

## REPORT TO THE NORTH AREA PLANNING COMMITTEE

<b>Date of Meeting</b>	<b>6<sup>th</sup> March 2019</b>
<b>Application Number</b>	<b>18/02180/FUL</b>
<b>Site Address</b>	<b>Land East of the A429, Malmesbury Bypass, Malmesbury</b>
<b>Proposal</b>	<b>Erection of a New Lidl Store and Associated Works Including Car Parking and Landscaping on Land East of the A429, Malmesbury, Wiltshire</b>
<b>Applicant</b>	<b>Lidl UK GmbH</b>
<b>Town/Parish Council</b>	<b>St Paul Malmesbury Without</b>
<b>Division</b>	<b>Sherston</b>
<b>Grid Ref</b>	<b>393674 186904</b>
<b>Type of application</b>	<b>Full Planning</b>
<b>Case Officer</b>	<b>Lee Burman</b>

### **Reason for the application being considered by Committee**

The application was called in for determination by Councillor Thomson in the event of a recommendation to approve given the significant level of public interest in the proposal.

However the Head of Development Management has resolved in accordance with the scheme of delegation to report the application to the committee in any event. The reasons for this decision being the mixed nature of the large scale public consultation response received; and the concurrent submission of a further application for a superstore (Aldi) at Malmesbury, which is also reported for committee determination on this agenda. Allowing both applications to be considered at the same meeting ensures transparency in decision making and enables them to be considered in context.

### **1. Purpose of Report**

To consider the development proposal in the context of the development plan and national guidance and to consider the recommendation that the application be refused.

### **2. Report Summary**

St Paul Malmesbury Without Parish and Malmesbury Town Councils both object to the application.

189 letters of objection from members of the public and interested parties have been received.

359 representations of support from members of the public received. *(It should be noted that a proportion of these representations support the development of a Lidl but raise concerns or objection in respect of the proposed location).*

99 representations from members of the public and interested parties making comments in respect of the proposed development and location received.

Planning Issues raised for consideration by the proposal are:-

Principle of Development

Impact on the character, appearance and visual amenity of the locality including trees

Impact to Heritage Assets including archaeology

Highways Impact and parking

Drainage & Flood Risk

Impact on Ecology

Noise

S106 Matters

### **3. Site Description**

The site is located in the open countryside outside of the defined limits of development for Malmesbury and outside of any other defined settlement boundary.

Immediately to the west and north-west of the site is the A429 with Waitrose supermarket and the Town of Malmesbury beyond. The area to the west of this location falls within the defined settlement boundary for Malmesbury and the defined Conservation Area for the town. To the south west lies the road junction of Priory roundabout with mixed type and scale of residential properties beyond at Burton Hill, and extending further south-east along the B4042 towards Cowbridge.

The land is in agricultural use and is relatively flat, sloping gently down in a north east direction within the red line application boundary before falling away more steeply towards the River Avon located further to the north east of the site. Adjacent agricultural land rises in height to the south towards Burton Hill and Cams Hill, while agricultural land also abuts the site to the east, extending along the river valley at broadly similar levels to the site.

To the north and north east the site is bordered with a mature field boundary featuring hedgerow and mature trees. To the west a line of trees extends along the edge of the A429. To the south the site has an open boundary with the larger field area.

The application site is subject to a range of known constraints in addition to those referenced above. The site is adjacent the Malmesbury Conservation Area. The Council has multiple records of surface water flooding in this location. The site is within a Groundwater Vulnerability Zone and a Water Source Protection Zone. The site is classified as Grade 3 Agricultural Land. The location is one of known archaeological potential with Historic Sites and Monuments Records in the immediate vicinity.

### **4. Planning History**

None directly relevant to the scheme proposals.

### **5. The Proposal**

The proposed development involves the erection of a 1,794 sq m A1 retail food store with ancillary works for access, parking, planting and landscaping. The food store operator is within the discount sector and the range of goods sold would extend beyond foodstuffs to include comparison goods albeit as an ancillary part of the offer and available as part of the

discount operation, so when sold the goods are no longer available i.e. not a permanent part of the offer.

## **6. Planning Policy**

The proposed development by virtue of its limited scale, known site constraints and the likely assessed impacts of development individually and cumulatively is not considered to constitute EIA development for the purposes of Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

### Wiltshire Core Strategy (WCS) (Adopted January 2015)

CP1 Settlement Strategy  
CP2 Delivery Strategy  
CP3 Infrastructure Requirements  
CP13 Spatial Strategy for Malmesbury Community Area  
CP38 Retail & Leisure  
CP50 Biodiversity and Geodiversity  
CP51 Landscape  
CP55 Air Quality  
CP57 Ensuring High Quality Design and Place Shaping  
CP58 Ensuring the Conservation of the Historic Environment  
CP60 Sustainable Transport  
CP61 Transport and Development  
CP62 Development Impacts on the Transport network  
CP65 Movement of Goods  
CP67 Flood Risk  
CP68 Water Resources

### Saved Policies of the North Wiltshire Local Plan 2011

NE18 Noise and Development  
NE14 Trees and New Development

### Malmesbury Neighbourhood Plan (MNP) (Made February 2015)

Policy 10 & Task 3.1, 3.2, 3.3  
Policy 13 Task 6.1 Task 6.4  
Tasks 8.1, 8.3, 8.4, 8.5, 8.9, 8.12, 8.15, 8.16, 8.17, 8.18, 8.19, 8.20, 8.25

### National Planning Policy Framework (Feb 2019)

Paragraphs 2, 7, 8, 10, 11, 12, 14, 38, 47, 85, 86, 89, 90, 91, 92, 108, 109, 110, 111, 117, 118, 124, 127, 131, 155, 163, 165, 170, 175, 180, 189, 190, 192, 193, 196, 197

Planning Policy Guidance (in particular but not exclusively) - Ensuring the vitality of town centres & Consultation Requirements

The Town and Country Planning (Consultation) (England) Direction 2009: Given the scale of the proposed development referral to the Secretary of State is not required.

## **7. Consultations**

The applicant team has made multiple submissions in part seeking to respond to representations made and consultation responses received following consideration of the initial application documentation. Consequently there have been two formal consultations

undertaken and consultees have received and commented upon multiple submissions. As such the following summary of consultee advice and responses is the position following consideration of all documentation submitted.

Wiltshire Council Spatial Planning – Site lies outside the defined settlement boundary where development is not supported. There appear to be no compelling reasons to set aside this policy approach. Sequential test is addressed. Impact to the vitality and viability of the town centre requires comprehensive assessment (defer to GVA advice). Policy 10 of the MNP has been partly addressed by the consent for and opening of Waitrose. Proposals conflict with WCS CP2.

Wiltshire Council Economic Development & Regeneration – no objections.

GVA (Council's Retail advisors) – The requirements of national guidance and WCS CP38 in respect of the sequential test and assessment of impact to town centre vitality and viability have been addressed. There are no more sequentially preferable sites available and this site in retail terms is marginally sequentially preferable to the Aldi site at the Malmesbury Garden Centre. The proposal both individually and cumulatively with the Aldi store will not result in harm to the vitality and viability of the town centre of such significance as to justify refusal on this basis.

Wiltshire Council Highways - No objection subject to conditions and planning obligation to secure highways works and traffic regulation order.

Wiltshire Council Landscape Officer – Objection. The proposed development will result in a harmful urban intrusion into rural countryside, east of the A429 Malmesbury Bypass and the sterilisation of small area of adjoining farmland and countryside to the west and south of the application site. The proposal conflicts with CP51 and CP57 of the WCS and saved policy NE14 of the North Wiltshire Local Plan.

Wiltshire Council Tree Officer – Concerns raised as to the clarity and accuracy of the submitted supporting information in terms of impacts of development to various trees and their root protection zones. Documentation and in particular the arboricultural method statement requires further revisions to comprehensively address matters in a manner consistent with the other application submission details.

Wiltshire Council Conservation Officer – Objection. The resulting alterations to the landscape and character of the area from these proposals would harm the setting of designated heritage assets (Conservation Area) individually and cumulatively and would be contrary to policies 192, 193, 196, 197 and 200 in the NPPF, Historic England's The Setting of Heritage Assets Good Practice Advice in Planning: Note 3 (2nd Ed Dec 2017) and the BS7913.

County Archaeologist – No objection and no conditions required.

Wiltshire Council Ecology – No objection subject to conditions

Wiltshire Council Public Protection – No objection subject to conditions

Wiltshire Council Drainage – No objection subject to conditions

Wiltshire Council Waste & Recycling – No comment as this will be a commercial waste collection arrangement.

Wiltshire Council Rights of Way Team – No objections.

Wessex Water – No objections but identifies issues with securing connections to foul and surface water drainage infrastructure. Consents from Wessex Water and Wiltshire Council as both Highways Authority and Lead Local Flood Authority will be required.

St Paul Malmesbury Without Parish Council- Object to development in this location in principle, outside of the defined settlement and within the open countryside. Retain concerns regarding the proposed access arrangements and impact to the local highway network of the vehicular movements generated.

Malmesbury Town Council – Supports the principle of a Lidl Store within Malmesbury but objects to the development in the proposed location. Significant concerns are raised as to the principle of permitting development in this location outside the defined settlement boundary and implications for future development beyond the A429 in the open countryside. Concerns are raised as to the landscape impact of development in this location. Similarly in terms of the Highways impact of traffic and vehicular movements generated and the proposed access arrangements. The Town Council consider that the impact to the town centre is material and requires mitigation through S106 contributions. The Town Council considers that the proposals conflict with Policy 10 of the neighbourhood plan.

Natural England – No objection

## **8. Publicity**

The application has been advertised by site notice, press notice, neighbour notification letters and consultation with local organisations. As noted above the application has been subject to two periods of formal public consultation.

The consultation response can be summarised as follows:-

- Support (unqualified)
- Support the principle of a discount superstore in the town to address out commuting and improve choice and affordability but object to this proposed location as harmful to the character and appearance of the locality (landscape and conservation area/character of the town), poor accessibility and setting a precedent for development beyond the A429 and outside the town.
- Object to the principle of the development proposal as unnecessary and harmful to the town centre.
- Object to both the principle of the development as unnecessary and harmful to the town centre and to this location being harmful to the character and appearance of the locality (landscape and conservation area/character of the town), poor accessibility and setting a precedent for development beyond the A429 and outside the town

In addition detailed representations have also been submitted on behalf of both Waitrose and the Co-operative society objecting to the proposals. Objections centre on impact to the vitality and viability of the town centre and critique of the scope and accuracy of the retail impact assessment submitted with the application; highways hazard and inadequate access arrangements with negative impact to vehicular movements at the Waitrose store; and site specific harm and related policy and development plan conflicts.

## **9. Planning Considerations**

Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the NPPF i.e. para 2, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. At the current

time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015); the 'saved' policies of the North Wiltshire Local Plan (NWLPL) 2011 (adopted June 2006); and The Malmesbury Neighbourhood Plan (MNP) (Made Feb 2015).

### 9.1 Principle of Development

The application site is located outside of the defined settlement boundary of Malmesbury within the open countryside and is not allocated for any form of development. The site is an out of town location for retail purposes. Policies CP1 CP2 and CP13 of the WCS seek to direct new development in market towns such as Malmesbury to locations within the settlement where additional development is anticipated and supported within the limits of development. Retail development in accordance with national guidance and WCS CP38 is directed to town centres in the first instance. The sequential test is then applied where no town centre sites are available, with edge of centre and then out of centre being the order of preference. Locations as close and well related to town centres as possible are generally sought. National guidance and case law does require that retailers adopt some degree of flexibility as to their operations in order to give full consideration to town centre sites that are potentially available but which may be constrained (as to scale, for example). CP38 does not resist proposals for development outside of town centres in principle. It requires the sequential test to be demonstrably met and for development to be located on the most central site available. It also requires that proposals be supported by a retail impact assessment in accordance with guidance and best practice which demonstrates that the proposal will not harm the vitality and viability of any nearby centres. Subject to meeting these requirements and all other relevant policies of the WCS the proposal could be acceptable in principle.

At this stage it should be noted that there is an application also before the Council for another discount retail foodstore at Malmesbury to be operated by Aldi. Application reference number 18/06980/FUL applies and the proposal is reported on this agenda.

The applicant (Lidl) has submitted a Retail Impact Assessment (RIA) supported by a Counsel's opinion as to the sequential test in the context of the Aldi scheme proposal at Malmesbury Garden Centre and compliance or conflict with CP62 in respect of access to and from the A429 (primary road network). The Council commissioned GVA to review the submitted RIA; Counsel's opinion and to consider the individual and cumulative impact to the town centre of both the Lidl and Aldi schemes. Following initial review of the assessment clarifications were sought and received. The advice received from GVA is that the assessment in terms of town centre impact and sequential test are appropriate following clarifications. In respect of the Lidl scheme the site location is sequentially preferable to the Aldi site in terms of accessibility to the town centre, but the actual number of linked trips could be small. There are no other more sequentially preferable sites available.

Importantly the advice goes on to identify that the impact of the Lidl store to the vitality and viability of the town centre, both individually and cumulatively with the Aldi store is not so significant as to warrant and justify refusal on that basis. The Council's advisors have also reviewed and considered the submissions made by interested parties including the Co-op and Waitrose in arriving at this conclusion. Importantly GVA were also the council's advisors when the Waitrose and Sainsbury's proposals were submitted and considered. This included consideration of the related retail impact assessments the conclusions of which can be considered in the context of the Waitrose development having taken place and the RIAs including household surveys of retail expenditure patterns.

It is also important to note here the very significant level of public representation and submission of important local organisations including the Parish and the Town Council. This

confirms that there is some degree of retail expenditure leakage from the town to other centres, in particular Cirencester and this entails unsustainable transport movements. It is also clear from the public consultation responses that there is a significant level of support for the provision of a discount supermarket operator at Malmesbury, although this support is not unanimous and is in part qualified by objection to the proposed open countryside location east of the A429 outside of the town.

It should also be noted that GVA referenced the possibility of S106 contributions to further offset any impacts to the Town Centre. This is also reflected in the consultation response of the Town Council and the policies of the MNP. S106 matters are addressed further below but in short it is not considered that financial contributions required by S106 would in this instance meet the statutory test set out in the regulations on the use of planning obligations and CIL. No quantified level of financial contribution has been identified. No specific proposals are advanced or identified by any party as to how the contributions would be utilised in the town centre. There is no detailed evidence to demonstrate how such contributions would mitigate impacts to the town centre. The advice of GVA identifies that there is no justified basis for refusal on the grounds of harm to the vitality and viability of the town centre. In these circumstances it is unclear how contributions could be considered necessary as a consequence of and related in scale and kind to the development proposed.

The Town and Country Planning (Consultation) (England) Direction 2009 requires Local Planning Authorities to consult with the Secretary of State in respect of new and extended retail development proposals in out of centre locations subject to certain criteria. These criteria are not met in this instance and so consultation is not necessary in respect of this application.

On this basis the development proposal are considered to conflict with the development strategy defined by core policies CP1, CP2 and CP13 but some level of support for the principle of development is provided under CP38 and Policy 10 MNP. It is therefore necessary to consider the proposals against the other policies of the development plan and relevant aspects of national guidance and weigh all considerations in the balance, which is undertaken in the conclusion below.

## 9.2 Impact on the Character, Appearance and Visual Amenity of the Locality Including Trees

As noted above the application site is within the open countryside abutting the A429 and in a visually prominent location on the access to the town in local views and from localised public and private vantage points. The site features mature field boundaries including a number of mature trees. The site is in agricultural use and lies on elevated land above the A429 adjacent to the A429 but with rising land to the east / north east. Abutting the northern field boundary the site drops to the Avon River and valley at a lower level with land levels dropping off in this direction.

The site forms part of the open countryside location at the entrance to the town beyond what has become a recognisable feature of the landscape and well defined visual boundary to the town – the A429 – especially so in the context of recent development to the west adjacent to the town including the Waitrose store on the opposite side of the A429. Also relevant to the context is the Malmesbury Conservation Area designation, the boundary of which abuts the western edge of the A429. In NPPF terms, the application site and immediate countryside areas is not a “valued” landscape in the context of the definition established by the NPPF, but the NPPF still requires local planning authorities to recognise the intrinsic character and beauty of the countryside when making planning decisions.

The proposals would result in an urbanisation of the land in question changing it from open agricultural pastoral land, prominent in localised views, to a significant large extended urban

area that harmfully breaches the well-established boundary of the A429, taking urban development into open countryside with new built form characteristic of a town centre location. The extensive parking arrangement with associated external lighting, and the site layout extending into the open field at an irregular obtuse angle increases the impact in this context and sterilises at least a part of the existing agricultural field in terms of a realistic and viable future agricultural use. Likewise the position of the development site located hard up against the existing northern field boundary results in the need for unnecessary tree removals and does not demonstrate that existing landscape features have been suitably incorporated into the development proposal, despite a clear opportunity to do so.

The applicant has sought to address the Council's concerns in these respects with various additional submissions including revised proposal to incorporate a green roof into the design of the building (it is not clear what form of planting is proposed for the green roof), the first for Lidl in the UK. In addition the applicant has proposed additional landscaping on a roughly triangular area of land to the north west of the proposed access and building that has been sterilised by the proposed layout and positioning of the development in the field. This is not a part of the application site red line boundary area or within the control of the applicant. The applicant has suggested this could be controlled and delivered by S106 agreement. The council has also received submissions from the landowner to confirm that they are willing to enter into such an agreement albeit subject to certain conditions. The applicant has also made it clear they have no intention of promoting the wider field / adjacent land for development and would enter into the agreement to address this again subject to conditions. The Council's landscape and conservation officers have reviewed and considered these submissions in full. Built Heritage and Conservation aspects are addressed below.

The Council's Landscape Officer raised objection during the first consultation in respect of these submissions with particular reference to the 'in principle' position that the site is outside of the defined settlement boundary, within the open countryside and unallocated for development. Objection was raised as to the harm resulting from the urbanisation of the open countryside through the introduction of significant built form in a location that is visually prominent in localised views and which forms a part of the setting and gateway to the town. Concerns were also raised in respect of the form and layout of the development accentuating this impact and sterilising substantial parts of the related agricultural land. Whilst the revised and additional proposals were welcomed as an improvement, Officers considered that the harm caused was not sufficiently mitigated and that the in principle objection to the introduction of significant built form in this location was not addressed by these provisions. The proposal will harm the intrinsic character and beauty of the countryside.

On this basis it is considered that there is conflict with WCS policies CP51 & CP57 (i, ii & iv & vi); MNP Policy 13 and the supporting aims and objectives set in Tasks 8.1, 8.4 & 8.5 of Vol II of the plan (Design Guide); and para 170 (b) of the NPPF and potentially NWLP (saved policy) NE14; as officers consider that development could be pulled further back from the northern boundary, allowing more vegetation to be retained and successfully incorporated for screening purposes etc.

It should also be noted that the Council's Tree officer has given full consideration to the scheme submissions and various additional submissions in seeking to respond to the results of this initial consultation. Officers identified a range of concerns as to the impact of the proposal on existing trees adjoining the northern boundary adjacent the river valley and the road verge, and also in respect of the proposed planting and landscaping arrangements. Concerns were also identified as to the consistency of information across the various submissions and clarifications and amendments were sought in these respects. This position and process has continued throughout the determination of the application with the applicant's consultants raising concerns and disputing the need for the requested revisions



and consistency of application documentation. This remains the case albeit it is considered that the currently outstanding matters are readily capable of resolution and so no formal objection or recommendation for refusal is advanced on the basis of harmful impact to important or protected trees by the trees officer.

### 9.3 Impact to Heritage Assets including Archaeology

During the initial consultation exercise the Council's archaeologists identified that the application site was one of significant archaeological potential given important finds in the near vicinity following the Waitrose development. Archaeological Field investigation was sought. The applicant team responded to this request in full and made submissions which have been reviewed and assessed by the Council's Archaeologist who has now confirmed that the application site has no archaeological resource and as such no objection is now raised and no conditions are required in respect of further archaeological site works or recording.

As noted above the site is open countryside and does not incorporate any listed buildings and no works to such heritage assets are proposed or required. The application does however sit very close to the Malmesbury Conservation area, which is itself a designated heritage asset, whose boundary lies on the opposite side of the A429. The significance of the conservation area arises from the interpretive, historic, informative and communal value. It is considered to be of higher significance and value given the wide range of high value heritage assets within the town, a number of which are of national significance and grade 1 designation. The town has evolved over time and the conservation area as it abuts the A429 has in particular been subject to recent development including the Waitrose store that has altered the character and appearance of the locality and the conservation area, including the setting of the historic core of the town. This is however a part of the historic evolution of the town and a part of the value & significance in communal and interpretive terms. Whilst not directly a part of and within the designated conservation area the open agricultural land adjacent the A429 and the Priory roundabout is considered to be a part of the setting of the town and the conservation area. It marks the transition of the built form of the two to the related hinterland including open countryside and agricultural land. This is of significance in terms of the historic market town role of Malmesbury.

As identified previously in landscape terms the development results in harm to the character, appearance and visual amenity of the locality through the introduction of significant built form urbanising open agricultural land. The land and the change in character and form would be visually prominent given site circumstances and this impact is not mitigated sufficiently by the proposed use of a green roof and landscaping. The Council's Senior Conservation Officer has been consulted in respect of all the application submissions and does identify less than substantial harm to the setting of the Conservation Area/designated heritage asset and in this context conflict with national guidance in the NPPF and the development plan. It is therefore necessary to consider both whether or not this harm is outweighed by any public benefits; and whether or not any such public benefits could be achieved in a manner that does not result in, or results in less harm than is currently identified. This is part of the overall planning balance exercise and is addressed in the conclusion below.

### 9.4 Highways Impact and Parking

The site is located adjacent to, and proposed to be accessed from, the A429 which is effectively a bypass for Malmesbury and is a long straight road with good visibility and fast moving traffic including as it relates to the site. The site and proposed access is also in close proximity to the Priory Roundabout which is one of the principal junctions in the Malmesbury locality and on the local highway network providing one of the main access points to Malmesbury whilst also distributing traffic southward toward the M4 and Chippenham and

eastward to various settlements. The site and the proposed access are also in close proximity to the existing access / egress for the Waitrose superstore.

The applicant made initial submissions based on an access/egress with left turn exit only and central reservation within the A429 providing right turn access from the southerly direction. The layout would include crossing islands. The proposals were informed by a full Transport Assessment and a draft Travel Plan. The Counsel opinion mentioned above also addressed the issue of access to the Primary Road Network.

The initial submissions have been the subject of multiple detailed representations of objection including those referenced above from consultants representing Waitrose who identify a range of concerns and conflicts with the access arrangements in place for the supermarket.

The Council's Highways Officers raised initial objections both in respect of the principle of a new access to the primary road network under the provisions of WCS CP62 alongside concerns as to the highways impacts of the proposed access and impacts to traffic movements on the Priory roundabout alongside conflicting movements and inadequate access arrangements for pedestrians and cyclist. Concerns were also identified in terms of the internal layout for servicing and parking arrangements.

Various submissions have been made by the applicant team in response with subsequent review and comment by officers and third parties resulting in further submissions. In particular technical notes incorporating additional information alongside revised and additional proposals informed by a road safety audit prepared by the applicant's Transport consultants have been submitted. The cumulative final position as to the proposed access arrangements can be summarised as follows:-

- Access to the proposed Lidl site will be from a new service road by way of a new priority junction on the A429. The proposed junction is located at the point of the existing field access. As part of the design proposals for the new A429 access, a ghost island right turn lane will be provided on the A429. The proposed access will allow for all movements into and out of the site.
- Pedestrian and bicycle access will be provided from the A429. The pedestrian and cycle upgrades proposed as part of the scheme are as follows:
  - Shared use foot / cycleway introduced on the west side of the A429 extending the existing foot / cycleway from its current termination point on the B4014 High Street up to the Waitrose Access.
  - Staggered crossing arrangement over the A429 to the south of the Waitrose Access.
  - Shared use foot / cycleway introduced on the east side of the A429 connecting the new store to the proposed pedestrian crossing on the A429.
  - Footway introduced on the east side of the A429 between the proposed pedestrian crossing and the footway on the north side of the B4042. The existing footway currently terminates at the Priory Roundabout.
  - Shared use foot / cycleway introduced on either side of the service road with pedestrian access into the Lidl store via a link to be located approximately 30m from the junction onto the A429. This link will provide direct access to the store entrance.
- As part of the current scheme proposals it is proposed that the current speed limit location is retained in the current location. However, the applicant has also offered to

cover the cost of the Traffic Regulation Order process to relocate the 30mph limit 75m to the north, should Wiltshire Highways consider this is required.

- Alongside the site access proposals the applicant has offered further works should Wiltshire Highways consider these are required. These potential traffic calming measures that reflect discussions with Malmesbury Town Council at a local level on what measures they may wish to see on this section of the A429 with Malmesbury. The measures discussed and that the applicant is willing to fund are as follows:
  - Potential relocation of the 30mph speed limit change further north on the A429, this will assist the enforcement of the 30mph speed limit on approach to the Priory Roundabout;
  - Dragon teeth markings on the A429 to emphasis the speed limit change;
  - Introduction of high friction surface treatment in red and '30' on road roundel on the A429 northbound approximately 45m north of the Priory Roundabout; and
  - Introduction of high friction surface treatment in red and 'SLOW' on road markings on the A429 northbound approximately 65m north of the Priory Roundabout and southbound approximately 225m north of the roundabout.
- The scheme proposed provides 119 car parking spaces of which 7 will be for the mobility impaired and 8 for parent and child car parking. The scheme proposed provides 7 cycle stands (14 spaces) which are to be located under a covered shelter and are visible from the tills.
- Draft Travel Plan

The Council's Highway Officers have reviewed and assessed all submissions made by the applicant and have done so in the context of and having reviewed all representations submitted. As noted in the consultation summary section Officers raise no objection to the scheme proposals subject to conditions and a planning obligation to address traffic regulation order requirements and highways works. Also in the context that a Section 278 Highways Agreement for various highways works will also be necessary. Officers do not support the proposed extension of the 30 MPH speed restriction given highways conditions and the proposed junction arrangement but do however acknowledge significant local support for this provision. In the event of a positive approval subject to this requirement by the local planning authority, highway officers would support the provision and further TRO funded by the applicant and this would need to be addressed through the planning obligation. Officers also seek clarification as to the exact details of the proposed right hand visibility splay but it is considered that this could be readily addressed through minor additional information and is not a fundamental objection to the proposed arrangements. It is also noteworthy that the proposed splay is the maximum provision or the best level of visibility that could be provided for the road conditions and the proposed vehicular movements. Officers have sought an 'all movement junction' and as is set out above this is the basis of the latest proposed arrangements. Officers were not entirely clear in this respect given that the RSA identifies that a left hand turn (egress) junction would enhance driver experience and given the multiple plan submissions made, a number of which defer full and correct detail to other submissions thereby requiring multiple overlapping cross referencing. Following further analysis it is confirmed that the proposal is an all movement junction which accords with the Highways recommendation. As such no Highways objection is raised to the scheme proposals which therefore accord with the relevant requirements of the development plan and national guidance.

#### 9.5 Drainage & Flood Risk

The position with respect to site drainage (foul and surface water) has been the subject of extensive discussion and submissions following the initial consultation exercise, particularly in respect of responses from the Council's Drainage Officers and Wessex Water. In short the immediate locality is one of known surface water drainage and flooding issues, groundwater flooding and water source protection constraint.

The application submissions included a Flood Risk Assessment (FRA) and Drainage Strategy which were subject to full review and assessment by the Council's drainage officers. An initial holding objection was raised and a range of concerns identified particularly focussing on the proposed strategy of provision of drainage infrastructure across third party land, the public highway and the adjacent water course. Wessex Water raised similar concerns in respect of the foul drainage provisions. However, it was identified that the strategy was broadly acceptable in terms of managing foul and drainage water requirements and achieving policy objectives in relation to climate change, albeit subject to the caveat that the proposals were not initially considered deliverable as no rights of connection existed.

As with the highways position the applicant team has sought to address and allay these concerns with a series of additional submissions including updated FRA and drainage strategy with commitments to secure necessary agreements for rights of access and connection and pumping station provisions. The final cumulative position as to the proposed drainage strategy arrangements can be summarised as follows:-

- Surface water will be discharged directly to the River Avon approximately 105m north of the site. Agreement has been obtained from the landowner to lay a new surface water drain within land north of the site (between the site and River Avon) to facilitate a new connection to the River Avon.
- Attenuation can be provided in the form of an underground attenuation tank located within the northern extent of the proposed car park. There is also potential to utilise permeable paving within the car park.
- Foul flows should be discharged to the 150mm public foul sewer located approximately 185m south of the site crossing Priory Roundabout. A pumped solution will be required.

Following review of the further submissions Officers made some further suggestions as to amendment of the drainage strategy regarding future proofing the foul and drainage provisions in the event of additional development proposals being advanced on the adjacent land. Officers did identify that matters could possibly be addressed via the use of conditions. Both the suggested revisions and the conditions were provided to the applicant team for comment, agreement and or action. The applicant team has responded to confirm that a number of agreements for the rights of access have been reached already, others involve highways land in the council's control and so are potentially deliverable, and that the proposals are those before the Council and there is no other development submitted for consideration at this stage and so it is inappropriate to plan for drainage provision on that basis. In the latter respect the applicant team comments that infrastructure will be capable of upgrading if necessary. As such the recommended conditions from the Drainage officer would be required in the event of an approval but no objection in respect of drainage matters is advanced and the proposals are considered to accord with relevant development plan policies and national guidance.

## 9.6 Impact on Ecology

The consideration of potential impacts in respect of ecology has been the subject of additional submissions following the outcome of the initial consultation exercise. The initial application submission included an ecological appraisal which was the subject of review and assessment by the Council's Ecologists and Natural England. Initial objection in respect of the submission was raised by the Council's Ecologist on the basis of inadequate survey information and/or unclear and incomplete survey detail in respect of a range of species including Bats, Badgers, Birds (Skylark) & Dormouse. Without these matters being addressed it was identified that Officers were not able to fully assess the impacts of development in accordance with national guidance and development plan policy (CP50).

In response to this position the applicant team provided an updated ecological appraisal which included additional information in respect of the above mentioned species alongside others and identified the following summary and recommendations:-

#### *Designated Sites*

- The nearest Natura 2000 site is North Meadow and Clattinger Farm SAC located approximately 9km north east of the site. It is considered unlikely that the development will have any negative direct or indirect impacts on the designated features of the site.
- Conygre Mead LNR, a broadleaved woodland and calcareous grassland is located 0.74km north west from the site. No impacts to the local nature reserve are predicted, if standard construction best practice guidelines are followed.
- There are five local wildlife sites (LWS) within 2km of the site. The closest is Bristol Avon River, located 100m from the site. No impacts to the local wildlife site are predicted if standard construction best practice guidelines are followed.

#### *Habitats*

- Improved grassland will be removed to facilitate the development however this habitat is considered common and widespread both locally and nationally.
- Trees and hedgerows to be retained within and adjacent to the site should be protected from direct impact and from severance or asphyxiation of the roots in accordance with BS5837: 2012 "Trees in Relation to Design, Demolition and Construction – Recommendations" (British Standard, 2012).
- There are opportunities to enhance the ecological value of the site. The incorporation of new native trees or shrubs within the proposed landscape buffer would provide suitable habitat for invertebrates, birds and foraging/commuting bats. Alternative options that could be considered include green walls or green roofs.

#### *Protected & Notable Species*

- It is likely no significant populations of reptiles are present with potential presence limited to low numbers in the field margins. It is recommended that habitat manipulation is completed of suitable boundary habitats.
- If tree T2 is to be removed to facilitate the development, in accordance with the BCT Guidelines, two emergence/ re-entry survey are recommended to determine whether the trees are used by bats at present.
- If tree T1 is to be removed, it must be felled using soft felling techniques.
- All boundary vegetation to be retained on site with a landscape buffer, where possible and subjected to a sensitive lighting plan for foraging and roosting bats;
- All vegetation clearance to be conducted outside of the breeding bird season (March-September inclusive). If this is not possible, all clearance must be supervised and subject to a nesting bird check;
- A check of the site for badgers should take place no more than three months prior to any development to allow time for a Natural England licence to be applied for to close any setts;
- All boundary hedgerow vegetation to be cleared should be first subjected to a dormouse nest check up to 48 prior to removal.
- A search by hand for hedgehogs is carried out immediately prior to removing any areas of

dense vegetation.

The Council's Ecologist has reviewed and assessed this updated appraisal and raises no objections subject to a range of conditions related to the recommendations made. Previous concerns and queries have been adequately addressed by the submissions. In this context it is considered that the requirements of national guidance and WCS CP50 are met.

## 9.7 Other Matters

### *Section 106*

The application is not recommended for approval and so no S106 agreement has been prepared. In the event of a decision to approve an agreement would be necessary to address highways works and TRO requirements.

As noted above the Council's retail advisors (GVA) and the town council have made reference to securing financial contributions for enhancements to the town centre to mitigate retail impact. No specific quantum of contribution is identified. There is no methodology available for assessing and calculating an appropriate level of contribution that would link in scale and kind to the development proposed and the assessed impact to the town centre. It must also be noted in this context that GVA identify that the level of impact to the town centre is not such that it would justify refusal either individually or cumulatively in conjunction with the Aldi store proposal. Finally there are no detailed proposals and projects advanced in respect of town centre enhancement upon which the monies would be expended. The Neighbourhood Plan refers to some aspirations in this respect but there is little detail available as to specific projects that could be related in scale and kind to a quantum of contribution being sought. Also the rationale identified in the plan for those contributions is based upon a dramatic impact to the town centre arising from development, which as set out above is not the assessed position. As such it is not possible to assess the extent to which such contributions would mitigate the impact of development in any event. As such it is not considered that the requirement would meet the provisions of the national requirements in terms of S106 matters as referenced in the NPPF and PPG and including the CIL regulations, which require that contributions be directly related in scale and kind to the development proposed, necessary to make the development acceptable and directly related to the development. The Council's legal department concur with this assessment. Furthermore it is not considered that such requirements are expressly required and justified under the terms of CP3 and CP38 of the WCS.

### *Noise/Public Protection*

The application is supported by a Noise Assessment, Service Delivery Management Plan and Geotechnical Site Investigations. The application proposals have also been amended to include provision for electrical vehicle charging points. Following initial consultations with Public Protection officers clarifications were sought as to the nature and timeframes for goods deliveries and waste servicing. Additional information has been provided and discussion between Public Protection Officers and the consultant advisors to the applicant team have taken place. Subject to use of conditions restricting delivery timeframes, which have been accepted by the applicant team, and following the submission in respect of the ground investigations and provision for ULEV charging Public Protection officers raise no objection and consider the proposals would not result in significant harm to air quality, residential amenity or the environment and so accord with relevant national guidance and the provisions of the development plan.

## **10. Conclusion – The Planning Balance**

The site is not allocated for any form of development and lies outside of the defined limits of development for Malmesbury. The site is therefore in the open countryside where the development strategy of the adopted up to date development plan and national guidance is to restrict development not least of all to recognise the intrinsic character and beauty of the open countryside and to focus development within and direct it to the most sustainable locations. The site is one that is visually prominent from a range of localised vantage points and is close to the boundary of the Malmesbury Conservation on the opposite side of the A429. It is also adjacent to the main arterial route for traffic travelling past and to the town and one its principle access and distributor points - Priory Roundabout. Conflict with the development plan and national guidance is identified in respect of the relevant policies relating to these matters.

The proposed development is also one which is specifically directed to town centre locations as a first preference and subject to a sequential approach to location thereafter. The application site is the least sequentially preferable location for development. The applicant has submitted legal opinion to argue that the site is sequentially preferable to the competitor Aldi application at the Malmesbury Garden Centre. The Council's retail advisors are also of the opinion that the site is marginally sequentially preferable to a material extent in retail terms. In both respects significant reference is made to similar assessments and conclusions in respect of previous competing supermarket proposals in similar locations – Sainsbury's and Waitrose, which concluded in favour of Waitrose. It is officer's opinion that these submissions do not appear to fully weigh and account for material changes in circumstances that have occurred since the determination of those applications. In particular the substantial amount of development, especially residential development, that has taken place to the north of Malmesbury, planned development in that location, and related highways improvements in the vicinity of the Garden Centre site. In addition the evidence of the retail impact assessment as to relatively limited link trips between the town centre and the Waitrose store is of relevance. Taking such factors into account it is officer's view that the sequential difference between the sites is limited. The retail evidence and advice also concludes that there would not be a significant harmful impact to the vitality and viability of the town centre individually from Lidl or cumulatively with the Aldi store such that there is conflict with the provisions of national policy and the development plan. It must also be noted that the development plan does indicate some level of need for additional retail provision within Malmesbury albeit this was the position adopted as the Waitrose Store was permitted. This is however reflected in the findings of the retail impact assessment. The outcome of the consultation exercise identified substantial levels of out commuting to other centres for retail purposes supporting the findings of the retail impact assessment and the provisions of the plan. The public consultation response whilst mixed overall did identify significant levels of support for provision of a discount supermarket retail store, at least somewhere in Malmesbury.

With respect to other site specific matters the majority are considered by officers to raise no significant harmful impacts or conflict with the development plan and national policy that cannot be appropriately and satisfactorily mitigated via the use of conditions and a planning obligation (S106 agreement) and some minor amendments/additional submissions. Ecology, Drainage, Trees, Public Protection and Highways are all considered to be satisfactorily addressed in this way. With respect to Highways interested third parties remain in objection and raised concerns to the assessment undertaken including as to the in principle acceptability of an additional access to the primary road network and compliance with the development plan and in particular WCS CP62. Officers have given this matter extensive consideration and concluded that on balance it would not be defensible to object and refuse permission as a matter of principle and conflict with CP62 WCS. In doing so weight is given to the site specific circumstances in terms of available visibility and existing highway speed restrictions and the proposed package of transport measures including pedestrian and cycle access, all-purpose junction and travel plan. It is also material to consider that the Council

has agreed such accesses in other locations within Wiltshire where the material site circumstances indicated this was appropriate.

On this basis and on balance it is considered that the proposals are in conflict with the development plan. It is therefore necessary to weigh this as a material harm in the overall planning balance.

It is also necessary to consider the Heritage asset issues individually. In this context the Council's Conservation Officer identifies less than substantial harm to the setting of the Conservation Area both individually and cumulatively with other recent development in this immediate locality, and consequently conflict with the relevant provisions of the development plan and national policy. Given the material circumstances in that the site is close to but not within the conservation area; and some level of mitigation is proposed with landscaping and planting to the south and west it is considered that the harm is at the lower half of the scale. It is considered that the development delivers some public benefits and these are set out in more detail below but include enhanced retail provision and offer, reduce out-commuting and loss of retail expenditure to other areas, economic benefits from construction and additional employment. It is considered that in isolation the benefits of development are marginally greater than the harm caused. However, where harm is identified, even when less than substantial, it must still be given weight in the planning balance. It is then necessary to consider whether or not these benefits could be achieved in a way that reduces or obviates the harm that is identified. In this instance it is considered that there is an alternative approach in that there is an alternative development proposed in a location that provides the same benefits but does not result in the identified harm. Given the statutory requirement to preserve and where possible enhance designated heritage assets it is considered on balance that there is harm and therefore conflict with the development plan and national guidance which must also be weighed in the overall planning balance.

As such there is both identified harm arising in relation to the conflict with the development plan and national guidance in respect of the development strategy of the plan, the adverse impact on the character, appearance and visual amenity of the landscape and the setting of the conservation area and in this latter respect there is harm to a designated heritage asset and consequent conflict with statutory requirements. Overall, these objections amount to a significant level of harm. The benefits of development must be weighed against and in relation to this harm. Such benefits include the additional retail offer for the town, including in respect of discount retail provision resulting in social and economic benefits for residents. The proposal has separate economic benefits in respect of additional expenditure in the town and the reduction in the leakage of expenditure to other locations alongside tax revenues. The proposal would also result in additional employment opportunities which also have social and economic benefits. There would be economic benefits arising from the construction of the development. Finally the improved retail offer for the town would result in reduced out commuting to other locations for shopping purposes resulting in environmental benefits from reducing vehicular movements.

It is not considered that these benefits outweigh the harm that would be caused by the development proposed. The conflict with the development plan is a harm that should not be set aside lightly given statutory provisions in this respect, similarly in relation to designated heritage assets. Much of the benefit that arises from development is of limited scale and extent e.g. economic benefits from construction are temporary, whilst the numbers of jobs generated are limited in scale. Additionally, it is considered that the benefits of the development of a discount food store could be achieved in another location that would result in a lesser degree of harm.



On this basis and in accordance with the provisions of the development plan and taking account of government policies outlined in the NPPF, it is recommended that the application should be refused planning permission.

## **RECOMMENDATION**

Refusal for the following reasons:-

1. The proposed development in the location identified would conflict with the development strategy of the development plan as defined by policies CP1, CP2 and CP13 of the Wiltshire Core Strategy (Jan 2015) and thereby conflict with paragraphs 2, 12 and 47 of the NPPF (Feb 2019).
2. The proposed development would result in harm to the character, appearance and visual amenity of the locality through the urbanisation of the landscape contrary to Wiltshire Core Strategy Policies CP51 and CP57 (i, ii, & iv);. Policy 13 as informed by aims and objectives tasks 8.1, 8.4 & 8.5 and Vol II (Design Guide) Malmesbury Neighbourhood Plan (Made Feb 2015); and NPPF para 170(b) (Feb 2019), while the proposed location of development precludes future viable agricultural use/s for adjoining farmland to the west and south, which would not represent an efficient use of land contrary to WCS, CP57 (vi).
3. The proposed development would result in less than substantial harm to a designated heritage asset (Setting of the Malmesbury Conservation Area) which is not outweighed by the public benefits of development. The proposals thereby conflict with Wiltshire Core Strategy CP57 (i & iv) and CP58; Malmesbury Neighbourhood Plan Policy 13 as informed by aims and objectives tasks 6.1, 8.1, 8.4 & 8.5 and Vol II (Design Guide); 192, 193, 196, 197 and 200 in the NPPF (Feb 2019), Historic England's The Setting of Heritage Assets Good Practice Advice in Planning: Note 3 (2nd Ed Dec 2017) and the BS7913.

### **Background Documents Used in the Preparation of this Report:**

**Application submissions (Initial and Revised/Additional)**  
**Wiltshire Core Strategy Jan 2015**  
**Malmesbury Neighbourhood Plan 2015**  
**National Planning Policy Framework Feb 2019**  
**Planning Practice Guidance**  
**Application submissions 18/06980/FUL**