

NORTHERN AREA PLANNING COMMITTEE – 16/05/18

LATE OBSERVATIONS

Agenda Item 7a

18/09445/FUL – Land at Hungerdown Lane/Bristol Road, Chippenham

Further consultation responses:

Highway Engineer - Access to construct the retail store is to be using an existing access from Allington Way. The Council's Highway Engineer is content, but recommends an additional planning condition.

Public Protection - comments as follows on specific issues:

Air Quality - No objection but requests that an Assessment is undertaken and that Ultra Low Energy Vehicle Infrastructure is incorporated. (Head of DM : Already incorporated into the design)

Contaminated land - Requests a suitably worded condition is applied. (Head of DM: Already applied)

Construction - Requests that a Construction and Environmental Management Plan is submitted (Head of DM : Already applied)

Lighting - Notwithstanding the submitted information requests a condition (Head of DM : Altered in accordance with requested wording).

Noise - Requests further information and suggests conditions.

Council Ecologist - does not object, subject to conditions.

Neighbour letters:

2 further letters of support have been received.

Representation from Aldi:

A further letter from Aldi representatives has been received querying advice on whether the site at Langley Park (which they have planning permission on for a food store). They have suggested that the Council seeks specific advice on this point.

The Council's retail advisor states that regard should be had to a legal decision in Mansfield, where it was stressed by the judge that sites owned by specific retailers should not be discounted as being unavailable to others. Rather, it is the availability of a site for the retail use proposed that is relevant.

The Council's retail advisor also cites an appeal decision in Epsom where a site was owned by Lidl and was vacant in a sequentially preferable location to a site subject to an application by Aldi. The Inspector concluded that at the time of the appeal that site was sequentially preferable. The Council's retail consultant advises that there is no definition of when construction of a foodstore by a specific retailer makes it unavailable.

The site at Langley Park is being developed as a foodstore. Permission 16/04269/FUL is being implemented and this is demonstrated by the fact that the pre-commencement conditions have been discharged, Payment of CIL negotiations have been entered into and the demolition of existing buildings (part of the description of development for the permission) has occurred. See photos for latest site update.

These events, in themselves, do not necessarily make the site unavailable, but add to the argument that Aldi is committed to the store. Such commitment must also be weighed against the likely timings of an appeal should the current application be refused. Any Public Inquiry is likely to take 12 months to be decided, and given the commitment already shown to the site, it is probable that the Aldi store at Langley Park would be built out and occupied. Whilst this argument contains an element of risk with regard to Judicial Review of the decision, some logic and practicality must be applied. The Committee is therefore advised that the site at Langley Park is not available and that the site before you passes the sequential test and can be permitted.

The applicant has submitted a supporting statement as to why they believe that the Langley Park site is not available, largely based on the undisputed fact that planning permission 16/04269/FUL has been implemented, including the discharging of pre-commencement conditions; the signing of a s278 agreement for highways works and negotiated on paying the CIL fees. Based on these facts, the applicant also agrees that the Aldi/Langley Park site is no longer available.

Amendments to conditions:

Condition 8 should be amended to read:

8. The retail development hereby permitted shall not be first occupied until full details of a ghost right hand turn lane has been submitted to and approved in writing by the Local Planning Authority (in general accordance with drawing "Alternative Access Location 7.3m wide access Road A103274-SK03-C). As part of a package of full details to be submitted shall include full construction details, safety audit, visibility splays, swept path analysis, provision for pedestrian crossing facilities. No part of the development shall be commenced until the ghost right hand turn lane has been surfaced and laid out in accordance with the approved details.

REASON: In the interests of highways safety and that the access is suitably laid out.

Condition 9 should be amended to read:

9. The retail development hereby permitted shall not be first occupied until visibility splays have been provided between the edge of the carriageway and a line extending from a point 2.4m back from the edge of the carriageway, measured along the centre line of the access, to the points on the edge of the carriageway 43m in both directions from the centre of the access in accordance with the approved plans (Alternative Access Location 7.3m wide access Road A103274-SK03C). Such splays shall thereafter be permanently maintained free from obstruction to vision above a height of 0.6m above the level of the adjacent carriageway.

REASON: In the interests of highway safety.

Condition 11 should be amended to read:

11. The retail development hereby permitted shall not be occupied until details of secure covered cycle parking have been submitted to and approved in writing by the Local Planning Authority (in accordance with the council cycle parking standards). These facilities shall be provided in accordance with the approved details and made available for use prior to the retail store first opening and shall be retained for use at all times thereafter.

REASON: To ensure satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than private car.

Condition 16 should be amended to read:

16. No development shall commence on the residential element of the development hereby permitted until full details (including visibility splays, provision for pedestrians, signage) of the provision for the construction access onto the A420 have been submitted to and approved in writing by the Local Planning Authority. The details shall include details of a routing agreement, that will facilitate the ban of both vehicle movements right turning in and right turn out of the construction access. No part of the development hereby approved shall commence until details have been approved and the construction access built in accordance with the submitted and approved plans.

REASON: To ensure adequate construction access is made for loading/unloading within the site in the interests of highway safety.

Condition 22 should be amended to read

(i) No deliveries or collections shall be made from the retail development hereby permitted outside the hours of 06:00am and 22:00pm Monday to Saturday and 07:00am and 18:00pm on Sundays and Bank Holidays.

(ii) There shall be no use of reversing beepers on delivery or collection vehicles between 06:00 and 07:00 Monday to Saturday. In addition, there shall be no use of reversing beepers on delivery or collection vehicles between 07:00 and 09:00 on Sundays and Bank Holidays. All deliveries between these approved hours shall be direct via the loading and loading dock shown on the approved plans.

REASON: To limit the impact of the development on residential amenity.

Condition 23 should be amended to read:

23. The retail unit hereby permitted shall not be open to the public except between the hours of 08:00am to 22:00 pm on Mondays to Saturday and 09:00am to 18:00 pm on Sundays.

REASON: To limit the impact on adjacent residential amenity.

Condition 24 should be amended to read:

24. Prior to occupation a lighting scheme must be submitted for the approval of the Local Planning Authority in accordance with the Institute of Lighting Professional's Guidance notes for the reduction of obstructive light. The scheme must be designed by a suitably qualified person in accordance with the recommendations for environmental

zone E3 in the ILP document "Guidance Notes for the Reduction of Obtrusive Light GN01:2011.

Before commencement of operation of the approved lighting scheme the applicant shall appoint a suitably qualified member of the institute of lighting professionals (ILP) to validate that the lighting scheme as installed conforms to the recommendations for environmental zone E3 in the ILP document "Guidance Notes for the Reduction of Obtrusive Light GN01:2011.

REASON: To limit the impact of the development on adjacent residential amenity.

Condition 26 should be amended to read:

26. Development shall not be commenced on site until a planning obligation has been completed by all parties with an interest in the site and accepted in writing by the Council; to secure the provision of 40% affordable housing on site; the mechanism for the provision and maintenance of public open space on site; contributions to primary education ; contribution of £15000 for public art; £21900 for upgrade of play facilities at Little Battens Park and £9740 for upgrading facilities at Chippenham Sports Club.

REASON: To ensure the appropriate and necessary infrastructure to support the development is provided.

Additional conditions:

27. Prior to commencement an assessment of the acoustic impact arising from the operation of all internally and externally located plant at the Lidl store shall be undertaken in accordance with BS 4142: 2014. The assessment shall be submitted to the Local Planning Authority together with a scheme of attenuation measures to ensure the rating level of noise emitted from the proposed plant shall be less than background when measured at nearest noise sensitive receptors. The scheme shall be submitted to and approved in writing by the Local Planning Authority. A post installation noise assessment shall be carried out to confirm compliance with the noise criteria and additional steps to mitigate noise shall be taken, as necessary. The details as approved shall be implemented prior to occupation of the development and thereafter be permanently retained.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

28. All site preparation and construction works (excluding internal fit out works within the building) and the use of generators externally, including road works, shall only be carried out between the hours of 07:30 to 18:00 Mondays to Fridays and 08:00 - 13.30 Saturdays and at no times during Sundays or Bank Holidays without the prior written consent of the Local Planning Authority.

REASON: During the construction phase to minimize the level of disturbance to local residents.

29. The Lidl store development shall not be occupied until a service yard management scheme has been submitted to and approved by the local planning authority. The

development shall be operated in full accordance with the provisions of the service yard management scheme.

REASON: To protect the amenity of local residents and the surrounding rural area by minimizing any disturbance caused by vehicle movements, deliveries and other activities within the service yard.

30. Prior to the commencement of development an acoustic report shall be submitted to the LPA that demonstrates the internal and external amenity standards in accordance with BS 8233: 2014 Guidance on sound insulation and noise reduction for buildings and WHO Guidelines for Community Noise (1999) can be met within the proposed development; this must include details of any scheme of mitigation required to achieve this. Any scheme of mitigation applied to this development must be approved by the LPA prior to implementation and followed by verification prior to first occupation of the development and thereafter be permanently retained.

REASON: To ensure the creation/retention of an environment free from intrusive levels of noise and activity in the interests of the amenity of the area.

31. Prior to the commencement of development a scheme of measures to ensure noise levels in all amenity spaces do not exceed 55dB LAEQ 1hr shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of post construction validation. Thereafter the development shall be carried out in accordance with the approved details and a separate validation report shall be submitted to and approved in writing by the Local Planning Authority 3 months prior to occupation.

REASON: To protect the local amenity from any adverse effects of noise.

32. Prior to the commencement of the each element of development hereby permitted an updated Acoustic report for the relevant section shall be submitted to and approved in writing by the Local Planning Authority. Any recommendations agreed shall be implemented prior to the occupation or first use of each element of the development.

REASON: To protect the amenity of nearby residential properties.

33. The development shall be undertaken in strict accordance with Section 5.0 and 6.0 of the Ecological Appraisal (WYG, September 2017) and Section 5 of the Bat Activity Survey report (Devon Wildlife Consultants, September 2017), and with liaison with and supervision by (where applicable) a suitably qualified and competent ecological consultant.

REASON: To ensure appropriate protection and mitigation for habitats and wildlife including protected species.

34. No development shall commence until an Ecological Mitigation and Enhancement Strategy has been submitted to, and approved in writing by the local planning authority. The strategy shall be prepared by a suitably qualified and competent ecological consultant and shall include and build upon the measures stipulated in Section 5.0 and 6.0 of the Ecological Appraisal (WYG, September 2017) and Section 5

of the Bat Activity Survey report (Devon Wildlife Consultants, September 2017). The details presented in the strategy shall include, but not be limited to:

- a) Details of pre-commencement surveys including that required for badger;
- b) Precautionary working method statements including those required for tree felling and vegetation clearance particularly in respect of nesting birds, reptiles and roosting bats;
- c) Timings of the works and appropriate mitigation measures;
- d) Comprehensive details of ecological enhancement including wildlife friendly planting and inclusion of bat and bird boxes within the development, and these features should be illustrated on an accompanying site plan.

Thereafter, all works shall be undertaken in strict accordance with the approved strategy and with liaison with, and supervision by (where applicable) a suitably qualified and competent ecological consultant.

REASON: To ensure appropriate ecological mitigation and enhancement measures are implemented and to ensure compliance with wildlife legislation, the NPPF and Core Policy 50 of the Wiltshire Core Strategy (adopted January 2015).

35. No development shall commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to, and approved in writing by the local planning authority. The details presented in the LEMP shall include, but not be limited to:

- a) Full details of planting including a planting schedule and finalised landscape plan.
- b) Details of features to be retained and managed such as trees, together with details of how these features will be protected pre-construction and during construction and how they will be managed post-construction completion. These features should be shown on a site plan.
- c) Aims and objectives of management and prescriptive details of how management will be undertaken including timing and frequency of selected management options.
- d) Preparation of a work schedule (including an annual work plan capable of being rolled forward) and stipulation of the LEMP implementation period.
- e) Details of the body or organisation responsible for implementation of the LEMP;
- f) Details of when the LEMP will be reviewed to ensure it continues to be appropriate.
- g) Details of how the aims and objectives of the LEMP will be communicated to the occupiers of the development.
- h) Details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The LEMP shall be implemented in full in accordance with the approved details and with liaison with, and supervision by (where applicable) a suitably qualified and competent ecological consultant, arboriculturist and landscape manager/architect.

REASON: To ensure appropriate long-term management and protection of retained and created ecological and landscape features in perpetuity; and to accord with the aims of NPPF and Core Policy 50 of the Wiltshire Core Strategy (adopted January 2015).

36. No new external lighting shall be installed until a Sensitive Lighting Strategy has been submitted to the local planning authority for approval in writing. The lighting strategy shall specify the number, type and location of luminaires and lighting columns to be installed and will be accompanied by a lighting contour plan/lux plot. In addition, details of mitigation measures setting out how light spill onto retained and new habitats/areas of planting/ecological enhancement features will be minimised shall be included within the strategy. The strategy shall include and build upon the measures stipulated in Section 5.2 of the Bat Activity Survey report (Devon Wildlife Consultants, September 2017) and shall be prepared with liaison with a suitably qualified and competent ecological consultant. Thereafter, the development shall be carried out in strict accordance with the approved strategy.

REASON: To ensure appropriate mitigation for protected species and reduction in light spill onto retained and new habitats.

37. Prior to the occupation of the development, details of the stopping up of the Allington Way vehicle access, both pedestrian and vehicular, have been submitted to and approved in writing by the Local Planning Authority. That stopping up shall take place in accordance with the approved details, prior to the occupation of the development. The sole means of vehicular and pedestrian access to the development shall be as shown on the plans hereby approved.

REASON: In the interests of highway safety.

Agenda Item 7b
18/00474/FUL – The Malthouse, Bushton

Additional consultation responses:

Council Ecologist – comments received following submission of Bat Roost Inspection Survey dated January 2017, Landscape Ecology Management Plan dated March 2017

- The previous response has still not been addressed and the Council has still not been provided with the results of the Phase 2 surveys deemed necessary by the ecological consultant commissioned by the applicant. The LPA must be provided with the results of the required Phase 2 surveys together with details of any required mitigation and compensation prior to the determination of the planning application, and so maintain an objection on this basis.

- It is paramount that all required Phase 2 ecological surveys are undertaken prior to the determination of the planning application and that the Council is furnished with full ecological baseline details together with a comprehensive mitigation, compensation and enhancement strategy where necessary. Section 6.8 of the PEA stipulates that a Habitat Suitability Index (HSI) assessment for Great crested newts is undertaken of all ponds within 500m of the application site and Section 6.10 specifies that a Water vole survey is required; as aforementioned, neither of these surveys appear to have been carried out to date.

- In addition the email chain sent as an attachment to the Planning Officer from the agent on behalf of their Ecology consultant has misinformed the applicant as protected species surveys cannot be conditioned and the LPA should be provided with comprehensive ecological baseline information prior to the determination of the planning application. Moreover the Phase 2 surveys will inform the formulation of appropriate mitigation and compensation where applicable, and again this information is required by the LPA prior to the determination of planning applications to inform the judgement regarding the level of impact (if any) upon protected species and notable/priority habitats in line with its statutory duty. In addition, Section 3.1 of the submitted LEMP actually refers to the potential presence of great crested newts and reptiles, however, this needs to be established before the LPA reaches a decision regarding the planning application.
- Section 1.3 of the submitted LEMP states that it is a draft and that it requires finalisation in response to a planning condition, and as specified above it refers to the potential presence of protected species. The LEMP should be prepared following collation of full ecological baseline information so that it is appropriately informed and as such the LEMP should be amended accordingly following undertaking of the required Phase 2 surveys. Section 2.0 of the LEMP is titled Description and Evaluation of Features to be Managed; Section 2.1 of the LEMP lists the features of ecological interest present on site and this include aquatic habitat/pond, therefore implying that an existing pond is present. However Section 2.2 - 2.5 then goes on to describe how a waterbody will be created in the northern corner of the site and so is not describing existing habitats on site. This is not clear and appears to be contradictory as Section 2.1 seems to list existing ecological features and habitats whereas Section 2.2.-2.5 describes a proposed pond and how it will be managed. Therefore the Council requests clarification in this regard and for the LEMP to be amended accordingly.

Council Arboricultural Officer – comments following receipt of the Tree Schedule Plan and Tree Constraints Plan:

- It is identified within the Tree Survey and Tree Constraints Plan prepared by Treework Environmental Practice that there are a number of 'B' & 'C' category trees on site. The scheme should allow for the retention of the majority of the 'B' category trees and mitigated planting should be put in place for the loss of trees through this proposal.
- A plan is requested to show all trees to be retained and removed. The plan should also provide details of the correct canopy spread and root protection areas of retained trees on the proposed layout. We can then assess what impact this proposal will have on trees on site.

Officer comment:

The additional information submitted has been considered, but based on the comments of the Council's expert consultees, it remains the case the recommended reasons for refusal (as set out in the report) have not been overcome.

Agenda Item 7c
18/02295/FUL – Former Methodist Chapel, Biddestone

Neighbour representations:

A further letter supporting the proposal has been received from an adjacent occupier resident.

Officer comment:

Since publication of the report, an earlier planning decision has come to light. Permission reference N/78/1567/F allowed for the use of the building as a 'workshop', the scope of which appears also to include the storage of materials.

While a condition limiting the time period for which the permission remained valid was successfully overturned at a later enforcement appeal, the decision contains pre-commencement conditions for the laying out of a parking space and installation of sound insulation that it is understood were not carried out. This calls into question whether the permission was implemented lawfully in practice.

Notwithstanding, the evidence discussed in the course of the Inspector's judgement at the enforcement appeal (held in 1985) indicates that by that time the workshop use was nonetheless well established and in active operation. Therefore, with reference to the first paragraph under the heading 'Principle of Development' in the Officer report, it is now considered likely that the lawfulness of the existing workshop/storage use of the building has become established by virtue of the passage of time.

As either community (church) or employment (workshop/storage) use of the building is identified in the Core Strategy as sequentially preferable to residential use, this new information does not materially impact on the judgements and recommendation set out in the report. The assessment of parking impacts remains valid owing to the need to reflect the current situation and balance the desirability of off-street parking with the reasonable standards of residential amenity.