and Aftercare dated 24 February 2021, prior to first occupation of any part of the development unless otherwise agreed in writing by the Local Planning Authority.

Any trees or plants indicated on the approved scheme which, within a period of five years from the date of planting, die, are removed or become seriously damaged, diseased or dying shall be replaced during the next planting season with other trees or plants of a location, species and size which shall be first agreed in writing by the Local Planning Authority.

Reason: In the interests of the character and appearance of the area, having regard to adopted policies D1, GI2 and GI3 of the Cheltenham Plan (2020), and adopted policies SD4 and INF3 of the Joint Core Strategy (2017).

- 11 Prior to first beneficial occupation of the development, the proposed means of vehicular access, and parking and turning facilities shall be provided in accordance with the approved plans and thereafter retained as such at all times.

Reason: To ensure a safe and suitable access to the development is provided and maintained, in the interests of highway safety, and to ensure the adequate provision of car parking within the site, having regard to adopted policy INF1 of the Joint Core Strategy (2017).

- 12 Prior to first beneficial occupation of the development, 2no. rapid electric vehicle charging spaces shall be provided in accordance with the approved plans and thereafter retained as such at all times, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To encourage the use of sustainable transport modes, and healthy communities, having regard to adopted policy SD4 of the Joint Core Strategy (2017).

- 13 Prior to first beneficial occupation of the development, cycle parking facilities shall be provided in accordance with the approved plans and thereafter retained as such at all times.

Reason: To encourage the use of sustainable transport modes, and healthy communities, having regard to adopted policy SD4 of the Joint Core Strategy (2017).

- 14 The store shall only be open to customers between the following hours:

Monday to Saturday (incl. Bank/Public Holidays) – 7am to 10pm  
Sundays – 10am to 6pm

Reason: To protect the amenities of the occupants of nearby residential properties, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 15 The approved Travel Plan (Version F4, dated 25th February 2021) shall be implemented and monitored in accordance with the regime contained within the plan. In the event of failing to meet the targets within the plan, a revised Travel Plan shall be submitted to and approved in writing by the Local Planning Authority to address any shortfalls, and where necessary make provision for and promote improved sustainable forms of travel to and from the site; and shall thereafter be implemented, monitored and reviewed in accordance with the revised details.

Reason: To reduce vehicle movements and promote sustainable travel, having regard to adopted policy INF1 of the Joint Core Strategy (2017).



- 16 The approved Delivery Management Plan (Fourth Issue, dated 14th July 2021) shall be strictly adhered to in all respects. Should any variation of the Delivery Management Plan (DMP) be deemed necessary, a revised DMP shall be submitted to and approved in writing by the Local Planning Authority; and shall be strictly adhered to thereafter in accordance with the revised details.

Reason: In the interests of highway safety and to minimise the impact of vehicles servicing the development, and to protect the amenities of neighbouring land users, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policies SD14 and INF1 of the Joint Core Strategy (2017).

- 17 The approved Waste Management and Minimisation Plan, dated January 2021, shall be fully implemented in accordance with the details set out within the plan, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of resource efficiency and waste minimisation, having regard to adopted policy WCS2 of the Waste Core Strategy for Gloucestershire (2012).

- 18 All plant used in the proposed development shall be in accordance with the plant identified in the approved Noise Impact Assessment, Ref: 8568/JA/BL Rev B dated 25th January 2021, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the occupants of nearby residential properties, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 19 All external lighting on site shall be implemented strictly in accordance with the approved Proposed Lighting Layout, Ref. D-396198 Rev 3 dated 5th March 2021, prior to first occupation of any part of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: To protect the amenities of the occupants of nearby residential properties, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 20 The building hereby approved shall have a net sales area no greater than 1,117 square metres. No more than 20% of the net sales area shall be used for the sale of comparison goods.

Reason: For the avoidance of doubt and because an alternative format could have the potential to harm the vitality and viability of existing town centres, having regard to saved policy RT1 of the Cheltenham Borough Local Plan Second Review (2006).

- 21 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), the building hereby approved shall be used solely for purposes within Class E(a) of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provisions equivalent to that class in any statutory instrument revoking or re-enacting that order with or without modification).

Reason: For the avoidance of doubt and because an alternative use could have the potential to harm the vitality and viability of existing town centres, having regard to saved policy RT1 of the Cheltenham Borough Local Plan Second Review (2006).

## **INFORMATIVES**

- 1 This planning permission is subject to a Unilateral Undertaking with the County Council pursuant to Section 106 of the Town and Country Planning Act 1990 which secures the financial obligations relating to the Travel Plan (a Monitoring Fee and Default Payment).

The permission should be read in conjunction with this undertaking.

- 2 It is expected that contractors are registered with the Considerate Constructors Scheme and comply with the Code of Considerate Practice in full, but particular reference is made to "respecting the community" which states that:

Constructors should give utmost consideration to their impact on neighbours and the public by:

- Informing, respecting and showing courtesy to those affected by the work;
- Minimising the impact of deliveries, parking and work on the public highway;
- Contributing to and supporting the local community and economy; and
- Working to create a positive and enduring impression, and promoting the Code.

The Construction Method Statement or Construction Management Plan (condition 3) should clearly identify how the principle contractor will engage with the local community; and this should be tailored to local circumstances. Contractors should also confirm how they will manage any local concerns and complaints and provide an agreed Service Level Agreement for responding to said issues.

Contractors should ensure that courtesy boards are provided and information shared with the local community relating to the timing of operations and contact details for the site coordinator in the event of any difficulties.

This does not offer any relief to obligations under existing Legislation.

- 3 The applicant/developer is requested to include the Council's Trees Officer in the initial Arboricultural Monitoring Visit.
- 4 A member of the Environmental Protection Team may carry out a site visit should a mobile crusher be in operation.
- 5 The applicant is advised that a dawn survey should be undertaken on the day of demolition to further reduce the likelihood of disturbing/injuring bats. If the dawn survey cannot commence due to weather conditions, works should not commence until the survey can proceed.
- 6 The applicant/developer is requested to forward a copy of the Natural England EPS bat license once granted.

Please Reply to: Swindon

Our Ref: DAM/C10316

Yann Gol

Date: 5<sup>th</sup> February 2021

Michelle Payne  
Development Management  
Environmental & Regulatory Services  
Cheltenham Borough Council  
Council Offices  
The Promenade  
Cheltenham  
Gloucestershire GL50 9SA



Dear Michelle

Planning Application 20/02089/FUL Proposed Lidl Store, Cirencester Rd Cheltenham

This letter sets out our initial views on the Planning and Retail Statement (PRS) by Plan A dated November 2020. Our instructions cover only the retail planning aspects of the application.

The site is on the southern edge of the town and is out of centre. Key retail policies are policy SD2 of the JCS and saved policy RT1 of the Cheltenham Local Plan Second Review.

Policy RT1

The key policy from the Cheltenham Local Plan Second Review is RT1 which defines the hierarchy of centres in Cheltenham, the sequence of preferred locations for retail development and the policy for out of centre retail development. Policy RT1 has been saved beyond the adoption of the JCS. It sets out a sequence of preferred locations for retail development in the following order:

- The Central Shopping Area  
The Montpellier Shopping Area and High Street West End Shopping Area  
Elsewhere in the Core Commercial Area  
District and Neighbourhood Centres  
Out of Centre sites which are accessible by a regular choice of means of transport

Plan A (para 5.2 of the PRS) claim that policy RT1 is out of date and does not comply with the NPPF on the sequential test in three respects viz

- it seeks to direct all retail development to the Core Shopping Area in Cheltenham, regardless of whether the Core Shopping area is within an appropriate area of search from the application site (which is a widely and long-established methodology for applying the sequential test);
- it does not make any provision for development on the edge of district or neighbourhood centres;

Cont'd...

Swindon

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Michelle Payne  
Cheltenham Borough Council



- the requirement for out-of-centre sites to be accessible by a choice of modes of transport does not align with the NPPF requirement for out-of-centre sites that are accessible and well connected to a town centre to be preferred.

For these reasons, the Applicant contends that the sequential approach to site selection advocated by saved Local Plan Policy RT1 is out-of-date in the context of up-to-date guidance presented in the NPPF. Accordingly, paragraph 11 of the NPPF directs the Applicant to address the sequential test as it is set out at Section 7 of the NPPF.

However, Policy RT1 is a retail hierarchy policy which accords with para 85 a) of the NPPF. It was considered in the preparation and examination of the JCS and retained. It does not conflict with the operation of the sequential test as set out in the NPPF but does direct retail development to a hierarchy of centres. It is additional to the NPPF sequential test.

With regard to other the other points, there is no requirement in the NPPF to allocate sites in every centre and the appropriateness of doing so will depend on the individual circumstances of the area. The requirement that sites should be well connected to the centres as well accessible to them is a clarification or an additional requirement and not a fundamental revision to the test. The point the Applicant is making about para 11 of the NPPF is not clear. Para 11 applies to all sustainable development. However, without going into the case law, which is already widely known, para 11d refers to the basket of policies which are most important to the determination of the application and would not be engaged even if RT1 were considered out of date.

#### **Policy SD2**

The sequential test to be applied is clearly as set out the NPPF as is clear from JCS policy SD2. It is also clear from policy SD2 that in Cheltenham (and Tewkesbury) new retail development will be encouraged in accordance with the policies in the saved local plans insofar as they are consistent with national planning policy.

Para 86 of the NPPF states that

“Main town centre uses should be located in town centres, then in edge of centre locations, and only if suitable sites are not available (or expected to become available in a reasonable period) should out of centre sites be considered.

NPPF Para 87 notes that when considering edge of, and out of centre sites preference should be given to sites which are accessible and well connected the centre.

Cont/d...

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Michelle Payne  
Cheltenham Borough Council



The Practice Guidance makes it clear that it is for the Applicant to demonstrate compliance with the sequential test and the failure to do so can justify the refusal of planning permission (ref Paragraph: 011 Reference ID: 2b-011-20190722)

Under the heading of flexibility, the Applicant quotes from the Rushden Lakes decision. This is now somewhat old and pre-dates several significant legal judgments and Secretary of State decisions. We will comment further on these if necessary. The Supreme Court's Dundee judgment did, however, establish that in considering the suitability of sites, it is their suitability for the development proposed (subject to flexibility from the developer/retailer) that should be considered and not different means of meeting a hypothetical public need.

#### **The Applicants Search Area**

The area of search for alternative sites has been defined by a 5-minute off-peak drive time from the application site, which it describes as a widely accepted methodology for defining the sequential area of search for stores of the nature and scale proposed. (RPS para 5.7)

The appropriate area of search depends on local circumstances. The potential catchment area of a store depends in part on the location of competing stores. It also depends on the nature or special characteristics of the proposed store and there is evidence that people are prepared to travel further to discount food retailers than main-stream supermarkets. We consider that a food discount store would attract custom from further afield than a 5-minute drive time in this part of Cheltenham. This is because there are comparatively few competing shops and because of the location of the site at the southern edge of the town. The store would be located at the southern extreme of its effective catchment area in terms of population and potential customers. The population of the catchment area would be very small to support a foodstore if it did not rely on customers from further away. In any case the drive time should not be used with undue precision. We consider that a 10-minute drive time would be more reasonable in this area but, in any case, the town centre is within a 6 minute of the site (Google Maps) and should be included in the area of search regardless of the status of policy RTL. So should the Bath Road District Centre.

#### **Level of Detail**

The NPPF para 87 requires opportunities to utilise suitable town centre and edge of centre sites to be "fully explored". The level of detail provided is insufficient to assess the availability of potential sites. The only comment on edge of centre locations is in RPS para 5.18. This states that a number of sites were considered and lists some of those considered, but this is not exhaustive, but does not identify the areas considered on plans. It states that a number of sites were identified but **immediately** dismissed on the basis that they are not suitable and/or available without stating which.

Cont/d....



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Michelle Payne  
Cheltenham Borough Council

The only comment on out-of-centre sites is in para RPS 5.22 which simply states that no suitable and available sites have been identified.

The assessment of out of centre sites also need to address to the comparative accessibility of the application site and its connections to the town centres. A reference to an hourly bus route is not sufficient to establish good connectiveness or accessibility, but

It is accepted that not every potential redevelopment site within the catchment area can be covered in a sequential test assessment and that there is a need to narrow down the scope at an early stage, but there is no description of how that might have been done. Perhaps in view of this difficulty, the Planning Practice Guidance recommends that applicants discuss potential sites with the local planning authority at an early stage, and it is not clear whether this has been done.

For these reasons we conclude that the sequential test has not been met. We suggest however, that the applicant is given the opportunity to submit further information based on a more realistic search area and providing the level of information to demonstrate that relevant opportunities have been fully explored.

#### **Retail Impact**

In RPS para 6.2 the Applicant states that as

"The proposed Lidl store will have a gross floorspace of 1,840m<sup>2</sup>. The scale of the proposal falls significantly below the NPPF threshold and does not, therefore, trigger a requirement for the Applicant to satisfy the retail impact test."

Notwithstanding that, the impact of the proposal on local centres is a material consideration and objections have been made on the basis that the proposal would have an adverse impact. The Council needs to understand the impact on centres to determine the application in accordance with policy and to consider the objections that have been made. Furthermore, retail impact assessments are routinely submitted for Aldi and Lidl foodstores, including for instance, the application at Grovelands Way, Cheltenham. The Applicant may want to respond to the objections that have been made and we suggest it is given the opportunity to submit further information on the likely retail impact.

#### **Conclusions**

We conclude that the sequential test has not been met and suggest that the Applicant is invited to submit further information on the test based on a more realistic study area and providing the detail to demonstrate that the potential of sequentially preferable sites have been explored.

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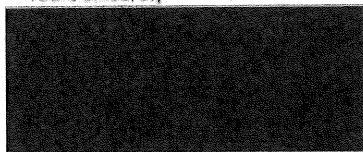
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We also conclude that retail impact is a material consideration on which the Council needs to be informed when it determines the application. We suggest the applicant is given the opportunity to state its case on this matter.

I trust you find this letter helpful but please get in touch if you have any questions.

Yours sincerely



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Please Reply to: Swindon  
Our Ref: DAM/C10316  
Your Ref:  
Date: 1<sup>st</sup> April 2021



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By Email: Michelle.Payne@cheltenham.gov.uk

Dear Michelle

Planning Application 20/02089/FUL Proposed Lidl Store, Cirencester Road Cheltenham

I refer the Applicant's letter of the 8<sup>th</sup> March. The Mansfield judgment is central to many of the points raised. I will refer to it a number of times and attach a copy for your convenience. Although the judgment refers to the 2012 NPPF, there are no material changes in the latest version which now require a different approach.

The judgment considered the sequential test in relation to an Aldi proposal and specifically ruled (para 35) that:

*"In my judgment, "suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer. The area and sites covered by the sequential test search should not vary from applicant to applicant according to their identity, but from application to application based on their content."*

The description of development in this application is for a class E retail store and not either for a Lidl store or a food discount store. The sequential test has to be applied in relation to that proposal. As far as I am aware the applicant has not offered conditions which would restrict the open E class permission, but the Mansfield judgment did not accept that a named user condition would overcome the requirement for the test to be related to the broad type of development, noting in para 41:

*"This is not solved by the imposition at the end of the process of a condition restricting occupation to a particular retailer. That may be necessary for consistency of approach but it would reinforce the error of approach; instructively though it was opposed here by Aldi which had benefited from an approach unique to Aldi. The town centre remains where development is required; the out of centre development may inhibit or prevent a store coming forward in the town centre, and draw away town centre trade, trips, expenditure and vitality."*

Cont/d.....

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Conditions have been used in the past to restrict the number of product lines that can be sold, but it is unclear what is meant by product lines (different brands or different sized packets of the same goods etc?) and it is impossible for a local authority to monitor, so the conditions fail the tests of precision and enforceability. Now that Lidl and Aldi compete head on for main food shopping with the big 4 grocers, it is also probably unfair and therefore not reasonable in all other respects.

However, if granting planning permission is under consideration, in line with common practise, it might be reasonable to impose a condition limiting the floorspace used for the sale of comparison goods. This is generally done to ensure the development is operated on the basis on which it has been assessed in terms of retail impact.

#### The Area of Search

#### Policy RT1

In compliance with Section 38(6) of the Planning and Compulsory Purchase Act (2004) and sections 70(2) and 79(4) of The Act (1990), planning applications have to be determined in accordance with the development plan unless material consideration indicate otherwise.

The sequential test in Cheltenham is governed by policies RT1 of the Cheltenham Local Plan Second Review and policy SD2 of the JCS. Policy RT1 specifically identifies the central shopping area and other areas in the core commercial area as the preferred locations for retail development.

Although Plan A claimed in the PRS that the policy was out of date, it has not addressed the points made on this claim in our earlier letter.

I also draw your attention to para 36 of the Mansfield Judgment. This warns against seeing the plan making and development control sections of the NPPF in isolation from each other and notes that:

*"It is not intended that the absence of an up to date plan creates a rather different world in which retailers could enjoy a much greater degree of temporary freedom based on their individual commercial interests."*

There is a further point; even if the policy were considered out of date; this might affect the weight given to the policy but does not mean that it can be ignored. The position is usefully summed up in para 60 of the Judgment.

*"An out of date policy or part of a policy, is still part of the development plan, in relation to which a decision is still required as to whether the proposal accords with it."*

To fulfil this requirement and to determine the weight that the policy should be given, it is still necessary to understand which sites, if any, in the town centre might be suitable and available.

In summary, the application of the sequential test in Cheltenham is set out in policy RT1 and the Council must have regard to it in determining the application.

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#### The Extent of the Search Area

Given Policy RT1, the appropriate drive time to define the catchment area of a foodstore of the approximate size proposed is immaterial, but I will go on to consider the points made.

First, contrary to Plan A's suggestion, the Mansfield judgment did not endorse a 5-minute drive time for the area of search. An area of search based on a 5-minute drive in that case would have included sites in the town centre, but these were excluded from the sequential exercise because Aldi would not consider them due the proximity to another of its stores. The judgment was not required to consider the appropriateness of a 5-minute drive time and would not do so since it is a matter of planning judgment on which the Courts will not intervene.

The Applicant suggests that a 5-minute drive time would be appropriate because the proposed store is just beyond a 10-minute drive from the recently opened Lidl store north of the town centre. The 5-minute drive time is suggested as a robust basis to distinguish between the catchments of the two stores. The sequential test, however, aims to focus retail (and other main town centre uses) into town centres and it is inevitable that stores' catchment areas will overlap. Clearly the area of search in the sequential test cannot be based on the distance from competing stores.

The Applicant now also suggests a 7-minute drive-time to define the catchment area serving the south-east part of Cheltenham. This is based on the fact that while Lidl looks for a population of 20,000 for its stores, the 5-minute drive time population is 12,000. This is clearly setting the area of search according to an operator's preference which fell foul of the Mansfield judgement (see for instance para 38). It is not clear which drive-time the Applicant now wishes to work to.

There is a clear conflict between the 5-minute drive time shown in the Planning and Retail Statement and the times shown on the Plan in its letter. A further 2 minutes from the 5-minute drive time shown in the PRS would clearly extend well into the town centre. Although the conflict is acknowledged, the information is not provided to indicate which the Council should prefer and why. It is not enough to say that it arises from a difference in software. Google maps indicate a general 7-12 minute drive time from the site to the town centre. It obviously does vary with traffic conditions and this indicates why drive times should not be used to define search areas with undue precision.

The site is clearly right on the southern edge of the intended catchment area which, in terms of its population and retail expenditure, lies overwhelmingly to the north. If the search is taken from a more central point in the intended catchment area, the town centre would fall easily within the area of search. As it is, the town centre would serve most of the population of the intended catchment area equally well.

The application is for a general E class use and the area of search should be based on the proposal. This now includes a wide variety of uses and unless controlled by condition, has to be generic. I have already commented on the use of conditions in this case.

For these reasons and to accord with Policy RT1, I remain of the view that the area of search should include the town centre areas identified and the Bath Road District Centre.

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#### Level of Detail

The starting point is that it is up to the Applicant to demonstrate compliance with the sequential test (PG Paragraph: 011 Reference ID: 2b-011-20190722).

The Applicant comments that we do not contest the claim that there are no suitable sequentially sites available for the development. The position is that the information provided is inadequate for us to come to a conclusion on the availability of sites in the Applicant's search area, although for the avoidance of doubt we clearly disagree that that search area is appropriate. But the point is broader, because the Council's reasoning on the matter must be clear to third parties and to the Council Committee members taking the decision. Plan A has not provided any further information and it is still not clear which sites have been considered or why they were considered unsuitable or unavailable. There is therefore no basis for us to change our earlier comments.

Plan A complains that we imply that the search has been narrowed down and that that is not the case. It is clear from our comment that we see this narrowing down as an essential part of the sequential test process and went on to comment there is no description of how that had been done. I went on to note that the Practice Guidance encourages dialogue with the local planning authority on this at an early stage. I understand that there was no such discussion.

I therefore conclude that sequential test has not been met and para 90 of the NPPF applies.

#### Retail Impact

Para 89 of the NPPF states:

*"When assessing applications for retail and leisure development outside town centres, which are not in accordance with an up-to-date plan, local planning authorities should require an impact assessment if the development is over a proportionate, locally set floorspace threshold (if there is no locally set threshold, the default threshold is 2,500m<sup>2</sup> of gross floorspace). This should include assessment of:*

- a) the impact of the proposal on existing, committed and planned public and private investment in a centre or centres in the catchment area of the proposal; and*
- b) 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)."*

It is clear that the NPPF states that if the development is over the threshold the local planning authority should require an impact assessment. It does not state that below the threshold the impact on a centre is immaterial and the NPPF could not do so. Local authorities are required to take account of all material considerations under section 70 of the 1990 TCPA.

My understanding is that what counts as a material consideration is ultimately a matter of law and policy cannot make immaterial something which is material, although it can indicate the weight which should be given to it.

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The Practice Guidance on Determining a Planning Application states:

*"A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission).*

*The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations."* Paragraph: 008 Reference ID: 21b-008-20140306

The PG then goes on to note:

*"The law makes a clear distinction between the question of whether something is a material consideration and the weight which it is to be given. Whether a particular consideration is material will depend on the circumstances of the case and is ultimately a decision for the courts. Provided regard is had to all material considerations, it is for the decision maker to decide what weight is to be given to the material considerations in each case, and (subject to the test of reasonableness) the courts will not get involved in the question of weight."* (ID: 21b-009-20140305)

The impact on local centres is a matter of land use and public interest because they have been recognised as part of the retail hierarchy in the local plan. The issue has also been raised by objectors and the Council must consider the merits of the objections. My understanding, reinforced by the PG, is that the Council must have regard to the matter and would be open to challenge if it did not. This is, however, ultimately a matter of law on which you might want to take legal advice.

I agree that the Applicant has no obligation, statutory or otherwise, to address objections but felt that it should be given the opportunity to do so and my letter was couched in those terms.

The Applicant has briefly referred to the likely impact on the local centres in its letter of 8<sup>th</sup> March. It notes the limited range of goods that Lidl would sell (about 2,500) and that it does not sell cigarettes, newspapers, scratch cards, and single confectionary items. It concludes from this that people will still need to use other shops. While it is true that people will continue to use local shops for such items, there are a great number of products which Lidl does sell – for example most categories of food, household cleaning products, and health and beauty products, which are also sold in the local centres. It follows that some trade diversion is likely. In short, it is not possible to conclude from what the proposal would not sell, what the impact would be or to balance the benefits of the proposal against the potential harm. In this context it is worth noting that the store would have a turnover of about £12m, although a substantial amount of this is likely to be diverted from the larger food stores.

#### Conclusions

I conclude that the applicant has not demonstrated compliance with the sequential test and that the application conflicts with policy RT1. Para 90 of the NPPF indicates that the application should be refused in these circumstances.

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The Applicant is not obliged to submit a retail impact assessment. The effect of the proposal on identified centres is nevertheless a material consideration which the Council will have to assess in a proportionate way.

I trust you find this letter helpful but please get in touch if you have any questions.

Yours sincerely

A black rectangular box redacting the signature of Duncan McCallum.

Duncan McCallum  
Consultant  
Development Planning & Design Services Limited  
dmccallum@dpds.co.uk

Enc: Mansfield Judgment

Date: 28<sup>th</sup> May 2021

By Email: [Michelle.Payne@cheltenham.gov.uk](mailto:Michelle.Payne@cheltenham.gov.uk)

Planning Application 20/02089/FUL Proposed Lidl Store, Cirencester Rd Cheltenham

In terms of retail impact, he advises that the Council is not able to require an impact assessment. I have acknowledged throughout but, given that it had been raised in public consultation, the Applicant was given the opportunity to address the issue. Counsel advises that it is a discretionary matter and advises (para 22)

Counsel notes that the Council would be expected, certainly at appeal, to produce substantive evidence in support of any retail impact and that objections on this basis would not, on their own, be sufficient evidence of harm. We always assess putative reasons for refusal in these terms and will assess the evidence available in due course.

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Counsel does comment (paras 17 and 18) that DPDS recommended the application be refused. That is not the case. We drew para 90 of the NPPF to your attention but only as matter of fact. We did not advise that Para 90 indicates the "necessity of refusal" and were therefore wrong in law. However, for the avoidance of any doubt, as both you and I are fully aware, planning decisions have to be based on all material considerations. It is, in the first instance, a matter for the Council to decide what weight to give to NPPF para 90 in all the relevant circumstances of the application provided it does so reasonably. We are also both aware that my advice relates only to retail planning matters and does not advise on the other relevant policies or the overall planning balance.

Counsel also found it odd that we had not mentioned application 19/01293 (by which I think he means 17/01293 – Former BMW site Tewkesbury Rd Cheltenham) or appeal APP/81605/W/18/3200395 (Grovefield Way Cheltenham). The appeal decision at Grovefield Way, although dated December 2019 relates to an application made in 2016 and did not consider retail impact. It is not relevant except perhaps in so far that the 2016 application submitted a retail impact assessment despite being under the 2,500 sq m threshold and considered potential sites in the context of policy RT1. The former BMW site application dates from 2017 and also considered the sequential test in the context of RT1. The development was for a larger overall development including other retail floorspace and was in excess of the NPPF threshold. They were not mentioned (except briefly, and incorrectly as Grovelands) in view their age and the fact that the Applicant in had not, at that stage, considered potential sites in the town centre. These decisions were of limited relevance. There can be no doubt that the Council cannot now rely on the conclusions on the sequential test in 2017 and that a new assessment taking account of more up-date information is necessary, although, of course, the Council should be consistent with its previous conclusions where there has been no change.

### The Sequential Test

The Dundee judgment established, in summary, that when assessing potential sites for their suitability, it is their suitability for the application proposal which has to be considered, not the possibility of alternative means of meeting the same public need. This is subject to a requirement for all parties to be flexible. The amount of flexibility is a matter of planning judgement for the local planning authority to exercise and, provided it exercises it reasonably, the Courts will not intervene. Its judgement is of course also subject to a review through the appeal process.

The Mansfield judgment, of which you already have a transcript, found that :-

*"Suitable" and "available" generally mean "suitable" and "available" for the broad type of development which is proposed in the application by approximate size, type, and range of goods. This incorporates the requirement for flexibility in [24] NPPF, and excludes, generally, the identity and personal or corporate attitudes of an individual retailer".*

The Judge considered this conclusion in the context of the Dundee judgment. In para 47 of his judgment he noted that the Supreme Court had not approached the case with the identity of an individual retailer in mind and in para 48, that what the Supreme Court had rejected was Tesco's argument about the role of need.

I shall approach the test directly by assessing whether any of the sites rejected in the Technical Note are suitable and available for a medium sized foodstore and whether there are any other potential sites which should be considered. Although the onus in the Planning Guidance is on the applicant to demonstrate that there are no suitable alternative sites available the Council would be expected, in practice, to be able to adduce evidence that there is at least one suitable site available to justify a reason for refusal based on the test at any subsequent appeal.



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Cheltenham Borough Council

#### Vacant Units

I have carried out an internet search of vacant retail units on the market and with the exception of the former Lidl store in Grosvenor Terrace, I have been unable to identify any vacant units of sufficient size in any of the centres to merit further investigation and will not consider vacant units further. As with potential sites, I will consider any vacant units drawn to my attention.

#### Former Lidl Unit - Grosvenor Terrace

The Applicant's Technical Note makes it clear that the unit is available. The units floorspace is given as 1623 sq m compared with the 1725 sq m of the proposal. It falls within the scope of flexibility in terms of size.

The technical note identifies the reasons why Lidl found the Grosvenor Terrace unsuitable for its needs and relocated. It also claims that it would be "perverse" to expect the company to re-occupy a unit that it has recently vacated at considerable expense. The Rushden Lakes appeal decision is also quoted as the "correct interpretation" of the sequential test.

However, the question is, in accordance with the Mansfield judgment, not whether the unit is suitable for the Applicant (which is a commercial decision for it) but whether it is suitable for *"the broad type of development which is proposed in the application by approximate size, type, and range of goods"* - In this case another food retailer operating from a similarly sized unit.

This brings in the question of the flexibility. The flexibility required in applying the sequential test is a matter of planning judgement which the Council must exercise in the first place. The Courts will not intervene in such cases unless the judgement is Wednesbury unreasonable, but the Council's judgement is open to review through the appeals process. It follows that the Rushden Lakes decision is not, as claimed by the Applicant, the "correct interpretation" of the sequential or an interpretation of the test at all, but the exercise of planning judgement in that particular case. Other Inspectors and Secretaries of State have exercised their planning judgement in different ways in other cases.

In my judgement, the unit is not suitable for food retailing at an appropriate scale for the test. It dates from a period when shopping patterns were very different and people tended to buy fewer goods when shopping for food and other items in town centres. Trolley use is now a reasonable requirement in a foodstore of this size and the physical relationship between the car parking and the unit would make the use of trolleys difficult. Although there are lifts, and these can be acceptable to retailers in some cases, the arrangement in this particular case would be expecting considerable flexibility. The car park also has rather poor access from the town centre road network and the unit is not visible from Albion Street. While this is similar to the Beechwood multi-storey car park access, the attractor to that car park (originally Debenhams and now John Lewis) is much stronger. The lack of prominence from the High Street is also a fundamental problem. The unit is significantly different from the nearby Sainsbury Local which is smaller, does have prominent street frontage and is very much aimed at basket shopping for people already in the town centre. This combination of factors makes the unit unattractive to food retailers in general and I think it would be expecting too much flexibility to consider the site suitable in sequential test terms.

At best, only a niche food retailer is likely to consider the unit. Inspectors tend to emphasize the practical nature of the sequential test and the flexibility that should be sought from retailers and developers would, at appeal, be assessed in terms of whether a site presents a realistic alternative for food retailers in practice. If no similar retailer is likely to consider a site it is likely to be rejected as a suitable alternative at any appeal.



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For the avoidance of doubt, the technical note indicates that Lidl requires bespoke delivery facilities. The unit does have a covered service yard. While this may be inadequate for the delivery lorries Lidl now uses, for instance, or because the adjacent storage area within the building is too restricted, it is impossible to assess and the Applicant does not elaborate. It is presented in terms that could be understood to be a requirement of Lidl (the reference to bespoke facilities) and I do not believe a case has been made out more generally (in Mansfield compliant terms). This requirement has not influenced my conclusion on the suitability of the site for a medium sized supermarket.

I conclude that the Grosvenor Terrace unit is unsuitable for the broad type of food retailer considered.

#### North Place Car Parks

The car parks are allocated for housing in the 2020 Local Plan (site HD9). The policy notes that planning permission was granted for in 2013 for a large supermarket, car park and 143 dwellings. However, it is noted that permission has not yet been implemented and it is likely that a new scheme will be required in order for development to take place. It is anticipated that a new scheme would provide a similar number of dwellings to the extant planning permission. This leaves the question of a foodstore on the site open.

The Applicant notes the freehold of the site between Portland St and North Place is of similar size to the application site and is being marketed as an investment opportunity with a lease to NCP lasting to 2055. According to the sales detail the lease has a landlord only break clause on three months' notice. The Applicant also claims that the sale price of £8m "would be highly prohibitive to viability of the development of a discount foodstore in the short term." While there is no viability assessment, the fact that it is being marketed as a car park indicates that it is more valuable as a car park with a long lease than it would be in alternative uses. In the absence of any move to redevelop the site in recent years, it cannot be considered as available for a food retailer.

As noted in the Local Plan 2020, the site west of Portland Street had planning permission for development including a foodstore. The Applicant comments that

*"Nevertheless, when assessing other discount foodstore proposals elsewhere in Cheltenham, the Council has consistently concluded that this site is not suitable and available to accommodate a discount foodstore, even as part of a mixed-use scheme. There has been no material change in circumstance to justify a different conclusion being drawn".*

This is not the case. The grant of planning permission and the fact that Morrisons had entered into a legal agreement with the then developer indicates that it is suitable for food retailing. Morrisons subsequently pulled out of the deal. In relation to the application for a Lidl on the former BMW site on Tewkesbury Road, DPDS advised in 2017 that the Council needed stronger evidence than the applicant had supplied to rule the site out. Following further discussions between the Council and the then landowner, the Council concluded that, at that time, it was more or less impossible for the applicant to pass the sequential test with respect to this site because of the legal dispute between the developer and Morrisons and the lack of information on the landowner's further intentions. The Officers Report concluded that in view of the lack of impact on the town centre and the Applicant's fall-back position (an extant permission for retail warehousing which was regarded as less desirable than a foodstore in impact terms) it was concluded that the failure to fully meet the sequential test did not indicate the refusal of the permission.

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As far as I am aware the last time North Place was considered in a sequential test exercise was in relation an application to vary a condition on the former Homebase Unit at Centrum Park in 2019 to allow the sale of food from 400 sq m of the unit. At that time, we concluded that the site is likely to be developed as a mixed-use site which means that it would not be available for the retailer within a reasonable period of time, given the time scale of the proposal. That proposal would have required a refurbishment of an existing retail warehouse and the timescale was short. While the timescale here might be longer, I am not aware of any progress in bringing forward a mixed use scheme on the site and unless the Council has been involved in recent discussion with a developer, I conclude that the North Place sites cannot be considered available in terms of the sequential test.

#### **St. Georgos Lane/St. James Street**

The site is allocated for employment use (site E4 of the 2020 Local Plan). The Plan notes that flood risk is likely to be a significant constraint on development and that is regarded as a prime employment site capable of accommodating a modern office development. It seems to me to be a clear indication that the Council would not favour a retail development on the site.

The use of the land for car parking is clearly intended to be temporary and the Council has stated that preparatory work has started to bring the site forward for development in accordance with the Local Plan and that this is expected to take two to three years. I conclude that the site is not available in sequential test terms.

#### **Other Sites in the Town Centre**

I have examined other sites in the town centre which have been considered in the past. This includes the Brewery, the former BHS unit in Regent Arcade and the Municipal Offices. The Applicant has assessed the vacant units in the Brewery and demonstrated that there is insufficient floorspace available there. The position with the former BHS unit is still unclear, but I consider that it is unsuitable for foodstore on the application scale for similar reasons to Grosvenor Terrace. There has been no publicity about the Council's possible move out the Municipal Offices recently and, unless the Council tells me otherwise, I conclude that they not available.

#### **Other Centres**

I have been unable to identify any suitable vacant premises in Bath Road or other relevant centres or to identify suitable sites in or on the edges of the centres.

#### **Out of Centre Potential**

NPPF para 87 requires LPAs, when considering edge of centre and out of centre sites, "to give preference to accessible sites which are well connected to the town centre". There can be no reasonable argument that the application site is not well connected to the town centre, or any other centre and that almost any other site with reasonable road frontage in the built-up area to the south of the town would be preferable in these terms. Applied too rigidly this would be an almost insurmountable hurdle, although the Applicant might have been able to reduce such a burden through discussion with the Council. However, I have been unable to identify any potential sites along the A435 corridor but will examine any potential sites the Council can identify. The Applicant states that it has carried out a similar exercise.



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The more general location of the proposal and its accessibility and sustainability (matters considered in NPPF para 103) are not part of the sequential test and need to be considered separately from it. Thus nothing I have said should be taken to be a comment on its compliance with the NPPF or the development plan policies on promoting sustainable transport.

I therefore conclude that with the recent submissions, the Applicant has demonstrated compliance with the sequential test.

#### **Retail Impact**

As acknowledged in Counsel's Opinion, retail impact is a material consideration and it is up to the Council to determine what weight it should be given although it should be borne in mind that it would have to justify a retail impact reason for refusal with credible evidence at any appeal. Although the Council cannot request an impact assessment, it needs to be informed on the likely impact of the proposal on the vitality and viability of centres not least because of the large number of objections referring to retail impact.

Retail impact in planning terms has two facets – the impact on private and public investment and the impact on the vitality and viability of the centre. It is clear from the Practice Guidance on Town Centres and Retail that the test refers to specific and identifiable investments proposals and not to a generalised fear that investment will be discouraged in the relevant centres. I am not aware of any investment which would qualify in the Practice Guidance terms.

With regard to the impact on the vitality and viability of centres, in its original statement, the Applicant did not address retail impact, just noting that because the scale of the proposal falls significantly below the NPPF threshold it does not trigger a requirement for the Applicant to satisfy the retail impact test. In its response to my first letter of the 5<sup>th</sup> February 2021, it briefly noted that the Lidl would be used for main food shopping and would sell a limited range of goods (about 2500) and that it does not sell cigarettes, newspapers, scratch cards, and single confectionary items. It concludes from this that people will still need to use other shops. I noted the overlap between the goods that Lidl and local centres sell and noted that it is not possible to assess what the impact of the proposal might be from what the proposal would not sell.

In its letter of the 29<sup>th</sup> April, the Applicant states that it visited the Six Ways/London Rd, Lyefield Rd West, Church Street, Leckhampton and Croft Road centres and considered them to be in robust health. The Applicant then goes on to examine the impact on Lyefield Road because, in its view, this is the centre about which the objectors have expressed most concern. It notes that there are four shops, a pharmacy, a florist, a café and a Nisa convenience store. It then notes that Lidl sells a limited range of pharmaceutical goods and does not offer a prescriptions service, that it sells a small range of flowers but not the other services florists offer and does not have cafés or sell hot drinks for consumption off the premises. With regard to the Nisa store, it notes that it is primarily a top-up shopping whereas Lidl is primarily for main food shopping. It also notes that these shops are already competing with similar shops in the area, including, in Nisa's case, the Sainsbury Local on Cirencester Road and Co-op stores in Church St and Six Ways.

I have visited these centres on a number of occasions, most recently on the 24<sup>th</sup> May. With the exception of the Croft local centre, there are no obvious signs of economic distress. Their trade is clearly more walk-in rather than car based, not least because all but Church St are restricted in parking and access by car to Church Street is inconvenient.

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I am somewhat hampered in assessing the likely impact by a lack of data on current shopping patterns derived from a household survey, although it must be said that such data are not very reliable in relation to the use of small shops or their likely turnover.

I noted earlier that the proposal is likely to have a turnover of about £12m. A certain amount of trade would be derived from pass by trade but given the largely local nature of the traffic on the road, a large part of this would be on journeys to or from Cheltenham. This points to a fairly dispersed pattern of impact within Cheltenham. A large substantial part of the proposed store's trade will be main food shopping and will be diverted from the main food supermarkets. To give an idea of the scale of likely trade diversion it is assumed that 95% of its turnover was derived from the Cheltenham area this would give an overall trade diversion of about £11.4m from Cheltenham foodstore. Assuming that 85% of this is from main food shopping, this would suggest that about £10.1m would be diverted from the large foodstores. The majority of these are out-of-centre and the impact on them is not a material consideration. This includes the Lidl on the former Matalan site which could be expected to experience the greatest trade diversion.

The Morrisons at Caernarvon Rd (Up Hatherley) is in a centre and Morrison's has objected to the application. The nub of its objection is that although the proposal is below the NPPF threshold for retail impact assessments, the need for additional convenience goods floorspace identified in the 2015 Retail Study is limited and the proposal should be assessed for its potential impact on existing centres. This is what I have set out to do. The objection does not contain any evidence on the likely impact or assert that the proposal would have a significant adverse impact on the store.

The Morrisons is a large foodstore with an estimated turnover of about £40m according to the 2015 Retail Study Update (in 2014 prices). It appeared to be trading well above the company average, although not too much should be read into that. I appreciate that the turnover figure is now somewhat dated, but it gives some idea of the scale of store. It is a considerable distance from the proposal and there is no reason to believe that it would be disproportionately affected by the proposal to the extent of justifying a refusal.

The figures suggest that some £1.4m might be diverted from current top-up shopping visits. These would be diverted from a wide range of food outlets throughout Cheltenham, including the larger foodstores. I think it is reasonable to assume that about one third of this top-up shopping would otherwise have taken place in the large foodstores. I will assume that about £1m will be diverted from smaller shops and convenience stores and, bearing in mind the likely pass-by trade, about half of this will be from the local centres – that is about £500,000.

The top-up location most affected would be the Sainsbury Local some 500m to the north. This is because it is the nearest store, on a direct route from the proposal and the proposed store would intercept some of its existing trade and because it offers some adjacent parking for car borne shoppers. I estimate that at least half of the local trade diversion is likely to come from this store – that is about £250,000. The store trades all day Sunday and therefore has a sales floorspace (the area used to display goods and serve customers) of under 280 sqm. In 2014 we estimated its turnover at about £2.35m. In current prices and operated by Sainsbury I estimate that its turnover is likely to be about £3m. The loss of about £250,000 from the turnover, or substantially more, would not threaten the viability of the store. In any case, the store is not in an identified centre and does not receive policy protection.



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Losses of trade could be also expected from Six Ways, Church Road and Lyefield Road West centres. In total the calculations set out above indicate that this might be in region of £250,000. It is difficult to assign this to the individual centres. In part the trade diversion would reflect the Co-op offer which is more orientated towards grocery sales and offers a wider range of fresh fruit and vegetables, chilled goods and frozen foods than typical of Convenience stores. The Co-op is resilient to trade loss and there is no reason to consider the stores in Six Ways and Church Road would be at risk from the proposal.

Some loss could be expected from the Smith and Mann store in the Lyefield Road West centre, Smith and Mann have objected to the application noting the social role that the centre offers and commenting that it suffered a significant dip in trade when the Sainsbury opened but it does not provide further details that might help my assessment. The Applicant has sent an email to the Council (24<sup>th</sup> May) which disputes any risk to the Post Office, draws parallels with the determination of the application which is now the Sainsbury Local Store.

In our advice on that application, we (correctly) predicted the risk to the Premier shop in the Croft Road centre contrary to the then policy RT7, but expressed concern that this might be given limited weight at an appeal because the loss of the shop would be replaced by an arguably better facility serving the same local function very nearby. This would not be the case if the local store in the Lyefield Road West centre closed. The proposal is much further away and it would be the loss of a facility rather than a replacement of it.

The potential loss of local shops and Post Offices is a material consideration which falls to be considered separately from the retail impact test under para 92 of the NPPF. Para 92 subsection a) requires planning policies and decisions to

*"Plan positively for the provision and use of shared spaces, community facilities, (such as local shops, meeting places, sports venues, open space, cultural buildings, public houses and places of worship) and other local services to enhance the sustainability of communities and residential environments".*

Sub section c requires authorities

*"To guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day to day needs."*

In view of the other shops in the area, it appears to me that the loss of the shop would not necessarily reduce the community's ability to meet its day to day needs, but the loss of the Post Office would. In my view this needs special attention in any report.

To a certain extent the conclusions on the shop and the Post Office are bound together. Although Lidl does not offer Post Office services at present and is unlikely to do so in the future, if Smith and Mann closes the Post Office facility would be lost. I note that the shop lost turnover when the Sainsbury Local opened but the amount is, for perfectly understandable reasons, not given. I also do not know what the turnover or profitability of the shop is. This is usual when considering the impact of proposals on small shops and this is a problem even where full impact assessments are made. There are, however, reasons why the impact of the current proposal would be less than the impact from the Sainsbury. First it is further away. Second, although a larger unit, most of the proposals trade would be derived from main food shopping, whereas the Sainsbury is orientated towards the same local top-up market in the same area. Lastly much of the trade that would divert from the Smith and Mann shop will have already diverted to Sainsbury.



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On the basis of the information and for the reasons I have set out, I conclude that the impact on the Lyefield Road West and other local centres is not likely to be significantly adverse in terms of the retail impact test and that the Post Office facilities are not likely to be lost. I also think that it would be difficult to adduce evidence to justify a refusal on the basis of retail impact at any appeal.

Overall, I conclude that there are no sequentially preferable suitable sites available and that the proposal is not likely to lead to a significant adverse impact on the vitality and viability of any centre. I would of course reconsider these conclusions should other potential sites or opportunities or further information on the current trading performance of stores be drawn to my attention.

Yours sincerely



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Enc:

Please Reply to: Swindon

Our Ref. DM/C10316

Your Ref

Date 12<sup>th</sup> July 2021

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By Email: [Michelle.Payne@cheltenham.gov.uk](mailto:Michelle.Payne@cheltenham.gov.uk)

Dear Michelle

**Planning Application 20/02089/FUL Proposed Lidl Store, Cirencester Rd Cheltenham**

I refer your email of the 5<sup>th</sup> July and the submissions by Martin Robeson Planning Practice (MRPP) on behalf of Tesco dated 15<sup>th</sup> June and by Smith and Mann dated 21<sup>st</sup> June enclosing a letter from its accountants (dated 1<sup>st</sup> June).

**The Tesco Objection**

Taking MRPP's letter first, it raises two issues relevant to retail planning policy – the application of the sequential test to the town centre and the lack of a retail impact study.

MRPP's point with regard to the sequential test is that the area of search should not be restricted to a 5 minute drive time and should take account of linked shopping trips – particularly in the case of the proposal which is based on a business model of a limited range of goods. It should therefore include the town centre. MRPP does not identify any sites which it considers should be included in the exercise. It is not clear whether MRPP had seen the Applicant's Technical Note of 29<sup>th</sup> April but this considers sites within the town centre. I have assessed the Applicant's Note and visited the sites. I have advised the Council that, in our view, there are no suitable sites available for the proposed development in the town centre (or other centres) and this matter has therefore been addressed.

In terms of retail impact MRPP notes that the NPPF threshold for Retail Impact Assessments does not take account of potential cumulative impacts. This is correct and the Council could not argue that a full impact assessment was required on the basis of other permitted developments. The possible cumulative impact remains relevant in the same terms as the sole impact of the proposal. MRPP states that the combined effect of permitted schemes could pose a real risk of unacceptable impacts but does not indicate where these might arise. In my view there is no reasonable risk to the town centre's vitality and viability from the permitted foodstores. With regard to any local centres, there is little risk of significant combined impact since the permitted proposals are on the other side of the town and would not draw trade from the local centres under consideration here.

Cont/d.....

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#### The Smith and Mann Objection

Smith and Mann's objection points out the overlap between the goods it sells and those that the proposed store would sell and this confirms my view that there would be some impact. The letter from the accountant indicates that its turnover was reduced by about 21% following the opening of the Sainsbury Local on Cirencester Road and a similar impact now would force the closure of the shop. In these circumstances the local Post Office services would be lost.

The turnover figures are for the period up to Oct 2017 and I understand that the Applicant has asked for up to date turnover figures. While these would be helpful to me (and I will comment on them in due course if asked), they are much more sensitive and such figures are not normally released for commercial and other, non-planning related, reasons. It is also the case that turnover figures are not particularly revealing with regard to viability without an indication of costs so the inferences that can be drawn from them are limited. The objector should not be placed in a position where a failure to supply confidential information is taken as a lack of co-operation or that adverse inferences can be drawn. The purpose of quoting the figures was to provide evidence of the impact of the Sainsbury Local and they have done this. It was always clear that there would be some impact from the Sainsbury on the shop and I find the level indicated as might be expected.

There are, however, reasons why the impact of the current proposal would be less than the impact from the Sainsbury. First it is further away. Second, although a larger unit, most of the proposals trade would be derived from main food shopping, whereas the Sainsbury is orientated towards the same local top-up market in the same area as the Smith and Mann shop. Lastly much of the trade that would divert from the Smith and Mann shop will have already diverted to Sainsbury. I do not think that the letters are sufficient to establish with enough certainty that the impact would be at a level that would lead to the closure of the shop.

It is only if the shop were to close that the post office services would be lost. I pointed out earlier that post offices are considered a community service under NPPF para 92 but as I conclude the closure of the shop as a result of the proposals impact is not likely only limited weight could be given to its possible closure.

I conclude that there is nothing in the additional correspondence that leads me to change my earlier advice.

Yours sincerely

*Duncan McCallum*

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