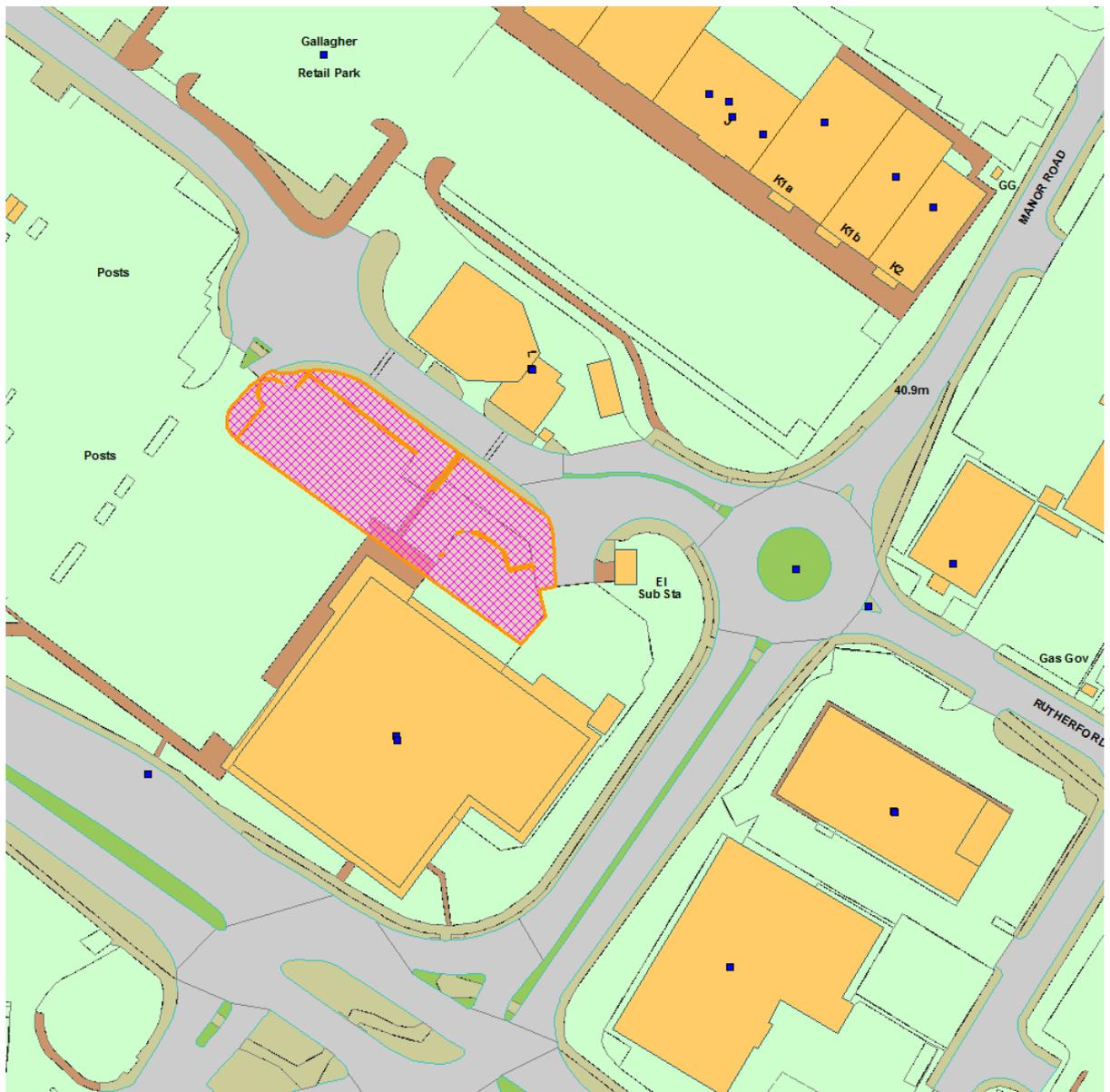


APPLICATION NO: 21/02120/FUL	OFFICER: Mrs Lucy White
DATE REGISTERED: 23rd September 2021	DATE OF EXPIRY: 18th November 2021/Agreed EoT 28 th March 2022
DATE VALIDATED: 23rd September 2021	DATE OF SITE VISIT:
WARD: Swindon Village	PARISH: Swindon
APPLICANT:	The Crown Estate
AGENT:	Montagu Evans
LOCATION:	Gallagher Retail Park Tewkesbury Road Cheltenham
PROPOSAL:	Erection of a restaurant unit with drive-through lane and associated car parking, layout and landscaping amendments.

RECOMMENDATION: Permit



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1. DESCRIPTION OF SITE AND PROPOSAL

- 1.1 The application site comprises of land and structures to the west and in close proximity to the Manor Road entrance/roundabout to the established out of town Gallagher Retail Park. The site includes an enclosed, external courtyard area and vacant hardstanding, last used in association with an adjoining retail unit (Unit M - The Food Warehouse), and a section of the customer car park and landscaping of the retail park.
- 1.2 Gallagher Retail Park is located adjacent to the A4019 Tewkesbury Road and Manor Road within Swindon Village and its retail offer is varied, and includes two large food outlets (Sainsbury's and The Food Warehouse) and a petrol filling station. The main customer and service vehicular access into the site is via Manor Road and Tewkesbury Road, with other pedestrian routes into the site from Tewkesbury Road. The majority of the existing retail units (excluding the supermarket buildings) have undergone substantial refurbishment over recent years, with alterations to the front facades and some sub-division of units.
- 1.3 The applicant proposes the erection of a drive-thru, fast food restaurant and associated external seating area, parking and landscaping. The proposed restaurant would be occupied by Burger King and would operate 7 days per week, between 10am and 11pm. Between 25-30 new and full time employees would be created by the proposals.
- 1.4 The application has been revised during the course of the application; the layout slightly altered in response to concerns regarding tree retention and highway safety. Additional information on transport/highways matters was also sought.
- 1.5 The application is before the Planning Committee following an objection received from Swindon Village Parish Council. Their representation is set out in full in section 4 below.

2. CONSTRAINTS AND RELEVANT PLANNING HISTORY

Constraints:

Airport Safeguarding over 45m
Landfill Sites region
Landfill Sites boundary
Parish Boundary
Principal Urban Area

Relevant Planning History:

91/01334/PF 12th March 1991 PER

Retail park with non-food retail stores, petrol filling station, car parking, service yards, access road and ancillary facilities.

89/01658/PF 16th June 1989 PER

Outline application for the erection of non food retail store on the form of a retail park including parking, service yards, access roads, landscaping, petrol filling station and ancillary facilities.

13/02107/FUL 20th January 2014 PER

Provision of new electricity sub station within existing service yard

14/00523/FUL 23rd June 2014 PER

Proposed erection of retail warehouse unit on car parking adjacent to Unit K Gallagher Retail Park

14/01313/FUL 28th August 2014 PER

External alterations involving front and flank elevations; reconfiguration of car parking; provision of 27 staff car parking spaces within the service area (net increase of 11 spaces),

and enhancements to the public realm including new pedestrian crossings to units A3, B and E

17/00028/FUL 9th February 2017 PER

Installation of cameras and supporting equipment in association with car park management (Retrospective)

17/00028/ADV 9th February 2017 GRANT

45 signs associated with the car park management system comprising, 4 entrance signs, 34 internal signs and 7 signs relating to disabled parking (Retrospective)

17/00097/FUL 30th May 2017 PER

Planning permission to allow the erection of temporary Class A1/A3/A5 retail pop-up units within defined areas encompassing 276 sqm of the existing Gallagher Retail Park car park

17/01459/FUL 19th December 2017 PER

Erection of a Class A1 retail unit comprising 929 sqm at ground floor with full cover mezzanine, car parking, re-alignment of service yard access, renewal / adjustment of service yard drainage, diversion of a Class 5 highway, and associated works to the west of Unit A Gallagher Retail Park.

3. POLICIES AND GUIDANCE

National Planning Policy Framework

Section 2 Achieving sustainable development

Section 4 Decision-making

Section 9 Promoting sustainable transport

Section 11 Making effective use of land

Section 12 Achieving well-designed places

Saved Local Plan Policies

RT 1 Location of retail development

RT 5 Non-A1 uses in local shopping centres

Adopted Cheltenham Plan Policies

EM2 Safeguarding Non-Designated Existing Employment Land and Buildings

D1 Design

SL1 Safe and Sustainable Living

GI2 Protection and replacement of trees

GI3 Trees and Development

Adopted Joint Core Strategy Policies

SD2 Retail and City / Town Centres

SD3 Sustainable Design and Construction

SD4 Design Requirements

SD14 Health and Environmental Quality

INF1 Transport Network

INF2 Flood Risk Management

Supplementary Planning Guidance/Documents

4. CONSULTATIONS

Ward Councillors

6th October 2021 - I write to object to the planning application above.

My objections are:

Excessive traffic generation as has happened on the Kingsditch estate with McDonalds;

Health concerns for those living and working nearby due to increased pollution caused by traffic;

Road safety concerns;

Entrance to the site which appears not to have effective controls on traffic accessing the site and queueing for service;

Egress from the site will require exiting through the same space as the entrance location, according to the plans submitted, causing potential further issues on the main road.

I would be grateful if my objections could be submitted.

Parish Council

18th October 2021 - The Parish Council objects to the proposals on the following grounds.

1. Having the drive-through share the same access as Sainsbury's could lead to the entrance to Sainsbury's being blocked by queuing traffic. Traffic at the McDonald's drive-through regularly backs up to the roundabout on the Tewkesbury Road.

2. The footpath should be extended around the end of the drive-through to the existing 'pear' shaped crossing refuge.

3. The parapet walls are unnecessary. They add height and bulk and are not in keeping with the existing hard landscaping.

4. The Design and Access Statement planting strategy does not include any planting.

GCC Highways Planning Liaison Officer

21st December 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.

This planning application seeks construction of a 232sqm drive-through restaurant at land within the existing Gallagher Retail Park, Cheltenham. The site is currently used for car parking and an external storage area for the adjacent retail unit. The applicant is supported by a transport statement produced by Stantec.

At this time the Highway Authority has concerns in respect of the potential impact of the proposal on the safe operation of the highway network, and therefore

Email: simon.shapland@gloucestershire.gov.uk

recommends the application is deferred to allow the applicant to provide additional information. Further comments below.

Site Layout

The primary concern in relation to drive through restaurants such as this is the

potential for queuing to extend beyond the site limits towards the highway network. There is evidence within the Cheltenham area that existing drive throughs are creating highway safety concerns due the level of demand and queuing they are experiencing.

The Highway Authority will need to be satisfied that sufficient queuing space is available on site to ensure this does not happen with this proposal. Evidence will need to be submitted by the applicant to demonstrate the proposed level of demand for the drive through element, to demonstrate the site layout is acceptable. This should be informed by local conditions.

Trip Generation

The applicant has used the TRICS database to derive the proposed trip generations for the proposed unit. Whilst TRICS is the industry standard for predicting the traffic generation of new developments, it would have been helpful for this data to be compared against existing drive through facilities to determine if it is appropriate for use in this assessment.

Furthermore, it has been assumed that only 10% of these trips will be new trips to the site, with 70% considered linked trips and 20% pass by trips. Whilst the Highway Authority recognises there will be a degree of linked and pass-by trips for this site, it is not clear where the 70/20% split has come from, and there is no justification within the transport statement. Further clarification is therefore sought here as a 70% figure of linked trips seems very high for this site. Furthermore, given the recent increase in delivery companies such as just eat, uber eats etc, it is likely that there would be much higher 'primary' trips to the site to pick up such orders. This should be considered and reflected in the assessment.

Whilst the breakdown of trips is useful in understanding the wider impact on the highway network, given this is a new proposal the actual trip generation figure at the site access will be 100% of the trips. As above, a breakdown of how many of these trips are likely to use the drive through will need to be provided to understand if the site has the physical vehicular queuing capacity to ensure this does not spill onto the wider highway.

Pedestrian Accessibility

Whilst a new informal zebra crossing has been shown to link the footway from the access road into the burger king site, there is no such crossing facilities shown on the exit point of the drive through lane. Furthermore, given the positioning of the building, pedestrians wishing to leave the burger king site and walk to the adjacent retail units would have severely restricted visibility of any vehicles. This should be addressed.

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

21st February 2022 –

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.

The justification for this decision is provided below.

Further to our consultation response dated 20 December 2021, the applicant has provided additional assessment in respect of the operation of the proposed drive through.

Site Operation

Concerns were raised about the operation of the drive through, and the concern that excess waiting and queuing could extend towards the highway and cause operational issues. Additional information has been submitted which clarifies the likely extent of queuing, based on operational details submitted by Burger King. Having reviewed this data, we the Highway Authority is satisfied that it is unlikely that the queue from the drive through would impact the safe operation of the road network.

Trip Generation

Additional assessment has been submitted in respect of the proposed trip generations for the development. Having considered the assessment, the Highway Authority is content with the conclusions drawn, and that the site will not have a severe impact on the highway network.

Pedestrian Accessibility

The site layout has been revised to take into account the comments made in respect of pedestrian accessibility to the site, and the Highway Authority is content with the proposals.

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 'Proposed Site Block Plan' Rev PL02 dated 09.02.2022.

Reason: To ensure conformity with submitted details.

Electric Vehicle Charging Points (Commercial)

An electric vehicle infrastructure strategy and implementation plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of any building hereby permitted. The plan shall contain details of the number and location of all electric vehicle charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851, and Manual for Gloucestershire Streets. Buildings and parking spaces that are to be provided with charging points shall not be brought into use until associated charging points are installed in strict accordance with approved details and are operational. The charging point installed shall be retained thereafter unless replaced or upgraded to an equal or higher specification.

Reason: To promote sustainable travel and healthy communities.

Construction Management Plan

Prior to commencement of the development hereby permitted details of a construction management plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan 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);
Advisory routes for construction traffic;
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;
Highway Condition survey;
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.

Environmental Health

1st November 2021 –

Given the details already submitted (Ventilation and Extract Details, submitted 22 Sept 2021), which are in the main suitable and sufficient for odour control, I can recommend the following condition:

Scheme for treatment of fumes and odours to be approved

The development shall not start until a scheme for treating fumes and odours has been submitted to and approved in writing by the Local Planning Authority and the means of treating the fumes and odours shall be installed and be operational before the development is brought into use or occupied and maintained as such thereafter.

Reason: To ensure that any concentration of air pollutants in the vicinity is minimised and to protect the amenity of the locality, especially for people living and working nearby or a nuisance is not caused in accordance with Local Planning Policy.

The following further advice should be added:

- o Towards an assessment of compliance with the above condition, the applicant should submit evidence for: dwell times within the UV-C system; the velocity of expelled air at the flue terminus under all control settings.
- o With reference to the submitted Risk Assessment for Odour, it is noted that the current design does not appear to discharge 1m above ridge heights at the application building itself.

Publica Drainage And Flooding

18th November 2021 –

Site Geology and Source of Information

Soil - Freely draining lime-rich loamy soils <https://www.landis.org.uk/soilscapes/>

Bedrock - Charmouth Mudstone Formation - Mudstone Geology of Britain viewer | British Geological Survey (BGS)

Superficial deposits - Cheltenham Sand & Gravel - Sand & Gravel Geology of Britain viewer | British Geological Survey (BGS)

Flooding History / EA Flood Zone

According to the EA Flood Maps, the proposed development is in flood zone 1.

<https://flood-map-for-planning.service.gov.uk/>

1. Surface water flood maps - there is no apparent surface water flood risk to the site according to the Risk of Flooding from Surface Water map.

2. Surface water flow route - there is no apparent surface water flow route through the site.
3. Historic flooding - there is no known history of flooding at the site.
4. Groundwater flooding - the site is in an area at High Risk according to Gloucestershire County Council's Groundwater Management Plan.
5. Within 20m of a watercourse - No

Surface Water Drainage Proposal

Sustainable drainage system

Other Relevant Information (such as contours and levels of neighbouring plots)
Site Area: 0.2 ha

Comments

Surface Water Drainage

The geology of the area indicates that soakaways may be viable on site, however, this must first be proven by infiltration tests undertaken in the location of the proposed soakaway and in accordance with BRE365.

If there is good infiltration and acceptable groundwater levels, soakaways must be designed in accordance with the guidance notes shown below.

Please note, soakaways are not recommended on steep slopes (>1 in 10) as they might reduce slope stability and pose an increased risk of flooding to buildings at a lower elevation, in an exceedance event. Caution is advised.

Notes regarding soakaway location and design

- Soakaways should be designed with a minimum clearance of 1m from base to water table at all times of year.
- Soakaways must be >5m from any structure and >2m from the boundary.
- If soakaways are viable, it is important that they are positioned at a lower elevation to the property or neighbouring property, in case of exceedance. If it is not possible due to site restrictions, it is vital that they are located at a depth whereby the invert level of the inlet pipe is lower than the threshold level of the property. Landscaping must then be considered to route water away from any vulnerable property in an exceedance event.
- Individual geocellular soakaways are recommended for ease of maintenance and reduced footprint, and are particularly effective if the groundwater level is found to be within 1m of the soakaway inlet pipe.
- Silt traps are also recommended for ease of maintenance.
- If soakaways are located beneath a car parking/turning area, they will need to have adequate clearance and the design will need to be suitable for the additional loading.
- During the construction phase it is important not to compact ground where soakaways are proposed.

If infiltration is not viable, there is a private surface water sewer that serves the site and discharges to a public surface water sewer in Tewkesbury Road. Attenuation will be required prior to controlled discharge in line with the Qbar Greenfield Runoff Rate or, if not practicable, 40% betterment over the current discharge rate.

The onsite surface water drainage system must be designed to accommodate up to and including, either:

- 1 in 100 year storm event plus 40% climate change (CC); or
- 1 in 30 year event plus 40% CC but any volume above this must be kept on site for all return periods up to and including the 1 in 100 year event plus 40% CC and must not cause a risk to any existing property or land beyond the site.

General Comments

It is important to note that the development must not increase flood risk to any existing property or land beyond the site boundary and the landscaping of the site should route water away from any vulnerable property and avoid creating hazards to access and egress routes. As such, an exceedance flow route plan for flows above the 1 in 100 year plus 40% CC must be submitted with the proposal, identifying the surface water flow routes through the site should the capacity of the drainage system be exceeded.

We highly recommend the use of permeable or granular construction on access routes and hardstandings.

We would like to see waterbutts/rainwater harvesting being incorporated into the proposed surface water drainage system if possible.

RECOMMENDATION

No Objection subject to conditions

SUMMARY REASON FOR RECOMMENDATION

(including details of required conditions/revisions where applicable)

We highly recommend that infiltration tests are undertaken at the earliest opportunity in order to determine the most appropriate surface water drainage system.

If insufficient further information is provided, please notify the applicant that the following pre-commencement condition will be required.

Condition:

That, prior to the commencement of development, a full surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme, and results of soakage tests carried out at the site to demonstrate the infiltration rate. Three tests should be carried out for each soakage pit as per BRE 365, with the lowest infiltration rate (expressed m/s) used for design. The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby approved.

Reason: To ensure the proper provision for surface water drainage and/or to ensure flooding is not exacerbated in the locality (National Planning Policy Framework and Planning Practice Guidance).

NOTE TO APPLICANT:

The Surface Water Drainage Scheme should, where possible, incorporate Sustainable Drainage Techniques in order to ensure compliance with;

- Flood and Water Management Act 2010 (Part 1 - Clause 27 (1))
- Code for sustainable homes - A step-change in sustainable home building practice
- The Local Flood Risk Management Strategy published by Gloucestershire County Council, as per the Flood and Water Management Act 2010 (Part 1 - Clause 9 (1))
- Gloucestershire SuDS Design and Maintenance Guide (Nov 2015)

Tree Officer

12th October 2021 - The Tree Retention and Removal Plan and Landscape plan don't quite match. While on the one hand this means that the Norway maple (T370) is to be retained, it shows that the Scots pine (T357) is to be removed still. This is a tree is now well established and should be retained.

The retained trees should be protected during any excavation and construction works and this should be planned in a Tree Protection Plan, to be submitted for approval prior to determination.

Where any excavation or construction is to take place within the root protection area of trees, a method statement for this work (to avoid damaging the roots of trees) should be submitted for approval prior to determination.

All submitted documents should be to BS 5837 (2012).

18th November 2021 - T357 is a high quality tree and it would be preferable to retain it. Efforts could be made to accommodate it in the plans for this proposal - either by altering the plans or through considerate excavation / construction methods within its RPA. For best practice, this would be evidenced in a method statement to BS5837.

Reason: to protect amenity and wildlife value within the Borough as per Policies GI2 and 3 of the adopted Cheltenham Plan.

Severn Trent Water Ltd

6th October 2021 - Thank you for the opportunity to comment on this planning application. Please find our response noted below:

With Reference to the above planning application the company's observations regarding sewerage are as follows.

I can confirm that we have no objections to the proposals subject to the inclusion of the following condition:

- o The development hereby permitted should not commence until drainage plans for the disposal of foul and surface water flows have been submitted to and approved by the Local Planning Authority, and
- o The scheme shall be implemented in accordance with the approved details before the development is first brought into use. This is to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any flooding issues and to minimise the risk of pollution.

Please note if you wish to respond to this email please send it to Planning.apwest@severntrent.co.uk where we will look to respond within 10 working days.

If your query is regarding drainage proposals, please email to the aforementioned email address and mark for the attention of Planning Liaison Technician.

5. PUBLICITY AND REPRESENTATIONS

Number of letters sent	4
Total comments received	2
Number of objections	2
Number of supporting	0
General comment	0

5.1 Four letters of notification were sent to the nearest neighbouring properties. In addition, a site notice was posted within the vicinity of the site. A total of two representations were received following the publicity and the concerns/comments raised are, in summary, as follows:-

- Increase in traffic and queuing and circulation problems with retail park

- Impact on access to and operation of adjoining stores
- Loss of parking spaces and no assessment of parking needs
- Area already well provided with fast food outlets
- Litter problems associated with fast food outlets
- Proposals conflict with Council's healthy-life style policies
- Alternative sites not considered as part of Sequential Test
- Conflict with lease agreement of adjacent retail business

6. OFFICER COMMENTS

6.1 Determining Issues

6.2 The key issues in the determination of this application are (i) the principle of an additional retail unit in this location and the suitability of the site to accommodate the proposals, (ii) design, scale and layout, (iii) highway safety, parking and traffic congestion, (iv) impact on trees and (v) neighbour amenity.

6.3 Principle and Policy Context

6.4 Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions should be taken in accordance with the relevant adopted Development Plan unless material considerations dictate otherwise. The proposal must therefore be considered against the relevant policies contained within the Cheltenham Plan (2020), the saved policies of the Local Plan (2006) and the Joint Core Strategy (2017); the most relevant policies being D1 and SL1 of the Cheltenham Plan, the saved retail policies of the local Plan (2006) and policies, SD4, SD14 and INF1 of the JCS.

6.5 Paragraph 11 of the NPPF states 'Plans and decisions should apply a presumption in favour of sustainable development....and for decision making this means approving development proposals that accord with an up-to-date development plan'. Where the development plan is absent, silent of relevant policies are out of date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

6.6 In seeking to support the role and vitality of town centres, Paragraph 87 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses which are not in an existing centre nor in accordance with an up-to-date-plan. Paragraph 88 goes on to state that when considering out of centre proposals, preference should be given to accessible sites which are well connected to the town centre.

6.7 Saved Policy RT1 of the Local Plan states that retail development will be permitted which relates to the role and function of retailing centres and their catchments in a sequence of locations (starting at the town centre with out-of-centre sites considered last), which are accessible by a regular choice of transport means.

6.8 Policy RT7 of the Local Plan relates to retail development in out-of-centre locations and states that retail development outside of defined shopping areas will only be permitted where:

a) a need for the additional floorspace has been demonstrated, and the proposals:

b) individually or in conjunction with other completed and permitted retail development, would not harm the vitality and viability of the town centre as a whole or of a district or neighbourhood centre;

6.9 Policy SD2 of the JCS seeks to ensure that proposals for retail and other main town centre uses 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 assessed against the requirements of the sequential test and impact test, as set out in national policy, or locally defined impact assessment thresholds as appropriate.

6.10 Sequential Test

6.11 Notwithstanding the small scale nature of the proposals and the fact that the application site is located within an established retail park (and arguably acts as a local shopping centre meeting the needs of both the local and wider catchment areas), the applicant has carried out a (proportionate) sequential test, in accordance with NPPF para 87, relevant NPPG guidance and Local Plan Policy (LP) RT1. Note also that the size of the proposed retail unit (at 232 sq. metres) is below the NPPF threshold for a retail impact assessment.

6.12 The applicant considered the locational and operational/business model requirements of a drive through restaurant to be a fundamental factor when approaching the sequential test. The nature of the proposed development in providing ancillary food and drink facilities to the existing main retail offer at Gallagher retail park is also considered relevant. As such, the proposals would complement the existing retail park and satisfy the locational requirements of the sequential test. In this respect, the application site would also adopt a different role to that of the town centre Burger King; the Gallagher site offering a drive-through facility, in similarity with other nearby fast food outlets.

6.13 Notwithstanding the above, an assessment of potential, sequentially preferable alternative sites of similar size within the town centre, district and neighbourhood centres was carried out. Allocated sites within the Cheltenham Plan were also considered. The assessment concluded that there are no suitable, available alternative sites which can accommodate the proposed development, by virtue of their size, suitability to accommodate the operational needs of a drive-through or current availability.

6.14 Officers have reviewed the sequential assessment and concur broadly with the scope and methodology of the assessment and the conclusions reached. The sequential test is therefore passed.

6.15 Summary

6.16 The application site lies within the Principal Urban Area (PUA) of Cheltenham and benefits from being in close proximity to other shops, services and community facilities and regular bus services to the town centre. As such, the site must be considered a sustainable location.

6.17 In the light of all the above policy considerations, the proposed development would enhance the retail offer and provide an ancillary restaurant facility for the retail park. In addition, the proposals would not impact on the vitality or function of the town centre and are therefore considered acceptable in principle.

6.18 Matters relating to design, amenity and highway safety are considered in turn in the following sections of the report.

6.19 Design and layout

6.20 Policy D1 of the Cheltenham Plan requires all new development to adequately reflect the principles of urban and architectural design and to complement and respect neighbouring development and the character of the locality. The policy is consistent with adopted JCS policy SD4 and advice set out within Section 12 of the NPPF.

6.21 The accompanying Design and Access Statement sets out the evolution and approach to design and layout of the scheme.

6.22 The proposals include the demolition of all existing structures and the erection of a single storey drive-through restaurant building adjacent and siting in parallel to the existing Food Warehouse store to the west and the retail park access road and petrol filling station to the east. A drive-through lane, reconfiguration of the existing parking layout and circulation, an external dining area and soft and hard landscaping are also proposed.

6.23 The existing pedestrian crossing point from the petrol filling station is to be retained and although the proposals necessitate some tree removal, the proposed landscaping scheme includes replacement planting, resulting in a net gain of trees. The existing vehicular entrance to the service yard for the adjoining retail unit would be unaffected by the proposals.

6.24 Whilst the drive through lane would be visible from the main retail park access road, the pedestrian entrance would face Sainsbury's and the main car park. Drivers would enter the drive-through lane to the left of the main entrance and exit from the right.

6.25 The DAS refers to the landmark location of the site, as a *gateway building into Gallagher Retail Park*. The materials palette and architectural detailing have therefore responded to this context. The design approach is overtly contemporary and fairly typical for Burger King and food outlets of this type; the building form comprising of two storey height, vertical columns with staggered, lower sections between, extended canopies around the drive-through lane and sections of full height glazing. Proposed materials consist of mix of facing brick, timber-style cladding, grey horizontal cladding and (Burger King) red coloured parapet detail.

6.26 The applicant has also provided 'street context' drawings to illustrate the visual impact of the proposals and the building's juxtaposition with the adjacent Food Warehouse store and petrol filling station. The proposed development, although a contrast to the architectural style of the adjoining unit, would add a fresh contemporary feel to the retail park and the scale, form and design aesthetic of the proposed building would not, in officer opinion, look out of place or detract from the overall character and appearance of the retail park.

6.27 In light of all the above considerations, the design, mass, scale and layout of the proposals are considered acceptable and, with the use of appropriate facing materials, should achieve a good standard of architectural design and not detract from the overall character of the retail park. As such, the proposals adhere with the objectives of Policy D1 of the Cheltenham Plan and Policy SD4 of the JCS.

6.28 Impact on neighbouring property

6.29 Policy SL1 of the Cheltenham Plan states that development will only be permitted where it will not cause unacceptable harm to the amenity of adjoining land owners or the locality.

These requirements are reiterated in adopted JCS policy SD14. In addition, NPPF paragraph 130 highlights the need to secure a high standard of amenity for existing and future users.

- 6.30** In addition to the existing retail units at Gallagher retail park, the nearest residential properties are located on Tewkesbury Road, River Leys, Coppice Gate and Hayden Road. Although these dwellings are located some distance from the site, the potential impacts on the amenities of nearby residents, in terms of odour pollution, noise and disturbance have been considered very carefully by the Council's Environmental Health (EHO) team.
- 6.31** The EHO concludes that the proposed means of extraction and ventilation (Ventilation and Extract Details, submitted 22 Sept 2021) are, in the main, suitable and sufficient for odour control. However, a condition is suggested requiring the submission and approval of the detail of all extraction and ventilation equipment.
- 6.32** The site and its surrounds are also located within a Landfill Sites Region. As such, a condition requiring the submission and approval of a site investigation report identifying the contamination risk of the site and any recommended remediation measures, is included below.
- 6.33** In light of the above considerations, the proposals are compliant with policies SL1 of the Cheltenham Plan, policy SD14 of the JCS and paragraph 130 of the NPPF.
- 6.34 Access and highway issues**
- 6.35** Paragraph 109 of the NPPF states that 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.
- 6.36** Policy INF1 of the JCS reiterates the stance of the NPPF and states that proposals should ensure that safe and efficient access to the highway network is provided for all transport modes.
- 6.37** The existing customer parking area to the front and principally serving the adjacent retail unit, provides a total of 141 spaces (including 7no. disabled spaces). The proposals would result in an overall net loss of spaces (including 1no. disabled space) but would create additional parking demand which needs to be considered alongside existing demand. In addition, the residual cumulative impact on the local highway network will also need to be considered carefully, alongside the potential for queuing and congestion along the main access road into the retail park.
- 6.38** It is acknowledged that many of the trips associated with the proposed development may already be present on the local highway network (i.e. diverted trips from Manor Road or Tewkesbury Road). However, there would be a proportion of new trips to the retail park generated by the proposed development and therefore the existing and resultant capacity of the existing roundabout and access road into the site will need to be assessed in the light of a potential increased trip rate.
- 6.39** Gloucestershire County Council acting as local highway authority (HA) was consulted on the proposals and has reviewed the submitted Transport Statement. The HA raised a number of concerns initially regarding (i) the potential for queuing to extend beyond the site limits towards the highway network, (ii) the need for the level of demand for the drive through element to be compared with trip rates for existing drive-through facilities, (iii) clarity on the split between linked and pass-by trips and trip rates in general; and (iv)

pedestrian visibility at crossing points into the wider retail park. The HA's full response is set out in section 4 above.

- 6.40** In response to the above concerns, additional information was submitted by the applicant. This information clarifies the likely extent of queuing, based on the operational details submitted by Burger King. The HA is now satisfied that it is unlikely that the queue from the drive-through element would impact the safe operation of the road network. Similarly, having considered the applicant's revised assessment of trip generation, the HA concludes that the proposals would not have a severe impact on the highway network. The site layout has also been revised to take into account the comments made in respect of pedestrian accessibility to and from the site.
- 6.41** The Highway Authority concludes that there would not be an unacceptable impact on highway safety or a severe impact on congestion and there are no justifiable grounds on which an objection could be maintained. This is subject to conditions securing provision of electric vehicle charging points and implementation of the proposed parking and internal road layout.
- 6.42** A Workplace Travel Plan has also been submitted which promotes sustainable modes of travel and marketing and promotional measures to inform staff. It also sets out a monitoring and implementation programme during the construction and operational phases of the development. A condition securing compliance with the submitted Travel Plan is also suggested below.
- 6.43 Other considerations**
- 6.44 Trees and Landscaping**
- 6.45** The proposals (specifically the drive-through lane) would necessitate the removal of 3no. trees within the site. As such, the application is accompanied by a Tree Survey and Tree Retention and Removal Plan.
- 6.46** It is regrettable that a Scots Pine tree would need to be removed. With this in mind, the potential for revising the layout of the scheme in order to retain this tree has been explored fully by the applicant, but without success. However, the applicant and Council's Trees officer have agreed the location and species of suitable replacement tree planting to mitigate the tree removals.
- 6.47** It is acknowledged that the proposed drive-through lane would reduce the width of the existing landscaped strip adjacent to the main access road into the retail park. However, the remaining area of soft landscaping would be planted with ornamental shrubs which should soften this harder edge to the road. New soft landscaping and tree planting within the car park area and within the immediate curtilage of the building are also proposed, and where there is none currently present. Overall therefore, the proposed landscaping of the site is considered acceptable.
- 6.48 Public Sector Equalities Duty (PSED)**
- 6.49** 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.
- 6.50** 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.

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

7. CONCLUSION AND RECOMMENDATION

- 7.1** Paragraph 11 of the NPPF applies a presumption in favour of sustainable development unless '*any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this framework taken as a whole*'.
- 7.2** The proposals would provide an ancillary restaurant facility for the existing retail park and local catchment area and, due principally to its locational and operational requirements, should not impact upon the vitality or function of the town centre. The applicant has also demonstrated that the sequential test for the location of new retail development, in this case, is met.
- 7.3** The design, mass, scale and layout of the proposed development are considered acceptable and although adding a contrast in architectural style to the retail park, the proposals should not appear incongruous or detract from the overall character and appearance of the locality. Similarly, there are no significant neighbour amenity or highway safety implications arising from the proposed development. As such, there are no adverse impacts of granting permission that significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.
- 7.4** The recommendation is therefore to grant planning permission subject to the following conditions. At the time of writing, agreement with the pre-commencement conditions is being sought from the applicant.

8. 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, including any works of demolition or site clearance, a Construction Method Statement shall be submitted to and approved in writing by the Local Planning Authority.

The approved method statement shall be adhered to throughout the development process and shall, where necessary:

- i) specify the type and number of vehicles expected during the construction of the development;
- ii) allocate space for the parking and turning of vehicles for site operatives and visitors;
- iii) allocate space for the loading and unloading of plant, construction waste and materials;

- iv) allocate space for the storage of plant and materials used in constructing the development;
- v) specify the intended hours of construction;
- vi) specify measures to control the emission of noise, dust and dirt during construction;
- vii) provide a method of preventing mud and dust being carried onto the highway and provide for wheel washing facilities;
- viii) specify the access points to be used and maintained during the construction phase, including any temporary access points;
- vix) advisory routes for construction traffic
- x) specify arrangements to receive abnormal loads or unusually large vehicles;
- xi) provide a Highway Condition survey; and
- xii) specify methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

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

- 4 Prior to first occupation of the development, the proposed means of vehicular access, parking and turning facilities shall be constructed in accordance with the approved plans ('Proposed Site Block Plan' Rev PL02 dated 09.02.2022) 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, having regard to adopted policy INF1 of the Joint Core Strategy (2017).

- 5 An electric vehicle infrastructure strategy and implementation plan shall be submitted to and approved in writing by the Local Planning Authority prior to the first use of any building hereby permitted. The plan shall contain details of the number and location of all electric vehicle charging points and shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851, and Manual for Gloucestershire Streets. Buildings and parking spaces that are to be provided with charging points shall not be brought into use until the associated charging points are installed in strict accordance with approved details and are operational. The charging points shall thereafter be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging points shall be of the same specification or a higher specification in terms of charging performance.

Reason: In the interests of sustainable development and the reduction of carbon emissions having regard to Section 9 of the NPPF.

- 6 Prior to first occupation of the development, secure covered cycle storage shall be provided in accordance with the approved plans. The cycle storage shall thereafter be retained available for such use in accordance with the approved plans at all times.

Reason: To ensure the adequate provision and availability of cycle parking, so as to ensure that opportunities for sustainable transport modes have been taken up, having regard adopted policy INF1 of the Joint Core Strategy (2017).

- 7 Notwithstanding the submitted details, prior to the commencement of development a scheme for the treatment, means of ventilation and extraction for the dispersal of cooking smells/fumes, including odour control measures and noise levels, has been submitted to and approved in writing by the Local Planning Authority. The ventilation

and extraction system shall be installed in accordance with the approved details before the use hereby permitted commences on site and shall be retained as such at all times.

Reason: To safeguard the amenity of adjacent properties and the general locality, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017). Approval is required upfront because without proper mitigation the use could have an unacceptable environmental impact on the area.

- 8 Details of measures to deter seagulls from nesting on the building(s) hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The seagull deterrent measures shall be implemented in accordance with the approved details before the use hereby permitted commences on site and shall be retained as such at all times.

Reason: To safeguard the amenity of adjacent properties and the general locality, having regard to adopted policy SL1 of the Cheltenham Plan (2020) and adopted policy SD14 of the Joint Core Strategy (2017).

- 9 The following elements of the scheme shall not be installed, implemented or carried out unless in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority:

1. Parapet detail
2. Canopies over drive-through lane
3. Cycle stands
4. Freestanding menu signs and sales intercom equipment

Reason: To preserve or enhance the character or 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 the approved details 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, G12 and G13 of the Cheltenham Plan (2020), and adopted policies SD4 and INF3 of the Joint Core Strategy (2017).

- 11 Following the removal of the trees as permitted by this decision, the trees shall be replaced in accordance with approved Drawing No 1304-001 P03 unless first agreed otherwise by the Local Planning Authority. Prior to any tree planting, a planting specification to include [species, size, position and method of planting of all new trees; and a programme of implementation and maintenance (covering a minimum 5 year period) shall be submitted to and approved in writing by the Local Planning Authority. The replacement trees shall be planted during the planting season current at the time of felling (end October - end March) or during the next immediately available planting season. The trees shall be maintained for 5 years after planting and should they be removed, die, be severely damaged or become seriously diseased within 10 years after

first planting they shall be replaced with another tree as originally required to be planted by this condition.

Reason: In the interests of visual amenity, having regard to adopted policy GI2 of the Cheltenham Plan (2020).

- 12 Prior to the commencement of development (including demolition and site clearance), a Tree Protection Plan (TPP) to BS5837:2012 (or any standard that reproduces or replaces this standard) shall be submitted to and approved in writing by the Local Planning Authority. The TPP shall include the methods of tree and /or hedge protection, the position and specifications for the erection of tree protective fencing, and a programme for its implementation. The works shall not be carried out unless in accordance with the approved details, and the protective measures specified within the TPP shall remain in place until the completion of the construction process.

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.

- 13 Prior to the implementation of any hard surfaces within the site, including driveways, parking and turning areas, footways and patios, details shall be submitted to and approved in writing by the Local Planning Authority. All new hard surfacing areas shall be permeable or drain to a permeable area and shall be carried out in accordance with the approved details prior to first occupation of any part of the development.

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).

- 14 Prior to the commencement of development, plans showing the existing and proposed ground levels and slab levels of the proposed buildings shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented strictly in accordance with the agreed details.

Reason: To ensure a satisfactory relationship between the proposed development and adjacent buildings and land, having regard to adopted policies D1 and SL1 of the Cheltenham Plan (2020) and adopted policies SD4 and SD14 of the Joint Core Strategy (2017). Approval is required upfront to allow the impact of the development to be accurately assessed.

- 15 No external facing or roofing materials 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).

- 16 No customers shall be served or remain in the building outside the following hours
10:00 and 23:00 Monday to Sunday.

Reason: To safeguard the amenities of and the area, having regard to Policy CP4 of the Cheltenham Borough Local Plan (adopted 2006).

- 17 Prior to first occupation of the development, refuse and recycling storage facilities shall be provided in accordance with the approved plans and shall be retained as such thereafter.

Reason: In the interests of sustainable waste management and recycling, having regard to Policy W36 of the Gloucestershire Waste Local Plan.

- 18 Prior to the commencement of development, a surface water drainage scheme, which shall incorporate Sustainable Urban Drainage System (SUDS) principles, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme, a programme for implementation of the works, proposals for maintenance and management and results of soakage tests carried out at the site to demonstrate the infiltration rate. Three tests should be carried out for each soakage pit as per BRE 365, with the lowest infiltration rate (expressed m/s) used for design. The development shall not be carried out unless in accordance with the approved drainage scheme and shall thereafter be maintained in accordance with the details approved.

Reason: To ensure sustainable drainage 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.

- 19 Prior to the commencement of development, a site investigation and risk assessment shall be carried out to assess the potential nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR11 and shall include:

- a) a survey of the extent, scale and nature of contamination
- b) an assessment of the potential risks to:
 - human health
 - property (including buildings, crops, livestock, pets, woodland and service lines and pipes)
 - adjoining land
 - ecological systems
 - groundwaters and surface water
 - archaeological sites and ancient monuments
- c) an appraisal of remedial options to mitigate against any potentially significant risks identified from the risk assessment.

Where remediation is required, a detailed remediation scheme to bring the site to a condition suitable for the intended use shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme shall ensure that the site will not qualify as contaminated land under Part 2a of the Environmental Protection Act (1990) in relation to the intended use of the land after remediation.

The site investigation, risk assessment report, and proposed remediation scheme shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any development.

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 in accordance with adopted policy SD14 of the Joint Core Strategy (2017).

- 20 Unless otherwise first agreed in writing by the Local Planning Authority, the development shall be carried out in accordance with the approved Workplace Travel Plan (Stantec dated 21st September 2021).

Reason: To encourage sustainable travel patterns and mitigate negative transport impacts arising from the development, having regard to adopted policy INF1 of the Joint Core Strategy (2017).

INFORMATIVES

- 1 In accordance with the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015 and the provisions of the NPPF, the Local Planning Authority adopts a positive and proactive approach to dealing with planning applications and where possible, will seek solutions to any problems that arise when dealing with a planning application with the aim of fostering the delivery of sustainable development.

At the heart of this positive and proactive approach is the authority's pre-application advice service for all types of development. Further to this however, the authority publishes guidance on the Council's website on how to submit planning applications and provides full and up-to-date information in relation to planning applications to enable the applicant, and other interested parties, to track progress.

In this instance, the authority sought revisions to landscaping/layout and replacement tree planting in the interests of the character and amenities of the area.

Following these negotiations, the application now constitutes sustainable development and has therefore been approved in a timely manner.